

MOCK TEST PAPER – 2
FINAL COURSE: GROUP – II
PAPER – 8: INDIRECT TAX LAWS
SUGGESTED ANSWERS / HINTS

1. (a) Computation of assessable value of the excisable goods:-

Contracted sale price		10,00,000
Less:		
Excise duty (Note – 1)	1,11,200	
VAT (Note – 1)	37,000	
Octroi (Note – 1)	9,500	
Actual freight from “place of removal” to buyer premises (Note – 2)	<u>42,300</u>	
		<u>2,00,000</u>
Assessable value		<u>8,00,000</u>

Notes - In the given question, for the purpose of determining the assessable value of the excisable goods:-

- the duty of excise, sales tax and other taxes, if any, actually paid or payable on the excisable goods has to be excluded [Section 4(3)(d) of the Central Excise Act, 1944].
- the cost of transportation from the place of removal up to the place of delivery of the excisable goods has to be deducted [Rule 5 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000].
- the cost of transportation, worth ` 27,000, from the factory to the place of removal would not be excluded [Explanation 2 to rule 5 of Central Excise Valuation (Determination of Price of Excisable Rules, 2000)].
- cost of packing, ` 4,000 and ` 9,000 would not be deducted. In this regard, it has been clarified that as per section 4 of the Central Excise Act, 1944, packing charges would form part of the assessable value whether packing is ordinary or special, or primary or secondary. Any charges recovered for packing are the charges recovered in relation to the sale of the goods under assessment and, hence, will form part of the transaction value of the goods [Circular no. 354/81/2000 dated 30/6/2000].
- The cost of drawings and designs, worth ` 6,000 would not be deducted.[Rule 6 of

Central Excise Valuation (Determination of Price of Excisable Rules, 2000].

- (b) Mintu & Co unit will be entitled to exemption in the year 2013-14, if its turnover in the year 2012-13 was less than `400 lakhs. As per Notification No. 8/2003 CE dated 01.03.2003, which governs the provisions relating to small scale exemption, following items will not be included for calculating the turnover limit of `400 lakh of previous year:

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

Only the goods bearing the brand name of others, which are ineligible for the grant of SSI exemption, are excluded for the purpose of said limit. Since, goods manufactured in rural area with brand name of others are eligible for SSI exemption; the same will not be excluded for calculating the said limit.

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

Product	Clearance for home consumption	Export to Nepal	Goods manufactured in rural area with brand name of others	Total Turnover
		(`in lakhs)		
AB	55	50	45	150
SA	40	40	35	115
AS	60	39	35	<u>134</u>
				<u>399</u>

Since turnover of the unit during the year 2012-13 is less than `400 lakh, the unit is entitled to SSI exemption from excise duty in the year 2013-14.

- (c) Computation of value of taxable service and service tax liability of Jayprakash Ltd:-

Particulars	Amount (`)
Repair and maintenance of Hari Nagar Railway Station (Note-1)	15,00,000
Construction of residential complex meant for use of member of parliament (Note-2)	Nil
Construction services provided to International Labour Organisation (Note-3)	Nil

Construction of Private clinic for Dr. Arihaan Bansal (Note-4)	50,00,000
Renovation service provided to Government relating to plant for sewerage treatment (Note-5)	Nil
Construction of roads in a factory (Note-6)	20,00,000
Renting of residential dwelling for use as residence (Note-7)	<u>Nil</u>
Value of taxable service	<u>85,00,000</u>
Service tax @ 12% [$85,00,000 \times 12\%$]	10,20,000
Education cess @ 2% [$10,20,000 \times 2\%$]	20,400
Secondary and higher education cess @ 1% [$10,20,000 \times 1\%$]	<u>10,200</u>
Service tax liability	<u>10,50,600</u>

Notes:

- (1) Services by way of construction, erection, or installation of original works pertaining to railway is exempt vide mega exemption notification. However, Repair, maintenance of railways would be liable to service tax
 - (2) Construction of residential complex meant for use of member of parliament is exempt vide mega exemption notification.
 - (3) Services provided To the specified international organisations are exempt vide mega exemption notification. (Notification No. 25/2012-ST dated 20.06.2012)
 - (4) Construction of hospitals for the Government is not liable to service tax. However, if it is constructed for others, service tax is payable on such construction.
 - (5) Renovation service provided to Government relating to plant for sewerage treatment is exempt vide mega exemption notification.
 - (6) Services provided by way of construction of roads for use by general public is exempt vide mega exemption notification. However, Construction of roads in a factory would be taxable as it is not for general public.
 - (7) "services by way of renting of residential dwelling for use as residence are included in the negative list and hence are not taxable.
- (d) Computation of the tax liability for the period December 1, 2012 to December 31, 2012:-

