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PAPER – 8 : INDIRECT TAX LAWS

Working notes should form part of the answer.

Question No.1 is compulsory.

Attempt any five questions from the remaining six questions.

Question 1

- (a) Dharma Manufacturers, engaged in the manufacture of machines (and not availing small-scale concession) sold a machine to Asha Ltd. The cum-duty sale price of the machine excluding VAT is ₹ 5,80,000. Rate of excise duty is 10%, education cess is 2% and secondary and higher education cess is 1 %.

Sale price includes the following charges:

		₹
(i)	Warranty charges	28,000
(ii)	Secondary packing	6,000
(iii)	Trade discount actually allowed	24,000
(iv)	Design and development charges of machine	20,000
(v)	Primary packing	10,000
(vi)	Cost of return fare of vehicles	4,500
(vii)	Advertisement and publicity charges borne by Asha Ltd.	16,000
(viii)	Pre-delivery inspection charges	22,000
(ix)	After sales service charges	18,000

Determine the assessable value of the machine for purpose of Central Excise duty.

Provide notes in respect of the treatment for each of the items listed at (i) to (ix) above.

(5 Marks)

- (b) Choti Ltd., which is engaged in the manufacture of excisable goods started its business in May, 2011. It availed small scale exemption in terms of Notification No. 8/2003-C.E. dated 1-3-2003 as amended for the financial year 2011-2012. The following details are provided: (4 Marks)

	₹
15,000 kg of inputs purchased @ ₹ 992.70 per kg (inclusive of Central excise duty @ 10.3%)	1,48,90,500
Capital goods purchased on 28-6-2011 (inclusive of excise duty at 10.3%)	44,12,000
Finished goods sold (at uniform transaction value throughout the year)	2,50,00,000

The suggested answers for Indirect Tax Laws (Paper 8) are based on the provisions as amended by the Finance Act, 2011 and notifications/circulars issued up to 31.10.2012 which are relevant for May, 2012 examinations.

Calculate the amount of excise duty payable by M/s. Choti Ltd. in cash, if any, during the year 2011-12. Rate of duty on finished goods sold may be taken at 10.3% for the year and you may assume that the selling price is exclusive of central excise duty. There is neither any processing loss nor any inventory of input and output. Show your workings and notes with suitable assumptions as required. (5 Marks)

- (c) Justice & Co. (partnership) is a law firm engaged in providing legal consultancy services under section 65(105)(zzzm) of the Finance Act, 1994. Compute the service tax payable by Justice & Co. in respect of the following amounts received in the month of March, 2012.

		Receipts (₹)
(i)	Consultancy in relation to incorporation of XYZ Co. Ltd.	10,00,000
(ii)	Advance towards assistance in filing service tax return of PQR Ltd. for the half year ending March, 2012	2,00,000
(iii)	Advice to MNO & Co. in July, 2011 with regard to compliance under Point of Taxation Rules, 2011.	3,75,000
(iv)	Appearance before labour court on behalf of Mr. Worker (an individual) in the month of October, 2011.	25,000

Note: All receipts are exclusive of service tax. Justice & Co. is not eligible for small scale service provider's exemption under Notification No. 6/2005-S.T. dated 1-3-2005 in the financial year 2011-12. Show working notes with assumptions as may be required.

- (d) PQR Industries Ltd, has imported certain equipment from Japan at an FOB cost of 2,00,000 yen (Japanese). The other expenses incurred by M/s. PQR Industries Ltd. in this connection are as follows:
- (i) Freight from Japan to Indian Port 20,000 yen
 - (ii) Insurance paid to insurer in India (for the importation of the machine) ₹10,000
 - (iii) Designing charges paid to consultancy in Japan 30,000 yen
 - (iv) M/s. PQR Industries Ltd. had expended ₹1,00,000 in India for certain developmental activities with respect to the imported machine.
 - (v) PQR Industries Ltd., had incurred road transport cost from Mumbai port to their factory in Kamataka. ₹30,000
 - (vi) CBEC had notified for purposes of section 14 of the Customs Act, 1962 exchange rate of 1 yen = ₹0.3948. The interbank

exchange rate as announced by the authorized dealer was 1 yen = ₹ 40

(vii) M/s. PQR Industries Ltd. had effected payment based on exchange rate

1 yen = ₹ 0.4150

(viii) The commission payable to the agent in India was 5% of the

FOB cost of the equipment in Indian rupees

Arrive at the assessable value for purposes of valuation under the Customs Act, 1962 with brief notes wherever necessary for each of the adjustments at (i) to (viii) above.

- (e) Strong Constructions undertakes works contracts and maintains sufficient records to quantify the labour and other service charges. From the details given below, calculate the taxable turnover, input tax credit and net VAT payable under the State VAT Law:

(i)	Total contract price (excluding VAT)	1,80,00,00
(ii)	Materials purchased and used for the contract taxable at 12.5% VAT (inclusive of VAT)	33,75,000
(iii)	Labour charges paid for execution of the contract	40,00,000
(iv)	Other service charges paid for the execution of the contract	20,00,000
(v)	Cost of consumables used not involving transfer of property in goods	10,00,000

Strong Constructions also purchased a plant for use in the contract for ₹ 20,80,000 (inclusive of VAT). In the VAT invoice relating to the same VAT was charged at 4% separately. Assume 100% input tax credit is available on capital goods immediately. Make suitable assumptions where required and show the workings.

