

MOCK TEST PAPER – 1
FINAL COURSE: GROUP – II
PAPER – 8: INDIRECT TAX LAWS
SUGGESTED ANSWERS / HINTS

1. (a) Computation of turnover limit of ₹ 400 lakh of Swagat Enterprises for claiming SSI exemption during financial year 2012-13:-

S. No.	Particulars	Amount (₹ in lakh)
(i)	Goods subject to valuation based on retail sale price under section 4A of the Central Excise Act, 1944 (said goods are eligible for 40% abatement) (Note-5)	60
(ii)	Goods on which duty is paid based on annual capacity of production under section 3A of the Central Excise Act, 1944	100
(iii)	Clearances without payment of duty to a 100% export oriented unit (Note-1)	Nil
(iv)	Goods bearing brand name of National Small Industries Corporation (Note-2)	50
(v)	Exports to U.S.A. (Note-3)	Nil
(vi)	Exports to Bhutan (Note-3)	50
(vii)	Job work done under <i>Notification No. 214/86-C.E. and 84/94-CE</i> (Note-4)	Nil
(viii)	Goods manufactured in rural area with brand name of others (Note-2)	30
(ix)	Balance clearances of goods in the normal course	<u>30</u>
	Total turnover	<u>320</u>

Notes: 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 ₹ 400 lakh in the preceding year. *Notification No. 08/2003* provides that for the purpose of computing the turnover of ₹ 400 lakh (as shown above):-

- clearances of excisable goods without payment of duty to a 100% EOU are excluded
- clearances bearing the brand name or trade name of another person are excluded. However, clearances of excisable goods bearing brand name/trade name of National Small Industries Corporation and goods manufactured in

rural area with brand name of others are included.

3. export turnover is excluded. However, exports to Bhutan cannot be excluded as these are treated as "clearances for home consumption".
4. clearances under specified job work notifications are excluded and *Notification No. 214/86 CE* and *84/94-CE* are the specified notifications.
5. In case of the goods subject to valuation under section 4A of the Central Excise Act, 1944, value for the purpose of the SSI exemption would mean value fixed under section 4A i.e., retail sale price less abatement. Hence, value of such clearances would be ₹ 100 lakh × 60% = ₹ 60 lakh.

Since the value of clearances in the previous financial year 2012-13 does not exceed ₹ 400 lakh, Swagat Enterprises is eligible to claim the benefit of *Notification No. 8/2003 dated 1st March, 2003* in the financial year 2013-14.

- (b) Services provided by the Government or a local authority are not chargeable to service tax as they are included in the negative list. However, following services provided to a person other than Government, by the Department of Posts are excluded from the negative list:-

- (i) Speed post
- (ii) Express parcel post
- (iii) Rural Postal Life Insurance
- (iii) Agency services which include distribution of mutual funds, bonds, collection of telephone and electricity bills, etc.

Hence, the aforesaid services are taxable.

Thus, the amount of service tax payable by Bharatpur Post Office for the quarter ending 31.03.2013 would be as follows:-

Particulars	Amount(₹)
Speed post services	6,50,000
Basic mail services	Nil
Issue of postal orders	Nil
Distribution of mutual funds, bonds and passport applications	8,00,000
Transfer of money through money orders	Nil
Rural postal life insurance services	3,00,000
Collection of telephone and electricity bills	5,50,000
Pension payments	Nil
Operation of saving accounts	Nil

Express parcel post	<u>7,00,000</u>
Value of taxable service	<u>30,00,000</u>
Service tax @ 12% [30,00,000×12%]	3,60,000
Education cess @ 2% [3,60,000×2%]	7,200
Secondary and higher education cess @ 1% [3,60,000×1%]	<u>3,600</u>
Service tax liability	<u>3,70,800</u>

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

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

Particulars		₹	
Total contract price		2,00,00,000	
Less : Deductions admissible			
1. Labour charges paid for executing the contract	70,00,000		
2. Cost of consumables in which no property is transferred	10,00,000		
Total deductions		80,00,000	
Taxable turnover		1,20,00,000	
Output VAT payable @ 12.5% (on ₹ 1,20,00,000)		15,00,000	(A)
Less : Input tax credit admissible			
1. On the material purchased (on ₹ 90,00,000 x 12.5/112.5)	10,00,000		
2. On the plant purchases (on ₹ 20,80,000 x 4/104)	80,000		
Input tax credit		10,80,000	(B)
Net VAT payable		4,20,000	(A-B)