Inputs purchased in the month [12.5% VAT]	2,00,000
Output sold in the month (within the State)	3,00,000
Inter-State sales	2,00,000

Input credit (including capital goods) (₹ 25,000 + ₹ 25,000)	50,000
Output tax	12,000
CST for Inter-State sale @ 2%	4000
State VAT liability (₹ 12,000 – ₹ 50,000)	Nil
Excess credit carried forward to subsequent month	38,000
Central sales tax to be paid (₹ 4,000 – ₹ 38,000)	Nil
Excess credit carried forward to subsequent period	34,000

(e) Computation of custom duty payable

Particulars	₹
Assessable value (8,000 x 60)	4,80,000
Add: Basic custom duty @ 10%	<u>48,000</u>
Total	5,28,000
Add : CVD @ 12%	<u>63,360</u>
Total	5,91,360
Add : Education Cess (48,000+63,360) x 3%	<u>3,340.80</u>
Total	5,94,700.80
Additional duty u/s 3(5) @ 4%	<u>23,788.03</u>
Total Custom Duty Payable (48,000+63,360+3,340.80+23,788.03)	1,38,488.83
Custom Duty (rounded off to nearest rupee)	1,38,489

1. Rate of exchange notified by CBEC as prevalent on the date of filing of bill of entry would be the applicable rate.[Section 14 of Customs Act,1962]
2. Rate of duty would be the rate as prevalent on the date of filing of bill of entry or entry inwards whichever is later i.e , 10%.
2. (a) (i) The said statement is not valid. Rule 14 has been amended to provide that interest is payable in either of the following two cases:-
 - (i) CENVAT credit has been taken AND utilized wrongly.
 - (ii) CENVAT credit has been erroneously refunded.

Since in the given case CENVAT credit has been taken wrongly but has not been utilized, so interest is not payable.
- (ii) The said statement is not valid. With the amendment in Rule 6 of CENVAT Credit Rules, 2004, rate for CENVAT credit reversal for exempted goods has been raised from 5% to 6%. Hence, Mr. Prince Goel, a manufacturer of both

dutiable and exempted goods, opting not to maintain separate accounts, has the option to pay an amount equal to 6% of the value of exempted goods.

- (b) (i) The Services by a veterinary clinic in relation to health care of animals or birds is not liable to service tax as the Mega Exemption Notification grants exemption from service tax to this service.
 - (ii) The Services by way of public conveniences such as provision of facilities of washrooms are not taxable but exempt from service tax vide mega exemption notification.
 - (c) According to section 153 of the Customs Act 1962, order or decision passed or any summons or notice issued under the Customs Act, shall be served by tendering the order, decision, summons or notice or sending it by registered post or by such courier as may be approved by the Commissioner of Customs. In case if this is not possible, the order, decision, summons or notice shall be affixed on the notice board of the customs house.
3. (a) Yes, the duty is payable on such testing equipments. The facts of the given case are similar to the case of Usha Rectifier Corpn. (I) Ltd. v. CCEx., New Delhi 2011 (263) E.L.T. 655 (S.C.) The Supreme Court observed that once the appellant had themselves made admission regarding the development of testing equipments in their own Balance Sheet, which was further substantiated in the Director's report, it could not make contrary submissions later on. Moreover, assessee's stand that testing equipments were developed in the factory to avoid importing of such equipments with a view to save foreign exchange, confirmed that such equipments were saleable and marketable. Hence, the Apex Court held that duty was payable on such testing equipments.
- (b) The High Court in the case of CCE v. Nahar Industrial Enterprises Ltd. 2010 (19) STR 166 (P & H) noted that apparently, service tax could be levied only if service of 'storage and warehousing' was provided. Nobody can provide service to himself. In the instant case, the assessee stored the goods owned by him. After the expiry of storage period, he was free to sell them to the buyers of its own choice. He had stored goods in compliance to directions of Government of India issued under the Sugar Development Fund Act, 1982. He had received subsidy not on account of services rendered to Government of India, but had received compensation on account of loss of interest, cost of insurance etc. incurred on account of maintenance of stock. Hence, the act of assessee could not be called as rendering of services.