Answer

- (a) Computation of assessable value of the machine

Particulars	₹	₹
Cum-duty sales price of the machine excluding VAT		5,80,000
Less: Trade discount [Note 3]	24,000	
Cost of return fare of vehicles [Note 5]	<u>4,500</u>	<u>28,500</u>
Cum-duty price for excise duty purposes		<u>5,51,000</u>
Assessable value = $\frac{5,51,500}{110.30} \times 100$		5,00,000

Notes:

1. As per the definition of the transaction value under section 4(3)(d) of the Central Excise Act, 1944, warranty charges are includible in the assessable value.
2. Amount charged from the buyer in relation to packing, irrespective of it being primary or secondary, is included in the assessable value. [Circular No. 643/34/2002 CX dated 01.07.2002]
3. As the transaction value is the price actually paid or payable, trade discount is allowable as deduction. The discount amount is reduced from the sale price on the presumption that such discount is included (added back) in the sale price of ₹ 5,80,000.
4. Design and development charges of machine are included in the assessable value as such charges are 'in connection with sale'.
5. Cost of return fare of vehicles is not included in the assessable value [Circular No. 923/13/2010 CX dated 19.05.2010].
6. Advertisement and publicity expenses borne by the buyer are included in the assessable value. [Circular No. 643/34/2002 CX dated 01.07.2002]
7. Pre-delivery inspection charges and after sales service charges are included in the assessable value. [Circular No. 936/26/2010 CX. dated 27-10-2010]

(b) Computation of the excise duty payable

Particulars	₹	₹
Finished goods sold during the year		2,50,00,000
Less : Exemption of ₹150 lakh under Notification No. 8/2003 CE dated 01-03-2003		<u>1,50,00,000</u>
Dutiable clearances [Note 1]		<u>1,00,00,000</u>
Excise duty payable @ 10.30% (₹1,00,00,000 × 10.30%)		10,30,000
Less: CENVAT credit available on inputs [Note 2] Proportion of inputs consumed in dutiable clearances $= ₹ \frac{1,00,00,000}{2,50,00,000} = 0.4$ Excise duty paid on such inputs $= ₹ \frac{1,48,90,500}{110.30} \times 0.4$	5,56,200	
Less: CENVAT credit available on capital goods [Note 3]	<u>4,12,000</u>	<u>9,68,200</u>

$= ₹ \frac{44,12,000 \times 10.30}{110.30}$		
Excise duty payable in cash		61,800

Notes:

1. Since there is neither any processing loss nor inventory of input and output, it implies that all goods manufactured have been sold and entire quantity of inputs has been used in manufacturing these goods.
2. In respect of units availing SSI exemption, no CENVAT credit is available on inputs consumed in exempt clearances of ₹150 lakh.
3. In respect of units availing SSI exemption, CENVAT credit on capital goods can be availed but utilized only after clearances of ₹150 lakh.

Further, entire credit on capital goods can be taken in the same financial year by such units.

(c) Computation of service tax payable

Particulars	₹
Consultancy in relation to incorporation of XYZ Co. Ltd. [Note 1]	10,00,000
Advance towards assistance in filing service tax return of PQR Ltd. for half year ending March, 2012 [Note 1]	2,00,000
Advice to MNO & Co. in July, 2011 with regard to compliance under Point of Taxation Rules, 2011 [Note 1]	3,75,000
Appearance before Labour Court on behalf of Mr. Worker, an individual [Note 1]	<u>Nil</u>
Value of taxable services	<u>15,75,000</u>
Service tax @10% = ₹15,75,000 × 10%	1,57,500
Education cess @ 2% = ₹1,57,500 × 2%	3,150
Secondary and higher education cess @1% = ₹1,57,500 × 1%	<u>1,575</u>
Service tax payable	<u>1,62,225</u>

Notes:

1. As per the definition of taxable legal consultancy service provided under section 65(105)(zzzzm) of the Finance Act, 1994:-
 - (a) Legal consultancy service provided to any person, by a business entity, in relation to advice, consultancy or assistance in any branch of law, in any manner is liable to service tax.

(b) Legal consultancy service provided by any person, in relation to representational services before any court, tribunal or authority, to an individual is not liable to service tax.

2. As per rule 7 of the Point of Taxation Rules, 2011, in case of legal consultancy services, service tax is payable on receipt basis.

(d) **Computation of assessable value**

Particulars	Yen	Yen
FOB value		2,00,000.00
Add: Freight	20,000	
Designing charges paid in Japan [Note 2]	<u>30,000</u>	<u>50,000.00</u>
Total value (in yen)		<u>2,50,000.00</u>
Total value (in Indian rupees) =2,50,000 Yen × ₹ 0.3948 [Note 1] (Rate of 1 yen = ₹0.3948)		98,700.00
Add: Insurance [Note 5]	10,000.00	
Add: Agent's commission at 5% FOB value [Note 6] (5% of 2,00,000 Yen × 0.3948)	<u>3,948.00</u>	<u>13,948.00</u>
Total CIF price		1,12,648.00
Add: Landing charges @ 1% [Note 7] (1% of ₹1,12,648)		<u>1,126.48</u>
Assessable value for the purposes of customs duty (rounded off)		<u>1,13,774</u>

Notes:

- (1) Rate of exchange notified by the CBEC has been considered [Clause (a) of the explanation to section 14 of the Customs Act, 1962].
As per rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007:
- (2) Value of design work undertaken *elsewhere than in India* is includible in the value of the imported goods. [Rule 10(1)(b)(iv)]
- (3) Value of development work undertaken *in India* is not includible in the value of the imported goods. Hence, ₹1,00,000 expended in India for developmental activities have not been considered.
- (4) Only the cost of transport of the imported goods *up to the place of importation* is includible for the purpose of valuation. Thus, transport cost from Mumbai port

(place of importation) to the factory in Karnataka has not been included in the assessable value. [Rule 10(2)(a)]

- (5) Insurance of the machine is includible in the assessable value. [Rule 10(2)(c)]
 - (6) Buying commission is not includible in the value of the imported goods. Since the agent's commission does not represent buying commission, hence, it is includible. [Rule 10(1)(a)(i)]
 - (7) Landing charges have been considered @ 1%. [Clause (ii) of the first proviso to rule 10(2)]
- (e) Under works contract, VAT is imposed on the sale price of the goods in which there is a transfer of property. Labour and other charges incurred for such execution are deductible.

Computation of the taxable turnover, input tax credit and net VAT payable

Particulars	₹	₹
Total contract price		1,80,00,000
Less : Deductions admissible		
Labour charges paid for executing the contract	40,00,000	
Service charges paid for execution of contract	20,00,000	
Cost of consumables not involving transfer of property in goods	<u>10,00,000</u>	<u>70,00,000</u>
Taxable turnover		<u>1,10,00,000</u>
Output VAT payable @ 12.5% [VAT rate has been assumed to be 12.5%]		13,75,000
Less : <u>Input tax credit admissible</u>		
On the material purchased	3,75,000	
$\text{₹ } 33,75,000 \times \frac{12.5}{112.5}$		
On the plant purchased $\text{₹ } 20,80,000 \times \frac{4}{104}$	<u>80,000</u>	<u>4,55,000</u>
<u>Net VAT payable</u>		<u>9,20,000</u>

Note: The above solution has been worked out by assuming output VAT rate to be 12.5% since output VAT rate has not been provided in the question.

Question 2

- (a) With reference to the amendments effected by the Finance Act, 2011, briefly explain the following:

- (i) *State the three conditions upon fulfilment of which penalty under Section 11A of the Central Excise Act, 1944 may be halved and the extended period of limitation of five years may be invoked.*
- (ii) *State the three conditions upon fulfilment of which no interest would become payable under Section 11AA of the Central Excise Act, 1944.*
- (iii) *Briefly explain the condition when accessories and goods used for providing free warranty are eligible as 'input' under rule 2 (k) of the Cenvat Credit Rules, 2004.*
(2×3=6 Marks)
- (b) *Answer the following with brief reasons and reference to the Finance Act, 1994 as amended relating to applicability of service tax.*
- (i) *Delayed payment charges collected by stock brokers.*
- (ii) *Practising chartered accountant representing a client before Income Tax Officer in assessment proceedings.*
- (iii) *Personal liability of a director or other officer of a company for offences under the Finance Act, 1994 relating to service tax.*
(2×3=6 Marks)
- (c) *Discuss briefly the provisions relating to manner of computation of limitation period of one year in three situations contemplated under Section 27(1B) of the Customs Act, 1962 for purpose of refund of duty.*
(3 Marks)

Answer

- (a) (i) Under section 11A of the Central Excise Act, 1944, extended period of limitation can be invoked and penalty be reduced to 50% on fulfillment of the following conditions:
- duty has not been levied or paid or short-levied or short-paid or erroneously refunded by the reason of fraud, collusion, any wilful mis-statement, suppression of facts, contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty.
 - the said default has been found during the course of any audit, investigation or verification.
 - details relating to the transactions are available in the specified records.
- (ii) Interest under section 11AA of the Central Excise Act, 1944 would not be payable on fulfillment of the following conditions:
- (a) Duty becomes payable consequent to issue of an order, instruction or direction by the Board under section 37B;
 - (b) Full duty is paid voluntarily within 45 days from the date of issue of such order, instruction or direction; and
 - (c) Right to appeal against such payment at any subsequent stage is not reserved.

- (iii) As per rule 2(k) of the CENVAT Credit Rules, 2004,
- (i) accessories would be eligible as input, if they are cleared along with the final product and their value is included in the value of the final product.
 - (ii) goods used for providing free warranty for final products would be eligible as input if warranty is provided by the manufacturer and its value is included in the price of the final product and is not charged separately from the customer.
- (b) (i) *CBEC Letter No. F.No.137/25/2011-ST dated 03.08.2011* has clarified that delayed payment charges collected by the stock brokers are not includible in taxable value as such charges are in the nature of a penal charge levied by a service provider on the service recipient for not making the payment within stipulated time.
- It may be noted that service tax would not be leviable on these charges only if they are shown separately in the account statement/invoice/bill etc.
- (ii) With effect from 01.05.2011, *Notification No. 32/2011 ST dated 25.04.2011* has rescinded *Notification No. 25/2006 ST dated 13.07.2006* granting exemption to Chartered Accountants in relation 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.
- Therefore, a practicing Chartered Accountant representing a client before Income Tax Officer in assessment proceedings would be liable to service tax.
- (iii) Certain provisions of the Central Excise Act, 1944 are made applicable to service tax vide section 83 of the Finance Act, 1994. Section 9AA of the Central Excise Act, 1944 relating to the offences committed by companies is one such provision which has been made applicable to the service tax also.
- Section 9AA provides as follows:-
- In case of an offence committed by a company, every person who was in-charge of the company (in the given case, it is director) and responsible for conduct of the business at the time when offence was committed, is deemed to be guilty. However, such person will not be liable to any punishment if he proves that offence was committed without his knowledge or he had taken due care to prevent the offence. [Sub-section (1)]
- If it is proved that the offence is committed with consent or connivance of, or due neglect on part of any director or other officer of the company, such person would be deemed to be guilty and can be proceeded against and punished accordingly. [Sub-section (2)]
- (c) The three situations and the manner of computation of limitation period of one year in such situations as contemplated under section 27(1B) of the Customs Act, 1962 are:

- (i) Where goods are exempt from payment of duty by a special order issued under section 25(2) of the Customs Act, 1962, the limitation of one year is computed from the date of issue of such order.
- (ii) Where the duty becomes refundable on account of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any Court, the limitation of one year is computed from the date of such judgment, decree, order or direction.
- (iii) Where any duty is paid provisionally under section 18, the limitation of one year is computed from the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment.

Question 3

- (a) *Happy Ltd., cleared certain goods to P. Ltd., paying higher rate of excise duty in the month of March, although the rate of duty on the said goods had been reduced in the Budget of the same financial year. However, P Ltd., refused to pay the higher duty which Happy Ltd., had paid by mistake. P Ltd., raised a debit note in the month of June of the same year. Happy Ltd., applied for refund of the excess excise duty paid in August. The Department rejected the claim on the ground that the incidence of duty has been passed by Happy Ltd. to P. Ltd.*

While claiming refund Happy Ltd., relied on the debit note raised by P Ltd., in the month of June to demonstrate that its customer P Ltd, had not paid the excess duty to Happy Ltd. The Department contended that since the debit note was issued in the month of June and not March it could not be the basis for refund.

With a brief note:

- (i) *Examine, with the help of decided case law, whether the contention of the Department is correct in law.*
 - (ii) *State whether in the above case, assuming that the issue is decided in favour of Happy Ltd. by the Commissioner of Central Excise (Appeals) and the duty involved is ₹4,80,000, the Revenue could file an appeal before the CESTAT against such an order.* (6 Marks)
- (b) *Briefly explain with reasons whether in the following cases service tax would be applicable besides Value Added Tax (VAT) or Excise duty on the same transaction as indicated herein below with reference to decided case law:*
- (i) *SIM card supplied as part of mobile telecommunication services could be subjected to service tax and VAT.*
 - (ii) *Manufacture and sale of products where the sale price is inclusive of erection, installation and commissioning services could be subjected to excise duty and service tax on the services involved.* (6 Marks)

- (c) Write a brief note on the following with reference to decided case law and the provisions of the Customs Act, 1962.
- (i) Whether it is mandatory for the revenue officer to make available copies of seized documents to the person from whom they are seized?
 - (ii) Whether benefit of exemption notification meant for 'imported goods' could be extended in case of "smuggled goods"? (3 Marks)

Answer

- (a) (i) The facts of the given case are similar to the case of *CCE v. Techno Rubber Industries Pvt Ltd.* 2011 (272) E.L.T. 191 (Kar.) wherein the High Court has held that the Department is bound to refund the excess amount of duty received by it to the person who has paid this excess duty. In this case, the buyer had refused to pay excess duty claimed and had raised a debit note. The High Court observed that in such a situation, the only inference which could be drawn was that the assessee had not received the excess duty paid by him to the Department.

In the given case also, P Ltd. (buyer) has refused to pay the higher duty and has raised a debit note on Happy Ltd. (assessee). Thus, it can be inferred that Happy Ltd. has paid higher duty to the Department and has not received it from P Ltd. Thus, Happy Ltd. is entitled to the refund of such excess duty paid by him and the contention of the Department is not valid in law.

- (ii) No, Revenue could not have filed an appeal to CESTAT against the order passed by the Commissioner of Central Excise (Appeals) as the duty involved for refund is ₹4,80,000.

CBEC has issued the instructions vide *F.No.390/Misc./163/2010-JC dated 17.08.2011* fixing the monetary limits of duty below which an appeal cannot be filed in CESTAT, High Court and Supreme Court by the Department and these monetary limits apply to cases of refund as well. As per the said instructions, an appeal cannot be filed before the Tribunal if the duty involved in a case is ₹ 5,00,000 or below.

- (b) (i) SIM card supplied as part of mobile communications services would be subjected to service tax and not VAT in the light of the decision in case of *Idea Mobile Communications Ltd. v. CCE 2011 (23) S.T.R. 433 (SC)*.

The Apex Court has affirmed the decision of the Kerala High Court wherein it has been held that SIM card has no intrinsic value or purpose other than use in mobile phone for receiving mobile telephone service from the service provider. Thus, SIM cards are not goods sold or intended to be sold to the customer, but are supplied as part of service. The value of SIM cards forms part of the activation charges because no activation is possible without a valid functioning of SIM card. Hence,

the value of SIM card supplied by the assessee would form part of the value of taxable service on which service tax is payable by the assessee.

