CHAPTER 1

Basic Concepts

Question 1

Explain briefly, with reference to the provisions of the Customs Act, 1962, the following:

(i) Bill of export

(ii) Import report

Answer

(i) As per section 2(5) of the Customs Act, 1962, bill of export means a bill of export referred to in section 50. Section 50 *inter alia* provides that the exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported by land, a bill of export in the prescribed form.

(ii) As per section 2(24) of the Customs Act, 1962, import report means the report required to be delivered under section 30. Section 30 *inter alia* provides that the person-in-charge of a vehicle carrying imported goods or any other person as may be notified by the Central Government shall, in the case of a vehicle, deliver to the proper officer an import report within twelve hours after its arrival in the customs station, in the prescribed form.

Question 2

Explain briefly the following with reference to the Customs Act, 1962:

(i) Assessment

(ii) Imported goods

Answer

(i) As per section 2(2) of the Customs Act, 1962, with effect from 08.04.2011 the term "assessment" is defined to include provisional assessment, self-assessment, reassessment and any order of assessment in which the duty assessed is nil.

Assessment is the name given to the process of determining the tax liability in accordance with the provisions of this Act.

(ii) The term "imported goods" has been defined in section 2(25) of the Customs Act, 1962 to mean any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption.

Question 3

Briefly explain the following with reference to the provisions of the Customs Act:

(i) Entry

(ii) Prohibited goods

(iii) Warehouses.

Answer

(i) As per **section 2(16)** of the Customs Act, 1962 **entry** in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes in the case of goods imported or to be exported by post, the entry referred to in section 82 or the entry made under the regulations made under section 84.

(ii) As per **section 2(33)** of the Customs Act, 1962 **prohibited goods** means any goods the import or export of which is subject to any prohibition under the Customs Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

(iii) As per **section 2(43)** of the Customs Act, 1962, **warehouse means a public warehouse** appointed under section 57 or **a private warehouse** licensed under section 58. A warehouse is a place where goods after landing are permitted to be removed without payment of duty. Duty is collected at the time of clearance from the warehouse. A public warehouse is owned and managed by a Government body like Central Warehousing Corporation. A private warehouse is licensed in a place where there is no public bonded warehouse.

Question 4

Explain briefly the following with reference to the provisions of the Customs Act, 1962:

(i) Customs port

(ii) Goods

(iii) Stores.

Answer

(i) As per **section 2(12)** of the Customs Act, 1962, customs port means any port appointed under clause (a) of section 7 to be a customs port and includes a place appointed under clause (aa) of that section to be an inland container depot.

As per clause (a) and (aa) of section 7(1) of the Customs Act, the Board may, by notification in the Official Gazette, appoint the ports and airports and the places which alone shall be customs ports or customs airports and the inland container depots for the unloading of imported goods and the loading of export goods or any class of such goods.

(ii) According to **section 2(22)** of the Customs Act, 1962, goods includes –

(a) vessels, aircrafts and vehicles;

(b) stores;

(c) baggage;

(d) currency and negotiable instruments and

(e) any other kind of movable property.

(iii) As per **section 2(38)** of the Customs Act, 1962, stores means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting.

Stores are also goods but are covered by special provisions in sections 85 to 90. **The definition does not cover goods for use in a vehicle.**

Question 5

Explain briefly the following with reference to the provisions of the Customs Act, 1962:

(i) Conveyance

(ii) Dutiable goods

(iii) India

Answer

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

(ii) As per **section 2(14)** of the Customs Act, 1962, dutiable goods is defined to mean any goods which are chargeable to duty and on which duty has not been paid. In order to be dutiable, any article should be within the ambit of the word goods as defined under section 2(22) and should find a mention in the Custom tariff.

(iii) As per **section 2(27)** of the Customs Act, 1962, India includes the territorial waters of India. Territorial waters of India extend to 12 nautical miles into sea from the appropriate base line. Goods are deemed to have been imported if the vessel enters the **imaginary line** on the sea at the 12th nautical mile i.e., if the vessel enters the territorial waters of India. **India includes not only the surface of sea in the territorial waters but also the air space above and the ground at the bottom of the sea.**

Question 6

Write short note on "Rules & Regulations" with reference to Customs Act 1962.

Answer

According to **section 2(36)** of the Act, **"rules"** means the **rules made by the Central Government** under any provision of this Act. **Section 156** of the Act gives the Central Government the general power to make rules.

As per **section 2(35)** of the Customs Act, 1962, **"regulations"** means the **regulations made** by the Central Board of Excise and Customs (CBEC) under any provision of this Act. The Board gets the authority to make regulations under section 157 of the Customs Act, 1962.

While the rules are to be framed in consistence with the provisions of the Act, the regulations are subject to an additional limitation, i.e. they should not be contrary to the rules also.

Rules have to be placed before the Parliament, while regulations framed by CBEC are not required to be placed before the Parliament. However, both are "subordinate legislations" and are legally valid and enforceable.

Question 7

Explain briefly the expression person-in-charge. under the Customs Act, 1962.

Answer

Section 2(31) provides that person in charge means:

(a) in relation to a vessel, the master of the vessel.

(b) in relation to an aircraft, the commander or the pilot in charge of the aircraft.

(c) in relation to a railway train, the conductor, guard or other person having the chief direction of the train.

(d) in relation to any other conveyance, the driver or other person in charge of the conveyance.

The importance of person in charge is multidimensional for instance he is responsible for submitting Import Manifest and Export Manifest. He is also responsible for ensuring that the conveyance comes through approved route and lands at approved places only. He has also to ensure that goods are unloaded after written order, at proper place. Likewise he has also to ensure that goods are loaded only after proper permission.

Question 8

Briefly explain the following with reference to the provisions of the Customs Act, 1962:

(i) Adjudicating Authority

(ii) Customs Area

(iii) Smuggling

Answer

(i) As per section 2(1) of the Customs Act, 1962, adjudicating authority means any authority competent to pass any order or decision under this Act, but does not include the Board, Commissioner (Appeals) or Appellate Tribunal.

(ii) As per section 2(11) of the Customs Act, 1962, customs area means the area of a customs station and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities.

(iii) As per section 2(39) of the Customs Act, 1962, smuggling, in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113.

Question 9

Briefly explain the following with reference to the provisions of the Customs Act 1962,:

(i) Indian customs waters

(ii) Foreign going vessel or aircraft

Answer

(i) As defined by section 2(28) of the Customs Act,1962 Indian customs waters means the waters extending into the sea up to the limit of contiguous zone of India(hereinafter abbreviated as CZI) under section 5 of the Territorial waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and includes any bay, gulf, harbour, creek or tidal river. According to foregoing Act of 1976 CZI comes immediately after territorial waters. The outer limit of continuous zone is 24 nautical miles from the nearest point of base line. Therefore, area beyond 12 nautical miles & upto 24 nautical miles is CZI. Looking from another perspective, Indian Customs Waters extend upto 12 nautical miles beyond territorial waters. The significance of Indian Customs Waters lies in the fact that customs officers can exercise certain powers [for instance under section 100(2)(a), 104, 106, 111(d), 115(1)(a) & 115(1)(c)] within Indian Customs Waters.

(ii) As per section 2(21) of the Customs Act, 1962, foreign going vessel or aircraft means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes-

(a) any naval vessel of any foreign Government taking part in any naval exercises;

(b) any vessel engaged in fishing or any other operations outside the territorial waters of India;

(c) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever.

The significance of foreign going vessel lies in the fact that stores supplied to foreign going vessel is treated as export as per provisions of section 89. Thus, duty drawback is available on such stores. Further, imported stores may be consumed on foreign going vessel without payment of duty as per section 87.

Question 10

Explain in detail, the significance of Indian customs waters under the Customs Act, 1962.

Answer

Significance of Indian customs waters is as follows :

(i) If an officer of Customs has reason to believe that any person in India or within the Indian customs waters has committed an offence punishable under section 132 or section 133 or section 135 or section 135A or section 136, he **may arrest such person** informing him of the grounds for such arrest [**Section 104** of the Customs Act, 1962].

(ii) Where the proper officer has reason to believe that any vessel in India or within the Indian customs waters has been, is being, or is about to be, used in the smuggling of any goods or in the carriage of any smuggled goods, he may stop any such vehicle, animal or vessel or, in case of an aircraft, compel it to land [**Section 106** of the Customs Act, 1962].

(iii) **Any vessel** which is or has been within the Indian customs waters is constructed, adapted, altered or fitted in any manner for the purpose of concealing goods shall be **liable to confiscation** [**Section 115(1)(a)** of the Customs Act, 1962].

(iv) Customs officer has the **power to search any person** who has landed from/about to board/is on board any vessel within Indian customs waters and who has secreted about his person, any goods liable to confiscation or any documents relating thereto [**Section 100(2)(a)** of the Customs Act, 1962].

(v) **Any goods** which are brought within the Indian customs waters for the purpose of being imported from a place outside India, contrary to any prohibition imposed by or under this Act or any other law for the time being in force, shall be **liable to confiscation [Section 111(d)** of the Customs Act, 1962].

Question 11

Explain briefly the following with reference to the provisions of the Customs Act, 1962 :

(i) "Import" and "Importer"

(ii) Meaning of "Assessment"

(iii) "Clearance for home consumption" and "Clearance for warehousing"

Answer

(i) The term import under **section 2(23)** of the Customs Act, 1962 refers to bringing into India from a place outside India. Import of goods into India commences when the goods enter the territorial waters of India, but gets completed only when the goods become part of the mass of goods within the country.

As per **section 2(26)** of the Customs Act, 1962 **importer**, in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer.

(ii) In the context of customs duty, the term **"assessment"** means quantification of the amount of duty payable. The process of assessment involves determining:

   (i) the quantity and total value of the consignment

   (ii) the proper tariff classification of the goods

   (iii) the appropriate rate of duty after all abatements

   (iv) whether the goods are to be cleared for home consumption or for warehousing.

(iii) **Clearance for home consumption** implies that the customs duty on the imported goods has been discharged and goods are cleared for utilization. **Clearance for warehousing** implies that the goods may, instead of being cleared for home consumption, be deposited in a warehouse and cleared later. When the goods are deposited in a warehouse the collection of duty is deferred till the time such goods are cleared for home consumption. However, the importer has to **execute a bond up to a sum equal to twice** the amount of duty assessed on the goods at the time of import.

Question 12

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.

Answer

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].

Exercise

1. *Distinguish between Indian territorial waters and Indian custom waters.*
2. *Write a brief note on the constitutional provisions governing the levy of customs duties.*
3. *ONGC vessel and a foreign vessel are drilling oil beyond 12 nautical miles in the sea. Which of the two is a foreign going vessel? Explain.*

   Answer: Foreign going vessel or aircraft is one that carries passengers and (or) goods between ports/airports in India and out of India. It does not matter if it touches any intermediate port/airport in India. The following are also included in the definition:

   (a) A foreign naval vessel doing naval exercises in Indian waters.

   (b) A vessel engaged in fishing or any other operation (like oil drilling by O.N.G.C.) outside territorial waters.

   (c) A vessel or aircraft going to a place outside India for any purpose whatsoever [section 2(21)].

   In the given case both the vessels are beyond territorial waters. Hence, both of them are foreign going vessels.

CHAPTER 2

Place of Provision of Services Rules,2012

Question 1

Give summary of Place of Provision of Services Rules, 2012 in a tabular form.

Answer

<table>
<tr><th>Rule</th><th>Nature of Services Covered</th><th>Place of Provision</th></tr>
<tr><td rowspan="2">Rule 3</td><td><u>Place of Provision generally</u>
Services not Covered under any of the Rules specified below i.e. Rule 4 to Rule 12</td><td>Location of Service Recipient</td></tr>
<tr><td>Services not Covered under any of the Rules specified below i.e. Rule 4 to Rule 12 and Location of the service receiver is not available in the ordinary course of business</td><td>Location of Service Provider</td></tr>
<tr><td>Rule 4</td><td><u>Performance Based Services</u>
1. Services provided in relation to goods that are required to be made physically available. For instance:
• Repair, Reconditioning or any other work on goods (not amounting to manufacture)
• Storage and Warehousing
• Courier Service
• Cargo Handling Service
• Technical Testing/ Inspection / Certification / Analysis of goods
• Dry Cleaning etc.
- Services provided from a remote location by way of electronic means
- Services provided in respect of goods temporarily transported into India for repairs, reconditioning etc.</td><td>Location where Services are performed

Location where goods are situated at the time of provision of service.

Rule shall not be applicable</td></tr>
</table>

	2. Services which require physical presence of receiver or person acting on behalf of receiver. For Instance: • Cosmetic or Plastic Surgery • Beauty Treatment Services • Personal Security Services • Health and Fitness Services • Photography Service (to individuals) • Internet Café Service • Classroom Teaching etc.	Location where Services are performed
Rule 5	<u>Services relating to Immovable property</u> Services provided directly in relation to Immovable Property. For instance: • construction, reconstruction, alteration, demolition, repair or maintenance (including painting and decorating) of any building or civil engineering work; • Renting of immovable property • Services of real estate agents, auctioneers, architects, engineers and similar experts or professional people, relating to land, buildings or civil engineering works. This includes the management, survey or valuation of property by a solicitor, surveyor or loss adjuster. • Services connected with oil/gas/mineral exploration or exploitation relating to specific sites of land or the seabed. • Surveying (such as seismic, geological or geomagnetic) of land or seabed. • Legal services such as dealing with applications for planning permission. • Packages of property management services which may include rent collection, arranging repairs and the maintenance of financial accounts. • The supply of hotel accommodation by a hotel, inn, guest house, club or campsite or supply of warehouse space	Location where Immovable Property is located or intended to be located
Rule 6	<u>Services relating to events</u> Services provided by way of admission to, or	The place where the

	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. For Instance: • A management School located in USA intends to organize road show in Delhi. Mr. A, provides services in relation to such Road Show Place of Provision of Services of Mr. A:- New Delhi • An Indian Fashion Designing firm hosts a show at Toronto, Canada. The firm receives services of Canadian Event Manager. Place of Provision of Services of Canadian Event Manager :- Canada	event is held
Rule 7	<u>Services provided at more than one location</u> Service specified under aforesaid Rules i.e. Rule 4, 5 or 6 if provided at more than one location. For Instance: • An Indian firm provides a 'technical inspection and certification service' for a newly developed product of an overseas firm (say, for a newly launched motorbike which has to meet emission standards in different states or countries). Say, the testing is carried out in Maharashtra (20%), Kerala (25%), and an international location (say, Colombo 55%). Place of Provision: - Kerala notwithstanding the fact that the greatest proportion of a service rendered is outside the taxable territory. This Rule is, however, not intended to capture insignificant portion of a service rendered in any part of the taxable territory. For example • Mere issue of invoice, • Mere processing of purchase order • Mere recovery because above services are not by way of services actually performed on goods.	The location in the Taxable Territory where greatest proportion of service is provided.
Rule 8	<u>Service Provider and Service receiver located in taxable territory</u>	

<table>
<tr><td></td><td>This Rule covers situations where the place of provision of a service provided in the taxable territory may be determinable to be outside the taxable territory by applying one of earlier Rules i.e. Rule 4 to 6 but the Service Provider and Service Recipient are located in the taxable territory.

For Instance:

• A helicopter of Pawan Hans Ltd (India based) develops a technical snag in Nepal. Say, engineers are deputed by Hindustan Aeronautics Ltd, Bangalore, to undertake repairs at the site in Nepal.

Place of Provision: - Within the Taxable Territory. But for this Rule, Rule 4(1) would apply in this case and the place of provision would have been Nepal i.e. outside the taxable territory.</td><td>The location of Recipient of Services.</td></tr>
<tr><td>Rule 9</td><td><u>Specified Services</u>

Following Services are covered under this:

(a) Services by a banking company, or a financial institution, or a non-banking financial company, to account holders. For instance:

- Services linked to or requiring opening and operation of bank accounts such as lending, deposits, safe deposit locker etc.

- Transfer of money including telegraphic transfer, mail transfer, electronic transfer etc.

(b) Online information and database access or retrieval services.

For instance:

- Online information generated automatically by software from specific data input by the customer, such as web-based services providing trade statistics, legal and financial data, matrimonial services, social networking sites;

- digitized content of books and other electronic publications, subscription of online newspapers and journals, online news, flight information and weather reports;

- Web-based services providing access or download of digital content.</td><td>The location of Service Provider</td></tr>
</table>

However, following services **will not** fall within the purview of these services:

- Sale or purchase of goods, articles etc. over the internet.
- Telecommunication services provided over the internet including fax, telephony, audio conferencing and videoconferencing.
- A service which is rendered over the internet such as architectural drawing or management consultancy through e-mail.
- Repair of software or of hardware, through the internet, from a remote location.
- Internet backbone services and internet access services.

(c) Intermediary services; (Note 1)

(d) Service consisting of hiring of Means of Transport, up to a period of one month. Means of Transport include the following:

- Land vehicles such as motor cars, buses, trucks.
- Vessels.
- Aircraft.
- Vehicles designed specifically for the transport of sick or injured persons.
- Mechanically or electronically propelled invalid carriages.
- Trailers, semi-trailers and railway wagons.

However, following are not 'Means of Transport:

- Racing Cars
- Containers used to store or carry goods while being transported.
- Dredgers or the like.

Note 1: Intermediaries include following:

➢ Travel Agent (any mode of travel)

➢ Tour Operator

➢ Commission agent for a service [an agent for buying or selling of goods is excluded]

➢ Recovery Agent

Rule 10	Goods Transportation Services 1) Services of transportation of goods, other than by way of mail or courier. For Instance: • If a consignment of cut flowers is consigned from Chennai to Amsterdam. Place of Provision:- Amsterdam • If a consignment of crystal ware is consigned from Paris to New Delhi. Place of Provision:- New Delhi	Place of destination of goods
	2) Services provided by Goods Transport Agency	Location of person liable to pay Tax.
Rule 11	Services in respect of Passenger Transportation Note 2: A "continuous journey "means a journey for which: (i) A single ticket has been issued for the entire journey; or (ii) More than one ticket or invoice has been issued for the journey, by one service provider, or by an agent on behalf of more than one service providers, at the same time, and there is no scheduled stopover[a place where a passengers disembarks from the conveyance] in the journey.	Place where passenger embarks for Continuous Journey (Note 2)
Rule 12	Services provided on board a conveyance Services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board. For Instance: • A video game or a movie-on-demand is provided as on-board entertainment during the Kolkata-Delhi leg of a Bangkok-Kolkata-Delhi flight. Place of Provision :- Bangkok • A video game or a movie-on-demand is provided on a Delhi-Kolkata-Bangkok-Jakarta flight during the Bangkok-Jakarta leg Place of Provision :- Delhi	First scheduled point of departure of that conveyance for the journey
Rule 14	Order of Application of Rules Where the provision of a service is, prima facie,	In accordance with the rule that occurs

	determinable in terms of more than one rule. For Example: (i) An architect based in Mumbai provides his service to an Indian Hotel Chain (which has business establishment in New Delhi) for its newly acquired property in Dubai. If Rule 5(Property Rule) were to be applied, the place of provision would be the location of the property i.e. Dubai (outside the taxable territory). With this result, the service would not be taxable in India. Whereas, by application of Rule 8, since both the provider and the receiver are located in taxable territory, the place of provision would be the location of the service receiver i.e. New Delhi. Consequently, service would be taxable in India. By application of Rule 14, the latter of the Rules i.e. Rule 8 would be applied to determine the place of provision. (ii) For the Ms Universe Contest planned to be held in South Africa, the Indian pageant (say located in Mumbai) avails the services of Indian beauticians, fashion designers, videographers and photographers. The service providers travel as part of the Indian pageant's entourage to South Africa. Some of these services are in the nature of personalized services, for which the place of provision would normally be the location where performed (Performance Rule-Rule 4), while for other, under the main Rule (Receiver location), the place of provision would be the location of receiver. Whereas, by application of Rule 8, since both the provider and the receiver are located in taxable territory, the place of provision would be the location of the service receiver i.e. New Delhi. Place of provision being in the taxable territory, the services would be taxable in India. By application of Rule 14, the latter of the Rules i.e. Rule 8 would be applied to determine the place of provision.	latter among the rules that merit equal consideration

Question 2

Determine the place of provision of services as well as their taxability in each of the following independent cases:

(i) Mr. A, the owner of an immovable Property located in New Delhi gives on Rent the said property to Mr. B of U.P. for Commercial Purposes.

(ii) Mr. Rahul, a Delhi based Interior Decorator provides his professional services in respect of property which is intended to be located in Punjab.

(iii) A U.S.A. based company possessing specialization in mineral exploration has been awarded a contract for mineral exploration in respect of specific sites in Canada by Mumbai based Mr. Ram Kapoor.

(iv) ABC Ltd. agrees to provide [by virtue of single agreement for consolidated consideration]services connected with oil exploration to XYZ Ltd. in respect of specific sites located in Assam, Gujarat and Maharashtra. The proportion of services provided by ABC Ltd. in relation of above states worked out to be 25%, 60% and 15%.

(v) Rohit, a Consulting Engineer provides his professional consultancy services to a U.K. based company in respect of its three properties located in U.K., USA and Dubai.

(vi) Yogesh, Chennai based Professional valuer provides his professional services of valuation of immovable properties[vide a single contract for a consolidated consideration] to Mumbai based Reliance Industries Ltd. in respect of its four properties located in Delhi, Kashmir, Kolkata and London. It is assumed that Yogesh performed 20%, 30%, 15% and 35% of his total services in foregoing four cities respectively.

(vii) A Delhi based Builder provides Construction Services to Punjab based company in respect of construction of its new building in Bangladesh.

Answer

(i) In this case, since the immovable property in question is located in New Delhi, Place of Provision of Services will be New Delhi which falls within the ambit of 'Taxable Territory' and resultantly these services will be taxable.

(ii) In this case, place of Provision of Services will be Punjab as the concerned property is intended to be located in Punjab which also falls within the ambit of 'Taxable Territory' and resultantly these services will be taxable.

(iii) 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.

(iv) In this case, Place of Provision of Service shall be Gujarat because greatest proportion of taxable service [60%] is provided there. The students may tempt to draw conclusion here that as all the locations given in this example fall within the taxable territory, Place of Provision of Services Rules have no applicability. However, students must keep in mind that POPS, Rules, 2012 are useful for those service providers who operate from multiple locations within India without having Centralised Registration for the purpose of determining the precise taxable jurisdiction applicable to their operations. Therefore, in the present case if it is assumed that ABC Ltd. has Decentralized Registration, it will pay applicable service tax in respect of services provided to XYZ Ltd. in Gujarat

(v) Since, in this case Consulting Engineer's Services provided by Rohit are in respect of locations which fall within non-taxable territory, no service tax is chargeable by Mr. Rohit.

(vi) In this case, percentage of services performed in London will be ignored for determining Place of Provision of Services because London falls in non-taxable territory. Amongst the remaining three cities located in India, percentage of services performed in Kashmir will also be ignored because provisions of Chapter V of Finance Act, 1994 extend to whole of India except the State of Jammu and Kashmir by virtue of Section 64(1) of Finance Act, 1994. Thus, comparison has to be made between location of Delhi and Kolkata. Since in the present context, the greater proportion [20%] of services is performed in Delhi, Place of provision of services will be Delhi. As a result, such services will be subject to tax.

(vii) In this situation, if Rule 5 of POPS Rules, 2012 is applied, then Place of Provision would be location of property which is Bangladesh in the present context. Since Bangladesh falls within non-taxable territory, foregoing Construction Services will not be taxable. However, if latter Rule 8 of POPS Rules, 2012 is applied, the place of provision will be the location of the service receiver i.e. Punjab [which falls within the taxable territory] and resultantly, Construction Services will be taxable.