- (d) **Computation of assessable value and customs duty payable on the machine:**

FOB value	16,000 UK pounds
Add: Design and development charges	1,000 UK pounds
Add: Freight (air) (Note-3)	3,200 UK pounds
Add: Insurance 1.125% of FOB (Note-4)	<u>180 UK pounds</u>
Total	<u>20,380 UK pounds</u>
Total in rupees @ ₹ 80 per pound (Note-1)	₹ 16,30,400

Add: Local agency commission	
(2% of 16000 UK pounds)= 320 UK pounds × ₹ 80	₹ 25,600
C.I.F value	₹ 16,56,000
Add: Landing charges @1%of CIF value	₹ 16,560
Assessable value	₹ 16,72,560
Add: Basic custom duty @ 20% (Note-2)	₹ 3,34,512
Total	₹ 20,07,072
Add: CVD @12%	₹ 2,40,848.60
Add: Education cess (3% of custom duty) = 3% of (₹ 3,34,512+ ₹ 2,40,848.60)	₹ 17,260.82
Total for Special CVD	₹ 22,65,181.46
Special CVD @4%	₹ 90,607.26
Total duty payable:	₹ 3,15,993.28
(₹3,34,512+ ₹ 2,40,848.60+ ₹ 17,260.82+ ₹ 90,607.26)	₹ 6,83,229(Rounded off)

Notes:

- Exchange rate = ₹ 80 per UK pound (date of presentation of bill of entry)
 - Section 15 of the Customs Act, 1962 provides that rate of duty shall be :-
the rate in force on the date of presentation of bill of entry
or
the rate in force on the date of entry inward
whichever is later.
 - The air freight should not exceed 20% of FOB value. Hence actual air freight of 5,000 pounds has been restricted to 3,200 pounds (16,000 × 20%).
 - Where the insurance charges are not ascertainable, such cost shall be 1.125% of FOB value of the goods.
2. (a) (i) The definition of the exempted services has been substituted with the following new definition:-
- Exempted service means a-
- taxable service which is exempt from the whole of the service tax leviable thereon; or
 - service, on which no service tax is leviable under section 66B of the Finance Act; or
 - taxable service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable

service, shall be taken;

but shall not include a service which is exported in terms of rule 6A of the Service Tax Rules, 1994.

- (ii) **Refund of CENVAT credit to service providers providing services taxed on reverse charge basis**-A provider of service providing services notified under sub-section (2) of section 68 of the Finance Act (services taxed on reverse charge basis) and being unable to utilise the CENVAT credit availed on inputs and input services for payment of service tax on such output services, shall be allowed refund of such unutilised CENVAT credit subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette.
- (b) (i) The provision of any service provided or agreed to be provided shall be treated as export of service when,-
- (a) the service provider is located in the taxable territory,
 - (b) the service receiver is located outside India and the place of provision of the service is outside India,
 - (c) the service is not a service specified in the negative list (Section 66D) of the Act,
 - (d) the payment for such service has been received by the service provider in convertible foreign exchange, and
 - (e) the service provider and service receiver are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act.
- (ii) The definition of continuous supply of service has been amended to insert the condition of making payment periodically or from time-to-time. Moreover, the services provided on a recurrent basis shall also be considered as continuous supply of service.
- (c) The basic allowance to passengers other than tourists consists of:-
- (a) Used personal effects, excluding jewellery required for satisfying daily necessities of life.
 - (b) Other articles which are carried on the person or in his accompanying baggage.

There is no value limit for used personal daily necessities of life. However, in respect of a passenger of more than 10 years of age coming from a country other than Nepal, Bhutan, Myanmar or China after more than 3 days of stay abroad, other articles of baggage upto a value of ₹ 35,000 are allowed duty free. Consequently, Mr. Kamal is not liable to pay customs duty.

3. (a) Yes, the Department's action is justified in law. The facts of the given case are similar to the case of *CCEx., Mumbai v. Fiat India Pvt. Ltd.* 2012 (283) E.L.T. 161 (S.C.). The Supreme Court held that duty has to be paid on the "transaction value". Section 4(1)(a) of the Central Excise Act, 1944 defines transaction value as under:-

".....in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value"

If any of the ingredients in the above definition is missing, then the price shall not be considered as the sole consideration as transaction value.