The High Court upheld the Tribunal's decision that just because the storage period of free sale sugar had to be extended at the behest of Government of India, neither the assessee becomes 'storage and warehouse keeper' nor the Government of India becomes their 'client' in this regard. Therefore, the storage of specific quantity

of free sale sugar could not be treated as providing 'storage and warehousing' services to the Government of India.

- (c) No, the application for remission of duty filed by the Landmark Laminates is not valid in law. The facts of the given case are similar to the case of CCE v. Decorative Laminates (I) Pvt. Ltd. 2010 (257) E.L.T. 61 (Kar.). The High Court, while interpreting section 23, stipulated that section 23 states that only when the imported goods have been lost or destroyed at any time before clearance for home consumption, the application for remission of duty can be considered. Further, even before an order for clearance of goods for home consumption is made, relinquishing of title to the goods can be made; in such event also, an importer would not be liable to pay duty.

Therefore, the expression "at any time before clearance for home consumption" would mean the time period as per the initial order during which the goods are warehoused or before the expiry of the extended date for clearance and not any period after the lapse of the aforesaid periods. The said expression cannot extend to a period after the lapse of the extended period merely because the licence holder has not cleared the goods within the stipulated time.

Moreover, since in the given case, the goods continued to be in the warehouse, even after the expiry of the warehousing period, it would be a case of goods improperly removed from the warehouse as per section 72(1)(b) read with section 71.

The High Court, overruling the decision of the Tribunal, held that the circumstances made out under section 23 were not applicable to the present case since the destruction of the goods or loss of the goods had not occurred before the clearance for home consumption within the meaning of that section. When the goods are not cleared within the period or extended period as given by the authorities, their continuance in the warehouse will not attract section 23 of the Act.

4. (a) No, the Department's plea is not justified in law. The facts of the given case are similar to the case of CCE v. Tarpaulin International 2010 (256) E.L.T. 481 (S.C.). The Apex Court opined that stitching of tarpaulin sheets and making eyelets did not change basic characteristic of the raw material and end product. The process did not bring into existence a new and distinct product with total transformation in the original commodity. The original material used i.e., the tarpaulin, was still called tarpaulin made-ups even after undergoing the said process. Hence, it could not be said that the process was a manufacturing process. Therefore, there could be no levy of Central excise duty on the tarpaulin made-ups.

Hence, the Supreme Court, upholding the decision of the Tribunal, held that conversion of tarpaulin into tarpaulin made-ups would not amount to manufacture.

- (b) The High Court in the case of CCEx. & ST v. Volvo India Ltd. 2011 (24) S.T.R. 25 (Kar.) held that the question as to whether the assessee is liable to pay service tax falls squarely within the exception carved cut in section 35G of the Central Excise Act, 1944, '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', and the High Court has no jurisdiction to adjudicate the said issue. The appeal lies to the Apex Court under section 35L of the Central Excise Act, 1944, which alone has exclusive jurisdiction to decide the said question.
 - (c) The facts of the given case are similar to the case of UOI v. East and West Shipping Agency 2010 (253) E.L.T. 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, the appellants 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 respondents and against the appellant. Hence, the order of the settlement commission can be considered to be a judicial proceeding.
5. (a) (i) According to provisions of section 23F(1) of Central Excise Act, 1944 where on a representation from commissioner or otherwise, it is proved that an advance ruling was obtained by the concerned applicant by fraud or misrepresentation of facts, the authority for advance ruling can declare the advance ruling as void ab initio [from the beginning]. Consequently, all the provisions of the Central Excise Act shall apply to the applicant as if such ruling had never been made. Copy of such order is sent to the Commissioner of Central Excise.
- (ii) According to the trade parlance test, if a product is not defined in the Schedule and Section Notes and Chapter Notes of the Central Excise Tariff Act, 1985, then it should be classified according to its popular meaning or meaning attached to it by those dealing with it, i.e., in commercial sense. However, where the tariff heading itself uses highly scientific or technical terms, goods should be classified in scientific or technical sense.
- (b) (i) (a) According to provisions of Section 89(1)(a) of Finance Act, 1994 with effect from 28.05.2012, whoever knowingly evades the payment of service tax under this chapter shall be punishable with imprisonment depending upon the amount involved.
- Since in the given case, Mr. Mayank has provided Consulting Engineer's Services of ` 60 lakhs during the month of July, 2012 and knowingly evaded the payment of service tax he shall be punishable with imprisonment. Further, as the amount involved in the offence exceeds

` 50 lakhs, Mr. Mayank can face imprisonment upto three years in accordance with provisions of Section 89(1)(i) of Finance Act, 1994.