Question 3

What essential conditions are to be satisfied for treating the provision of any service as Export of Service with effect from 01.07.2012?

Answer

In order to treat the provision of any service as Export of Service with effect from 01.07.2012, following essential conditions are required to be satisfied cumulatively as per Rule 6A (1) of Service Tax Rules, 1994:

(a) The provider of service is located in the taxable territory,

(b) The recipient of service is located outside India,

(c) The service is not a service specified in section 66D[which deals with Negative List of Services] of the Act;

(d) The place of provision of the service is outside India;

(e) The payment for such service has been received by the provider of service in convertible foreign exchange; and

(f) The provider of service and recipient of service are not merely establishment of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act.

Question 4

What are the advantages derived by Exporters of Taxable Services with effect from 01.07.2012?

Answer

The following advantages are derived by Exporters of Taxable Services:

(i) Claiming rebate [in terms of Rule 6A(2) of Service Tax Rules, 1994] of service tax or duty paid on input services or inputs, as the case may be, used in providing such service.

(ii) Claiming refund of CENVAT Credit under Rule 5 of CENVAT Credit Rules, 2004

Question 5

Can there be an export of services between an establishment of a person in a taxable territory [say Infosys Ltd.(India)] and another establishment of same person in a non-taxable territory [say Infosys Ltd.(USA)] ?

Answer

No. Even though such persons have been specified as distinct persons under Explanation 3 to Section 65B (44), yet the transaction between such establishments have not been recognised as Export of Service in terms of Rule 6A (1)(f) of Service Tax Rules, 1994. As a consequence, there can not be any export of services between Infosys Ltd.(India)and Infosys Ltd.(USA).

CHAPTER 3

Point of Taxation Rules, 2011

Question 1

Determine the Point of Taxation in each of following independent cases in accordance with Point of Taxation Rules, 2011:

S. No.	Date of completion of service	Time[Date] of Invoice	Date on which payment received
1.	10.04. 2012	05.05.2012	20.05.2012
2.	10.04. 2012	05.05.2012	25.04.2012
3.	10.04. 2012	05.05.2012	25.04.2012 (Part) and 20.05.2012 (remaining)
4.	10.04. 2012	05.05.2012	06.04.2012(Part) and 09.04.2012 (remaining)
5.	10.04. 2012	05.05.2012	06.04.2012(Part) and 01.05.2012 (remaining)
6.	10.04. 2012	16.05.2012	20.05.2012
7.	10.04. 2012	16.05.2012	05.04.2012(Part) and 14.05.2012 (remaining)

Answer

Before giving the answer to above practical problem, it will be worthwhile to have a quick look at the provisions of Rule 3 of Point of Taxation Rules which are given below in Tabular Format for easy recap:

Relevant Clause and Rule	Time of Issue of Invoice	Point of Taxation Unless Otherwise Specified
Clause (a) of Rule 3	Within the time period specified in Rule 4A of the Service Tax Rules, 1994 i.e. thirty days (or forty five days for banks and financial institutions) from the date of completion of the service	Time of issuance of invoice

Relevant Clause and Rule	Time of Issue of Invoice	Point of Taxation Unless Otherwise Specified
	According to substituted proviso to Rule 3(a) with effect from 01.04.2012 if invoice is Not issued within [i.e. After] thirty days (or forty five days for banks and financial institutions)from the date of completion of the service	Date of Completion of provision of service
Clause (b) of Rule 3	If, service provider receives any payment before time specified in clause (a) above i.e. before the issuance of invoice	Time [Date] of Payment to the extent it is received.

Note in respect of receipt of advance: According to Explanation appended to this Rule 3 wherever any advance by whatever name known is received by the service provider towards the provision of taxable service, the Point of Taxation shall be the Date of Receipt of each such advance

Point of Taxation in each of above cases has been given in following table:

S. No.	Date of Completion of service	Time [Date] of Invoice, Bill or Challan as the case may be	Date on which payment received	Point of Taxation	Remarks
1.	10.04. 2012	5.05.2012	20.05.2012	5.05.2012	Invoice issued within 30 days and before receipt of payment.
2.	10.04.2012	5.05.2012	25.04.2012	25.04.2012	Invoice issued within 30 days but payment received before invoice.
3.	10.04. 2012	5.05.2012	Part payment on 25.04.2012 remaining on 20.05.2012	25.04.2012 for the part payment and 5.05.2012 for the remaining amount	Invoice issued within 30 days. Part payment received before invoice and remaining payment after invoice.

S. No.	Date of Completion of service	Time [Date] of Invoice, Bill or Challan as the case may be	Date on which payment received	Point of Taxation	Remarks
4.	10.04. 2012	5.05.2012	Part payment on 6.04.2012 and remaining on 09.04.2012	06.04.2012 and 09.04.2012 for the respective amount	Invoice issued within 30 days. However, the advance has been received in two installments before the date of completion of service. Thus, date of receipt of each such advance shall be treated as point of taxation.
5.	10.04. 2012	5.05.2012	Part payment on 06.04.2012 and remaining on 1.05.2012	06.04.2012 and 1.05.2012 for the respective amount	Invoice issued within 30 days. Part payment [in the form of advance] received before issue of invoice and remaining payment received before issuance of Invoice.
6.	10.04. 2012	16.05.2012	20.05.2012	10.04.2012	Invoice not issued within 30 days and payment received after completion of service. Thus. Point of Taxation is Date of completion of service.
7.	10.04. 2012	16.05.2012	Part payment on 05.04.2012 and remaining	05.04.2012 and 10.04.2012	Invoice not issued within 30 days. Part payment

S. No.	Date of Completion of service	Time [Date] of Invoice, Bill or Challan as the case may be	Date on which payment received	Point of Taxation	Remarks
			on 14.05.2012	for respective amounts	received as advance before completion of service and remaining payment received after completion of

Question 2

A service becomes taxable with effect from 01.07.2012. Determine in each of the following independent cases whether service tax is leviable in accordance with Point of Taxation Rules, 2011?

Case	Date of Issuance of Invoice	Date of receipt of payment
I	25.06.2012 for ₹ 1,00,000	26.06.2012 for ₹ 1,00,000
II	25.06.2012 for ₹ 1,00,000	26.06.2012 for ₹ 60,000
III	25.06.2012 for ₹ 60,000	26.06.2012 for ₹ 1,00,000
IV	24..06.2012 for 1,00,000	20.06.2012 for ₹ 1,00,000
V	03.07.2012 for ₹ 1,00,000	30.06.2012 for ₹ 1,00,000
VI	24.07.2012 for ₹ 1,00,000	20.06.202 for ₹ 1,00,000

Answer

According to substituted Rule 5 of Point of Taxation Rules, 2011 with effect from 01.04.2012 where a service is taxed for the first time, then Point of Taxation will be determined in the following manner:

Relevant Rule of POT Rules, 2011	Time of Issue of Invoice	Time of receipt of payment	Position of Taxability
Rule 5(a)	Before the date such service becomes taxable for the first time	Before the date such service becomes taxable for the first time	Not-Taxable to the extent of issue of invoice and receipt of payment against such invoice.

Rule 5(b)	Issue of invoice within fourteen days of the date when the service is taxed for the first time.	Before the date such service becomes taxable for the first time	Not Taxable if the payment has been received before the service become taxable and invoice has been issued within fourteen days of the date when the service is taxed for the first time.

In the light of above provisions of Rule 5 of POT Rules, 2011 the position of taxability in each of cases given in the question will be as under:

<table>
<tr><th>Date of Issuance of Invoice</th><th>Date of receipt of payment</th><th colspan="3">Position of Taxability</th></tr>
<tr><td>25.06.2012 for ₹ 1,00,000</td><td>26.06.2012 for ₹ 1,00,000</td><td colspan="3">Not-Taxable to the extent of issue of invoice and receipt of payment against such invoice before such service becomes taxable i.e. entire amount of ₹1,00,000 in this case.</td></tr>
<tr><td>25.06.2012 for ₹ 1,00,000</td><td>26.06.2012 for ₹ 60,000</td><td colspan="3">Not-taxable to the extent of ₹60,000 because against the invoice of ₹1,00,000 only part payment to the extent of ₹60,000 has been received before such service becomes taxable for the first time. In other words, ₹40,000 received after such service become taxable [i.e. after 01.07.2012] will be subject to service tax.</td></tr>
<tr><td rowspan="3">25.06.2012 for ₹ 60,000</td><td rowspan="3">26.06.2012 for ₹ 1,00,000</td><td colspan="3">Not-taxable to the extent of ₹60,000 because of Rule 5(a) of this Rule i.e. to the extent of issue of invoice and receipt of payment against such invoice before such service becomes taxable.
The taxability of remaining ₹40,000/- will be determined in the following manner:</td></tr>
<tr><td>Time of Issuance of Invoice</td><td>Time of Receipt of Payment</td><td>Position of Taxability</td></tr>
<tr><td>If invoice for ₹ 40,000 is issued within 14 days [i.e. latest by 14.07.2012 in the</td><td>Before the date such service becomes</td><td>Not Taxable because the situation will be squarely</td></tr>
</table>

<table>
<tr><th>Date of Issuance of Invoice</th><th>Date of receipt of payment</th><th colspan="3">Position of Taxability</th></tr>
<tr><td rowspan="2"></td><td rowspan="2"></td><td>present case] from the date such service becomes taxable.</td><td>taxable for the first time</td><td>covered by Rule 5(a).</td></tr>
<tr><td>If invoice for ₹ 40,000/- is not issued within 14 days [i.e. after 14.07.2012 in the present case] from the date such service becomes taxable.</td><td>Before the date such service becomes taxable for the first time</td><td>Taxable because neither the requirement of Rule 5(a) nor Rule 5(b) is met.</td></tr>
<tr><td>24.06.2012 for 1,00,000</td><td>20.06.2012 for ₹ 1,00,000</td><td colspan="3">Not Taxable as the payment has been received before the service became taxable and invoice has also been issued before such service became taxable.</td></tr>
<tr><td>03.07.2012 for ₹ 1,00,000</td><td>30.06.2012 for ₹ 1,00,000</td><td colspan="3">No Tax shall be payable because payment has been received before the service becomes taxable and invoice has been issued within 14 days of the date when the service is taxed for the first time.</td></tr>
<tr><td>24.07.2012 for ₹ 1,00,000</td><td>20.06.202 for ₹ 1,00,000</td><td colspan="3">Taxable because essential requirement of issue of invoice within 14 days of the date when service is taxed for the first time is not met.</td></tr>
</table>

Question 3

Renu Ltd. enters into a contract with XYZ Ltd. for construction of a new building primarily for the purpose of commerce or industry for a total consideration of ₹150 lakhs on 02.07.2012. The relevant details are given as under:

Stage	Date [Expected]	Date of issuance of invoice	Date of Payment	Amount of Payment(₹)
Initial/Booking	02.07.2012	02.07.2012	02.07.2012	15 lakhs
50% completion of building [after getting certificate from the stipulated Chartered Engineer]	15.03.2013	22.03.2013	29.03.2013	60 lakhs
75% completion of building [after getting	20.06.2013	24.07.2013	25.07.2013	35 lakhs

certificate from the stipulated Chartered Engineer]				
100% completion of building [after getting certificate from the stipulated Chartered Engineer]	30.09.2013	21.10.2013	20.10.2013	40 lakhs

Answer

According to Rule 2(c) of Point of Taxation Rules, 2011 "continuous supply of service" means any service which is provided or to be provided continuously or on recurrent basis, under a contract, for a period exceeding three months with the obligation for payment periodically or from time to time, or where the Central Government, by a notification in the Official Gazette, prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition.

Since in the present case Construction Services to be provided by Renu Ltd. under a contract with XYZ Ltd. for a period exceed three months with the obligation for payment periodically, the aforestated services fall within the ambit of term "continuous supply of service" as defined above. The Point of Taxation in case of Continuous Supply of Services is determined in accordance with provisions of Rule 3 of POT Rules, 2011 with effect from 01.04.2012 which are given in the following table for instant reference of students:

Time of Issue of Invoice	Point of Taxation	Deemed date of completion of provision of service
Within thirty days (or forty five days for banks and financial institutions) from the date of completion of the provision of service	Earlier of the following two dates: *(i)* Date of Invoice for the service provided or agreed to be provided; or *(ii)* Date of payment to the extent it is received.	According to Proviso (i) to clause (a) and (b) of Rule 3 of POT Rules, 2011 where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the service receiver to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be date of completion of provision of service.
After thirty days (or forty five days for banks and other	Earlier of the following two dates:	

Time of Issue of Invoice	Point of Taxation	Deemed date of completion of provision of service
financial institutions) from the date of completion of the provision of service	(i) Date of completion of the provision of the service **or** (ii) Date of Payment to the extent it is received.	

Note in respect of receipt of advance: According to Explanation appended to this Rule 3 wherever any advance by whatever name known is received by the service provider towards the provision of taxable service, the Point of Taxation shall be the Date of Receipt of each such advance

Therefore, according to Rule 3 of Point of Taxation Rules, 2011 in respect of each of the above stage of completion Point of Taxation will be determined as under

Stage of Completion	Deemed date of completion of provision of service as per proviso (i) to clause (a) and clause (b) of Rule 3 of POT Rules, 2011	Point of Taxation	Reason/Remarks
Initial/ Booking	02.07.2012	02.07.2012	Date of issuance of invoice as well as Date of Payment is same i.e. 02.07.2012.
50%	15.03.2013	22.03.2013	Since invoice has been issued on 22.03.2013 i.e. within thirty days from the date of completion of provision of service [which is 15.03.2013], comparison has been made between Date of issuance of Invoice [22.03.2013] and Date of Payment [29.03.2013]. Accordingly, Point of Taxation will be 22.03.2013.

75%	20.06.2013	20.06.2013	Since invoice has been issued on 24.07.2013 i.e. after thirty days from the date of completion of provision of service [which is 20.06.2013], comparison has been made between Date of Completion of Provision of Service **[20.06.2013]** and Date of Payment **[25.07.2013].** Accordingly, Point of Taxation will be 20.06.2013
100%	30.09.2013	20.10.2013	Since invoice has been issued on 21.10.2013 i.e. within thirty days from the date of completion of provision of service [which is 30.09.2013], comparison has been made between Date of issuance of Invoice[21.10.2013] and Date of Payment [20.10.2013]. Accordingly, Point of Taxation will be 20.10.2013

Question 4

Manoj Ltd. imports Business Support Services from Green Ltd. of USA on 13.07.2012. The relevant invoice for $ 1,20,000 is raised by Green Ltd. 18.08.2012. Manoj Ltd. makes the aforementioned payment as per following table:

CASE I	*22.11.2012*
CASE II	*27.05.2013*

Answer

According to Rule 7 of POT Rules, 2011 with effect from 01.04.2012 notwithstanding anything contained in these rules, the point of taxation in respect of persons required to pay tax as recipients of service under the rules made in respect of services notified under section 68(2) of the Act, shall be the date on which payment is made. However, proviso to foregoing Rule 7 provides that where the payment is not made within a period of six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist.

Since in the present case Manoj Ltd. imports services from USA, it is required to pay tax as recipient of service under section 68(2) of the Act. Therefore, Point of Taxation in each of above two cases will be as under:

CASE	Point of Taxation	Detailed Reason/Remark
CASE I	Date of payment i.e. 22.11.2012	Since the importing company i.e. Manoj Ltd makes the payment within the six months from the date of invoice, provisions of Rule 7 of POT Rules, 2011 become

		applicable. Accordingly, date on which payment is made will be considered as Point of Taxation.
CASE II	Date of completion of service i.e. 13.07.2012	As Manoj Ltd. does not make the payment within six months from the date of invoice, provisions of Rule 7 of POT Rules, 2011 will not apply. Point of Taxation will be determined in the absence of this rule. In simple words, Point of Taxation will be determined on the basis of Rule 3. Since in the present case invoice has NOT been issued within thirty days from the date of completion of provision of service, **earlier of the following two dates** will be point of taxation: (i) Date of completion of provision of service; or (ii) Date of payment to the extent it is made in the present situation. Since in the present case Date of completion of provision of service [13.07.2012] precedes the date of payment [27.05.2013], date of completion of provision of service [i.e. 13.07.2012] will be point of taxation.

Question 5

Gupta & Gupta Ltd. is located in India and holding 60% shares of Vasu Ltd., a U.K. based company. The latter company [Vasu Ltd.] provides Business Auxiliary Services to former company [Gupta & Gupta Ltd.] The other relevant details are given in the following table:

Agreed Consideration	*£ 2,00,000/-*
Date on which services are provided by Vasu Ltd.	*16.07.2012*
Date on which invoice is sent by Vasu Ltd.	*19.07.2012*
Date of debit in the books of account of Gupta & Gupta Ltd.	*31.07.2012*
Date on which payment is made by Gupta & Gupta Ltd.	*23.10.2012*

Determine Point of Taxation for Gupta & Gupta Ltd.

Answer

First of all, it is worth highlighting that by virtue of its aforementioned shares in Vasu Ltd., Gupta & Gupta Ltd. becomes the **holding company** of Vasu Ltd as per section 4 of Companies Act, 1956. Resultantly, both Gupta & Gupta Ltd. and Vasu 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 Gupta & Gupta Ltd. in the present case]	31.07.2012
Date of making the payment [by Gupta & Gupta Ltd. in the present case]	23.10.2012

Thus, Point of Taxation will be 31.07.2012.

Question 6

Kirti Ltd is the owner of a coal-mine in Bihar. It obtained a patent from the concerned competent authorities in relation of foregoing coal-mine in February, 2011. Further, the company has entered into an agreement with ABC Ltd in April, 2011 for allowing the latter party to extract coals for the next three years. The consideration payable by ABC Ltd. for using the coal-mine has been fixed @ ₹1000 per tonne.The quantum of coal extracted by ABC Ltd and other relevant details are given in the following table:

Relevant Year	*Relevant Output (in Tonnes]*	*Consideration for using the coal-mine @ ₹1000/- per tonne*	*Date of Issuance of Invoice*	*Date of Receipt of Payment*
2011-12	*2,000*	*20,00,000*	*05.07.2012*	*26.08.2012*
2012-13	*3,000*	*30,00,000*	*13.04.2013*	*03.04.2013*
2013-14	*4,000*	*40,00,000*	*11.04.2014*	*20.07.2014*

Answer

It is pertinent to clarify here that in the present question Kirti Ltd. is the service provider and ABC Ltd. is the service recipient. Since whole amount of the consideration for the provision of patent is not ascertainable at the time when service was performed and subsequently the use of these services by a person other than the provider gives right to any payment of consideration, both the conditions specified in Rule 8 of POT Rules, 2011 get satisfied. The Point of Taxation of Kirti Ltd. for the various Financial Years has been exhibited in the following table:

Point of Taxation For Various Financial Years As Per Rule 8

Earlier of the following two:

(i) Date of Issuance of Invoice;

(ii) Date of receipt of payment.

It is worth highlighting that Point of Taxation is to be determined in the above manner **each time** on the occurrence of earlier of the above two events.

Point of Taxation	Reason/Remarks
05.07.2012	Date of Issuance of Invoice[05.07.2012] falls before Date of Payment[26.08.2012]
03.04.2013	Date of Payment [03.04.2013]precedes Date of Issuance of Invoice[13.04.2013]
11.04.2014	Date of Issuance of Invoice[11.04.2014]falls before Date of Payment[20.07.2014]

Question 7

HMV Ltd. is having the copyright of classic songs of Late Kishore Kumar recorded in a Compact Disk [CD]. The company gave the aforementioned copyright to Super Cassettes Industries Ltd. [hereinafter abbreviated as "SCI Ltd."] on 20.04.2011. The consideration payable by SCI Ltd. to HMV Ltd. for acquiring the foregoing copyright has been fixed @ ₹10/- per CD sold by it [SCI Ltd.]. The No. of CDs Sold by SCI Ltd. during different financial years as well as other relevant details is given in the following table:

Relevant Year	*No. of CDs sold*	*Consideration Payable @ ₹10- per CD sold [₹.]*	*Date of Issuance of Invoice by HMV Ltd.*	*Date of Receipt of Payment from SCI Ltd.*
2011-12	*4,00,000*	*40,00,000*	*29.07.2012*	*16.08.2012*
2012-13	*6,00,000*	*60,00,000*	*03.06.2013*	*23.05.2013*
2013-14	*7,00,000*	*70,00,000*	*16.06.2014*	*16.06.2014*

Answer

Point of Taxation for different financial years will be determined in the following manner:

Point of Taxation	Reason/Remarks
29.07.2012	Date of Issuance of Invoice[29.07.2012] falls before Date of Payment [16.08.2012]
23.05.2013	Date of Payment [23.05.2013]precedes Date of Issuance of Invoice[03.06.2013]
16.06.2014	Date of Issuance of Invoice [16.06.2014] as well as Date of Receipt of Payment [16.06.2014] is same.

Question 8

Raj Jaggi is the author and copyright-owner in relation of a book on the subject of Central Excise. He enters into an agreement with ABC Publishers on 15.07.2012. As a result of *foregoing agreement Raj Jaggi transfers the copyright to said publishers for a lump sum consideration of ₹10,00,000/-. The other relevant details are as under:*

Relevant Date	*Particulars*
15.07.2012	*Issue of invoice by Raj Jaggi*
27.11.2012	*Receipt of lump sum consideration of ₹10,00.000/-*

Determine Point of Taxation in the above case.

Answer

In the above case Point of Taxation will be determined as under:

The first important thing is that although the above-mentioned contract is in relation of copy-rights, provisions of Rule 8 of Point of Taxation Rules. 2011 will not apply. The reason is that one of the essential requirements of Rule 8 is not getting satisfied in this case. According to prescribed requirement the whole amount of consideration for the provision of service should not be ascertainable at the time when service was performed [i.e. when the agreement is entered into between the concerned parties]. Since in the present case the whole amount of consideration of ₹10,00,000/- has been ascertained at the time of entering into agreement itself, one of the essential requirements of Rule 8 does not get satisfied. Resultantly, Rule 8 becomes inapplicable in the present case. Contrarily, Point of Taxation will be determined in accordance with Rule 3 of Point of Taxation Rules, 2011 in the following manner:

Since invoice has been issued within thirty days from the date of completion of provision of service [which in the present case is the date of entering into agreement], earlier of the following dates will be the Point of Taxation:

Date of invoice	15.07.2012
Date of payment	27.11.2012

Thus, Point of Taxation is 15.07.2012.

Question 9

How the point of taxation will be determined if the date of invoice or the date of payment or both are not available?

Answer

According to Rule 8A of POT Rules, 2011 with effect from 01.04.2012 if the date of invoice or the date of payment or both are not available, Central Excise Officer, may require the concerned person to produce such accounts, documents or other evidence as he may deem necessary. Central Excise Officer may after taking into consideration such material and the effective rate of tax prevalent at different points of time, shall by an order in writing determine the point of taxation to the best of his judgment. However, before making such order, he is required to give an opportunity of being heard to the concerned person in accordance with principle of natural justice.

Question 10

Nikhil Ltd., a famous builder and developer entered into an agreement with Mr. Sumit in May, 2012 for constructing four flats for him for an agreed consideration of ₹2,60,00,000/-. Mr. Sumit made payment in instalments as per following details:

Date of Receipt of Payment	*Amount of Payment*	*Date of Invoice issued by Nikhil Ltd.*
19.05.2012	*₹ 30,00,000/-*	*10.05.2012*
22.06.2012	*₹40,00,000/-*	*10.06.2012*
27.07.2012	*₹50,00,000/-*	*10.07.2012*
24.08.2012	*₹80,00,000/-*	*10.08.2012*
21.09.2012	*₹60,00,000/-*	*10.09.2012*

Nikhil Ltd. obtained completion certificate from the competent authority in respect of four flats on 08.09.2012. Whether services provided by Nikhil Ltd. to Mr. Sumit are subject to Service Tax?