Supreme Court opined that this is a case of extra commercial consideration in fixing of price, and artificially depressing it. Full commercial cost of manufacturing and selling was not reflected in the price as it was deliberately kept below the cost of production. Thus, price could not be considered as the sole consideration for sale. No prudent business person would continuously suffer huge loss only to penetrate market; they are expected to act with discretion to seek reasonable income, preserve capital and, in general, avoid speculative investments. It is immaterial that the cars were not sold to related persons.

In view of the above, resorting to best judgment assessment was proper.

- (b) Yes, BBP Constructions is entitled to claim refund on service tax paid on construction activity so done by them. The facts of the given case are similar to the case of *CCE (A) v. KVR Construction* 2012 (26) STR 195 (Kar.). The High Court of Karnataka, distinguishing the landmark judgment by Supreme Court in the case of *Mafatlal Industries v. UOI* 1997 (89) E.L.T. 247 (S.C.) relating to refund of duty/tax, held that service tax paid mistakenly under construction service although actually exempt, is payment made without authority of law. Mere payment of amount would not make it 'service tax' payable by the respondents. When once there is lack of authority to collect such service tax from the respondent, it would not give authority to Department to retain such amount and validate it. In view of the above, it was held that refund of an amount mistakenly paid as service tax could not be rejected on ground of limitation under section 11B of the Central Excise Act, 1944.
- (c) No, the contention of Revenue is not correct. The facts of the given case are similar to the case of *Commissioner of Cus., Vishakhapatnam v. Aggarwal Industries Ltd.* 2011 E.L.T. 641 (S.C.). The Supreme Court held that in the instant case, the contract for supply of crude sunflower seed oil was entered into at a certain agreed price. The contract could not be performed on time because of which extension of time for shipment was agreed between the contracting parties. It is true that the commodity involved had volatile fluctuations in its price in the international market, but having delayed the shipment; the supplier did not increase the price of the commodity even after the increase in its price in the international market. There was no allegation of the supplier and importer being in collusion. Thus, the appeal was

allowed in the favour of the assessee and contract price was accepted as transaction value.

4. (a) No, the Department's contention is not justified. The appeal is required to be filed within the stipulated time of 3 months of the date of serving of the order i.e. 26th February 2012. The facts of the given case are similar to the case of *Amidev Agro Care Pvt. Ltd. v. Union of India* 2012 (279) E.L.T. 353 (Bom.). The High Court observed that as per section 37C(1)(a) of the Central Excise Act, 1944, it was obligatory on the part of the Revenue, either to tender a copy of the order to the assessee or to send it by 'registered post with due acknowledgment' to the assessee or its authorized agent.

In the present case, neither of the above had been complied with by the Revenue. The High Court thus held that in the facts of the present case, it cannot be accepted that the requirements of section 37C had been complied with. Accordingly, the contention of the assessee that a copy of the order of Commissioner of Central Excise (Appeals) would be considered to be received for the first time on the day on which the copy of the order was made available via registered post, would have to be accepted.

- (b) Yes, the assessee's contention is justified in law. The facts of the given case are similar to the case of *CCE & ST v. Adecco Flexione Workforce Solutions Ltd.* 2012 (26) S.T.R 3 (Kar). The High Court held that Revenue had no authority to initiate proceedings for recovery of penalty under section 76 of the Finance Act, 1994 when the tax payer paid service tax along with interest for delayed payments promptly. As per section 73(3), no notice shall be served against persons who had paid tax with interest. The authorities can initiate proceedings against defaulters who had not paid tax and not to harass persons who had paid tax with interest on their own. If the notices were issued contrary to this section, the person who had issued notice should be punishable and not the person to whom it was issued.
- (c) No, BSF is not liable to pay custom duty. The facts of the given case are similar to the case of *Commissioner of Customs (Import), Mumbai v. Konkan Synthetic Fibres* 2012 (278) E.L.T. 37 (S.C.). The Supreme Court stated that it was a settled proposition in a fiscal or taxation law that while ascertaining the scope or expressions used in a particular entry, the opinion of the expert in the field of trade, who deals in those goods, should not be ignored, rather it should be given due importance. The Court, on referring to the case of *Collector of Customs v. Swastik Woollens (P) Ltd.* 1988 (37) E.L.T. 474 (S.C.), held that when no statutory definition was provided in respect of an item in the Customs Act or the Central Excise Act, the trade understanding, i.e. the understanding in the opinion of those who deal with the goods in question was the safest guide. Therefore, statement of the textile commissioner that the product imported by the assessee was covered under said notification needs to be accepted. Thus, the Supreme Court concluded that the imported goods were covered under the exemption notification.

5. (a) (i) No, Haribhakti Jewellers' opinion is not correct in law.