- (ii) Manufacture and sale of products where the sale price is inclusive of erection, installation and commissioning services would be subjected to the excise duty on the assessable value of manufactured products (excluding erection, commissioning and installation charges).

As per the decision in the case of *Commissioner of Service Tax v. Lincoln Helios (India) Ltd.* 2011 (23) S.T.R. 112 (Kar.), excise duty is levied on the aspect of manufacture and service tax is levied on the aspect of services rendered.

Hence, in case both excise duty and service tax are paid in a transaction, it would not amount to payment of tax twice.

Service tax and excise duty are not mutually exclusive. The assessee has to pay service tax on the value of services.

- (c) (i) In the case of *Manish Lalitkumar Bavishi v. Addl. DIR. General, DRI* 2011 (272) E.L.T. 42 (Bom.), it is held that it is mandatory for the Revenue officers to make available the copies of documents seized during the course of any action by an officer to the person from whose custody such documents are seized.

As per section 110(4) of the Customs Act, 1962, it is mandatory for the Customs officers to make available the copies asked for and the choice of either asking for the document or seeking extract is not available to the officers, but only to the party concerned.

- (ii) No, the benefit of the exemption notification meant for 'imported goods' could not be extended to "smuggled goods".

The Supreme Court in the case of *CCus. (Prev.), Mumbai v. M. Ambalal & Co.* 2010 (260) E.L.T. 487 has held that had smuggled goods and imported goods were to be treated as one, Customs Act, 1962 would not have provided for two different definitions for the two. Considering that curbing the ills of smuggling in the economy is one of the principal functions of the Customs Act, the purpose of exemption notifications would be defeated if the benefit meant for imported goods is given to smuggled goods.

Question 4

- (a) *Gaseous Ltd., purchased helium gas in bulk from the open market and its quality control officer had conducted various tests and issued test reports stating the results of the tests. The bulk purchase was packed and filled in cylinders of various sizes and certificates were issued along with quantities. The purchases from the open market were of generic description and after test and analysis were sold to different customers based on their specific requirements with a profit margin of 40 to 60%. The Central Excise Department*

claimed that duty had to be paid on the sale price as there was "deemed manufacture" in terms of Note 9 to Chapter 28 of the Central Excise Tariff, 1985 which reads as follows:

"In relation to products of this Chapter, labelling or relabelling of containers or repacking from bulk packs to retail packs or adoption of any other treatment to render the product marketable to the consumer shall amount to manufacture." Briefly explain with a note based on case law, if any, whether:

- (i) the process of filling the bulk gas into cylinders of smaller quantities after tests and quality processes with distinct grades would amount to 'treatment' as per the said chapter note. (2 Marks)*
- (ii) Whether it could be said that the helium gas purchased in bulk is already marketable and hence the chapter note will not be attracted in this case. (4 Marks)*
- (b) PQR & Co. was involved in the services of unloading of coal from wagon tripping system, stacking/reclaiming of coal to stacker reclaimer system and feeding of coal to boiler bunkers through conveyor system. The Department had taken a view that the charges received by PQR & Co. for such activity were taxable under the category of 'Cargo Handling Services' in terms of Section 65(105)(zi) read with Section 65(23) of the Finance Act, 1994. However PQR & Co. claimed that the services rendered by them cannot be brought under 'cargo handling services' as it is engaged only in the handling of coal from railway wagons to the required destination of the thermal power station wherein machines are used with the aid of some man power.*

Briefly explain:

- (i) with reference to relevant provisions and case law, if any, whether the stand taken by the Department is correct in law;*
- (ii) Whether in the above matter, against an adverse order passed by the Commissioner of Central Excise in adjudication proceedings against PQR & Co. and thereafter confirmed by the CESTAT, PQR & Co. could file an appeal against the order of the CESTAT before the High Court under Section 35G of the Central Excise Act, 1944. (6 Marks)*
- (c) Explain, with reference to decided case law, whether clearances from Domestic Tariff Area (DTA) to Special Economic Zone is chargeable to export duty under the SEZ Act, 2005 or the Customs Act, 1962. (3 Marks)*

Answer

- (a) The facts of the given case are similar to the case of Air Liquide North India Pvt. Ltd. v. CCE 2011 (271) E.L.T. 321 (S.C.). Hence, answers to part (i) and (ii) are based on the observations and the decision in the said case.*
- (i) Yes, the process of filling the bulk gas into cylinders of smaller quantities after the tests and quality processes with distinct grades would amount to 'treatment' as per the said chapter note.*

In the aforesaid judgment, the Apex Court observed that if the gas purchased by the assessee had not undergone any treatment and was being sold as such, customers of the assessee could have purchased the same from the assessee's suppliers. Further, the customers would not have paid a price 40% to 60% higher than the purchase price of assessee.

- (ii) No, the helium gas purchased in bulk was not already marketable and hence, chapter note will be attracted in this case.

The Supreme Court observed that the marketability of the product to “the purchaser trading in it” is distinguishable from the marketability of the product to “the purchaser purchasing the same for final consumption”. The phrase “marketable to the consumer” in the Chapter note refers to the latter case.

The helium gas purchased in bulk by the assessee was marketable to the “purchaser trading in it” and the helium sold by the assessee is marketable to “the person who purchases the product for his own consumption”. Hence, the product became marketable only after undergoing the said treatment. Thus, the chapter note is attracted thereby making the assessee liable to pay excise duty.

- (b) (i) No, the stand taken by the Department is not valid in law.