Answer

The definition of term 'Residential Complex' has been changed with effect from 01.07.2012. Whereas upto 30.06.2012, "residential complex" means any complex comprising of a building or buildings, having more than twelve residential units under the section 65(91a). However, with effect from 01.07.2012 according to clause (zc) of Notification No. 25/2012 dated 20.06.2012, "residential complex" means any complex comprising of a building or buildings, having more than one single residential unit.

Rule 5 of Point of Taxation Rules, 2011 becomes applicable in the present context. According to foregoing Rule 5 where a service is taxed for the first time then –

(a) No tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;

(b) No tax shall be payable if the payment has been received before service becomes taxable and invoice has been within fourteen days of the date when the service is taxed for the first time.

Therefore, in the present case, invoice has already been issued by Nikhil Ltd., case (a) of Rule 5 of Point of Taxation Rules, 2011 will become applicable. Therefore, no Service Tax shall be payable to the extent of ₹70,00,000/- for which invoice has been issued and the payment received prior to 01.07.2012.

Question 11

Service Tax was chargeable at the rate of 10.30% up to 31.03.2012. However, with effect from 01.04.2012, the rate of service tax has been increased to 12.36%. Determine the point of *taxation as well as consequent Applicable Rate of Service Tax in each of the following independent cases.*

Case	*Time[Date] of Provision of Service*	*Time[Date] of Issue of Invoice*	*Time[Date] of Receipt of Payment*
I	*28.03.2012*	*02.04.2012*	*08.04.2012*
II	*28.03.2012*	*29.03.2012*	*08.04.2012*
III	*28.03.2012*	*04.04.2012*	*30.03.2012*
IV	*03.04.2012*	*31.03.2012*	*06.04.2012*
V	*03.04.2012*	*29.03.2012*	*30.03.2012*
VI	*03.04.2012*	*07.04.2012*	*31.03.2012*

Answer

Whenever there is change in effective rate of tax, point of taxation is to be determined in accordance with Rule 4 of Point of Taxation Rules, 2011. According to aforestated Rule 4, notwithstanding anything contained in Rule 3, the Point of Taxation in cases where there is a change in effective rate of tax in respect of a service shall be determined in the following manner:

S. No.	Time[Date] of Provision of Taxable Service	Time[Date] of Issue of Invoice	Time[Date] of Receipt of Payment	Point of Taxation
(a)	Before the change in effective rate of tax	(i) After the change in effective rate of tax	After the change in effective rate of tax	Earlier of following two dates: *(A)* Date of issuance of invoice; or *(B)* Date of payment of invoice
		(ii) Prior to change in effective rate of tax	After the change in effective rate of tax	Date of issuance of invoice
		(iii) After the change in effective rate of tax	Prior to the change in effective rate of tax	Date of payment
(b)	After the change in effective rate of tax	(i) Prior to change in effective rate of tax	After the change in effective rate of tax	Date of Payment

		(ii) Prior to change in effective rate of tax	Prior to change in effective rate of tax	Earlier of the following two dates: (A) Date of receipt of payment; **or** (B) Date of issuance of invoice
		(iii) After the change in effective rate of tax	Prior to change in effective rate of tax	Date of issuance of invoice

Alternatively, students may learn the above table in the following manner:

Case	Time [Date] of Provision of Service	Time [Date of Issue of Invoice]	Time [Date] of Receipt of Payment	Point of Taxation	Applicable Rate of Tax
I	Before	After	After	Earlier of Date of Issuance of Invoice or Receipt of Payment	New i.e. after the change in effective rate of tax
II	Before	Before	After	Date of Issuance of Invoice	Old i.e. before the change in effective rate of tax
III	Before	After	Before	Date of Receipt of Payment	Old i.e. before the change in effective rate of tax
IV	After	Before	After	Date of Receipt of Payment	New i.e. after the change in effective rate of tax
V	After	Before	Before	Earlier of Date of Issuance of Invoice or	Old i.e. before the change in effective rate

Case	Time [Date] of Provision of Service	Time [Date of Issue of Invoice]	Time [Date] of Receipt of Payment	Point of Taxation	Applicable Rate of Tax
				Receipt of Payment	of tax
VI	After	After	Before	Date of Insurance of Invoice	New i.e. after the change in effective rate of tax

Still, the students can learn the above table in the following shorter way:

1. The OLD rate will be applied if out of the following three factors , any two factors belong to "BEFORE" category:
   (a) Date of provision of taxable service
   (b) Date of issuance of invoice
   (c) Date of receipt of payment.
2. Similarly, the NEW rate will be applied if out of the following three factors, any two factors belong to "AFTER" category:
   (a) Date of provision of taxable service
   (b) Date of issuance of invoice
   (c) Date of receipt of payment.

In the light of above-mentioned Rule 4 of POT Rules, 2011, the point of taxation as well as applicable rate of tax in the present case will be determined as under:

Case	Time[Date] of Provision of Service	Time[Date of Issue of Invoice]	Time[Date] of Receipt of Payment	Point of Taxation	Applicable Rate of Tax
I	28.03.2012	02.04.2012	08.04.2012	02.04.2012, being earlier of Date of Issuance of Invoice [i.e. 02.04.2012] or Receipt of Payment [08.04.2012.]	12.36%

Case	Time[Date] of Provision of Service	Time[Date of Issue of Invoice]	Time[Date] of Receipt of Payment	Point of Taxation	Applicable Rate of Tax
II	28.03.2012	29.03.2012	08.04.2012	29.03.2012, being Date of Issuance of Invoice	10.30%
III	28.03.2012	04.04.2012	30.03.2012	30.03.2012, being Date of Receipt of Payment	10.30%
IV	03.04.2012	31.03.2012	06.04.2012	06.04.2012, being Date of Receipt of Payment	12.36%
V	03.04.2012	29.03.2012	30.03.2012	29.03.2012, being Earlier of Date of Issuance of Invoice [29.03.2012] or Receipt of Payment 30.03.2012]	10.30%
VI	03.04.2012	07.04.2012	31.03.2012	07.04.2012, being Date of Insurance of Invoice	12.36%

CHAPTER 4

Valuation of Taxable Services

Question 1

Briefly explain the following with reference to the provisions of Finance Act, 1994 and Service Tax (Determination of Value) Rules, 2006

(i) Bundled Service

(ii) Gross amount charged

(iii) Original Works in the context of Rule 2A of Valuation Rules, 2006

(iv) Total amount in the context of Rule 2A of Valuation Rules, 2006

Answer

(i) **Bundled Service:** 'Bundled service' means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services. For example, air transport services provided by airlines wherein an element of transportation of passenger by air is combined with an element of catering service on board.

According to provisions of section 66F of Finance Act, 1994, the taxability of a bundled service shall be determined in the following manner:

Position of various elements of such service	Treatment for the purpose of charging service tax
If various elements of such service are naturally bundled in the ordinary course of business	As provision of the single service which gives such bundle its essential character. **For example**, if a hotel provides a 4D/3-N package with the facility of breakfast, it will be considered a case of naturally bundled service. Since the service of hotel accommodation gives the bundle the essential character, it will be treated as service of providing hotel accommodation.
If various elements of such service are not naturally bundled in the ordinary course of business	As provision of the single service which results in highest liability of service tax. For example, two floors of a house are given on rent for two different purposes-Ground Floor for the purpose of running a shop and first floor for residential purpose. Renting for aforestated two purposes is not naturally bundled in the ordinary course of business. Resultantly, if consolidated rent agreement is entered for providing renting of both the said floors, it will be considered as a single

	service which results in highest liability of service tax. Renting of residential dwelling for use as residence falls within the purview of Negative List of Services under section 66D. On the other hand, renting for the purpose of running a shop is subject to service tax. Since the latter category of renting attracts highest liability of service tax between two services bundled together, entire renting would be treated as renting for commercial purposes. As a consequence, service tax will be levied on the gross amount charged for renting of both the floors.

(ii) Gross amount charged: Explanation (c) to section 67 of the Finance Act, 1994 provides that "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment.

However, in case of transaction of taxable service is with any associated enterprise, any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax will also fall within the purview of term "gross amount charged."

The significance of term "gross amount charged" lies in the fact that wherever any taxable service is provided for a consideration in money, service tax is chargeable on the gross amount charged by the service provider for such service provided or to be provided by him.

(iii) Original Works in the context of Rule 2A of Valuation Rules, 2006: According to substituted Rule 2A of Service Tax(Determination of Value) Rules, 2006 with effect from 01.07.2012 the term "original works" means :

(i) All new constructions;

(ii) All types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii) Erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise.

The significance of term "original Works" can be appreciated from the fact that when works contract is for execution of original works, value of service portion shall be forty percent of the total amount charged for the works contract in pursuance of Rule 2A of Service Tax(Determination of Value) Rules, 2006. As a result, less service tax amount will be payable as compared to other two situations under foregoing Rule.

(iv) Total amount in the context of Rule 2A of Valuation Rules, 2006: According to Explanation 1(b) to Rule 2A of Service Tax(Determination of Value) Rules, 2006 "total amount" means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of works contract, whether or not supplied under the same contract or any other contract, after deducting

(i) The amount charged for such goods or services, if any; and

(ii) The value added tax or sales tax, if any, levied thereon.

Computation of "Total amount" can be appreciated from the following **practical example:**

(i)	Gross Amount charged for the works Contract	₹1,00,000
(ii)	**Add**: Fair Market Value of goods/services (supplied by the contractee)	₹ 70,000
(iii)	**Less**: The amount charged for such goods/services (supplied by the contractee)	₹ 10,000
(iv)	**Less**: the value of VAT, levied on goods supplied by the contractee	₹ 1,250
(v)	Total Amount (i) + (ii) –(iii)-(iv)	₹ 1,58,750

Further, according to Proviso to Explanation I (b) the fair market value of goods and services so supplied is required to be determined in accordance with the generally accepted accounting principles.

Question 2

Explain in brief the manner of determination of value as per rule 3 of the Service Tax (Determination of Value) Rules, 2006.

Answer

Subject to provisions of Section 67 of Finance Act, 1994, the value of taxable service, where such value is not ascertainable, shall be determined by the service provider in the following manner as per **Rule 3** of the Service Tax (Determination of Value) Rules, 2006:

(a) The value of such taxable service shall be equivalent to the gross amount charged by the service provider **to provide similar service to any other person in the ordinary course of trade.** However, the aforementioned gross amount charged must be the sole consideration.

(b) Where the value cannot be determined in accordance with above clause, the service provider is required to determine the **equivalent money value of such consideration.** However, such value shall in no case be less than the cost of provision of such taxable service.

Question 3

Compute service tax liability from the following particulars:

Gross Amount charged by the service provider for providing works contract service	*₹1,00,000*

Actual Value of material transferred in the above works contract	*₹70,000*
CENVAT Credit of duty on value of material transferred	*₹8,750*
Service Tax paid on Input Services	*₹1,000*
CENVAT Credit of capital goods used in the provision of works contract service	*₹1,000*
Rate of Service Tax	*12.36%*

Answer

Computation of Service Tax liability

S.No.	*Particulars*	*Amount*
(i)	*Gross Amount charged*	*₹1,00,000*
(ii)	*Actual Value of goods transferred*	*₹70,000*
(iii)	*Value of service portion in the execution of works contract i.e. (ii)- (i)*	*₹30,000*
	Service Tax on ₹ 30,000 @12.36% = 3,708 **Less:** *CENVAT credit On Inputs = NIL* *On Input Services = 1,000* *On Capital Goods (50%) = 500* *Service Tax Payable*	 *₹2,208*

Question 4

Write a brief note explaining the circumstances under which expenditure or costs incurred by a service provider as a pure agent of the recipient of service shall be excluded from the value of taxable services under the Service Tax (Determination of Value) Rules, 2006.

Answer

Exclusion of Expenditure or costs incurred as a pure agent: Expenditure or costs incurred by the service provider as a **pure agent of the recipient of the service** shall be excluded from the value of the taxable service if **all** the following conditions are satisfied **cumulatively** as per Rule 5(2) of Service Tax(Determination of Value) Rules 2006:-

(a) The service provider acts as a pure agent of the recipient of the service while making payment to the third party.

(b) The recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service.

(c) The recipient of service is liable to make payment to the third party.

(d) The recipient of service authorizes the service provider to make payment on his behalf.

(e) The recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party.

(f) The payment made by the service provider on behalf of the recipient of service is separately indicated in the invoice issued by the service provider to the recipient of service.

(g) The service provider recovers from the recipient of service only such amount as has been paid by him to the third party.

(h) The goods or services procured by the service provider from the third party as a pure agent are in addition to the service he provides on his own account.

In order to truly appreciate the application of above-mentioned conditions in practical situations, following simple **example** is given:

Delhi based Mr. Raj is a commission agent of Mumbai based XYZ Ltd Thus, Mr. Raj provides **Business Auxiliary Services** to XYZ Ltd. He is directed by XYZ Ltd. to purchase certain goods on its behalf to the extent of ₹ 10,00,000/- and to make the payment to the concerned seller. Further, Mr. Raj also takes the purchase invoice of said goods in the name of XYZ Ltd. Mr. Raj raises the invoice of ₹ 50,000/-[together with service tax @ 12.36%] as commission charges on XYZ Ltd. in respect of his Business Auxiliary Services. Besides, he will include above-mentioned ₹ 10,00,000/--in the invoice but will not charge any service tax on it because in respect of this amount he is **acting as pure agent of XYZ Ltd.** The above-mentioned conditions of pure-agent are being tested below:

(a) The service provider [Mr. Raj in the present case] acts as a pure agent of the recipient of the service [i.e. XYZ Ltd. in the present case] while making payment to the third party [i.e. concerned seller of said goods]

(b) The recipient of service [i.e. XYZ Ltd.] receives and uses the goods so procured by the service provider in his capacity as pure agent of the recipient of service.

(c) The recipient of service [i.e. XYZ Ltd.] is liable to make payment to the third party.

(d) The recipient of service [i.e. XYZ Ltd.] authorizes the service provider [i.e. Mr. Raj] to make payment on his behalf.

(e) The recipient of service [XYZ Ltd.] knows that the goods for which payment has been made by the service provider [Mr. Raj] shall be provided by the third party [concerned seller of said goods]

(f) The payment made by the service provider [Mr. Raj] on behalf of the recipient of service [XYZ Ltd.] **is separately indicated** in the invoice issued by the service provider to the recipient of service.

(g) The service provider [Mr. Raj] recovers from the recipient of service only such amount as has been paid by him[₹ 10,00,000/-] to the third party[concerned seller of said goods]

(h) The goods procured by the service provider [Mr. Raj] from the third party [concerned seller of goods] as a pure agent are in addition to the service he provides on his own account.

Since all the prescribed conditions are fully satisfied in the present case, it may be safely inferred that Mr. Raj acts as pure agent on behalf of XYZ Ltd. in the present case.

Question 5

Kirti Ltd. was awarded a contract in September, 2012 for providing plastering services in respect of an immovable property for ₹ 2,00,000/-. The material required for plastering is also required to be supplied by Kirti Ltd. Whether the foregoing plastering services are subject to Service Tax and if so, how the service tax liability will be computed?

Answer

Kirti Ltd. has agreed to provide materials which are leviable to tax as sale of goods. In addition, it is also required to provide its services to its client. Therefore, its services fall within the scope of term 'works contract' as defined under Section 65B (54) of Finance Act, 1994. As a result, aforestated Services of Kirti Ltd. are subject to Service Tax. As the value of materials transferred in the execution of said works contract has not been separately given, the value of Works Contract Services has to be determined in accordance with Rule 2A(ii) of Service Tax(Determination of Value) Rules, 2006 which is effective from 01.07.2012. Further, the present contract will get covered under Rule 2A(ii)(C) of Service Tax (Determination of Value) Rules, 2006. Therefore, Service Tax shall be payable on sixty per cent of the total amount charged for the works contract .The computation of service tax payable has been exhibited below:

Sixty per cent of the total amount charged	₹ 1,20,000/- [₹ 2,00,000 X 60%]
Rate of Service Tax	12.36%
Amount of Service Tax payable	₹ 14,832/-[which is 7.416% of the total amount charged of ₹ 2 lakh]

Question 6

Indian Oil Corporation [IOC] has awarded a contract in August, 2012 for ₹ 140 lakh to M/s Jagjit Construction Ltd. in respect of alterations to one of its buildings. The said building was abandoned by IOC five years ago. The materials required for carrying out the alterations will be supplied by Jagjit Construction Ltd. itself. The purpose of awarding the foregoing contract is to make the said building workable. Whether the aforestated services of Jagjit construction Ltd. are subject to Service Tax and if so, determine the amount of service tax payable?

Answer

According to Explanation 1(a)(ii) to *Notification No. 24/2012 dated 06.06.2012* "original works" means all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable. Since Jagjit Construction Ltd. has been awarded a contract for carrying out alterations in respect an abandoned building with a view to make it workable, the contract falls within the purview of term “original works”. Further, as there is involvement of materials {which is subject to VAT] during the course of execution of such contract, it will fall within the purview of ‘Works Contract’. As the value of materials transferred in the execution of said works contract has not been separately given, the value of Works Contract Services has to be determined in accordance with Rule 2A(ii) of Service Tax(Determination of Value) Rules, 2006 which is effective from 01.07.2012. Further, the present contract will get covered under Rule 2A(ii)(A) of Service Tax (Determination of Value) Rules, 2006. Therefore, Service Tax shall be payable on forty per cent of the total amount charged for the works contract .The computation of service tax payable has been exhibited below:

Forty percent of the total amount charged	₹ 56 lakh [₹ 140 lakh X 40%]
Rate of Service Tax	12.36%
Amount of Service Tax payable	₹ 6,92,160/-[which is 4.944% of the total amount charged of ₹ 140 lakh]

Question 7

Airports Authority of India (AAI) awarded a contract for construction of an airport in Nicobar Islands to Ananyana Construction Ltd. for ₹ 2345 lakh in August, 2012. Whether the aforestated services of Ananyana construction Ltd. are subject to Service Tax and if so, determine the amount of service tax payable?

Answer

According to Explanation 1(a)(i) to *Notification No. 24/2012 dated 06.06.2012* “original works” means all new constructions. Since in the present case Ananyana Construction Ltd. has been awarded a contract for construction of an airport in Nicobar Islands, the contract falls within the purview of term “original works”. However, it is to be borne in mind that Entry No. 14(a) of *Notification No. 25/2012 dated 20.06.2012* provides, amongst other things, exemption to services by way of construction of an airport. Therefore, aforestated services of Ananyana construction Ltd. are not subject to Service Tax

Exercise

1. *Discuss whether the Central Excise Officer has power to reject the value of taxable service.*
2. *Write a detailed note on concept of pure agent.*

CHAPTER 5

Exemptions and Abatements

Question 1

List any ten taxable services which have been exempted from payment of service tax by virtue of Notification No. 25/2012-S.T. dated 20.06.2012 with effect from 01.07.2012.

Answer

Notification No. 25/2012-S.T. dated 20.06.2012-S.T. has granted exemption to thirty nine taxable services with effect from 01.07.2012. The following table lists all the thirty nine taxable services:

S.No.	Description
1.	Services provided to the United Nations or a specified international organization.
2.	Health care services by a clinical establishment, an authorised medical practitioner or para-medics.
3.	Services by a veterinary clinic in relation to health care of animals or birds.
4.	Services by an entity registered under section 12AA of the Income tax Act, 1961 by way of charitable activities
5.	Services by a person by way of- (a) renting of precincts of a religious place meant for general public; or (b) conduct of any religious ceremony.
6.	Services provided by - (a) an arbitral tribunal to- (i) any person other than a business entity; or (ii) a business entity with a turnover upto rupees ten lakh in the preceding financial year; (b) an individual as an advocate or a partnership firm of advocates by way of legal services to- (i) an advocate or partnership firm of advocates providing legal services; (ii) any person other than a business entity; or (iii) a business entity with a turnover upto rupees ten lakh in the receding financial year; (c) A person represented on an arbitral tribunal to an arbitral tribunal;

S.No.	Description
7.	Services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies, on human participants by a clinical research organisation approved to conduct clinical trials by the Drug Controller General of India.
8.	Services by way of training or coaching in recreational activities relating to arts, culture or sports.
9.	Services provided to or by an educational institution in respect of education exempted from service tax, by way of - (a) auxiliary educational services; or (b) renting of immovable property
10.	Services provided to a recognised sports body by- (a) an individual as a player, referee, umpire, coach or team manager for participation in a tournament or championship organized by a recognized sports body; (b) another recognised sports body.
11.	Services by way of sponsorship of sporting events organised- (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone; (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympics Committee of India, Special Olympics Bharat; (c) by Central Civil Services Cultural and Sports Board; (d) as part of national games, by Indian Olympic Association; or (e) under Panchayat Yuva Kreeda Aur Khel Abhiyaan (PYKKA) Scheme.
12.	Services provided to the Government or local authority or a governmental authority by way of construction, erection , commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration, of - (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession; (b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958); (c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; (d) canal, dam or other irrigation works;

S.No.	Description
	(e) pipeline, conduit or plant for (i) water supply (ii) water treatment (iii)sewerage treatment or disposal; or (f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the *Explanation* 1 to clause 44 of section 65 B of the said Act;
13.	Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration, of,- (a) a road, bridge, tunnel, or terminal for road transportation for use by general public; (b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana; (c) building owned by an entity registered under section 12AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public; (d) a pollution control or effluent treatment plant, except located as a part of a factory; or (e) A structure meant for funeral, burial or cremation of decreased;
14.	Services by way of construction, erection, commissioning, or installation of original works pertaining to,- *(a)* an airport, port or railways including monorail or metro *(b)* single residential unit otherwise as a part of a residential complex; *(c)* low- cost houses up to a carpet area of 60 square meters per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India; (d) post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or (e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.
15.	Temporary transfer or permitting the use or enjoyment of a copyright covered under clause (a) or (b) of sub-section (1) of section 13 of the Indian Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical, artistic works or cinematograph films.
16.	Services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, excluding services provided by such artist as a brand ambassador.