As per rule 12AA of the Central Excise Rules, 2002, in case of article of jewellery or other articles of precious metals falling under Heading 7113 or 7114 manufactured on job-work basis, merchant manufacturer would obtain registration, maintain accounts, pay duty leviable on such goods and comply with all the relevant provisions of these rules, as if he is an assessee. Proviso to sub-rule (1) to rule 12AA earlier providing an option available to job-worker to pay duty and comply with all the procedures has been omitted thereby withdrawing such option available to job-worker to pay duty and comply with all the procedures. Therefore, now only the merchant manufacturer can pay duty in such cases. Hence, in the given case, Haribhakti Jewellers will have to obtain registration, maintain accounts, pay duty leviable on such goods and comply with all the relevant provisions of Central Excise Rules, 2002.

- (ii) The Central Excise Tariff Act, 1985 incorporates five Rules of Interpretation. Rule 3(c) of the Rules for the Interpretation provides that when goods cannot be classified by reference to rule 3(a) or rule 3(b), they shall be classified under the heading which occurs last in the numerical order among those which equally merit consideration.

Thus the maxim "Latter the Better" applies in determining the classification of the excisable goods.

- (b) (i) Services by way of training or coaching in recreational activities relating to arts, culture or sports are not liable to service tax as it is specifically exempt under the mega exemption notification.
- (ii) Service of a player to a franchisee which is not a recognized sports body is taxable as it does not get covered under the mega exemption notification.
- (iii) Pre-school education and education up to higher secondary school or equivalent is not liable to service tax as it is included in the negative list under section 66D of the Finance Act, 1994.
- (c) The statement is not correct. As per section 125 of the Customs Act, 1962, whenever confiscation is ordered, the adjudicating officer may provide an option to the owner of the goods to pay redemption fine in lieu of confiscation if the importation or exportation of goods is prohibited. However, if importation or exportation of goods is not prohibited, the option to pay redemption fine shall be given to the owner of goods.

Therefore, an exporter guilty of exporting prohibited goods is not entitled as such to an option to pay fine in lieu of confiscation under section 125 of the Customs Act, 1962. It is at **the discretion of the adjudicating officer** to give or not to give such an option to the exporter guilty of exporting prohibited goods. However, the owner

of the goods importing or exporting non-prohibited goods shall be entitled to such an option.

6. (a) The goods kept in a warehouse for being exported can be diverted by Mr. Arnav Gupta for home consumption in the following manner:
- (i) With the permission of the Deputy or Assistant Commissioner of Central Excise, the goods can be cleared for home consumption on invoice prepared under rule 8 on payment of duty, interest and any other charges on GAR-7 challans. Necessary entries are to be made in the export warehouse register maintained by the exporter in the warehouse.
 - (ii) Credit will be permitted in the Running Bond Account equivalent to the duty involved in the goods so diverted, which shall not exceed amount of duty debited on the basis of ARE-3 on which such goods were received in the warehouse.
 - (iii) Goods can also be diverted for home consumption even after clearance of goods from warehouse under ARE- 1. The documents will be cancelled as per *Notification No. 46/2001 CE (NT) dated 26.6.2001* as amended. The intimation of such cancellation is to be given to Deputy/Assistant Commissioner having jurisdiction over the warehouse. Credit in Running Bond Account will be permitted in the same manner as mentioned above.
 - (iv) The exporter has to pay an interest @ 24% p.a. on the amount of duty payable on such goods from the day of clearance from the factory of production or any other premises approved till the date of payment of duty and clearance.

OR

(a) Procedure of Excise Audit, 2000:-

- (i) **Selection of Assessee:** Depending upon the manpower availability, about 300 to 400 units are selected for conducting audit during a financial year. Selection of the unit is based taking into account the 'risk-factors'.
- (ii) **Desk Review:** The auditors are assigned the assessee to be audited at the beginning of the financial year. They are required to gather as much information about the assessee as possible by interacting with the assessee.
- (iii) **Gathering and documenting information:** The auditor may also require certain documents or information from the assessee to complete his preliminary investigation. For this, he may write letter to the assessee or send him a questionnaire to obtain this information.
- (iv) **Touring of the premises:** The auditor then visits the unit of the assessee to see the actual running of the unit, the systems that are followed for maintaining records in various sections and the system of movement of goods and the related documents within the unit.