In the case of *S.B. Construction Company v. Union of India* (2006) 214 STR 545 (Raj.), it is held that service tax is levied under the cargo handling on such services which undertake the activities of packing, unpacking, loading, unloading of goods to be transported by any means of transportation namely truck, rail, ship or aircraft.

However, in the instant case, the service provided by PQR & Co. is distinct i.e., transporting coal from wagons to Thermal Power Station by conveyor belt and not by any means of transportation. Thus, the services rendered by PQR & Co. do not fall under the ambit of ‘cargo handling services’ and as such, are not liable to service tax.

- (ii) No, PQR & Co. could not have filed an appeal against the order of CESTAT before High Court under section 35G of the Central Excise Act, 1944.

In case of *CCEx. & ST v. Volvo India Ltd.* 2011 (24) S.T.R. 25 (Kar.), the High Court has held that as per section 35G of the Central Excise Act, 1944, an appeal to High Court cannot be filed to decide the question relating to the taxability of any services as this question falls squarely in the exception mentioned in section 35G viz., ‘an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment’. In these cases, the appeal lies to the Apex Court under section 35L of the Central Excise Act, 1944.

- (c) In the case of *Tirupati Udyog Ltd. v. UOI* 2011 (272) E.L.T. 209 (A.P.), it is held that the clearances of goods from DTA to Special Economic Zone are not chargeable to export duty either under the SEZ Act, 2005 or under the Customs Act, 1962 on the basis of the following observations:-

- The charging section needs to be construed strictly. If a person is not expressly brought within the scope of the charging section, he cannot be taxed at all.
- SEZ Act does not contain any provision for levy and collection of export duty on goods supplied by a DTA unit to a Unit in a Special Economic Zone for its authorised operations. Since there is no charging provision in the SEZ Act providing for the levy of customs duty on such goods, export duty cannot be levied on the DTA supplier.
- Reading section 12(1) of the Customs Act, 1962 along with sections 2(18), 2(23) and 2(27) makes it apparent that customs duty can be levied only on goods imported into or exported beyond the territorial waters of India.

Since both the SEZ unit and the DTA unit are located within the territorial waters of India, supplies from DTA to SEZ would not attract section 12(1) [charging section for customs duty].

Question 5

- (a) (i) Explain briefly whether "assembly" would tantamount to 'manufacture' under the Central Excise Act, 1944.
- (ii) Briefly explain the situations where transaction value under Section 4 of the Central Excise Act, 1944 does not apply. (3×2=6 Marks)
- (b) (i) Major Ltd., imports business support services from Wilfred Ltd., of USA on 18-8-2011. The relevant invoice for \$ 1,50,000 is raised by Wilfred Ltd., on 20-9-2011. Assuming that Major Ltd. makes the above mentioned payment on the dates as indicated in the following table, determine the point of taxation under the Point of Taxation Rules, 2011 in each case giving reasons for your answer:
- | | | |
|---------|------------|-----------|
| CASE I | 10-12-2011 | |
| CASE II | 15-04-2012 | (4 Marks) |
- (ii) Write a brief note on Tax Payer's Identification Number (TIN) for purpose of VAT. (2 Marks)
- (c) What is the purpose of the interpretation rules regarding Customs Tariff? Do they form part of the Tariff Schedule? Briefly explain Akin rule of interpretation. (3 Marks)

Answer

- (a) (i) Assembly is a process of putting together a number of items or their parts to make a product. All cases of assembly may not amount to manufacture as an already manufactured item may also be assembled to put it in a readily usable form.
- However, assembly of various parts and components may tantamount to manufacture if a new product which is movable and marketable emerges out of such assembly. Therefore, if an "immovable property" emerges after such assembly, it will not be considered as manufacture.

The Apex Court in the case of *Narne Tulaman Manufacturers Pvt. Ltd. V CCE 1988 (38) E.L.T. 566 (S.C)* held that if the assembly results in new commercial commodity with a distinct name, character and use, then it would amount to manufacture.

- (ii) As per section 4 of the Central Excise Act, 1944, following four conditions are to be fulfilled individually and cumulatively for valuing excisable goods on the basis of transaction value:

- (1) There should be sale of goods.
- (2) The goods sold should be for delivery at the time and place of removal.
- (3) The assessee and the buyer of the goods should not be related persons.
- (4) The price should be sole consideration for the sale.

The transaction value will not apply if any of the above requirements is not fulfilled.

- (b) (i) As per rule 7 of the Point of Taxation Rules 2011, the point of taxation for persons who are required to pay tax as recipients in respect of notified services is the date on which payment is made. However, in case the payment is not made within a period of six months from the date of invoice, the provisions of rule 7 do not apply and the point of taxation is determined under rule 3, 4, 5, 6 or 8 as applicable.

Since, the given case relates to import of services where service tax is to be paid by the service receiver, the point of taxation in each of the two cases will be determined as under:

CASE I The point of taxation is date of payment i.e., 10.12.2011 since Major Ltd. makes the payment within six months from the date of invoice.

CASE II As Major Ltd. does not make the payment within six months from the date of invoice, provisions of rule 7 will not apply and point of taxation will be determined on the basis of rule 3, i.e, issuance of invoice or date of making the payment, whichever is earlier.

However, since invoice has NOT been issued within 14 days from the date of completion of provision of service, earlier of the following two dates will be the point of taxation:

- (i) Date of completion of provision of service; or
- (ii) Date of payment.