S.No.	Description
17.	Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India.
18.	Services by way of renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a unit of accomodation below rupees one thousand per day or equivalent.
19.	Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having (i) the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and (ii) a licence to serve alcoholic beverages.
20.	Services by way of transportation by rail or a vessel from one port in India to another of the following goods - (a) petroleum and petroleum products falling under Chapter heading 2710 and 2711 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986); (b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; (c) defence or military equipments; (d) postal mail or mail bags (e) household effects; (f) newspaper or magazines registered with Registrar of Newspapers; (g) railway equipments or materials; (h) agricultural produce; (i) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages; or (j) chemical fertilizer and oilcakes.
21.	Services provided by a goods transport agency by way of transportation of - (a) fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage; (b) goods where gross amount charged on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or (c) goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty.
22.	Services by way of giving on hire - (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or

S.No.	Description
	(b) to a goods transport agency, a means of transportation of goods.
23.	Transport of passengers, with or without accompanied belongings, by - (a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Baghdogra located in West Bengal; (b) *a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire; or* *(c) Ropeway, cable car or aerial tramway*
24.	Services by way of motor vehicle parking to general public excluding leasing of space to an entity for providing such parking facility;
25.	Services provided to the Government or a local authority or governmental authority by way of - (a) carrying out any activity in relation to any function, ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or (b) repair or maintenance of a vessel or an aircraft;
26.	Services of general insurance business provided under following schemes - (a) Hut Insurance Scheme; (b) Cattle Insurance under Swarnajaynti Gram SwarozgarYojna (earlier known as Integrated Rural Development Programme); (c) Scheme for Insurance of Tribals; (d) Janata Personal Accident Policy and Gramin Accident Policy; (e) Group Personal Accident Policy for Self-Employed Women; (f) Agricultural Pumpset and Failed Well Insurance; (g) premia collected on export credit insurance; (h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture; (i) Jan Arogya Bima Policy; (j) National Agricultural Insurance Scheme (Rashtriya Krishi BimaYojana); (k) Pilot Scheme on Seed Crop Insurance; (l) Central Sector Scheme on Cattle Insurance; (m) Universal Health Insurance Scheme; (n) RashtriyaSwasthyaBimaYojana; or

S.No.	Description
	(o) Coconut Palm Insurance Scheme;
27.	Services provided by an incubatee up to a total business turnover of fifty lakh rupees in a financial year subject to the following conditions, namely:- (a) the total business turnover had not exceeded fifty lakh rupees during the preceding financial year; and (b) a period of three years has not lapsed from the date of entering into an agreement as an incubatee;
28.	Service by an unincorporated body or a non-profit entity registered under any law for the time being in force to its own members by way of reimbursement of charges or share of contribution - (a) as a trade union; (b) for the provision of carrying out any activity which is exempt from the levy of service tax; or (c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.
29.	Services by the following persons in respective capacities - (a) a sub-broker or an authorised person to a stock broker; (b) an authorised person to a member of a commodity exchange; (c) a mutual fund agent to a mutal fund or asset management company; (d) distributor to a mutual fund or asset management company; (e) a selling or marketing agent of lottery tickets to a distributer or a selling agent; (f) a selling agent or a distributer of SIM cards or recharge coupon vouchers; or (g) a business facilitator or a business correspondent to a banking company or an insurance company in a rural area. (h) Sub-contractor providing services by way of works contract to another contractor providing works contract service which are exempt
30.	Carrying out an intermediate production process as job work in relation to - (a) agriculture, printing or textile processing; (b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act,1985 (5 of 1986); (c) any goods on which appropriate duty is payable by the principal manufacturer; or (d) processes of electroplating, zinc plating, anodizing, heat treatment, powder

S.No.	Description
	coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines up to an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year.
31.	Services by an organiser to any person in respect of a business exhibition held outside India.
32.	Services by way of making telephone calls from - (a) departmentally run public telephones; (b) guaranteed public telephones operating only for local calls; or (c) free telephone at airport and hospitals where no bills are being issued.
33.	Services by way of slaughtering of bovine animals.
34.	Services received from a service provider located in a non- taxable territory by - (a) the Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce,industry or any other business or profession; or (b) an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities. (c) A person located in a non-taxable territory.
35.	Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material.
36.	Services by Emplyees' State Insurance Corporation to persons covered under the Employees' Insurance Act, 1948 (34 of 1948).
37.	Services by way of transfer of a going concern, as a whole or an independent part thereof.
38.	Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets.
39.	Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the constitution.

[Note: Students may give name of any 10 services out of above 39 services while answering this question]

Question 2

Are repair, maintenance of airports, ports and railways liable to tax with effect from 01.07.2012?

Answer

Yes. They are liable to service tax. However, amount of service tax paid will be available as input tax credit to railways, port or airport authority, if other conditions are met. Looking from another perspective, the benefit of exemption which was earlier available under *Notification No. 54/2010-S.T. dated 21.12.2010* will no longer be available on or after 01.07.2012.

Question 3

Whether the exemption provided in the Exemption Notification No. 25/2012 dated 20.06.2012 to services by way of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., is also available to the sub-contractors who provide input service to these main contractors in relation to such construction?

Answer

According to section 66F reference to a service by nature or description in the Act shall not include reference to a service which is used for providing main service. Therefore, if any person is providing services, in respect of projects involving construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., such as architect service, consulting engineer service, which are used by the contractor in relation to such construction, the benefit of the specified entries in the mega-exemption would not be available to such persons unless the activities carried out by the sub-contractor independently and by itself falls in the ambit of the exemption.

It has to be appreciated that the wordings used in the exemption are 'services by way of construction of roads etc' and not 'services in relation to construction of roads etc'. It is thus apparent that just because the main contractor is providing the service by way of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., it would not automatically lead to the conclusion that services provided by the sub-contractor to the main contractor shall also be an exempt service.

However, a sub-contractor providing services by way of works contract to the main contractor, providing exempt works contract services, has been exempted [vide entry No. 29(h) of *Notification No. 25/2012 dated 20.06.2012*] from service tax if the main contractor is engaged in providing exempt services of works contracts. It may be noted that the exemption is available to sub-contractors engaged in works contracts and not to other outsourced services such as architect or consultants

Question 4

Whether service tax will be leviable in respect of transporation services provided by Raghav Goods Transport Agency in each of the following independent cases in October, 2012:

Name of the Customer	Nature of services provided	Amount charged
Raj Jaggi	Transportation of milk	₹20,000

Abhishek Batra	Transportation of books on a consignment transported in a single goods carriage	₹3,000
Manoj Garg	Transportation of chairs for a single consignee in the goods carriage	₹600

Answer

The issue of leviability of service tax in each of the above cases has been discussed in the following table

Name of the Customer	Nature of services provided	Amount charged	Service Tax implications, if any
Raj Jaggi	Transportation of milk	₹20,000	No service tax is leviable because of exemption to Transportation of milk, amongst other things, by virtue of entry no. 21(a) of *Notification No. 25/2012-S.T. dated 20.06.2012*.
Abhishek Batra	Transportation of books on a consignment transported in a single goods carriage	₹3,000	Service Tax is leviable. Exemption under entry no. 21(b) of *Notification No. 25/2012-S.T. dated 20.06.2012* is available only in those cases where gross amount charged for the transportation of goods on a consignment transported in a single goods carriage does not exceed ₹1,500/-.
Manoj Garg	Transportation of chairs for a single consignee in the goods carriage	₹600	No service tax is leviable because of Exemption under entry no. 21(c) of *Notification No. 25/2012-S.T. dated 20.06.2012* . The foregoing entry provides exemption of transportation of goods where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed ₹750/-.

Question 5

List any five taxable services in respect of which abatement has been provided by Notification No. 26/2012-S.T. dated 20.06.2012 with effect from 01.07.2012.

Answer

In all twelve taxable services have been provided the benefit of abatement with effect from 01.07.2012 vide *Notification No. 26/2012-S.T. dated 20.06.2012*. However, it is also worth highlighting that in order to claim abatement in respect of specified taxable services, certain conditions are also required to be fulfilled which have been exhibited in the following table:

Sl. No.	Description of taxable service	Abatement percentage of the amount charged by service provider for providing relevant taxable service	Taxable Percent-age of the amount charged by service provider for providing relevant taxable service	Conditions
(1)	(2)	(3)	(4)	(5)
1	Services in relation to financial leasing including hire purchase	90	10	Nil.
2	Transport of goods by rail	70	30	Nil.
3	Transport of passengers, with or without accompanied belongings by rail	70	30	Nil.
4	Bundled service by way of supply of food or any other article of human consumption or any drink, in a premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organizing a function)	30	70	CENVAT credit on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985 (5 of 1986) used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.

Sl. No.	Description of taxable service	Abatement percentage of the amount charged by service provider for providing relevant taxable service	Taxable Percent-age of the amount charged by service provider for providing relevant taxable service	Conditions
(1)	(2)	(3)	(4)	(5)
	together with renting of such premises			
5	Transport of passengers by air, with or without accompanied belongings	60	40	CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
6	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes.	40	60	Same as above.
7	Services of goods transport agency in relation to transportation of goods.	75	25	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
8	Services provided in relation to chit	30	70	Same as above.

Sl. No.	Description of taxable service	Abatement percentage of the amount charged by service provider for providing relevant taxable service	Taxable Percent-age of the amount charged by service provider for providing relevant taxable service	Conditions
(1)	(2)	(3)	(4)	(5)
9	Renting of any motor vehicle designed to carry passengers	60	40	Same as above.
10	Transport of goods in a vessel	50	50	Same as above.
11	Services by a tour operator in relation to,- (i) a package tour	75	25	(i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The bill issued for this purpose indicates that it is inclusive of charges for such a tour.
	(ii) a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour	90	10	(i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.

Sl. No.	Description of taxable service	Abatement percentage of the amount charged by service provider for providing relevant taxable service	Taxable Percent-age of the amount charged by service provider for providing relevant taxable service	Conditions
(1)	(2)	(3)	(4)	(5)
				(ii) The invoice, bill or challan issued indicates that it is towards the charges for such accommodation. (iii) This exemption shall not apply in such cases where the invoice, bill or challan issued by the tour operator, in relation to a tour, only includes the service charges for arranging or booking accommodation for any person and does not include the cost of such accommodation.
	(iii) any services other than specified at (i) and (ii) above.	60	40	(i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii)The bill issued indicates that the amount charged in

Sl. No.	Description of taxable service	Abatement percentage of the amount charged by service provider for providing relevant taxable service	Taxable Percent-age of the amount charged by service provider for providing relevant taxable service	Conditions
(1)	(2)	(3)	(4)	(5)
				the bill is the gross amount charged for such a tour.
12.	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority	75	25	(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii)The value of land is included in the amount charged from the service receiver.

[Note: Students may mention the name of any of the above five taxable services along with the percentage of abatement and condition, if any, to be fulfilled.]

Question 6

How to calculate the aggregate value of ₹ 10 lakh in case of those taxable services where abatement is allowed

Answer

According to ***Notification No. 26/2012 dated 20.06.2012*** with effect from 01.07.2012 in case of certain taxable services, services tax is not leviable on full [gross] amount charged by the relevant service provider. To put it differently, these certain services are entitled for certain abatements from the gross amount charged. **For example**, in case of services provided by way of Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes service tax is leviable on 60% of the gross amount charged. Looking from another angle, the said services are entitled for 40% abatement of the gross amount charged.

For the purpose of calculating the aggregate value, the gross amount charged is to be considered.

Question 7

Rohit Computer Centre provided services of ₹8.4 lakh during the financial year 2011-12 in respect of repair and maintenance of computers under the unregistered brand name of "NIIT Computers". Is Rohit Computer Centre entitled for Small Service Provider Exemption of ₹10 lakh in the current financial year 2012-13 ?

Answer

Notification No. 33/2012-S.T. provides threshold exemption of ₹10 lakh in the current financial year if the aggregate value of taxable services rendered by a provider of taxable service from one or more premises does not exceed rupees ten lakh in the preceding financial year. However, the foregoing exemption will not be available to taxable services provided by a person under a brand name or trade name of another person, irrespective of the fact whether such brand name or trade name is registered or not. Since in the present case, Rohit Computer Centre provides taxable services under the brand name of another person, it is not entitled to avail threshold exemption of ₹10 lakh. The fact that such trade name is unregistered is wholly insignificant.

Question 8

Notification No. 40/2012 dated 20.06.2012 provides exemption from service tax to services provided to Special Economic Zone. However, in order to claim the foregoing exemption certain conditions are required to be fulfilled. What are those essential conditions?

Answer

Essential conditions for claiming exemption under *Notification No. 40/2012 dated 20.06.2012*

S. No.	Relevant Sub-Heading	Relevant Condition
(A)(i)	Mode of Exemption in case of services which are not wholly consumed in a SEZ	The exemption shall be granted by way of refund of Service Tax paid on specified services received by a unit located in a SEZ or the developer of SEZ and used for the authorised operations.

S. No.	Relevant Sub-Heading	Relevant Condition
(A)(ii)	Mode of Exemption in case of services which are wholly consumed in a SEZ	Where specified serviced are received in SEZ and used for authorised operations are **wholly consumed** within the SEZ, then the person liable to pay tax, has been given **option not to pay the service tax ab initio** instead of the SEZ Unit or Developer claiming exemption by way of refund in terms of this Notification.
(A)(iii)	Meaning of the expression **"wholly consumed"**	The meaning of the expression "wholly consumed" will depend on Place of Provision Rules, 2012. Consequently, services will be treated as wholly consumed in accordance with following parameters: (i) **Performance based services** [which are classified under Rule 4 of Place of Provision Rules, 2012] will be treated as wholly consumed if the place where the services are actually performed is within SEZ. (ii) **Immovable Property based services** [which are classified under Rule 5 of Place of Provisions Rules, 2012] will be treated as wholly consumed if the place where property is located or intended to be located is within the SEZ. (iii) **Residual services** [which do not fall under either of above two categories] will be treated as wholly consumed if the recipient does not own or carry on any business other than the operations in SEZ.
(B)	Proportionate Refund in case of specified services which are not wholly consumed within SEZ	Where the specified services are not wholly consumed within SEZ i.e. shared between authorised operations in SEZ Unit and DTA Unit, refund shall be restricted to the extent of the ratio of export turnover of goods and services multiplied by the service tax paid on services other than wholly consumed services to the total turnover for the given period to which the claim relates i.e. Maximum Refund: As per the formula given in Notification No 40/2012 dated 20.06.2012 $\boxed{\text{Maximum refund} = \frac{ST \times ET}{TT}}$

S. No.	Relevant Sub-Heading	Relevant Condition
		where ST stands for service tax paid on services other than wholly consumed services (used for both SEZ and DTA Unit) ET stands for Export turnover of goods and services of SEZ Unit/Developer TT stands for Total turnover for the period Meaning of Terms: 1. "Export Turnover of Goods" means the value of final products and intermediate products cleared during the relevant period and exported 2. "Export Turnover of Services" means the value of export service calculated in the following manner, namely 3. Export Turnover of Services = Payments received during the relevant period for export of services Add: Export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period Less: Advances received for export services for which the provision of service has not been completed during the relevant period 4. "Total Turnover means sum total of the value of :- (i) All excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported (ii) Export turnover of services determined as per point (3) above and the value of all other services, during the relevant period
(C)	No CENVAT Credit	No CENVAT Credit of service tax paid on the specified services used for the authorised operations in a SEZ is allowed to be taken under the CCR, 2004 because SEZ Unit/Developer will be claiming refund of relevant amount of service tax. Looking from another perspective, SEZ

S. No.	Relevant Sub-Heading	Relevant Condition
		Unit/Developer cannot take the benefit from both the sides i.e. claiming refund of service tax as well as taking CENVAT Credit of the same Service Tax paid on specified services.
(D)	Maintenance of Proper Account of Receipt & Use of Specified Services	SEZ Unit/Developer desirous of availing exemption and or refund under this Notification is required to maintain proper account of Receipt and Use of the specified services on which exemption is claimed.

CHAPTER 6

Service Tax Procedures

Question 1

Answer the following with reference to the Finance Act, 1994 and the rules made thereunder relating to service tax:

(i) Intimation regarding change in details furnished by an assessee in Form ST-1.

(ii) Cancellation of registration certificate.

(iii) Adjustment of excess amount paid towards service tax liability for the subsequent period.

Answer

(i) As per Rule 4(5A) of the Service Tax Rules, 1994, where there is a change in any information or details furnished by an assessee in Form ST-1 at the time of obtaining registration or he intends to furnish any additional information or detail, such change or information or details are required to be intimated in writing by the assessee to the jurisdictional Assistant/ Deputy Commissioner of Central Excise. Such intimation should be given within a period of 30 days of such change.

Further, the assessee would be required to submit a self-certified copy of the registration certificate while intimating any such change and the amended registration certificate shall be issued after canceling the original registration certificate issued earlier.

However at places where Automation of Central Excise and Service Tax [popularly known as "ACES"] Scheme is in place, scheme has to be compulsorily followed, application for amendment in ST-1 has to be filed online.

(ii) As per Rule 4(7) of the Service Tax Rules, 1994, every assessee who is registered and ceases to provide taxable service shall surrender his registration certificate to the Superintendent of Central Excise immediately. Sub-rule (8) of rule 4 provides that on receipt of such certificate the Superintendent of Central Excise shall ensure that the assessee has paid all moneys due to the Central Government under the provisions of Act/Rules/Notifications and thereupon cancel the registration certificate.

(iii) According to substituted Rule 6(3) of the Service Tax Rules, 1994 w.e.f. 01.04.2011 of the Service Tax Rules, 1994 where an assessee has issued an invoice or received any payment, against a service to be provided which is not so provided by him either wholly or partially for any person, or where the amount of invoice is renegotiated due to deficient provision of service, or any terms contained in a contract, the assesses may take the credit of such excess service tax paid by him, if the assessee:-

(a) has refunded the payment or part thereof, so received for the service provided to the person from whom it was received; or

(b) has issued a credit note for the value of the service not so provided to the person to whom such an invoice has been received.

Further, **Rule 6(4A)** of the Service Tax Rules, 1994 provides that where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may **adjust such excess amount paid** by him against his service tax liability for the succeeding month or quarter, as the case may be. However with effect from 01.04.2012 such adjustment of excess amount paid shall be subject to satisfaction of condition [specified in Rule 6(4B) of Service Tax Rules. 1994] that excess amount paid is on account of reasons **not involving**

(i) Interpretation of law,

(ii) Taxability,

(iii) Valuation, or

(iv) Applicability of exemption notification.

Question 2

Briefly state the provisions under the Service Tax Rules, 1994 relating to filing of returns and also state any ***late fee payable*** *for delay in filing of returns.*

Answer

Filing of Service Tax Returns: Section 70 of Finance Act, 1994 inter alia provides that every person who is liable to pay service tax shall furnish to the Superintendent of Central Excise a return in the prescribed form and in the prescribed manner and at prescribed frequency. The aforementioned prescribed form, manner and frequency have been given in the following table:

Form, Frequency and Manner of filing Return	Particulars	Relevant Rule of Service Tax Rules, 1994
Form of filing Return	Every assessee shall submit a half yearly return in **form 'ST-3'** along with the copy of form 'GAR-7'(challan for payment of service tax) **in triplicate** for the months covered in the half yearly return.	Rule 7(1)
Frequency of filing Return	Every assessee [other than those registered as **input service distributor**] is required to submit the half-yearly return by 25th of the month following the particular half year .Here, it is necessary to clarify that	Rule 7(2)

	as per Rule 2(cc) of STR, 1994, "Half Year" means the period between 1st April to 30th September or 1st October to 31st March of the financial year In simple words, the service tax returns are due to be filed by 25th of October and 25th of April for the half year ended 30th Sep. and 31st March respectively.	
Manner of filing Return	Every assessee is required to submit half-yearly return electronically	Rule 7(3)

In addition, a single return has to be filed in respect of all taxable services provided by an assessee.

Payment of Late Fee for delayed furnishing of Return: According to Section 70 depending on period of delay late fee up to ₹20,000/- is required to be paid for delayed furnishing of return. However, as per Rule 7C of STR, 1994, the quantum of late fee is to be determined as under:

Delay in Days	Amount of Late Fee/Penalty/Amount Payable
Upto 15 days	₹500/-
16 to 30 days	₹1,000/-
More than 30 days	₹1,000 + ₹100/- for each day of subsequent delay. However, total amount of Additional Fee under rule read with section 70 shall not exceed ₹20,000/-

Note:-The delay is to be calculated from the day immediately succeeding the last date of due date of filing of return.

Practical Example-

Ms Harpreet Jaggi submitted her Service Tax Return for the half year ending 30th September, 2012 on following independent dates for which due date of filing return is 25th October, 2012:

Different Cases	Date of Filing of Service Tax Return
Case I	01.11.2012
Case II	22.11.2012
Case III	28.11.2012
Case IV	04.12.2012
Case V	14.12.2012
Case VI	03.05.2013
Case VII	02.06.2013
Case VIII	27.10.2013

The amount of Late Fee/Penalty/Amount Payable in each of the above independent cases is exhibited in the following table:

Different Cases	Amount of Late Fee/Penalty/Amount Payable
Case I	₹500/- because there is a delay of 7 days which falls within the ambit of first given [prescribed] range of delay upto 15 days.
Case II	₹1,000/- because there is a delay of 28 days which falls within the purview of second given [prescribed] range of delay from 16 to 30 days.
Case III	₹1,400/- because there is a delay of 34 days. For delay upto 30 days ₹1,000/- becomes payable. For delay of 4 days beyond 30 days ₹400/- [₹100/- X 4 days] becomes payable. Thus, total amount of Late Fee payable= ₹1,000/- + ₹400/-
Case IV	₹2,000/- because there is a delay of 40 days. For delay upto 30 days ₹1,000/- becomes payable. For delay of 10 days beyond 30 days ₹1000/- [₹100/- X 10 days] becomes payable. Thus, total amount of Late Fee payable= ₹1,000/- + ₹1000/-
Case V	₹3,000/- because there is a delay of 50 days. For delay upto 30 days ₹1,000/- becomes payable. For delay of 20 days beyond 30 days ₹2,000/- [₹100/- X 20 days] becomes payable. Consequently, total amount of Late Fee payable= ₹1,000/- + ₹2,000/-
Case VI	₹17,000/- because there is a delay of 190 days. For delay upto 30 days ₹1,000/- becomes payable. For delay of 160 days beyond 30 days ₹16,000/- [₹100/- X 160 days] becomes payable. Consequently, total amount of Late Fee payable= ₹1,000/- + ₹16,000/-. Moreover, the aforementioned amount of ₹17,000/- also remains below the maximum ceiling of ₹20,000/-
Case VII	₹20,000/- because there is a delay of 220 days. For delay upto 30 days ₹1,000/- becomes payable. For delay of 190 days beyond 30 days ₹19,000/- [₹100/- X 190 days] becomes payable. Consequently, total amount of Late Fee payable= ₹1,000/- + ₹19,000/-. Moreover, the aforementioned amount of ₹20,000/- does not exceed the maximum ceiling of ₹20,000/
Case VIII	₹ 20,000/- because there is a delay of 367 days [including 29 days of February, 2012, being a leap year] For delay upto 30 days ₹1,000/- becomes payable. For delay of 347 days beyond 30 days ₹ 34,700/- [₹ 100/- X 347 days] becomes payable. Consequently, total amount of Late Fee payable= ₹ 1,000/- + ₹ 34,700.However, as Section 70 has prescribed a cap of ₹ 20,000/-, the amount of penalty will be restricted to ₹20,000/-

Question 3

What do you understand by 'Centralised Registration'? Which authority grants the Centralised Registration?

Answer

Meaning of Centralised Registration: Sometimes an assessee provides taxable service from more than one premises. **Rule 4(2)** of Service Tax Rules, 1994 provides that in such cases, the assessee can obtain centralized registration **at his option** if:

(a) he has centralized billing or centralized accounting in respect of such service, and

(b) such centralized billing or centralized accounting systems are located in one or more offices or premises.

The assessee can register such offices or premises where centralized accounting or centralized billing systems are located.

Authority granting the Centralised Registration: According to Rule 4(3) of Service Tax Rules, 1994 Centralised Registration is granted by the Commissioner of Central Excise in whose jurisdiction the premises or offices, from where Centralised billing or accounting is done, are located.

Question 4

What option is available to an assessee if he does not seek Centralised Registration?

Answer

Rule 4(3A) of Service Tax Rules, 1994 provides that if the assessee does not opt for Centralised Registration, he is required to make **separate applications in respect of each of such premises or offices** to the jurisdictional Superintendent of Central Excise. This type of registration is also known **Decentralized Registration.**

Question 5

State briefly, whether the following persons are liable to apply for registration under the Finance Act, 1994 and the Service Tax (Registration of Special Category of Persons) Rules, 2005 and if so, from which date:

(i) An input service distributor who starts his business with effect from 1st November, 2012.

(ii) A provider of taxable service under an unregistered brand name of another person. Aggregate value of taxable services was ₹ 8,00,000 up to 31.3.13.