- (b) According to provisions of Section 89(1)(b), whoever avails and utilizes credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of Chapter V of Finance Act, 1994, shall be punishable with imprisonment depending on the amount involved.

As in the present case Mr. Bittoo avails and utilizes credit of taxes of `45 lakhs during the quarter ending September, 2012 without actual receipt of taxable service in violation of the rules made under the provisions of Chapter V of Finance Act, 1994, he shall be punishable with imprisonment as per provisions of Section 89(1)(b). Besides, as far as period of imprisonment is concerned since the amount involved in this offence does not exceed `50 lakhs, Mr. Bittoo can be sent for imprisonment up to one year as per provisions of Section 89(1)(ii) of Finance Act, 1994.

- (ii) The broad principles considered by the States while framing various sales-tax incentive schemes in VAT regime are given below:

- (i) VAT chain should not be disturbed.
- (ii) There should not be any further revenue loss to the States.
- (iii) The Department should be able to track the transactions and should ensure that there is no evasion/avoidance of tax due to the policy.

Further, the States who have continued the old incentive schemes in the form of exemption/deferment considered the following additional issues:

- (i) the units enjoying exemption under the old law should not be put to disadvantageous position under the VAT system.
- (ii) the units purchasing inputs without payment of any tax should be allowed to enjoy the benefit under the new system also.

- (c) The Customs Act, 1962 does not prescribe any statutory time limit for filing Bill of Entry. However, under section 48 of the Customs Act, 1962, if imported goods are not cleared within 30 days from the date of unloading, goods can be disposed off by the custodian. Therefore, since no offence is committed by late filing of bill of entry, penalty cannot be imposed for the same. However, the custodian after giving notice to the importer and with the approval of the proper officer can sell the goods.

In the instant case, the importer can file an appeal before Commissioner (Appeals) since endorsement of penalty on the bill of entry can be considered as part of assessment.

6. (a) (i) Remission of duty is granted when the goods are lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as unfit for consumption, at any time before removal.

Hence, in this case remission of duty cannot be granted under rule 21 of the Central Excise Rules, 2002 as goods have already been cleared from the factory after payment of duty.

- (ii) As per sub-rule (5C) of rule 3 of CENVAT Credit Rules, 2004 inserted vide Notification No. 33/2007 CE (NT) dated 07.09.2007, where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under rule 21 of the Central Excise Rules, 2002, the CENVAT credit taken on the inputs used in the manufacture or production of said goods shall be reversed.

or

6. (a) (i) Risk factors under Excise Audit, 2000 means that the assessees who have a bad track record are taken up for audit on priority as opposed to those who enjoy a clean track record.

For example:

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

Note : Any two examples may be given.

- (ii) As per the provisions of section 12F of the Central Excise Act, 1944, where the Joint Commissioner/Additional Commissioner of Central Excise or such other Central Excise Officer as may be notified by the Board has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any Central Excise Officer to search and seize or may himself search and seize such documents or books or things.

The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the words "Commissioner of Central Excise" were substituted.

- (b) (i) In this case, place of Provision of Services will be Chandigarh as the concerned property is intended to be located in Chandigarh which also falls within the ambit of 'Taxable Territory' and resultantly these services will be taxable.
- (ii) In this case, since specific sites in respect of which mineral exploration is to be carried out are located in Canada, the Place of Provision of Services will be Canada which does not fall within the ambit of 'Taxable Territory' and resultantly these services will not be taxable. The fact that service providing company is located in U.S.A. and service recipient is located in Mumbai (India) is wholly insignificant
- (c) Section 125 of the Customs Act empowers a Customs Officer adjudging the confiscation to give an option to the owner of the goods or where such owner is not known, the person from whose possession or custody such goods have been seized to pay a fine as the said officer thinks fit, in lieu of confiscation of the imported goods. The provisions in this regard are as follows:
 - (a) in case of prohibited goods, the proper officer may give an option to pay a fine in lieu of confiscation;
 - (b) in case of other goods, the proper officer shall give an option of payment of fine, in lieu of confiscation;
 - (c) the amount of such fine cannot exceed the market price of the goods confiscated less import duty chargeable (in the case of imported goods) thereon;
 - (d) the assessee shall also be liable to pay any duty and charges payable in respect of such goods.