Since, date of completion of provision of service [18.08.2011] precedes the date of payment [15.04.2012], it will be the point of taxation.

- (ii) Tax Payer's Identification Number (TIN) is the registration number of the dealer. It consists of 11 digit numerals throughout the country. First two characters represent the State Code and the next nine characters are different in different States.

TIN facilitates computer applications such as detecting stop filers and delinquent accounts. It also helps in cross-checking the information on tax payer compliance.

- (c) The purpose of Interpretation Rules of Customs Tariff is:
- (i) to give clear direction as to how the nomenclature in the Schedule is to be interpreted and
 - (ii) to give statutory force to the Interpretation Rules and the general explanatory notes.

The Interpretation Rules are integral part of the schedule.

Rule 4 of the Rules of Interpretation is called as Akin Rule. This rule lays down that goods which cannot be classified in accordance with rules 1, 2 and 3 of the Rules of Interpretation would be classified under the heading appropriate to the goods to which they are most akin.

Question 6

- (a) *Briefly explain the procedure to be followed by the Authority for Advance Rulings on receipt of application for Advance Ruling under the Central Excise Act, 1944. (6 Marks)*

OR

- (i) *Briefly specify under what circumstances it may be beneficial to pay duty and claim rebate under rule 18 of the Central Excise Rules, 2002. (3 Marks)*
- (ii) *Can the Department file an appeal in respect of the same assessee if in respect of some years no appeal was filed in matters involving identical dispute. Write a brief note with reference to the Central Excise Act, 1944. (3 Marks)*
- (b) *Dwarka Ltd. is engaged in providing taxable services under the Finance Act, 1994.*
 - (i) *For the half year ending on 30-9-2011, it furnished the return on 24-12-2011. On the basis of information provided answer the following:*
 - (i) *Specify the due date and form for filing the return (1 Mark)*
 - (ii) *Compute the amount of late fee payable by Dwarka Ltd., under the Finance Act, 1994 and rules made there under. (2 Marks)*
 - (ii) *Explain the system of cross-checking under VAT Laws. (3 Marks)*
- (c) *Write a brief note on self assessment in customs under the Customs Act, 1962. (3 Marks)*

Answer

- (a) As per section 23D of the Central Excise Act, 1944, following procedure is to be followed by the Authority for Advance Rulings on receipt of application for advance ruling:-
1. On receipt of application for advance ruling, the Authority has to forward a copy to the relevant Commissioner.

2. The Authority may accept or reject the application. The Authority will pass an order of admission or rejection of the application and give a copy of such order to the applicant and the Commissioner.
3. Application can be rejected in the following cases only after giving an opportunity of being heard to the applicant:-
 - (i) where the question raised in the application is already pending before any Central Excise Officer, the Appellate Tribunal or any Court; or
 - (ii) where the question raised is the same as in a matter already decided by any Appellate Tribunal or any Court.
4. The Authority can further examine any material placed before it after admission of the application.
5. The Authority has to pronounce the final order within 90 days of receipt of application.
6. Duly signed copies of the final order are to be given to the applicant as well as the Commissioner of Central Excise.

OR

- (i) Under the following situations, it is beneficial to pay duty and claim rebate under rule 18 of Central Excise Rules, 2002:
 - (i) If the assessee has unutilized balance of CENVAT credit in respect of capital goods because credit in respect of capital goods is never refundable.
 - (ii) SSI unit may pay excise duty and claim rebate, as getting refund of CENVAT credit of inputs is not easy and it cannot claim refund of duty paid on capital goods.
 - (iii) When duty paid goods are proposed to be exported.
- (ii) It has been held by the Supreme Court in the case of *C.K Gangadharan v. CIT, Cochin, 2008 (228) ELT 497* that merely because Revenue has not preferred an appeal in some cases, it would not prevent the Revenue to prefer an appeal in another case if it is in the public interest or there is just cause for doing so or for a pronouncement by the higher Court when divergent views are expressed by the different High Courts.

However, the Supreme Court has given a conflicting decision in the case of *CIT v. J.K. Charitable Trust 2008 (232) ELT 769 (SC 3 members bench)* wherein it has held that if in respect of some years, in respect of same assessee, no appeal was filed involving an identical dispute, revenue can be precluded from filing an appeal if the fact situation in subsequent years remains the same.

Further, it may be noted that section 35R inserted vide the Finance Act, 2011 provides *inter alia* that where in pursuance of any instruction issued by CBEC with regard to fixing monetary limits for filing appeal etc., Central Excise Officer has not filed any appeal against any decision passed under the provisions of the Act, then it shall not preclude

such officer from filing appeal in any other case involving the same or similar issues or questions of law.

- (b) (i) (i) As per rule 7 of the Service Tax Rules, 1994, due date for filing the service tax return for the half year ending on 30.09.2011 is 25.10.2011. The return has to be filed in Form ST-3.
- (ii) Dwarka Ltd. furnished its return on 24.12.2011. Therefore, the delay in submission of return is 60 days (6 days of October +30 days of November + 24 days of December).

As per rule 7C of the Service Tax Rules, 1994, if the return is filed beyond 30 days from the due date, ₹1,000 plus ₹100 for every day from the 31st day till the date of furnishing the said return, subject to a maximum of ₹20,000, is payable as late fee.