Answer

(i) Yes, as per **Rule 3(1)** of the Service Tax (Registration of Special Category of Persons) Rules, 2005, an input service distributor is liable to apply for registration within a period of 30 days of the commencement of business. Thus, in the given case, the input service distributor should apply for registration by 30.11.2012.

(ii) According to Notification No. 33/2012 dated 20.06.2012 the basic[threshold] exemption limit of ₹10 lakh is not available to taxable services provided by a person under a brand name or trade name, whether registered or not of another person. Therefore, in the present case a provider of taxable service under an unregistered brand name of another person is liable to apply for registration within a period of 30 days of commencement of business of providing taxable service.

Question 6

With reference to the Finance Act, 1994 as amended and the rules made thereunder relating to service tax, state whether registration is required or not in the case of the following persons or class of persons:

(i) Input service distributor

(ii) Small service provider whose aggregate value of taxable service is ₹9,50,000 per annum.

(iii) Mr. Raj, located in taxable territory receives taxable services provided from a non-taxable territory by a U.K. based company.

Answer

(i) Yes. As per provisions of section 69(2) of the Finance Act, 1994 read with Rule 3(1) of Service Tax (Registration of Special Category of Persons) Rules, 2005 an input service distributor is required to make an application for registration.

(ii) Yes. As per provisions of section 69(2) of the Finance Act, 1994 read with Rule 3(2) of Service Tax (Registration of Special Category of Persons) Rules, 2005 any provider of taxable service whose aggregate value of taxable service in a financial year exceeds nine lakh rupees is required to get registration within a period of thirty days of exceeding the aggregate value of taxable service of nine lakh rupees.

(iii) Yes. According to provisions of section 68(2) of Finance Act, 1994 in respect of notified taxable services, the service tax thereon shall be payable by the such person as may be specified. Notification No. 30/2012-Service Tax dated 20.06.2012 specifies, amongst other things, that in respect of services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory, service tax is required to paid by person receiving the service. Therefore, in the present case, service tax is required to be paid by Mr. Raj, being a person receiving the service and located in taxable territory. As a consequence, he has to take registration.

Question 7

(i) What is the time limit under Rule 4A for raising/issuing an invoice for services? What are the essential particulars to be specified on an invoice/bill/challan?

(ii) What is the due date for monthly/quarterly payment of service Tax?

Answer

(i) **Time limit for issuing an invoice/bill/challan:** As per **Rule 4A(1)** of Service Tax Rules, 1994, with effect from 01.04.2012 an invoice, a bill or challan is to be issued within time-limit specified in the following concise table:

In case the provider of taxable service is a banking company/a financial institution including a non-banking financial company	**Within Forty-five days** from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier.
In case of any other taxable service provider	**Within Thirty days** from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier.
In case of assessee who provides continuous supply of service	**Within Thirty days** of the date when each event specified in the contract which requires the service receiver to make any payment to service provider is completed or receipt of any payment towards the value of such taxable service, whichever is earlier.

Essential Particulars to be specified in an invoice/bill/challan

Following are the essential particulars to be specified on an invoice/bill/challan as per Rule 4A of Service Tax Rules, 1994:

In case the provider of taxable service is a banking company/a financial institution including a non-banking financial company	(i) The name, address and the registration number of the Service Provider. (ii) The name of the Service Recipient. (iii) Description and value of taxable service provided or agreed to be provided. (iv) The service tax payable thereon.
In case of any other taxable service provider	(i) Serial Number of invoice (ii) The name, address and the registration number of the Service Provider; (iii) The name and address of the Service Recipient; (iv) Description and value of taxable service provided or agreed to be provided; (v) The service tax payable thereon.

(ii) Rule 6(1) of Service Tax Rules, 1994 governs both the manner and period of payment of Service Tax. The following table succinctly exhibits the various provisions of Rule 6(1) of STR 1994

S.No	Mode of Payment	Status of Service Provider	Last date for making payment of Service Tax*
1.	Electronically through internet banking i.e. on-line Payment	Any person other than an individual or proprietary firm or partnership firm (including limited liability partnership)	6th day of the month immediately following the calendar month in which the service is deemed to be provided as per the Point of Taxation Rules, 2011. However, for the month of March, Service Tax has to be deposited by 31st March.
2.	Any mode other than internet banking	Any person other than an individual or proprietary firm or partnership firm (including limited liability partnership)	5th day of the month immediately following the calendar month in which the service is deemed to be provided as per the Point of Taxation Rules, 2011. However, for the month of March, Service Tax has to be deposited by 31st March.
3.	Electronically through internet banking i.e. on-line payment	An individual or proprietary firm or partnership firm (including limited liability partnership) providing taxable services exceeding ₹50 Lacs in Previous Year.	With effect from 01.04.2012 6th day of the month immediately following the quarter in which the service is deemed to be provided as per the Point of Taxation Rules, 2011. However, for the month of March, Service Tax has to be deposited by 31st March.
		An individual or proprietary firm or partnership firm (including limited liability partnership) providing taxable services up to ₹50 Lacs in Previous Year.	With effect from 01.04.2012 6th day of the month immediately following the quarter in which the payment is received towards the value of taxable services up to the service tax amounting to ₹50 Lacs. However, for the month of March, Service Tax has to be deposited by 31st March.
4.	Any mode other than internet	An individual or proprietary firm or	With effect from 01.04.2012 5th day of the month immediately

S.No	Mode of Payment	Status of Service Provider	Last date for making payment of Service Tax*
	banking	partnership firm (including limited liability partnership) providing taxable services exceeding ₹50 Lacs in Previous Year.	**following the quarter** in which the service is **deemed to be provided** as per the Point of Taxation Rules, 2011. However, for the month of March, Service Tax has to be deposited by 31st March.
		An individual or proprietary firm or partnership firm (including limited liability partnership) providing taxable services up to ₹50 Lacs in Previous Year.	With effect from 01.04.2012 5th day of the month **immediately following the quarter** in which the **payment is received** towards the value of taxable services up to the service tax amounting to ₹50 Lacs. However, for the month of March, Service Tax has to be deposited by 31st March. (In other words, in case of such assessees, service tax can be discharged on receipt basis up to ₹50,00,000).

Question 8

Mr. Ajesh Yadav, a Chartered Accountant, raised an invoice for ₹28,090 (25,000 + 3,090 service tax) to a client on 20.06.2012.The client, however, has paid a lump-sum of ₹26,000 on 28.10.2012 for full and final settlement.

(i) *How much service tax Mr. Ajesh Yadav has to pay and when does this tax become due for payment?*

(ii) *What will be his liability, if the client refuses to pay service tax and pays only ₹25,000 in total?*

While answering the above question, keep in mind that value of taxable services provided by Mr. Ajesh Yadav during the financial year 2011-12 was 48 lakh.

Answer

(i) According to **third proviso to Rule 6(1)** of Service Tax Rules, 1994 in case of an individuals and partnership firms, whose aggregate value of taxable services provided from one or more premises is fifty lakh rupees or less in the **previous financial year**, the service provider **shall have the option** to pay tax on taxable services provided or agreed to be provided by him up to a total of rupees fifty lakhs in the current financial year by the dates specified in Rule 6)(1) of Service Tax Rules, 1994 with respect to the month or quarter in which payment is received.

Since in the present case, value of taxable services provided by Mr. Ajesh Yadav during the financial year 2011-12 was 48 lakh, he has the option of depositing service tax on taxable services provided or agreed to be provided by him up to a total of rupees fifty lakhs in the current financial year on receipt basis. It is assumed that Mr. Ajesh Yadav has exercised the foregoing option of depositing service tax on receipt basis.

Where the amount received is less than the gross amount charged/billed to the client, the assessee is required to amend the bills either by rectifying the existing bill or by issuing a revised bill and by properly endorsing such change in the billed amount.

Assuming that Mr. AJAR has amended the bill, amount of service tax payable shall be computed by back calculations. Effective rate of service tax is 12.36% (12% service tax + 2% Primary Education Cess & 1% Secondary & Higher Education Cess on service tax).

Service tax and education cess payable	$= \frac{\text{Gross value x Rate of tax}}{100 + \text{rate of tax}}$
	= 26,000 X 12.36/(100 + 12.36)
	= ₹ 2,860/-

Such service tax should be paid along with the tax of 3rd quarter of financial year 2012-13 by 5th of Jan. 2013.

(ii) In the present case the value of taxable service and the service tax liability will be worked out by **back calculations.** As mentioned before, Effective rate of service tax is 12.36%.

Service tax and education cess payable $= \frac{\text{Gross value x Rate of tax}}{100 + \text{rate of tax}}$

= 25000 * 12.36/112.36 = 2,750/-

Question 9

Briefly explain the provisions in the Service Tax Rules, 1994 relating to furnishing of list of records at the time of filing of return for the first time.

Answer

According to **Rule 5(2) of the Service Tax Rules,** 1994 every assessee shall furnish to the Superintendent of Central Excise at the time of filing of return for the first time a list in duplicate, of

(i) all the records prepared or maintained by the assessee for accounting of transactions in regard to,

(a) Providing of any service;

(b) Receipt or procurement of input services and payment for such input services;

(c) Receipt, purchase, manufacture, storage, sale, or delivery, as the case may be, in regard of inputs and capital goods;

(d) Other activities, such as manufacture and sale of goods, if any.

(ii) all other financial records maintained by him in the normal course of business.

Question 10

Ashwani Mohan & Sons, a partnership firm is engaged in providing construction services. Aggregate value of its taxable service provided during the financial year 2011-12 was ₹49 lakh. However, its receipts from taxable services was ₹51 lakh. However, during the financial year 2012-13, upto 20.09.2012 value of its taxable services was ₹50 lakh out of which payment of ₹42 lakh was received by it until 30.09.2012. Subsequently, on 22.09.2012 the firm provided services of ₹15 lakh, the payment for which was received by it in January 2013.

Discuss the options available to the above referred firm regarding deposit of service tax.

Answer

Following two options are available for depositing Service Tax by Ashwini Mohan & Sons:

(i) To deposit Service Tax on Accrual basis

(ii) To take the benefit of third proviso to Rule 6(1) of Service Tax Rules, 1994 and deposit service tax to the credit of Central Government up to ₹50 lakh in current financial year on receipt basis. According to aforestated third proviso to Rule 6(1) of Service Tax Rules, 1994 in case of individuals and partnership firm whose aggregate value of taxable services provided from one or more premises is fifty lakh rupees or less in the previous financial year, the service provider shall have the option to pay tax on taxable services provided or agreed to be provided by him upto a total of rupees fifty lakh in the current financial year, by the 6th day of the month or 5th day of the month immediately following the quarter in which the payment is received. In simple words, such service providers can discharge their service tax liability up to ₹50 lakh in current financial year on receipt basis.

Since in the present case, value of taxable services provided by Ashwani Mohan & Sons was 49 lakh,[less than ₹50 lakh] it can take the benefit of above-mentioned third proviso to Rule 6(1) of Service Tax Rules, 1994 and discharge its service tax liability on receipt basis up to ₹50 lakh in the current financial year 2012-13. It is to be noted carefully that the fact of receipt of ₹51 lakh in the preceding financial year is not a deciding factor for the purpose of eligibility to the benefit provided by above-mentioned third proviso. In other words, for deciding the eligibility to avail the benefit of third proviso, only value of services provided in the previous financial year are to be kept in mind.

As a result, in the present case, Ashwani Mohan & Sons can deposit service tax on taxable services provided or agreed to be provided upto a total of rupees fifty lakh in the financial year 2012-13 on receipt basis. However, once the foregoing limit of ₹50 lakh is crossed, service tax is required to be deposited on accrual basis. In the foregoing legal position, the firm is required to deposit service tax as under by 5th October, 2012

(A) Service Tax on receipt basis on ₹42 lakh

(B) Service Tax on accrual basis on ₹15 lakh

Question 11

Briefly explain the following with reference to the Service Tax Rules, 1994 and the Finance Act, 1994:-

(i) E-payment of service tax.

(ii) E-filing of Service Tax Return

(iii) Filing of Revised Return

(iv) Due Date of Filing Service Tax Return by Input Service Distributor

(v) Large Taxpayer

(vi) Optional scheme for payment of service tax available to life insurer in respect of Composite Policies

(vii) Optional scheme for payment of service tax available to money changers

Answer

(i) E-payment of Service Tax : According to Proviso to Rule 6(2) of the Service Tax Rules, 1994 w.e.f. 01-04-2010 the assessee who has paid service tax of ₹10,00,000 or more including the amount paid by utilization of CENVAT Credit in the preceding financial year, is required to deposit the service tax electronically, through internet banking.

It is also worth highlighting that in terms of provisions of Section 77(1)(d) of Finance Act, 1994 any person who is required to pay tax electronically through internet banking, fails to pay the tax electronically, shall be liable to a penalty which may extend to ten thousand rupees.

(ii) E-filing of Service Tax Return: According to Rule 7(3) of the Service Tax Rules, 1994 w.e.f. 01.10.2011 every assessee shall submit the half-yearly return electronically.

(iii) Filing of Revised Return: According to Rule 7B of Service Tax Rules, 1994 an assessee may submit a revised return in Form ST-3 in triplicate with a view to correct a mistake or omission within a period of ninety days from the date of submission of the return under Rule 7. For instance, Miss Anu Dem submitted her service tax return on 20.10.2012 for the period ending 30.09.2012. Therefore, Miss Anu Dem can revise her aforesaid service tax return within a period of 90 days from 20.10.2012[i.e. 11 days of October, 2012; 30 days of November, 2012; 31 days of December, 2012 and 18 days of

January, 2012] i.e. latest by 18th January, 2013. Students should also remember that 90 days are not to be counted from the last date prescribed for filing of service tax return [which is 25.10.2012 in the present case] because Miss Anu Dem filed her service tax return before the last date of filing return.

On the other hand, if the above example is slightly modified and it is assumed that Anu Dem filed her service tax return on 30.10.2012 i.e. after passing of the last date for filing of service tax return then 90 days will be counted from the actual date of filing service tax return i.e. 30.10.2012. Accordingly, Anu Dem can revise her said service tax return latest by 28th January, 2013 [i.e. 1 day of October, 2012; 30 days of November, 2012; 31 days of December, 2012 and 28 days of January, 2013]

(iv) **Due date of filing service tax return by Input Service Distributor: Rule 9(10) of CENVAT Credit Rules**, 2004 provides that the Input Service Distributor shall file a half yearly return in the prescribed form[giving details of credit received and distributed during the said half year] to the Jurisdictional Superintendent of Central Excise not later than last day of the month following the half year period. In simple words, the following succinct table exhibits the last date for filing service tax return by a Input Service Distributor:

Relevant half year Period ending on	Last date for filing service tax return
30th September of a given financial year	31st October of the same financial year
31st March of a given financial year	30th April of the same financial year

(v) **Large Taxpayer:** According to Rule 2(cc) of Service Tax Rules, 1994 the term "large taxpayer" shall have the meaning assigned to it in the Central Excise Rules 2002. According to Rule 2(ea) of Central Excise Rules 2002 "large taxpayer" means a person who has one or more registered premises under the Central Excise Act 1944; **OR** has **one or more registered premises** under Chapter V of the Finance Act 1994 **AND** is an assessee under Income Tax Act 1961(43 of 1961), who holds a Permanent Account Number issued under Section 139A of the said Act and satisfies the conditions & observes the procedures as notified by the Central Government in this regard.

Further, every taxpayer (single PAN based entity) who is:-

(a) Presently assessed to Income Tax/Corporate Tax under Income Tax Act 1961 in any of the five cities (i.e. Bangalore, Chennai, Delhi, Kolkata or Mumbai); **and**

(b) Who has **paid** during the preceding financial year :-

   (i) **Duties of Excise** in cash (or account current) **of more than ₹5 Crore; or**

   (ii) **Service Tax in cash** (or account current) **of more than ₹5 Crore; or**

   (iii) **Advance Income Tax /Corporate Tax of more than ₹10 Crore** is an eligible taxpayer for the purpose of being treated as LTU.

Statutory Provisions/Rules/Notification governing LTU under Service Tax Law:-

Rule 10 (inserted vide Notification No. 28/2006 dated 30-09-2006) of Service Tax 1994 provides as under:-

Procedure & facilities extended to large taxpayer: - Interestingly, the heading has been phrased as "procedure & facilities extended to large taxpayer". However, following are the duties of a LTU:-

Notwithstanding anything contained in these rules (i.e. Service Tax Rules, 1994) the following shall apply to a large taxpayer:-

(1) Submission of returns:- A LTU shall submit prescribed returns for each of the registered premises. However, a LTU who has obtained Centralized Registration under Rule 4(2) shall submit a Consolidated Return in respect of all of his premises.

(2) Make available Records in Electronic Form: - A LTU may be asked to make available the Financial, Stores & Cenvat Credit Records in electronic media such as compact disc/tape for Scrutiny & Verification purposes.

(3) Exit Notice: - A LTU may opt out to be a LTU from the first day of the following financial year. For exit option a LTU has to give minimum 30 days advance intimation.

(4) Status of Pending Notices: - Any notice issued (before granting LTU Status) but not adjudged by the concerned Central Excise Officer shall be deemed to be issued by Central Excise Officers of LTU Cell & accordingly will be adjudged by them.

(5) Application of Service Rules 1994:- Provisions of Service Tax Rules1994 shall apply (with necessary changes) to LTU also provided these are not inconsistent with Rule 10 of Service Tax Rules, 1994.

In addition, consequent upon introduction of concept of LTU, Following information relating to LTU is required to be given in ST-3 Return:-

1A Has the assessee opted to operate as LTU(Y/N)

(As defined under Rule 2(ea) of the Central Excise Rules 2002 read with

Rule 2(1) (cccc) of Service Tax Rules, 1994)

1B If reply to column "1A" is 'yes', name of Large Taxpayer Unit (LTU)

opted for

(Name of city)

(vi) Optional Scheme for payment of service tax available to life-insurer in respect of composite policies: According to substituted Rule 6(7A) of Service Tax Rules, 1994 instead of discharging his service tax liability at the prevailing rate of service tax an insurer carrying on life insurance business shall have the **option** to pay service tax in accordance with following concise table:

When break-up of the gross premium into risk portion and investment portion is given to the policy holder at the time of providing of service	Payment of Tax on that portion of the premium which is not invested. **For instance** gross premium of ₹20,000/- is divided into Risk Portion (₹14,000) and investment portion (₹6,000) and intimated to the concerned policy holder. As per this option the concerned life insurance company will have the option of paying service tax at the prevailing rate [i.e. 12.36%] on ₹14,000/- ₹20,000(gross premium) – ₹6,000/- [investment portion].
When above-mentioned break-up is not given to the policy holder	Payment of Service Tax @ 3 per cent of the premium charged from the policy holder in the first year and **1.5 per cent** of the gross premium charged from policy holder in subsequent years. Continuing with the above example, the life insurance company will have the option of paying service tax @ **3 per cent** on ₹20,000/- (gross amount of premium).

However, according to **proviso to Rule 6(7A)** the benefit of optional rate shall not be available in cases where the entire premium paid by the policy holder is only towards the risk cover in life insurance. Once again, continuing with the above example, if the entire (gross) premium is paid by the policy holder only towards the risk cover in life insurance. In this situation, service tax liability is to be discharged at the prevailing rate of service tax of 12.36%.

(vii) **Optional Scheme for payment of Service Tax in case of Money Changer Services:** According to Rule 6(7B) of Service Tax Rules, 1994 the person liable to pay service tax in relation to purchase or sale of foreign currency [including money changing] provided by a foreign exchange broker[including an authorised dealer in foreign exchange or an authorised money changer] has either of the following options of paying service tax:

(A) At the rate specified in Section 66B of the Act on the value of services determined in accordance with **Rule 2B[**of Service Tax(Determination of Value) Rules, 2006 ;OR

(B) At the rate in accordance with following slabs:

S. No.	Quantum of Currency Exchanged	Composition Rate of Service Tax
(A)	Up to ₹1,00,000/-	0.12% of the gross amount of currency exchanged, subject to minimum amount of ₹30/-
(B)	An amount exceeding ₹1,00,000/- and up to ₹10,00,000	₹120/- [calculated @ 0.12% on first ₹1,00,000] plus 0.06%[on the remaining balance] of the gross amount of currency exchanged
(C)	An amount exceeding ₹10,00,000/-	₹660 [calculated on first ₹10,00,000 as per above second slab] plus 0.012% [on the remaining balance] of the gross amount of currency exchanged, subject to maximum amount of ₹6,000/-.

In order to facilitate the understanding of working of above slab rates introduced following practical example is given:

Mr. Ravi, an authorised money-changer exchanged the following gross amount of currency during the month of April, 2012 in each of the following independent cases:-

a.	₹20,000/-	*e.*	₹10,00,000/-
b.	₹50,000/-	*f.*	₹14,00,000/-
c.	₹1,00,000/-	*g.*	₹4,55,00,000/-[Rupees Four Crore Fifty Five Lac]
d.	₹300,000/-	*h.*	₹6,00,00,000/-[Rupees Six Crore]

The following Table exhibits computation of service tax liability in each of the above cases under Composition Scheme in accordance with above-mentioned slab-rates given under Rule 6(7B) of Service Tax Rules, 1994:

S. No.	Gross Amount of Currency Exchanged(₹)	Computation of Service Tax liability(₹)	Amount of Service Tax liability(₹)
(a)	20,000/-	20,000 X 0.12% = ₹24/- subject to minimum amount of ₹30/-	30/-
(b)	50,000/-	50,000 X 0.12% = ₹60/- subject to minimum amount of ₹30/-	60/-

S. No.	Gross Amount of Currency Exchanged(₹)	Computation of Service Tax liability(₹)	Amount of Service Tax liability(₹)
(c)	1,00,000/-	1,00,000 X 0.12% = ₹120/- subject to minimum amount of ₹30/-	120/-
(d)	3,00,000/-	120/- [₹100,000 X 0.12%] + 120/- [2,00,000 X 0.06%]	240/-
(e)	10,00,000/-	120/- [₹100,000 X 0.12%] + ₹540/- [₹9,00,000 X 0.06%]	660/-
(f)	14,00,000/-[Rupees Fourteen Lac]	660 [calculated on first ₹10,00,000 as per second slab] + ₹48/- [₹4,00,000 X 0.012%]	708/-
(g)	4,55,00,000/-[Rupees Four Crore Fifty Five Lac]	660 [calculated on first ₹10,00,000 as per second slab] + ₹5340/- [₹4,45,00,000 X 0.012%, subject to maximum amount of ₹6,000/-	6,000/-
(i)	6,00,00,000/-[Rupees Six Core]	660 [calculated on first ₹10,00,000 as per second slab] + ₹7080/- [₹5,90,00,000 X 0.012%, subject to maximum amount of ₹6,000/-	6,000/-

Exercise

1 Who is responsible to make the payment of service tax in case of service rendered by a Goods Transport Agency.

2 Who should apply for registration under service tax law ?

3 What is to be done with registration when-

(a) registered assessee transfers his business to another or
(b) a registered assessee ceases to carry on the activity for which he is registered.

4 What are the various purposes for which an officer authorised by the Commissioner can assess to any premises registered under Service Tax Rules? Further, also state what types of records to be made available by the assessee to such authorsied officer.

[**Hint**: Refer Rule 5A(1) & 5A(2) of Service Tax Rules, 1994]

CHAPTER 7

Demand, Adjudication and Offences

Question 1

Under what circumstances Central Excise Officer can make **best judgement assessment** *under Service Tax Law?*

Answer

Best judgment assessment: According to provisions of Section 72 of Finance Act 1994 if any person, liable to pay service tax,—

(a) fails to furnish the return under section 70; OR

(b) having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder, the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.