- (v) **Audit Plan:** Based on his experiences and the information gathered so far about the assessee, the auditor prepares an 'audit plan'. The idea of developing audit plan is to list the areas which, as per the auditor are the vulnerable areas from the revenue point of view. A well thought audit plan generally increases the success of audit result manifolds.
 - (vi) **Verification:** The auditors visit the unit of the assessee on a scheduled date (informed to the assessee in advance) and carry out the scrutiny of the records of the assessee as per the audit plan. The purpose of verification (carried out in presence of the assessee) is to reasonably ensure that no amount, which as per the Central Excise law is chargeable to duty, escapes taxation.
 - (vii) **Audit Objection and Audit Para:** Where the auditor finds instances of short payment of duty or non-observance of Central excise procedures, he is required to discuss the issue with the assessee. After explanation provided by the assessee, if the auditor is satisfied that such non-tax compliance has occurred, he records the same as an 'Audit Objection' or 'Audit Para' of the 'draft audit report' that he would be preparing at the end of the verification process.
 - (viii) **Audit Report:** At the end of the process of verification, the auditor prepares an 'Draft Audit Report' which provides (issue or para wise) the issue in brief, the reply or the explanation of the assessee, the reason for the auditor not being satisfied with the reply, the amount of short payment (if tabulated) and the recoveries of the same (if could be made at the spot). It is then submitted to the superior officers for review after which it becomes final and in cases where the disputed amounts have not already been paid by the assessee at the spot, demand notices are issued by the Department for their recoveries.
- (b) (i) As per rule 6 of the Place of Provision of Services Rules, 2012, place of provision of services provided by way of admission to, or organization of, a cultural, artistic, sporting, scientific, educational, or entertainment event, or a celebration, conference, fair, exhibition, or similar events, and of services ancillary to such admission, shall be the place where the event is actually held. Since in the given case, event is held in India, place of provision of services is India.
 - (ii) As per rule 7 of the Place of Provision of Services Rules, 2012, where any service referred to in rules 4, 5, or 6 is provided at more than one location, including a location in the taxable territory, its place of provision shall be the location in the taxable territory where the greatest proportion of the service is provided. In the given case, notwithstanding the fact that the greatest proportion of service is outside the taxable territory, the place of provision will be the place in the taxable territory where the greatest proportion of service is provided, which in this case is Kerala.
- (c) Section 76(1)(b) of the Customs Act, 1962 *inter alia* provides that no drawback shall be allowed in respect of any goods, the market price of which is less than the

amount of drawback due thereon. In this case, the market price of the goods is ₹ 75,000, which is less than the amount of duty drawback, i.e. 1,000 kg × ₹ 100 = ₹ 1,00,000. Hence, no duty drawback shall be allowed.

7. (a) (i) The said statement is incorrect. The proviso to section 32F(6) provides that Settlement Commission can extend time-limit for passing of the settlement order for a further period not exceeding three months for reasons to be recorded in writing by the Settlement Commission.
- (ii) The said statement is incorrect. Section 32-O provides that the assessee is entitled to apply for settlement more than once except when the case of such person is sent back to the Central Excise Officer having jurisdiction by the Settlement Commission under section 32L.

(b) (i) **Computation of the 'total amount charged':-**

S. No.	Particulars	Amount (₹)
1.	Gross amount received excluding taxes	1,00,00,000
2.	Fair market value of steel and cement supplied by SE excluding taxes	12,00,000
3.	Amount charged by service receiver for steel and cement	6,00,000
4.	Total amount charged (1.+2.-3.)	1,06,00,000
5.	Value of service portion (40% of 4. in case of original works)	42,40,000

- (ii) (1) Lease of an asset in the course of inter-State or import trade cannot be taxed under a State VAT law. It can be taxed under the Central Sales-tax Act, 1956 as deemed sales.
- (2) Sale of a leased asset after the lease period is over is taxable in the same manner in which normal sale of such asset would have been taxed. Normally, such sale is effected to the same lessee and hence, such sale would be a local one exigible to tax under the VAT laws of the State in which the asset is located.
- (c) As the goods are assessable under section 4A of the Central Excise Act, 1944, additional duty of customs will be payable on the basis of maximum retail price printed on the packing; less abatement as permissible [Proviso to section 3(2) of the Customs Tariff Act.]

Particulars	₹
Maximum retail price [20,000 pieces x ₹ 400]	80,00,000
Less : Abatement 40%	<u>32,00,000</u>
Assessable value under section 3(2)	<u>48,00,000</u>
Additional duty of customs @ 12%	5,76,000
Additional customs duty payable	5,76,000