Therefore, late fees payable by Dwarka Ltd. is ₹1,000 + (₹100×30 days) = ₹4,000

Note: It may be noted that the due date of filing the return for the half year ending on 30.09.2011 had been extended to 20th January, 2012 vide *Order No. 1/2012 dated 09.01.2012*.

- (ii) A comprehensive cross-checking system is a pre-requisite for an efficient VAT system as VAT system requires the assessee to self-assess the VAT liability and only a few returns are scrutinized on a selective basis. A threshold limit for purchases/sales may be specified exceeding which the dealers may be asked to submit the list of purchases/sales or the dealer-wise list from whom or to whom the goods have been purchased/sold.

A cross-checking computerized system is being worked out which would facilitate the comparison between the tax returns and set-off documents of VAT system of the States and those of Central Excise and Income-tax. Cross checking reduces tax evasion which leads to significant growth of tax revenue. It protects the honest dealers and penalizes the fictitious or dishonest ones and creates a level playing field.

- (c) (i) Self-assessment of duty has been introduced in the Customs Act, 1962 vide the Finance Act, 2011 by recasting section 17 of the Customs Act, 1962.
- (ii) The importer or the exporter has to self-assess the duty leviable on goods imported or exported.
- (iii) The proper officer may verify the self-assessment of such goods by examining/testing the goods, if necessary. He may also ask the importer or the exporter to furnish any document or information for ascertaining the duty.
- (iv) After verification, if it is found that the self-assessment has not been done correctly, the proper officer may re-assess the duty leviable on such goods.

- (v) If the order of the reassessment is contrary to the self-assessment, the proper officer should pass a speaking order on the re-assessment within 15 days from the date of reassessment.
- (vi) Where re-assessment has not been done or a speaking order has not been passed on re-assessment, the proper officer may audit the assessment of duty of the imported/export goods at his office or at the premises of the importer/exporter.

Question 7

- (a) (i) *Briefly explain the provisions in respect of waiver of physical warehousing in case of exigency in respect of export goods under the Central Excise Act, 1944.*
- (ii) *Under Excise Audit 2000, the selection of the unit is based on "risk factors". Explain in brief the expression 'risk factors' giving any two examples. (3 × 2 = 6 Marks)*
- (b) (i) *KPL Ltd. did not pay its service tax dues of ₹ 30 lakhs for the period ending 30-9-2011. Can the Department create first charge on the property of KPL Ltd.? If the answer is in the affirmative, whether there are any limitations in respect of creation of such first charge? Briefly explain with reference to the Finance Act, 1994.*
- (ii) *Who are not eligible for composition scheme under the VAT regime. Write a brief note. (3 × 2 = 6 Marks)*
- (c) *What are the ways that would constitute circumvention of antidumping duty imposed on an article that may warrant action by the Central Government based on inquiry as it may consider necessary for purpose of Section 9A(1A) of the Customs Tariff Act, 1975. (3 Marks)*

Answer

- (a) (i) The officer-in-charge of the warehouse may permit waiver from physical warehousing on the written request of the exporter provided all the formalities relating to record-keeping are completed with suitable record in the Warehousing Register: 'warehousing waived'. Such cases should be reported to the Superintendent-in-charge of the warehouse at the earliest.

The permission is given in the following exceptional cases if the entire consignment is entered for export in the original packing:

- (i) where delay occurred due to delayed supply from the factory or longer transit period; or
- (ii) requirement of immediate export; or
- (iii) any other genuine reasons.
- (ii) Risk factors under Excise Audit, 2000 means that the assessee who have a bad track record are taken up for audit on priority basis over those who enjoy a clean track record.

For example:

- (i) assessee having past duty evasion cases

- (ii) late payment of duty/late filing of returns
- (iii) major audit objections
- (iv) no cash payment of duty (all CENVAT adjustment)
- (v) past duty dues, etc.

Note : Any two examples may be given.

- (b) (i) Section 88 of the Finance Act, 1994 creates first charge on the property of the defaulter for recovery of service tax dues. Thus, the Department can create first charge on the property of KPL Ltd. for recovery of service tax dues of ₹ 30 lakhs.

Yes, there are limitations in respect of creation of such first charge. The first charge can be created subject to the provisions of following specified Acts:-

- (1) Companies Act, 1956 (Section 529A)
- (2) Recovery of Debts due to Banks and the Financial Institutions Act, 1993; and
- (3) Securitization and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002.

- (ii) The following persons are not eligible for the composition scheme under the VAT regime-

- (i) a manufacturer or a dealer who sells goods in the course of inter-State trade or commerce; or
- (ii) a dealer who sells goods in the course of import into or export out of territory of India; or
- (iii) a dealer transferring goods outside the State otherwise than by way of sale or for execution of works contract; or
- (iv) a dealer whose turnover exceeds ₹ 50 lakh in the last financial year.

Note: Any three points may be mentioned.

- (c) As per section 9A(1A) of the Customs Tariff Act, 1975, following are the ways that would constitute circumvention of antidumping duty imposed on an article that may warrant action by the Central Government:

- (i) altering the description or name or composition of the article subject to such anti-dumping duty,
- (ii) import of such article in an unassembled or disassembled form,
- (iii) changing the country of its origin or export, or
- (iv) any other manner, whereby the anti-dumping duty so imposed is rendered ineffective.

Note: Any three points may be mentioned.