Question 2

Raman Ltd. has been filing its service tax returns regularly. However, its jurisdictional commissioner has reasons to believe that Raman Ltd. has failed to declare the value of its taxable services correctly. Under these circumstances, what action can be taken by the jurisdictional Commissioner of Service Tax?

Answer

Sub-section (1) of Section 72A [which has been inserted by Finance Act, 2012 with effect from 28.05.2012] of Finance Act, 1994 provides, amongst other things, that if the Commissioner of Central Excise has reasons to believe that any person liable to pay service tax (herein referred to as **"such person"**) has failed to declare or determine the value of a taxable service correctly, he may direct such person to get his accounts audited by a chartered accountant or cost accountant nominated by him, to the extent and for the period as may be specified by the Commissioner.

Therefore, in the present case, jurisdictional Commissioner of Central Excise can direct Raman Ltd. to get its accounts audited by a chartered accountant or cost accountant nominated by him, to the extent and for the period as may be specified by him.

Question 3

Continuing with Question No. 2, whether Raman Ltd. can take a plea that its accounts for the relevant years have been audited under Income Tax Act, 1961?

Answer

According to provisions of Section 72A(3) of Finance Act, 1994, the provisions of sub-section (1) of section 72A shall have effect notwithstanding that the accounts of such person have been audited under any other law for the time being in force. Therefore, Raman Ltd. can't take a plea that its accounts for the relevant years have been audited under Income Tax Act, 1961. In other words, Raman Ltd. will have to comply with the order, if any, of jurisdictional Commissioner of Service Tax and get its accounts audited by the nominated Chartered Accountant/Cost Accountant to the extent and for the period specified in the relevant order.

Question 4

What is time limit for recovery of service tax under different circumstances? When a detailed show cause notice is not required to be issued ?

Answer

According to Section 73(1) of Finance Act, 1994 Central Excise Officer at any time **within 18 months from** the **relevant date** serve notice on the person chargeable with the service tax, requiring him to show cause why he should not pay the amount specified in the notice. However, the time limit of 18 months shall be substituted by 5 years in case where such short payment or non-payment of service tax or erroneous refund to the assessee is by reason of:-

(a) fraud; or

(b) collusion; or

(c) willful mis-statement; or

(d) suppression of facts; or

(e) contravention of any provisions of the Chapter or the rules made thereunder with intent to evade payment of service tax

However, where the service of notice is stayed by an order of the Court, the period of such stay shall be excluded in computing the period of 5 years or 18 months , as the case may be.

Meaning of term 'Relevant Date'

Situation	Relevant Date
1. Where service tax has escaped assessment or has been under assessed or has not been paid or has been short paid:	

Situation	Relevant Date
(i) if the assessee is liable to file the return, and	
(a) return is filed	Date on which return is filed
(b) return is not filed	Last date on which the return is to be filed
(ii) in other cases	Date on which service tax is due to be paid
2. Where service tax is provisionally assessed	Date of adjustment of service tax after final assessment
3. Where any sum has been erroneously refunded	Date of refund

When a detailed show cause notice is not required to be issued

According to Section 73(1A) [inserted with effect from28.05.2012], notwithstanding the provisions of Section 73(1), Central Excise Officer is not required to issue a detailed show cause notice if the following cumulative conditions are satisfied:

- A statement [containing the details of service tax not levied or paid or short levied or short paid or erroneously refunded for the subsequent period] is served on the same assessee on whom earlier notice(s) was/were served.
- Grounds relied upon for the subsequent period are same as are mentioned in the earlier notices.

If the above conditions are satisfied, then statement served would be deemed as service of notice on such person. This provision has been incorporated with a view to save the time of the Department [which gets unnecessarily wasted in retyping the same grounds again and again] as well as keeping in mind the larger objective of saving paper [which gets consumed during the course of retyping the same charges].

For Example: XYZ Ltd. working as a tour operator is served a (detailed) show cause notice for the period 2011-12 on the ground of failure to pay service tax in respect of outbound tours. Central Excise Officer intends to issue show cause notice for the period from 01-10-2012 to 31.03.2013 on the above ground only i.e. failure to pay service tax in respect of outbound tours. By Virtue of Section 73(1A), Central Excise need not serve a detailed show cause notice for the above-mentioned subsequent period i.e. 01-10-2012 to 31.03.2013. On the contrary, he has to just prepare a statement containing the details of service tax not paid and that statement shall be deemed to be show cause notice in view of section 73(1A).

Question 5

Briefly indicate the provisions under the Finance Act, 1994 relating to interest under section 75.

Answer

Section 75 of the Finance Act, 1994 provides for interest on delayed payment of service tax. Failure to pay service tax, including a part thereof, in time attracts simple interest at a rate not below 10% per annum but not exceeding 36% per annum as may be notified by the Central Government. With effect from 01.04.2011 the rate of interest to be charged is as per following brief table:

Type of Assessee	Rate of Interest
For all assessees other than Small Scale Sector Assessee	18% p.a.
For Small Scale Sector Assessee[A service provider whose value of taxable services does not exceed ₹ 60 lakhs during any of the years covered by the notice or during the last financial year]	15% p.a.

Question 6

Rahul Khanna, a practicing Chartered Accountant was liable to pay service tax of ₹ 5,15,000 for the quarter ending 30.06.2012. He deposited aforementioned service tax only on 15.09.2012. Compute the amount of interest payable by CA. Rahul Khanna under section 75 on the assumption that value of taxable services provided by him during the last financial year was ₹ 55.40 lakhs. Also compute the amount of interest payable by CA. Rahul Khanna if the value of services provided by him during the last financial year was ₹ 80.90 lakhs.

Answer

W.E.F. 01.04.2011 the rate of interest to be levied under section 75 on the late payment of service tax depends upon the fact whether the concerned assessee is Small Scale Sector Assessee or not. A service provider whose value of taxable services does not exceed ₹60 lakhs during any of the years covered by the notice or during the last financial year is termed as Small Scale Sector Assessee. Accordingly interest to be paid by CA. Rahul Khanna has been exhibited in the following succinct table:

Value of services provided during the last financial year	Rate of interest to be applied	Amount of Service Tax deposited beyond the last date	Period for which interest to be levied	Amount of Interest to be deposited in accordance with Section 75
₹55.40 lac	15% p.a.	₹5,15,000	72 days[Gap between 15.09.2012 and 05.07.2012]	₹15,197[₹5,15,000 X 15% X 72/366]
₹80.90 lac	18% p.a.	₹5,15,000	72 days[15.09.2012 and 05.07.2012]	₹18,236[₹5,15,000 X 18% X 72/366]

Question 7

M, an assessee fails to pay service tax of ₹ 15 lakhs payable by 5th January, 2013 He pays the amount on 16th January, 2013 What is the penalty payable by M?

Answer

Before giving the answer to this practical problem, the provisions of section 76 are given below in tabular format for the purpose of quick recapitulation:

S.No.	Relevant Sub-Heading	Relevant Provisions of Section 76
1.	When Penalty u/s 76 is leviable	When any person liable to pay Service Tax either does not (i.e. of his own choice) or fails (due to some compelling reason) to pay service tax which does not fall within the purview of expression 'reasonable cause' as envisaged under section 80 by the stipulated time.
2.	Quantum of Penalty	(A) ₹ 100/- per day for every day during which such failure continues OR (B) at the rate of 1% per cent of such tax, per month, [i.e. 12% p.a.] whichever is higher. However, total amount of penalty payable under this section shall not exceed 50% of the service tax that the assessee has failed to pay.
3.	Period for which penalty is to be levied	Beginning with the first day after the due date and ending with the date of actual payment

In the light of above statutory provisions the penalty under section 76 has been calculated as under:

S.No.	Nature of Transactions	Details
1.	Amount of Service Tax failed to be deposited by M	₹15,00,000
2.	Due date of depositing Service Tax	05.01.2013
3.	Date on which Service Tax actually deposited	16.01.2013
4.	No. of days by which Service Tax was deposited late	11 days [16th Jan. – 5th Jan.]

5.	Computation of Quantum of Penalty	IST STEP:- Higher of the following two amounts (A)₹100/- per day for 11 days = ₹1,100; OR (B) 1% of the amount of default for 11 days=₹5,323 [₹15,00,000 X 1% X 11/31] IIND STEP: - Higher of the above two amounts is to be restricted to 50% of amount of service tax required to be paid i.e. ₹5,323/- is to be compared with ₹ 7,50,000/-[50% of ₹15,00,000/-]. Since the aforementioned amount of *₹ 5,323/-* is within the ceiling of ₹7,5,0,000/- the amount of penalty finally works out to be ₹5,323/-

Question 8

Kirti Ltd. was required to deposit Service Tax of ₹ 10,000/- by 5th May, 2011. It actually deposited the foregoing amount of Service Tax on 5th November, 2014. Compute the amount of penalty to be paid by Kirti Ltd. in terms of Section 76 of Finance Act, 1994.

Answer

Table exhibiting the computation of liability to be paid by Kirti Ltd in terms of Section 76 of Finance Act, 1994

S.No.	Nature of Transactions	Details
1.	Amount of Service Tax failed to deposit by Kirti Ltd.	₹10,000
2.	Due date of depositing Service Tax	05.05.2011
3.	Date on which Service Tax actually deposited	05.11.2014
4.	No. of days by which Service Tax was deposited late	1280 days [05.05.2011 – 05.11.2014] OR 3.5 years
5.	Computation of Quantum of Penalty	IST STEP:- Higher of the following two amounts (A)₹100/- per day for 1280 days = ₹1,28,000; OR (B) 1% of the amount of such tax per month (i.e. 12% p.a. for 3.5 years = ₹ 4,200 [10,000 X 12% X 3.5 years] IIND STEP: - Higher of the above two amounts is to be restricted to amount of 50% of service tax

		required to be paid i.e. ₹1,28,000/- is to be compared with ₹5,000/-[50% X ₹10,000/-]. Since the aforementioned amount of ₹1,28,000/- exceeds the ceiling of ₹5,000/- the amount of penalty is be finally restricted **₹5,000/-**

Question 9

Harpreet Pvt. Ltd. was required to deposit Service Tax of ₹1,00,000/- by 05.05.2011. However, the said company actually deposited Service Tax on 03.11.2012. Compute the amount of penalty to be paid by Harpreet Pvt. Ltd. as per provisions of Section 76 of Finance Act, 1994.

Answer

Table showing the computation of penalty payable by Harpreet Pvt. Ltd. as per provisions of Section 76

S.No.	Nature of Transactions	Details
1.	Amount of Service Tax failed to be deposited by Harpreet Pvt. Ltd.	₹1,00,000
2.	Due date of depositing Service Tax	05.05.2011
3.	Date on which Service Tax actually deposited	03.11.2012
4.	No. of days by which Service Tax was deposited late	548 days [03.11.2012 – 05.05.2011] OR 1.5 years
5.	Computation of Quantum of Penalty	IST STEP:- Higher of the following two amounts (A)₹100/- per day for 548 days = ₹54,800; OR (B) 1% of the amount of such tax per month (i.e. 12% p.a. for 1.5 years =₹18,000 [1,00,000 X 12% X 1.5 years] IIND STEP: - Higher of the above two amounts is to be restricted to 50% of amount of service tax required to be paid i.e. ₹ 54,800/- is to be compared with ₹ 50,000/-[50% of ₹1,00,000]. Since the aforementioned amount of ₹54,800/- exceeds the ceiling of ₹ 50,000/-the amount of penalty will be restricted to ₹50,000/-

Question 10

Briefly explain with a note the time period for filing a claim for ***refund of service tax by an exporter of goods*** *and sanction of refund claim by the Department.*

Answer

According to Notification No.41/2012-ST dated 29.06.2012 the time period for filing a refund claim is one year from the date of export of goods. The exporter is required to file a refund claim in prescribed form A-1 from the date of export of goods. Further, in the aforementioned Notification it has been provided that Sanction of refund claims shall be made by the Department officials i.e. AC/DC of Central Excise within one month from the receipt of the claim.

Question 11

Briefly explain the following with reference to the Service Tax Rules, 1994 and the Finance Act, 1994:-

(i) Appeal to Commissioner of Central Excise[Appeals]

(ii) Appeal to Appellate Tribunal

Answer

(i) **Appeals to Commissioner of Central Excise (Appeals):** According to the provisions of section 85(1) of the Act any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Commissioner of Central Excise [hereinafter abbreviated as "CCE"] may file an appeal to the Commissioner of Central Excise (Appeals)[hereinafter referred as " CCE(Appeals)"]. The said appeal is popularly known as "First Appeal" .The other relevant provisions are given in the following table*:*

S. No.	Suitable Sub-Heading	Particulars/Details	Relevant Statutory Provisions, if any
1.	Prescribed Form for filing the first appeal	ST-4	Section 85(2) of the Act read with Rule 8(1) of STR, 1994
2.	How many copies of the appeal are to be filed	Two {It is advisable to prepare three copies of the appeal. One copy will be given back as an acknowledgment]	Rule 8(2) of STR, 1994
3.	Time Limit for filing the first appeal	Two months from the date of receipt of the decision or order of such adjudicating authority [relating to **service tax, interest**	Section 85(3A) of the Act

		or penalty] made on or after 28.05.2012 (the date on which Finance Bill, 2012 receives the assent of the President of India)	
4.	Extension of Time Limit for filing the first appeal	Above-mentioned period of two months may be extended by a period of one month. However, the extended time of one month is allowed only when CCE (Appeals) is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within earlier period of two months.	Proviso to Section 85(3A) of the Act
5.	Disposal of the first appeal	The CCE (Appeals) shall hear and determine the appeal and pass the necessary orders [including an order for enhancing the service tax, interest or penalty]. However, according to proviso to Section 85(4) an order enhancing the service tax, interest or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.	Section 85(4) of the Act

(ii) Appeals to Appellate Tribunal: According to the provisions of section 86(1) of the Act any person aggrieved by an order passed by a CCE under section 73 or section 83A or an order passed by a CCE (Appeals) under section 85 may appeal to the Appellate Tribunal against such order within three months of the date of receipt of the order. The said appeal is also known as "Second Appeal". It is worth mentioning here that the right of second appeal is available both to the assessee as well as to the department. The other relevant provisions are given in the following table:

S. No.	Suitable Sub-Heading	Particulars/Details	Relevant Statutory Provisions, if any
1.	Prescribed Form for filing the second appeal	ST-5	Section 86(1) of the Act read with Rule 9(1) of STR, 1994
2.	How many copies of the appeal are to be filed	Four	Rule 9(2) of STR, 1994
3.	Time Limit for filing the second appeal by Department	With effect from 28.05.2012, within four months of the date on which the order	Section 86(3) of the Act

		sought to be appealed against is received by the Committee of Chief Commissioners or Committee of Commissioners. On the other hand, an assessee is required to file appeal to the Tribunal within three months from the date of receipt of the order in terms of Section 86(1) of Finance Act, 1994.	
4.	Filing of Memorandum of Cross-Objections	If one party files an appeal then the other party can file a Memorandum of Cross Objections **within 45 days of the receipt** of the relevant notice regarding filing of appeal.	Section 86(4) of the Act
5.	Power to condone delay in filing the second appeal or Memorandum of Cross-objections	The Appellate Tribunal may condone the delay in filing the appeal or Memorandum of Cross Objections if it is satisfied that there was sufficient cause for not presenting the said appeal or Memorandum within the stipulated time.	Section 86(5) of the Act
6.	Powers and Procedure	In hearing the appeals & making the orders under this section the Appellate Tribunal shall exercise the same	Section 86(7)of the Act

<table>
<tr><td></td><td></td><td colspan="2">powers and follow the same procedure as it exercises & follows in hearing the appeals and making orders under the Central Excise Act, 1944</td><td></td></tr>
<tr><td rowspan="4">7.</td><td rowspan="4">Fees</td><td>Quantum of Service Tax, Interest & Penalty demanded</td><td>Amount of Fee payable</td><td rowspan="4">Section 86(6) of the Act</td></tr>
<tr><td>₹5,00,000 or less</td><td>₹1,000</td></tr>
<tr><td>More than
₹ 5,00,000 but not exceeding ₹50,00,000</td><td>₹5,000</td></tr>
<tr><td>More than ₹50,00,000</td><td>₹10,000</td></tr>
<tr><td>8.</td><td>Fees to be paid by an assessee in case of an appeal for grant of stay etc.</td><td colspan="2">₹500/- in case of application for grant of stay or for rectification of mistake or for any other purpose including restoration of an appeal.
However, the aforementioned fee of Rs, 500/- is not required to be paid in case the department files an appeal for said grant of stay etc.</td><td>Section 86(6A) of the Act</td></tr>
<tr><td>9.</td><td>Enclosures with ST-5</td><td colspan="2">(i)Application for stay on legal size paper
with double spacing</td><td>------</td></tr>
</table>

		(ii)Order in original(in first set, original copy to be enclosed and with the remaining four sets, photocopy of the original order to be enclosed on legal size paper) (iii)Copy of the relevant SCN (iv)All supporting and Relied Upon Documents duly certified by the appellant.	

Question 12

Whether in each of following independent cases the relevant assessee will be punishable:

(i) Mr. Mihir provides Consulting Engineer's Services of ₹60 lakhs during the month of July, 2012 and knowingly evades the payment of service tax.

(ii) Mr. Sanjay 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.

(iii) Mr. Ramesh fails to supply any information [having financial implications of ₹52 lakhs] which he was required to supply under Service Tax Rules, 1994.

(iv) Miss Kanika collected service tax of ₹50 lakhs in the month of May 2012 but did not deposit the said amount until 31st March, 2013.

Answer

W.E.F.08.04.2011 the prosecution provisions have been reinserted vide section 89 of Finance Act, 1994. In the light of foregoing reinserted section 89, each of the given case has been discussed as under:

(i) 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. Mihir 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. Mihir can face imprisonment upto three years in accordance with provisions of Section 89(1)(i) of Finance Act, 1994.

(ii) 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. Sanjay avails and utilizes credit of taxes of ₹45 lakhs during the quarter ending September, 2011 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. Sanjay can be sent for imprisonment up to one year as per provisions of Section 89(1)(ii) of Finance Act, 1994.

(iii) According to provisions of Section 89(1)(c) whoever maintains false books of accounts or fails to supply any information which he required to supply under this Act or rules made thereunder or [unless with a reasonable belief, the burden of providing which shall be upon him, that the information supplied by him is true) supplies false information, shall be punishable with imprisonment depending on the amount involved.

As in the present case Mr. Ramesh fails to supply any information which he was required to supply under Service Tax Rules, 1994, he shall be punishable with imprisonment as per provisions of Section 89(1)(c). Besides, as far as period of imprisonment is concerned since the amount involved in this offence exceeds ₹50 lakhs, Mr. Ramesh can be sent for imprisonment up to three years as per provisions of Section 89(1)(ii) of Finance Act, 1994.

(iv) According to provisions of Section 89(1)(c) whoever collects any amount as service tax but fails to pay the amount so collected to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due, shall be punishable with imprisonment depending on the amount involved.

As in the present case Miss Kanika collected service tax of ₹50 lakhs in the month of May 2012 but did not deposit the said amount until 31st March, 2013, she shall be punishable with imprisonment as per provisions of Section 89(1)(d). Besides, as far as period of imprisonment is concerned since the amount involved in this offence does not exceed ₹50 lakhs, Miss Kanika can be sent for imprisonment up to one year as per provisions of Section 89(1)(ii) of Finance Act, 1994.

Exercise

1. *Write a short note on provisional attachment to protect revenue in certain cases.*
2. *Briefly explain the provisions for publication of information in respect of persons in certain cases.*

CHAPTER 8

Other Provisions

Question 1

Under what circumstances premises of an assessee may be searched and by whom ?

Answer

According to provisions of **Section 82(1)** if the **Joint Commissioner** of Central Excise has reason to believe that any **documents or book or things** are secreted at any place, which in his opinion will be useful for any proceedings under this Act, he may **authorize any Superintendent** of Central Excise **to search for and seize** or he may himself search for and seize such documents or books or things.

Question 2

What are various modes of recovery of any amount due to Central Government?

Answer

According to provisions of Section 87 Central Government can make recovery of any amount due to it by **any one of the following modes**, namely:-

(i) **Central Excise Officer [hereinafter abbreviated as "CEO"] may deduct or may require any other CEO or any Custom Officer to deduct the amount payable to the assessee**

Central Excise Officer may deduct or may require any other Central Excise Officer or any officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the said Central Excise Officer or any officer of customs.

(ii) **CEO require any other person from whom money is due or may become due to assessee**

Central Excise Officer may require any other person from whom money **is due** or **may become due** to such person, or **who holds** or **may subsequently hold** money for or on account of such person, to pay to the credit of the Central Government so much of the money as is sufficient to pay the amount due from such person.

(iii) **CEO may restrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid**

Central Excise Officer may, on an authorization by Commissioner of Central Excise, in accordance with the rules made in this behalf, restrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid.

(iv) **CEO may prepare a certificate and send it to the Collector of the district to recover the amount if it were an arrear of land revenue.**

Central Excise Officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.

Question 3

Ms Garima Arora is a practicing chartered accountant. She made self-assessment of her Service Tax liability as ₹ 15,45,000/- for the quarter ending 30.06.2012. However, she did not make any payment of foregoing self-assessed tax until 31.03.2013. The said fact came to the notice of the Service Tax Department. How can the Department recover the aforementioned amount of service tax from Ms Garima Arora ? It is also to be noted that value of taxable services provided during the last financial year was ₹ 1.25 crore.

Answer

In the given situation the department has to resort provisions of Rule 6(6A) of Service Tax Rules, 1994. The foregoing Rule 6(6A) provides that where an amount of service tax payable has been self-assessed under section 70(1) of Finance Act, 1994, but not paid, either in full or in part, the same shall be recoverable with interest in the manner prescribed under section 87 of Finance Act, 1994.

As in the present case Ms Garima Arora has not paid in full her self-assessed service tax of ₹ 15,45,000/-, the Department can recover the foregoing amount of Service Tax along with interest in accordance with Rule 6(6A) of Service Tax Rules, 1994. The rate of interest will be decided on the basis of value of taxable services provided during the last financial year. Since the value of taxable services provided by Ms Garima exceeded ₹ 60 lakhs, she will not be termed as Small Scale Service provider and consequently interest will be charged at the rate of 18% p.a. for the period of delay.

Question 4

MNL Ltd. did not pay its service tax dues of ₹ 40 lakhs for the period ending 30.09.2012. Can the Department create first charge on the property of MNL Ltd ? If your answer is affirmative, whether there are any limitations in respect of creation of such first charge ?

Answer

According to provisions of section 88 of Finance Act, 1994 any amount of **tax [substituted for the word "duty" by Finance Act, 2012 with effect from 28.05.2012]**, penalty, interest or any other sum payable by an assessee or any other person shall be the first charge on the property of the assessee or the person, as the case may be. Thus, the Department can create first charge on the property of MNL Ltd for recovery of service tax dues of ₹ 40 lakhs.

However, the aforementioned first charge can be created subject to the provisions of following specified Acts:-

- Companies Act, 1956 (Section 529A)
- Recovery of Debt due to Band and Financial Institution Act, 1993; and
- Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest, 2002

Question 5

Mention the issues on which an advance ruling can be sought in service tax matters.

Answer

As per section 96C of Finance Act, 1994 an advance ruling can be sought in the following matters:

(a) classification of any service as a taxable service under Chapter V;

(b) the valuation of taxable services for charging service tax;

(c) the principles to be adopted for the purposes of determination of value of the taxable services under the provisions of Chapter V;

(d) applicability of notifications issued under Chapter V;

(e) admissibility of credit of duty or tax in terms of the rules made in this regard;

(f) determination of the liability to pay service tax on a taxable service under the provisions of Chapter V.