The provisions of section 125 give the importer an option to either allow the goods to be confiscated or pay redemption fine in lieu of confiscation. Hence, the redemption fine becomes liable only in lieu of confiscation.

However, where the importer has abandoned the goods, the scope for payment of any fine in lieu of confiscation comes to an end. Hence, the redemption fine, if already paid shall be liable to be refunded. The same decision was given by the Madras High Court in the case of Purfina Chemicals Pvt. Ltd v CEGAT, Madras (2004) (167) E.L.T. 145 (Mad.)

- 7. (a) (i) As per section 35B of the Central Excise Act, 1944, the matters in respect of which an appeal does not lie before the Customs Excise Service Tax Appellate Tribunal against any order passed by Commissioner (Appeals) are as follows:-
 - (a) case of loss of goods during transit or during their processing in a warehouse or in storage in a factory or a warehouse
 - (b) rebate of excise duty on export goods or on excisable materials used in

the manufacture of export goods or goods exported without payment of duty (except exports to Nepal or Bhutan);

- (c) CENVAT credit which is utilized for payment of excise duty on final products
- (ii) Section 4(3)(b) of Central Excise Act, 1944 states that persons shall be deemed to be related if:
 - (i) they are inter-connected undertakings;
 - (ii) they are relatives;
 - (iii) amongst them the buyer is a relative and a distributor of the assessee, or a sub-distributor of such distributor; or
 - (iv) they are so associated that they have interest, directly or indirectly, in the business of each other.

“Relative” shall have the meaning assigned to it in clause (41) of section 2 of the Companies Act, 1956.

- (b) (i) By virtue of its aforementioned shares in Aggarwal Ltd., Bansal Ltd. becomes the holding company of Aggarwal Ltd as per section 4 of Companies Act, 1956. Resultantly, both Bansal Ltd. and Aggarwal Ltd. will fall within the ambit of the term “associated enterprises” as per section 92A of Income Tax Act, 1961. As a result, second proviso to Rule 7 of Point of Taxation Rules, 2011 becomes applicable in the present case. Thus, Point of Taxation will be determined in the following manner:

Earlier of the following two dates:

Date of debit in the books of account of person receiving the service [which is Bansal Ltd. in the present case]	31.07.2012
Date of making the payment [by Bansal Ltd. in the present case]	23.10.2012

Thus, Point of Taxation will be 31.07.2012.

- (ii) Registration is the process of obtaining certificate of registration [popularly known as “RC”] from the concerned authorities. A dealer registered under the applicable VAT Act is called a Registered Dealer. Any dealer who intends to carry on the business of purchase and sale of goods [which attract VAT] in the concerned state and is liable to pay tax has to obtain RC from the concerned authorities.

The VAT Registration may be cancelled under following circumstances:

- (i) Discontinuance of business; or

- (ii) Disposal of business; or
 - (iii) Transfer of business to a new location;
 - (iv) Annual turnover of a manufacturer or a trader dealing in designated goods or services falling below the specified amount.
- (c) The Central Government has power to levy anti-dumping duty on dumped articles in accordance with the provisions of section 9A of the Customs Tariff Act, 1975 and the rules framed thereunder.
 - (i) In a case where no provisional duty is imposed, the date of commencement of anti-dumping duty will be the date of publication of notification, imposing anti-dumping duty under section 9A(1), in the Official Gazette.
 - (ii) In a case where provisional duty is imposed under section 9A(2), the date of commencement of anti-dumping duty will be the date of publication of notification, imposing provisional duty under section 9A(2), in the Official Gazette.
 - (iii) In a case where anti-dumping duty is imposed retrospectively under section 9A(3) from a date prior to the date of imposition of provisional duty, the date of commencement of anti-dumping duty will be such prior date as may be notified in the notification imposing anti-dumping duty retrospectively, but not beyond 90 days from the date of such notification of provisional duty.