Question 6

When does an advance ruling on service tax become void ab initio?

Answer

Section 96F of Finance Act, 1994 provides that if the Authority of Advance Ruling finds, on a representation made to it by the Commissioner of Central Excise or otherwise, that an advance ruling has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be void ab initio.

Question 7

What the prevailing audit norms for service tax assessees ?

Answer

The audit norms prescribed by Service Tax Audit Manual, 2010 are given in the following table:

S.No.	Quantum of annual total service tax payment in (cash + CENVAT Credit) in preceding financial year	Frequency of Audit
1	Tax payers paying more than ₹3 Crores	Every year
2	Tax payers paying between ₹1 crore and ₹3 crores	Once in 2 years
3	Tax payers paying between ₹25 Lacs and ₹1 Crore	Once in 5 years
4	Tax payers paying below ₹25 Lacs	2% of taxpayers to be audited every year

It has been further specified in above-mentioned Audit Norms that preferably Audit should be done by using Computer Assisted Audit Program (CAAP) techniques.

Exercise

1 *What are the powers of the Central Government to grant exemption from service tax.*

2. *What do you understand by Advance Ruling? On whom Advance Ruling is binding ?*

CHAPTER 9

Backdrop for State-Level VAT in India

Question 1

Give any three recommendations made by Dr. Vijay Kelkar in regard to State level VAT.

Answer

Dr. Vijay Kelkar made the following recommendations in regard to state-level VAT:

- **Publicity Awareness Programme:** A Publicity Awareness Programme should be started jointly with the Central Government and the State Governments. Further, Central Government should extend financial support for the said programme to State Governments, if required. It is also necessary that the publicity awareness programme should be implemented at the earliest.
- **Uniformity:** An attempt in uniformity of all state legislations, procedures and documents relating to VAT.
- **The issue of compensation:** The issue of compensation to states must be primarily tackled through mutually accepted mechanism of additional resource mobilization through service tax and not through budgetary support.
- **Discontinuance of all other local taxes:** With the introduction of VAT all other local taxes should be discontinued and the same should be taken into account in determining the Revenue Neutral Rate.
- **Provision for grant of credit of duty in the course of inter-**state movement of goods: The VAT schemes should provide for grant of credit of duty paid by the importing states for the duty paid in the exporting state, in the course of inter-state movement of goods.
- **Setting up of a VAT Council etc.**: For the stability and continuity of VAT, the setting up of a VAT Council or a permanent suitable alternative vested with adequate powers to take steps against discriminatory taxes and practices and eliminate barriers to free flow of trade and commerce across the country should be explored.

Question 2

Write a short note on Goods and Service Tax.

Answer

GST is a broad based & a single comprehensive tax levied on goods & services consumed in an economy. It is levied at every stage of production-distribution chain with applicable set offs in respect of tax remitted at previous stages. It is primarily a tax on final consumption. It is a tax on goods & services, which is leviable at each point of sale/provision of service, in which at the time of sale of goods/providing the services the seller/service provider may claim the Input Tax Credit of tax paid while purchasing the goods/procuring the services.

Following are some of the advantages which are expected to accrue on implementation of GST:-

(a) It will reduce compliance cost & increase voluntary compliance.

(b) It will remove cascading effect of taxation & also distortions in the economy.

(c) It will result in widening of tax base & increase in revenue both to the Centre & State.

(d) It will give competitive edge in international market for goods & services in a country, leading to increased exports.

(e) It will bring improvement in manufacturing & distribution efficiency. Further, it is expected to reduce cost of production of goods & services which, in turn, is likely to increase demand & production of goods & services.

Although GST was originally proposed to be implemented w.e.f. 01-04-2010, however, owing to non-formation of consensus amidst Centre & States on various relevant legal, constitutional, economic issues, the Central Government has understandably decided to defer the implementation of GST for the time being. Consequently, GST is most likely to be introduced in near future.

Exercise

1. *Write a brief note to historical background of VAT.*
2. *Briefly discuss the recommendations made by the Committee of State Finance Ministers in relation to introduction of state-level VAT.*
3. *Write a short note on the White Paper on State-Level VAT in India.*

CHAPTER 10

Taxonomy of VAT

Question 1

Briefly explain the three commonly used methods for computation of VAT.

Answer

The three commonly used methods for computation of VAT are briefly explained below:

(A) Addition Method: This method aggregates all the factor payments including profit to arrive at the total value addition on which the rate is applied to calculate the tax. This type of calculation is mainly used with income variant of VAT. Further, this method does not easily accommodate exemptions of intermediate dealers. The main drawback of this method that it does not facilitate matching of invoices for detecting evasion.

(B) Invoice Method: Under invoice method, at each stage of sales, VAT is imposed on the full sales value and VAT paid at the earlier stage is allowed as set off. Hence, at every stage the difference between the VAT payable at the time of sales and VAT paid at the time of purchases is required to be paid.

Under this method, at each stage, VAT is charged separately in the invoice. It is the most common and popular method of computing VAT. In India also this method is followed for computation of State-Level VAT and CENVAT. It is also known as the 'Tax Credit Method' or 'Voucher Method'.

(C) Subtraction Method: Under this method, the tax is charged only on the value added at each state of sale of goods. Since the total value of goods sold is not taken into account, the question of grant of claim for set-off or tax credit does not arise. This method is normally applied where the tax is not charged separately.

Question 2

Briefly discuss the different variants of VAT.

Answer

The different variants of VAT are briefly discussed below:

- Gross Product Variant: Tax is levied on all sales and deduction for tax paid on inputs excluding capital inputs is allowed.
- Income Variant: Tax is levied on all sales with set-off for tax paid on inputs and only depreciation on capital goods. This variant provides incentives to classify purchases as current expenditure to claim set-off.

- **Consumption Variant:** Tax is levied on all sales with deduction for tax paid on all business inputs [including capital goods]. Thus, gross investment is deductible in calculating value added. It neither distinguishes between capital and current expenditures nor specifies the life of assets or depreciations allowances for different assets. This variant is neutral between the methods of production [i.e. substitution capital for labour or vice versa]. The tax is also neutral between the decision to save or consume.

Among the above-mentioned three variants of VAT, Consumption Variant is widely used.

Question 3

Discuss any four merits of VAT.

Answer

Following are the merits of VAT:

(i) **No Tax Evasion:** It is said that VAT is a logical beauty. Under VAT, credit of duty paid is allowed against the liability on the final product manufactured or sold. Therefore, unless proper records are kept in respect of various inputs, it is not possible to claim credit. Hence suppression of purchases or production will be difficult because it will lead to loss of revenue. A perfect system of VAT will be a perfect chain where tax evasion is difficult.

(ii) **Neutrality:** The greatest advantage of the system is that it does not interfere in the choice of decision for purchases because it has anti-cascading effect.

(iii) **Certainty:** The VAT system is based simply on transactions. Thus, there is no need to go through complicated definitions like sales, sales price, turnover of purchases and turnover of sales. The tax is also broad-based and applicable to all sales in business leaving little room for different interpretations. Thus, this system brings certainty to a great extent.

(iv) **Transparency:** Under a VAT system, the buyer knows, out of the total consideration paid for purchase of material, what is tax component. Thus, the system ensures transparency also. This transparency enables the State Governments to know as to what is the exact amount of tax coming at each stage. Thus, it is a great aid to the Government while taking decisions with regard to rate of tax etc.

(v) **Better revenue collection and stability:** The Government will receive its due tax on the final consumer/retail sale price. There will be a minimum possibility of revenue leakage, since the tax credit will be given only if the proof of tax paid at an earlier stage is produced. This means that if the tax is evaded at one stage, full tax will be recoverable from the person at the subsequent stage or from a person unable to produce proof of such tax payment. Thus, in particular, an invoice of VAT will be self enforcing and will induce business to demand invoices from the suppliers. Another attribute of VAT is that it is an exceptionally stable and flexible source of government revenue.

(vi) Better accounting systems: Since the tax paid on earlier stage is received back, the system will promote better accounting systems.

(vii) Effect on retail price: A persistent criticism of the VAT form has been that since the tax is payable on the final sale price, the VAT usually increases the prices of the goods. However, VAT does not have any inflationary impact as it merely replaces the existing equal sales tax. It is also pertinent to add here that with the introduction of VAT, the tax impact on the raw material is to be totally eliminated. Therefore, there may not be any increase in the prices.

(viii) Exports become cheaper: The exports would be cheaper as taxes paid at earlier stages could be availed as credit or refunded in cash.

[Note: Students may give any four merits out of the above total eight merits given hereinabove]

Question 4

Discuss any four demerit of VAT System.

Answer

VAT System has the following demerits:

(i) Existence of several concessions: The merits of VAT will accrue only under a situation where there is only one rate of VAT and VAT applies to all commodities without any question of exemptions whatsoever. Once concessions like differential rates of VAT, Composition Schemes, Exemption Schemes, Exempted Category of Goods etc. are built into the system, distortions are bound to occur.

(ii) Integration of Central VAT with State VAT: In the federal structure of India in the context of sales-tax, so long as Central VAT is not integrated with the State VAT, it will be difficult to put the purchases from other states at par with the state purchases. Therefore, the advantage of neutrality will be confined only by purchases within the State.

(iii) Increased Accounting Cost: For complying with the VAT provisions, the accounting cost will increase. The burden of this increase may not be commensurate with the benefit to traders and small firms.

(iv) Increased Working Capital Requirements: Since under VAT System tax is to be imposed or paid at various stages and not on last stage, it would increase the working capital requirements and the interest burden on the same. In this way, it is considered to be non-beneficial as compared to the single stage last point taxation system.

(v) Increased Administration Cost: The administration cost to the State has increased under VAT because of significant increase in the no. of dealers to be administered.

(vi) Regressive in nature: It is claimed that VAT is regressive in nature because its burden falls disproportionately on the poor as the poor are likely to spend more of their income than the rich.

[Note: Students may give any four demerits out of the above total six demerits given hereinabove]

Exercise

1. *Briefly explain the different stages of VAT.*
2. *Briefly explain the mechanism of operation of VAT with the help of an illustration.*
3. *Describe the invoice method of calculation of VAT.*

CHAPTER 11

Input Tax Credit

Question 1

Calculate the VAT liability for the period Aug. 1, 2012 to Aug. 31, 2012 from the following particulars:

Inputs worth ₹ 1,00,000 were purchased within the State. ₹ 2,00,000 worth of finished goods were sold within the State and ₹ 1,00,000 worth of goods were sold in the course of inter-State trade. VAT paid on procurement of capital goods worth ₹ 1,00,000 during the month was at 12.5%. If the input and output tax rate in the State are 12.5% and 4% respectively and the central sales tax rate is 2%, show the total tax liability under the State VAT law and under the Central Sales Tax Act.

Answer

Computation of the tax liability for the period Aug. 1, 2012 to Aug. 31, 2012:-

	₹
Inputs purchased in the month [12.5% VAT]	1,00,000
Output sold in the month (within the State)	2,00,000
Inter-State sales	1,00,000
Input credit (including capital goods) (₹ 12,500 + ₹ 12,500)	25,000
Output tax	8,000
CST for Inter-State sale @ 2%	2,000
State VAT liability (₹ 8,000 – ₹ 25,000)	Nil
Excess credit carried forward to subsequent month	17,000
Central sales tax to be paid (₹ 2,000 – ₹ 17,000)	Nil
Excess credit carried forward to subsequent period	15,000

Question 2

The particulars regarding sale, purchase etc. of Shubham Udyog for the last quarter of the year 2012 -13 are as under:

			₹
1.		*Purchases of raw material within the State*	
	(i)	*taxable @ 1%*	*40,00,000*
	(ii)	*taxable @ 4%*	*60,00,000*
	(iii)	*taxable @ 12.5%*	*10,00,000*

2.		*Sale of goods manufactured from raw material purchased @ 4% tax rate*	
	(i)	*Taxable sale within the State (tax rate 4%)*	*20,00,000*
	(ii)	*Exempted sale within the State*	*10,00,000*
	(iii)	*Sale in the course of Inter-State trade or commerce (CST rate 2%)*	*10,00,000*
3.		*Sale of raw material purchased @ 1% tax rate*	*44,00,000*
4.		*Goods manufactured from the raw material purchased @ 12.5% tax rate were given on lease. The deemed sale price of such goods is ₹ 12,00,000, taxable @ 12.5%.*	

You may assume that input tax credit of tax paid on raw material used in manufacture of leased goods is available immediately. Compute the amount of Value Added Tax (VAT) payable by M/s Shubham Udyog for the relevant quarter. There was no opening or closing inventory.

How can he utilise the balance of input tax credit available, if any?

Answer

Computation of VAT payable for the quarter ending 31st March, 2013

	Particulars	₹
(A)	Output tax payable	
(i)	On sale of taxable finished goods within the state (₹ 20,00,000 ×4%)	80,000
(ii)	On raw material (₹ 44,00,000 × 1 %)	44,000
(iii)	On leased goods (₹ 12,00,000 × 12.5%) (Deemed sale)	1,50,000
	Total (A)	2,74,000
(B)	Input tax credit available	
(i)	On raw material purchased @ 1% (₹ 40,00,000 × 1%)	40,000
(ii)	On raw material purchased @ 4% (₹ 60,00,000 × 4%) × 75% (Note-1)	1,80,000
(iii)	On raw material purchased @ 12.5% (₹ 10,00,000 × 12.5%)	1,25,000
	Total (B)	3,45,000
	Net VAT payable = (A)-(B)	(71,000)
	CST payable on inter state sale adjusted (₹ 10,00,000 × 2%)(Note-2)	20,000
	Balance of input tax credit carried forward to next quarter (₹ 20,000-₹ 71,000)	51,000

Notes :

1. If the goods manufactured from raw material are exempt from tax, no input tax credit is available on such raw material. Out of total sales of ₹ 40,00,000 of goods manufactured from raw material purchased @ 4%, credit will not be allowed in respect of the inputs used in the manufacture of exempted goods. It has been assumed that the amount of raw

material used in the manufacture of exempted goods is proportionate to amount of the exempted sale in the total sales of goods manufactured from raw material purchased @ 4% assuming the input output ratio to be constant (10/40*60=15lakh) Hence, input tax credit has been allowed to the extent of 75% [(60-15)/60*100=75%]

2. If finished goods are sold in the course of inter-state trade and commerce, input tax can be set off against the output tax liability.

Question 3

Determine the taxable turnover, input tax credit and net VAT payable by a works contractor from the details given below on the assumption that the contractor maintains sufficient records to quantify the labour charges. Assume output VAT at 12.5%

	Particulars	₹ (in lakh)
(i)	Total contract price (excluding VAT)	100
(ii)	Labour charges paid for execution of the contract	35
(iii)	Cost of consumables used not involving transfer of property in goods	5
(iv)	Material purchased and used for the contract taxable at 12.5% VAT (VAT included)	45

The contractor also purchased a plant for use in the contract for ₹ 10.4 lakhs(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 assumption wherever required and show the working notes.

Answer

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		1,00,00,000	
Less : Deductions admissible			
1. Labour charges paid for executing the contract	35,00,000		
2. Cost of consumables in which no property is transferred	5,00,000		
Total deductions		40,00,000	
Taxable turnover		60,00,000	
Output VAT payable @ 12.5% (on ₹ 60,00,000)		7,50,000	(A)

Less : Input tax credit admissible			
1. On the material purchased (on ₹ 45,00,000 x 12.5/112.5)	5,00,000		
2. On the plant purchases (on ₹ 10,40,000 x 4/104)	40,000		
Input tax credit		5,40,000	(B)
Net VAT payable		2,10,000	(A-B)

Question 4

Mr. Ram, a dealer in Tamil Nadu dealing in consumer goods, submits the following information pertaining to the month of October, 2012:

Details of purchases of goods:-

Particulars (raw material purchased from within the State)	Amount (₹)	Rate of VAT
Goods 'A'	10,00,000	Exempt
Goods 'B'	20,00,000	1%
Goods 'C'	30,00,000	12.5%

Details of sales of goods:-

Particulars (Sale of finished goods)	State in which goods are sold	Amount (₹)	Rate of VAT
Produced from Goods 'A'	Tamil Nadu	5,00,000	12.5%
	Gujarat	7,00,000	1%
Produced from Goods 'B'	Tamil Nadu	24,00,000	Exempt
Produced from Goods 'C'	Tamil Nadu	35,00,000	4%

Compute the amount of Value Added Tax (VAT) payable by Mr. Ram for the relevant month. There was no opening or closing inventory.

Answer

Computation of VAT payable by Mr. Ram for the month of October, 2012:-

	Particulars	₹
(A)	Output tax payable	
	(i) On sale of finished goods produced from Goods 'A' within the State (₹ 5,00,000 × 12.5%)	62,500
	(ii) On taxable sale of finished goods produced from Goods 'C' within the State (₹ 35,00,000 × 4 %)	1,40,000
	Total (A)	2,02,500

(B)	Input tax credit available	
	(i) Goods 'A' (Exempt)	Nil
	(ii) Goods 'B' (Note-1)	Nil
	(iii) Goods 'C' (₹ 30,00,000×12.5%)	3,75,000
	Total (B)	3,75,000
	Net VAT payable = (A)-(B)	(1,72,500)
	CST payable on inter-state sale of goods produced from Goods 'A' (₹ 7,00,000 × 1%) shall be paid from the balance of credit of Rs. 1,72,500.	7,000
	Balance of input credit carried forward to next month	1,65,500

Notes:

1. Since, there is no opening and closing inventory, it implies that entire purchase of the Goods 'B' is used to manufacture the finished goods (which are exempt from tax). Further, purchases of goods, which are being utilized in the manufacture of exempted goods, are not eligible for input tax credit. Hence, no input tax credit is available in respect of VAT paid on purchase of Goods 'B'.
2. If finished goods are sold in the course of inter-state trade and commerce, credit is allowed.

Question 5

Briefly explain whether the purchases are eligible for availing input tax credit in each of the following cases:-

(a) Rohan purchased goods from a registered dealer. He claims that he has paid the amount of VAT on the said goods, but the invoice pertaining to said purchases has been lost on account of negligence of a clerk in his office.

(b) Jain & Co. purchased goods from Tide Enterprises. Tide Enterprises is an unregistered dealer.

(c) Ankit purchased some capital goods. The final product manufactured by Ankit using these capital goods is exported.

Answer

(a) The purchases made by Rohan are not eligible for claiming input tax credit because the purchase invoice is not available with the claimant.

(b) Purchases made by Jain & Co. from Tide Enterprises are not eligible for input tax credit as Tide Enterprises is not a registered dealer.

(c) Ankit can claim the input tax credit in respect of the purchase of the capital goods as capital goods used for manufacturing/packing goods to be sold in the course of export out of the territory of India are eligible for claiming input tax credit.

Question 6

Determine the taxable turnover, input tax credit and net VAT payable by a works contractor from the details given below on the assumption that the contractor maintains sufficient records to quantify the labour charges. Assume output VAT at 12.5%:-

	Particulars	₹ (in lakh)
(i)	Total contract price (excluding VAT)	100
(ii)	Labour charges paid for execution of the contract	35
(iii)	Cost of consumables used not involving transfer of property in goods	5
(iv)	Material purchased and used for the contract taxable at 12.5% VAT (VAT included)	45

The contractor also purchased a plant for use in the contract for ₹ 10.4 lakhs (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 assumption wherever required and show the working notes.

Answer

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		1,00,00,000	
Less : Deductions admissible			
1. Labour charges paid for executing the contract	35,00,000		
2. Cost of consumables in which no property is transferred	5,00,000		
Total deductions		40,00,000	
Taxable turnover		60,00,000	
Output VAT payable @ 12.5% (on ₹ 60,00,000)		7,50,000	(A)
Less : Input tax credit admissible			
1. On the material purchased (on ₹ 45,00,000 x 12.5/112.5)	5,00,000		

2. On the plant purchased (on ₹ 10,40,000 x 4/104)	40,000		
Input tax credit		5,40,000	(B)
Net VAT payable		2,10,000	(A-B)

Question 7

Shiv Ltd. of Madhya Pradesh made a total purchases of input and capital goods of ₹55,00,000 during the month of January, 2013. The following further information is available:

(i) Goods worth ₹ 9,00,000 were purchased from West Bengal on which C.S.T. @ 2% was paid.

(ii) The purchases made in January, 2013 include goods purchased from unregistered dealers amounting to ₹21,50,000.

(iii) It purchased capital goods (not eligible for input credit) worth ₹ 9,50,000 and those eligible for input credit for ₹9,00,000.

(iv) Sales made in Madhya Pradesh during the month of January, 2013 is ₹10,00,000 on which VAT @ 12.5% is payable.

Assuming that all purchases given are exclusive of tax and VAT @ 4% is paid on them, calculate

(i) the amount of input tax credit available for the month of January, 2013

(ii) VAT payable for the month of January, 2013 and

(iii) input tax credit carried forward.

Note: The input VAT credit on eligible capital goods is available in 36 equal monthly installments.

Answer

	Particulars	₹	₹
A.	Purchases made in January, 2013		55,00,000
	Less:(i) Inter-State purchases (input credit not available)	9,00,000	
	(ii) Purchase from unregistered dealer (input credit not available)	21,50,000	
	(iii) Capital goods (not eligible for input credit)	9,50,000	40,00,000
	Total purchases eligible for tax credit		15,00,000
B.	Input tax credit available		
	VAT credit on input @ 4%		
	4% of (₹ 15,00,000 – Rs.9,00,000)		
	i.e. 4% of ₹ 6,00,000		24,000
	VAT credit on eligible capital goods		

	(4% of ₹ 9,00,000) x $\frac{1}{36}$		1,000
	Input credit available for January, 2013		25,000
C.	VAT on sales @ 12.5% of ₹ 10,00,000		1,25,000
	Less: Input tax credit		25,000
	Net VAT payable		1,00,000
	Input tax credit carried forward to February,2013		Nil

Question 8

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)*	*1,80,00,000*
(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 and assume output VAT at 12.5%. Make suitable assumptions where required and show the workings.

Answer

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	10,00,000	70,00,000
Taxable turnover		1,10,00,000
Output VAT payable @ 12.5%		13,75,000
Less : Input tax credit admissible		
On the material purchased	3,75,000	
₹ $\left[33{,}75{,}000 \times \frac{12.5}{112.5}\right]$		
On the plant purchased ₹ $\left[20{,}80{,}000 \times \frac{4}{104}\right]$	80,000	4,55,000
Net VAT payable		9,20,000

Question 9

From the following information provided by M/s RA Ltd., registered under the VAT law in the State of Gujarat as dealer in consumer goods, compute the amount of VAT payable for the month of July 2012:

Purchase of raw material (within the State)

Item	*Amount (₹)*	*Rate of VAT*
Goods 'X'	*7,50,000*	*Exempt*
Goods 'Y'	*25,00,000*	*1%*
Goods 'Z'	*35,00,000*	*12.5%*

Sales

Particulars of finished goods sold	*State in which goods are sold*	*Value ₹*	*VAT/CST Rate %*
(i) Produced from goods 'X'	*Gujarat:*	*5,00,000*	*12.5% VAT*
	Interstate sales to Maharashtra:	*6,00,000*	*2% CST*
(ii) Produced from goods 'Y'	*Gujarat:*	*30,00,000*	*Exempt*
(iii) Produced from goods 'Z'	*Gujarat:*	*40,00,000*	*4% VAT*

Raw materials valued at ₹ 5 lakhs of goods 'Z' have been transferred to the branch in Madhya Pradesh during the month. Assume 2% reduction in input credit on account of such transfer.

Make assumptions where required and provide suitable explanations

Answer

Computation of VAT payable by M/s. RA Ltd. for the month of July, 2012

	Particulars	₹
(A)	Output VAT payable	
	(i) On sale of finished goods produced from Goods 'X' within Gujarat (₹ 5,00,000 × 12.5%)	62,500
	(ii) On sale of finished goods produced from Goods 'Z' within Gujarat (₹ 40,00,000 × 4 %)	1,60,000
	Total (A)	2,22,500
(B)	Input tax credit available	
	(i) Goods 'X' (Exempt)	Nil
	(ii) Goods 'Y' (Note-2)	Nil
	(iii) Goods 'Z' transferred to branch (₹ 5,00,000×10.5%)	52,500
	(iv) Remaining Goods 'Z' after transfer to the branch [₹ (35,00,000- 5,00,000)×12.5%]	3,75,000
	Total (B)	4,27,500
	Net VAT payable = (A)-(B)	(2,05,000)
	CST payable (₹ 6,00,000×2% = (₹ 12,000)on inter-state sale of goods produced from Goods 'X' would be paid from the balance of credit of ₹ 2,05,000.(Note-3)	12,000
	Balance input credit carried forward to next month	1,93,000

Notes:

1. It is assumed that there is no opening and closing inventory. Hence, entire purchases of the raw materials have been used to manufacture the respective finished goods.
2. Goods utilized in the manufacture of exempted goods are not eligible for input tax credit. Hence, no input tax credit is available in respect of VAT paid on purchase of Goods 'Y' as they have been used to produce goods which are exempt from VAT.
3. Input tax credit can be used to set off the central sales tax payable on the inter-state sales.

Question 10

From the following particulars compute net VAT payable by M/s. TAB & Co. for the period ending March 31, 2013.

Inputs procured :		₹
(i)	*Raw material at Nil VAT*	*10,00,000*

(ii)	*Raw material at 4% VAT*	*40,00,000*
(iii)	*Raw material at 12% VAT*	*20,00,000*
Output		
(i)	*Intra state sale of finished goods at 4% VAT (these goods were produced entirely from raw material at NIL VAT rate procured as inputs)*	*15,00,000*
(ii)	*Exempted sales (these goods were procured from raw material procured at 4% VAT to the extent of 50%)*	*20,00,000*
(iii)	*Sale of finished goods intrastate at 12% VAT*	*20,00,000*
(iv)	*Intrastate sale of raw material purchased at 4%*	*10,00,000*
(v)	*50% of the raw material produced at 12% VAT has been utilised to produce capital goods for the manufacturing process in TAB & Co's factory (Market Value):*	*15,00,000*

Provide explanations where necessary.

Answer

Computation of Net VAT payable by M/s. TAB & Co.:-

Output VAT payable

S.No.	Particulars	₹
1.	Intra-state sale of goods at 4% VAT (₹ 15,00,000 × 4%) (manufactured out of exempted material)	60,000
2.	Sale of finished goods at 12% VAT (₹ 20,00,000 × 12%)	2,40,000
3.	Sale of raw materials purchased at 4% VAT (₹ 10,00,000 × 4%)	40,000
	Total (A)	3,40,000

Input tax credit available

S.No.	Particulars	₹
1.	Purchase of raw material @ 4% VAT (50% of ₹ 40,00,000 x 4%) *(Note – 1)*	80,000
2.	Purchase of 12% VAT including purchases used for capital goods produced (12% of ₹ 20,00,000) *(Note – 2)*	2,40,000
	Total (B)	3,20,000

Net VAT payable = (A) - (B) = ₹ 3,40,000 – ₹ 3,20,000 = ₹ 20,000.

Notes:

1. Input tax credit for goods used to produce exempted goods will not be allowed. Hence, 50% of the input tax credit has been disallowed on purchases of goods at 4% VAT and utilized to produce exempted goods.

2. Input tax credit on raw materials is allowed even if the same has been consumed to produce capital goods. Hence, full input tax credit on goods purchased at 12% VAT has been allowed.

Question 11

Briefly explain the policy contained in the 'white paper' on introduction of VAT with regard to availment of input credit on capital goods.

Answer

The policy contained in the 'White Paper' lays down that in relation to capital goods, set-off will be available to traders and manufacturers.

The most important factor is that the White Paper recognizes the fact that set-off is to be given to both traders and manufacturers. It is well known that under traditional sales-tax system, in some States, partial credit was allowed on capital goods to the manufacturers but no credit was allowed to traders. In the White Paper, taking into account the very basis of VAT system, laid down a policy statement that set-off will be allowed to both manufacturers and traders.

However, as per the White Paper, the State Governments can provide to give set-off on a staggering basis, at the most in 36 instalments. This is subject to the policy of individual States.

Question 12

From the following particulars, arrive at the VAT liability for the month of January 2013 and also determine the amount of input tax credit to be carried forward for the next month:

(i) Input tax rate 5% and output tax rate is 15% in the State.

(ii) Inputs purchased in the month from within the State – ₹ 48,00,000.

(iii) Output sold to buyers within the State during the month – ₹ 15,00,000.

(iv) Output sold during the month to buyers as interstate sales – ₹ 3,00,000.

(CST rate 2% against C Form).

Inputs purchased from other States as interstate purchases against C Form @ 2% - ₹ 2,00,000.

(Provide suitable explanations where required with appropriate assumptions, if necessary).

Answer

Calculation of VAT liability for the month of January' 13 and amount of input tax credit to be carried forward to next month:

(i) Input tax credit available on the purchase of inputs from within the State will be 5% of Rs. ₹ 48 lakh, i.e. ₹ 2,40,000.

(ii) No input tax credit will be available on inputs purchased from other States.

(iii) VAT payable on sales within the State – 15% of ₹ 15 lakh, i.e. ₹ 2,25,000.

(iv) State VAT liability will be nil as the input tax credit (₹ 2,40,000) is more than the output VAT of the State (₹ 2,25,000).

(v) CST to be paid is ₹ 6000, i.e. 2% of inter-State sales of ₹ 3 lakh. This amount can be paid from the balance credit of ₹ 15,000 (i.e. ₹ 2.40 lakh-2.25 lakh)

(vi) The amount available for carry forward to next month will be ₹ 9,000, i.e. ₹ (15000-6000).

Question 13

Write a brief note on whether input tax credit of the VAT paid on purchases of goods that are stock transferred is available.

Answer

Inter State transfers do not involve sale and are therefore are not subjected to sales tax. The same position continues under VAT. However, tax paid on the purchases of goods which are stock transferred will be available as input credit after retention of 2% of such tax by the State Government.

Exercise

1. *Enumerate the eligible purchases in respect of which input tax credit can be availed.*
2. *Discuss the procedural requirements to be fulfilled in order to claim input tax credit on capital goods.*
3. *Differentiate between input tax and output tax.*
4. *Who can avail input tax credit?*
5. *Can input tax credit be carried forward? Discuss.*
6. *Mention the purchases which are not eligible for input tax credit.*
7. *How will the input tax credit be availed when common inputs are used for taxable and tax-free good?*
8. *Explain whether units in SEZ and EOU units are required to pay input tax on purchases made by them?*
9. *Discuss the policy contained in the White Paper with regard to availment of input tax credit on capital goods.*

CHAPTER 12

Small Dealers and Composition Scheme

Question 1

Who are not eligible for composition scheme under the VAT regime? Discuss briefly.

Answer

As per the White Paper, small dealers having gross turnover exceeding ₹ 5 lakhs but less than ₹ 50 lakhs have the option of composition scheme. The following persons are not eligible for the composition scheme:

(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 manufacturer/dealer who makes inter-State purchases; or

(v) a dealer/manufacturer who issues vatable invoices.

Question 2

Explain in brief the disadvantages of composition scheme available for small dealers under VAT system.

Answer

As per the White Paper, small dealers with annual gross turnover not exceeding ₹ 50 lakh who are otherwise liable to pay VAT, have the option for a composition scheme with payment of tax at small percentage of their gross turnover. The dealers opting for this scheme will not be entitled to input tax credit. The VAT chain gets broken under the composition scheme.

Following are the disadvantages of this scheme:

1. The purchaser does not get any tax credit for the purchases made by him from the dealer operating under the composition scheme. Hence, the dealers who desire to avail input tax credit on their purchases may not prefer to buy from composition dealers.
2. The dealer cannot avail input tax credit in respect of input tax paid by him and will not be able to pass on the benefit of input tax credit, which will add to the cost of goods.

Exercise

1. *Briefly explain the meaning of a composition scheme under VAT laws ?*
2. *How does the composition scheme affect the VAT chain ?*

CHAPTER 13

VAT Procedures

Question 1

What is the significance of Registration under VAT? Under what circumstances Registration can be cancelled under VAT?

Answer

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.

Question 2

Write a brief note on Tax Payer's Identification Number (TIN)?

Answer

Tax Payer's Identification Number (TIN) is a code to identify a tax payer. It is the registration number of the dealer. It consists of 11 digit numerals throughout the country. First two characters represent the State Code as used by the Union Ministry of Home Affairs. However, the set of next nine characters is different in various states. The basic purpose of TIN is to facilitate computer applications such as detecting stops filers and delinquent accounts. It also helps in cross-checking information in respect of tax payer compliance for example the selective cross-checking of sales and purchases amongst VAT taxpayers.

Question 3

Differentiate between Compulsory Registration and Voluntary Registration under VAT Act.

Answer

Compulsory Registration: If an assessee fails to obtain registration under the applicable VAT Act, he may be registered compulsorily by the Commissioner. The Commissioner may assess the tax due from such person on the basis of evidence available with him. Resultantly, the concerned assessee is bound to pay such amount of tax. In addition, failure on the part of get himself compulsorily register result in attracting default penalty and forfeiture of eligibility to set off all input tax credit related to the period prior to the compulsory registration.

Voluntary Registration: A dealer who is not eligible for registration under VAT may also obtain registration if the Commissioner is satisfied that the business of the applicant requires registration under VAT. At the time of granting voluntary registration, the Commissioner may impose certain terms or conditions if he thinks it necessary to do so.

Question 4

Briefly explain the importance of VAT invoice.

Answer

Invoices are crucial documents for administering VAT. In the absence of invoices, VAT paid by the dealer earlier cannot be claimed as set off. The importance of a VAT invoice can be gauged from the following:-

(i) It helps in determining the input tax credit;

(ii) It prevents cascading effect of taxes;

(iii) It facilitates multi-point taxation on the value addition;

(iv) It promotes assurance of invoices;

(v) It assists in performing audit and investigation activities effectively;

(vi) It helps in checking evasion of tax.

Question 5

What is VAT invoice? What are the mandatory provisions to be complied with while issuing a VAT invoice by a registered dealer?

Answer

VAT invoice is a document providing details of goods sold along with price, tax charged and other details as may be prescribed .Vat invoice is issued by a dealer authorized under the Act.

Mandatory provisions to be complied with:

(i) Every registered dealer whose turnover of sales exceeds the specified amount shall issue to the purchaser a serially numbered tax invoice, cash memo or bill with the prescribed particulars.

(ii) The VAT invoice shall be dated and signed by the dealer or his regular employee, showing the required particulars.

(iii) The dealer shall keep a counterfoil or duplicate of such VAT invoice duly signed and dated.

Question 6

List the records to be maintained under VAT System.

Answer

Following is the list of records to be maintained under VAT System:

(i) Purchase Records

(ii) Sales Records

(iii) VAT account containing the details of output tax and input tax together with credit and debit notes issued during the period.

(iv) Separate record for exempt sale

In addition, following records should also be kept and produced before VAT Officer if the need arises:

- ✓ Copies of all invoices issued in serial number.
- ✓ Copies of all credit and debit notes issued in chronological order.
- ✓ All purchase invoices, copies of customs entries, receipts for payment of customs duty or tax and credit and debit notes received to be filed chronologically either by date of receipt or under each supplier's name.
- ✓ Details of the amount of tax charged on each sale or purchase.
- ✓ Total of the output tax and input tax in each period and a net total of the tax payable or the excess carried forward at the end of each month.
- ✓ Details of goods manufactured and delivered from the factory of the taxable person.
- ✓ Details of each supply of goods from the business premises, unless such details are available at the time of supply in invoices issued at or before that time.

Question 7

Explain the system of cross-checking under VAT Laws.

Answer

A comprehensive cross-checking system is a pre-requisite for an efficient VAT system as VAT system requires the assessees 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.

Question 8

What are the various types of audits prescribed under VAT provisions?

Answer

Various types of audits prescribed under VAT provisions are given below:

- Departmental Audit: In this audit correctness of information supplied under self-assessment system is checked. A certain percentage of the dealers are taken up for audit every year on a scientific basis. If during the course of such audit tax evasion is detected, the previous records of the concerned dealer may also be called for the purpose of audit. Under this audit authorised officers of the Department visit the business place of the dealer to conduct the audit. The auditors examine the correctness of the returns vis-à-vis the books of account of the dealer or any other information available with them. It is also worth mentioning here that the concerned auditors are equipped with the information gathered from various agencies such as suppliers, income tax department, excise and customs departments etc.
- Independent Professional Audit: Since the Departmental Audit has not been able to curb the menace of tax avoidance and tax evasion to the desirable extent, the concept of independent professional audit by chartered accountants or cost accountants has been prescribed in some of VAT Acts in India.

Exercise

1. *Does VAT system require declaration forms? Discuss.*
2. *What are the provisions in respect of returns under VAT Acts ?*
3. *What is the eligible limit of turnover for registration under VAT laws?*
4. *Enlist the various contents of the tax invoice.*
5. *Does VAT system recognize self-assessment? Discuss.*

CHAPTER 14

VAT in Special Transactions

Question 1

Explain how sales tax incentives cause problems for VAT system?

Answer

Traditionally, all the State Governments have been using sales-tax incentives as an important developmental tool particularly for industrial development of an area of the state which is either undeveloped or underdeveloped and where no one would like to set up an industry because of several disadvantages such as lack of proper infrastructure, remoteness of the market, unwillingness of the workers to work in the remote and isolated areas etc. The basic philosophy of the incentive schemes is that even if the State does not get revenue from sales tax, the taxpayer will contribute towards the development of the underdeveloped area of the State and get rewarded out of more realization.

Any fiscal exemption from tax or subsidy is against the principles of VAT as it breaks the VAT chain. VAT system works on the basis of tax credit passed at each stage of production and distribution through issuance of tax invoices. Dealers effecting exempted sales are not allowed to avail input tax credit and they cannot pass on the credit.

Question 2

Briefly explain different modes of incentives under VAT and their suitability for VAT regime.

Answer

Different modes of incentives under VAT are briefly described below:

- **Exemption from tax:** Under this mode incentives are given by way of exemption from tax. The eligible industry is not required to pay any sales tax on purchases of raw materials as well as on sales of finished product. The advantage of this mode is that the unit is not required to pay any tax and thus its realisation improves. This brings it in a position to stand the competition. The amount of exemption is to be availed within a specified period of time. The exemption so allowed ceases either with the expiry of exemption period or the exemption amount whichever occurs first.
- **Deferment of tax liability:** Under this mode eligible industry is at par with any other normal unit. It collects the tax on sale of finished goods and also pays the tax to its vendors on the purchases of raw materials etc. However, such eligible unit or industry is not required to pay the collected tax to the Government immediately. The tax liability is assessed by applying the normal provision. However, payment of tax to the Government

is deferred for particular period. Moreover, the liability is required to be paid in prescribed installments.

- Remission of Tax: Under this mode, an eligible industry is allowed to collect tax at an appropriate rate but is not required to pay the same. The unit is required to file periodical return and show the tax liability. The tax liability as per return is deemed to have been paid. The input tax paid on purchases by the unit is given as refund immediately after filing of return.

Comparative assessment of above three modes Under VAT Regime: Out of the above three modes, the exemption mode is not suitable for VAT Regime because it breaks the VAT chain. The dealers cannot issue tax invoices and pass on the credit. On the other hand, under Deferment Mode as well as Remission Mode, the VAT invoices showing VAT liability separately can be issued by the dealer which results in maintenance of VAT chain.

Question 3

Briefly describe the broad principles considered by the States while framing various sales-tax incentive schemes in VAT regime.

Answer

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.

Question 4

Explain the guidelines to ascertain whether a transaction is a works contract.

Answer

To ascertain whether a transaction is a works contract as contemplated in Article 366(29A)(b) the following guidelines must be kept in view:

- There must exist an indivisible works contract. Divisible contracts are outside the scope.

- Goods must be involved in the executions of works. Transfer of property in goods does qualify as works contract when it is incorporated in the works.
- Transfer of property in goods must pass as goods or in some other form. Form of goods has no relevance [It may be relevance for determination of rate of tax but not otherwise]
- Property in goods must pass during the execution of works and not before or after the execution of works.
- Some work has to done on the property of the contractee by the contractor.
- In the works contract, transfer of property must be an integral part of its execution.
- Pure labour contracts or service contracts are outside the purview of the sales tax /VAT law.
- If during the execution of works contracts, goods are consumed and their identity is lost then no transfer of property occurs in those goods.
- There must be a dominant intention to effect the transfer of property in goods in execution of works contract. However, even if the dominant intention of the contract is rendering of a service and in that process if there is a transfer of property in goods, the contract will amount to a works contract.

Question 5

Write a brief note to explain the impact of VAT on lease transactions.

Answer

Impact of VAT on lease transactions:-

1. Lease is chargeable to tax by virtue of sub – clause (d) of clause 29A of Article 366 of the Constitution of India. This is a tax on the transfer of right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.
2. The taxable event is the transfer of right to use any goods and hence immovable property is not covered.
3. The taxable turnover means the valuable consideration paid or payable for any sale in a given period. Certain States have provided for deduction of interest or finance charges for the purpose of determination of taxable turnover.
4. Lease of an asset in the course of inter-State trade cannot be subject to VAT.
5. Transfer of right to use does not presuppose ownership of the goods. A sub-lease of an asset also is taxable unless specifically exempt under the State VAT Law.
6. Sale of leased asset after the end of the lease period is taxable as a normal sale.
7. The maintenance of leased asset involving supply of materials for maintenance/ repair by the lessor will not amount to a works contract as there would be no transfer of property in

such materials to the lessee. Hence, there would be no VAT on the value of materials supplied during maintenance/repair of the leased asset.

8. The assets given on lease will be generally capitalized by the lessor in his books and will be treated as capital assets. Thus, provision relating to input tax credit on capital goods will apply.

9. The lessor would pay VAT at the time of procurement of goods. However, liability to pay VAT on lease rentals will be spread over the tenure of the lease. Therefore, some States have provided for utilization of input credit for paying output tax only over the entire period of lease

Question 6

Explain the concept of Hire-purchase transactions. Comment upon their eligibility to VAT.

Answer

Concept of Hire-purchase Transactions: Under hire-purchase transactions, the hirer acquires the property (goods) immediately on signing the hire-purchase agreement but the ownership or title of the same is transferred only when the last installment is paid. The hire-purchase transactions are governed by Hire-Purchase Act, 1972. The aforementioned Act defines a hire-purchase as "an agreement under which goods are let on hire and under which the hirer has an option to purchase them in accordance with the terms of the agreement and includes an agreement under which:

(i) The owner delivers possession of goods to a person on condition that such person pays the agreed amount in periodic installments;

(ii) The property in the goods is to pass to such person on the payment of the last of such installments; and

(iii) Such person has a right to terminate the agreement at any time before the property so passes."

Hire-purchase transactions and VAT: The definition of term "sale " under VAT laws of various states provides that the taxable event will be the delivery of goods on hire-purchase or any system of payment by installments. It can be safely inferred that hire-purchase transactions are effected for monetary consideration. In case of hire-purchase, ownership of goods passes when the hirer exercises his option to purchase the goods subject to fulfillment of the terms of the agreement and then the transaction fructifies into a concluded (normal) sale. The important point to be noted in case of hire-purchase transaction is that taxable event is delivery of goods and not the completed sale on payment of the last installment. Resultantly, VAT is attracted on the delivery of goods.

Question 7

Explain briefly whether VAT is leviable on each of the following lease transactions:-

(a) Inter State Leasing

(b) Sale of leased asset after lease period

(c) Maintenance of leased asset

Answer

(a) 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.

(b) 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) The maintenance of the leased asset involving supply of materials for maintenance/repair by the lessor would not amount to works contract, as there would be no transfer of property in such materials to the lessee. Thus, there would be no VAT on the value of the materials supplied during maintenance/repair of the asset. In case of computers, generally the lessor undertakes the maintenance and repair of the leased computers. However, the materials required during such maintenance /repair would be input for sale and input tax credit will be available.

Exercise

1. *What is the taxable turnover for works contract? Also mention the types of tax rates specified under various VAT laws.*
2. *What is a works contract? Is it a sale? Explain with reference to the constitutional authority providing for the same.*
3. *How can the input tax credit be claimed in case of lease transactions?*

CHAPTER 15

VAT and Central Sales Tax

Question 1

Briefly explain the provisions of Central Sales Tax in case of Works Contract.

Answer

There was confusion as whether State Rules could be applied for inter-state Works Contract because there was no provision relating to Works Contract pricing. The aforementioned matter had been examined by Hon'ble Apex Court in M/s Mahim Patram Pvt. Ltd. Vs Union of India & others-20074 VST 248 (SC). It has been held that Section 13(3) of Cental Sales Tax, 1956 as long as Central Government does not make rules for the determination of turnover in relation to inter-state works contract, the turnover for the inter-state works contract can be determined as per Rules made by the State Government. For instance, a dealer from Karnataka executes inter-state works contract in relation to supply and installation of plant and machinery in Tamil Nadu. He can claim the deduction towards the labour charges either on actual basis [provided proper supporting bills are there] or standard deduction as specified in Karnataka VAT Act.

Question 2

On what kind of sales Central Sales Tax is levied? Briefly explain meaning of term "inter-state sale or purchase"

Answer

According to Constitution of India tax on inter-state sale or purchase can be levied only by Union Government. Central Sales Tax Act, 1956 has been enacted for this purpose. According to Section 6(1) of Central Sales Tax subject to other provisions of the Act, every dealer shall be liable to pay tax under this Act on all sale of goods effected by him in the course of inter-state trade or commerce.

According to section 3 of Central Sales Tax a sale or purchase of goods shall be deemed to take place in the course of inter-state trade or commerce if the sale or purchase:-

(a) Occasions the movement of goods from one state to another or

(b) Is effected by a transfer of documents of title to the goods during their movement from one state to another.

The above-mentioned first mode is 'direct inter-state sale' whereas second mode is 'by transfer of documents'.

Question 3

Illustrate with an example, whether inter-State purchases liable to central sales tax are eligible for input credit and explain the effect of the same on inter-State transactions.

Answer

The inter-State purchases liable to central sales tax are not eligible for input tax credit. However, the liability to central sales tax can be set off against the input tax credit earned on other eligible purchases. By way of an example, a dealer in State K purchases goods from another dealer in State M. The dealer in State M charges CST at 2% on this sale against C Form produced by dealer in State K. The tax is deposited in State M. Though it is called CST, the Central Government does not get any share in this and it is a revenue receipt of the selling State. The dealer in State K sells these goods within the State K and collects VAT which is deposited in State K. The question is whether the dealer in State K can claim input tax credit of the central sales tax paid by him to be set off against the VAT liability in State K. This is not possible as State K will not permit the set off against the tax paid to another State M. This is because the same if permitted would result in loss of revenue to State K. This is the reason why CST is not vatable.

The effect on inter-State trade is that trade will be uncompetitive for the States that are net importers because in those States consumer prices will be high. CST is origin based tax collected by the exporting State while VAT is a destination based consumption tax. They both cannot go together and to that extent the objective behind the VAT regime in lowering of prices for consumers cannot be achieved.

Exercise

1. *Explain with the help of an example why CST is not vatable.*
2. *Explain how the CST in the VAT regime leads to cascading effects of taxes.*