

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

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

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

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

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

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

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

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

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

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

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

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

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

Hence, the aforesaid services are taxable.

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

Particulars	Amount(₹)
Speed post services	6,50,000
Basic mail services	Nil
Issue of postal orders	Nil
Distribution of mutual funds, bonds and passport applications	8,00,000
Transfer of money through money orders	Nil
Rural postal life insurance services	3,00,000
Collection of telephone and electricity bills	5,50,000
Pension payments	Nil
Operation of saving accounts	Nil
Express parcel post	<u>7,00,000</u>
Value of taxable service	<u>30,00,000</u>
Service tax @ 12% [30,00,000×12%]	3,60,000
Education cess @ 2% [3,60,000×2%]	7,200
Secondary and higher education cess @ 1% [3,60,000×1%]	<u>3,600</u>
Service tax liability	<u>3,70,800</u>

(d) Computation of the tax liability for the period March 1, 2013 to March 31, 2013:-

	₹
Inputs purchased in the month [12.5% VAT]	2,00,000
Output sold in the month (within the State)	3,00,000
Inter-State sales	2,00,000
Input credit (including capital goods) (₹ 25,000 + ₹ 25,000)	50,000
Output tax	12,000
CST for Inter-State sale @ 2%	4000
State VAT liability (₹ 12,000 – ₹ 50,000)	Nil
Excess credit carried forward to subsequent month	38,000
Central sales tax to be paid (₹ 4,000 – ₹ 38,000)	Nil
Excess credit carried forward to subsequent period	34,000

(e) Computation of assessable value and customs duty payable on the machine:

FOB value	16,000 UK pounds
Add: Design and development charges	1,000 UK pounds
Add: Freight (air) (Note-3)	3,200 UK pounds
Add: Insurance 1.125% of FOB (Note-4)	<u>180 UK pounds</u>
Total	<u>20,380 UK pounds</u>
Total in rupees @ ₹ 80 per pound (Note-1)	₹ 16,30,400
Add: Local agency commission	
(2% of 16000 UK pounds)= 320 UK pounds × ₹ 80	<u>₹ 25,600</u>
C.I.F value	₹ 16,56,000
Add: Landing charges @1%of CIF value	<u>₹ 16,560</u>
Assessable value	₹ 16,72,560
Add: Basic custom duty @ 20% (Note-2)	<u>₹ 3,34,512</u>
Total	₹ 20,07,072
Add: CVD @12%	₹ 2,40,848.60
Add: Education cess (3% of custom duty) = 3% of (₹ 3,34,512+ ₹ 2,40,848.60)	<u>₹ 17,260.82</u>
Total for Special CVD	₹ 22,65,181.46
Special CVD @4%	₹ 90,607.26
Total duty payable:	₹ 3,15,993.28
(₹3,34,512+ ₹ 2,40,848.60+ ₹ 17,260.82+ ₹ 90,607.26)	₹ 6,83,229(Rounded off)

Notes:

1. Exchange rate =₹ 80 per UK pound (date of presentation of bill of entry)
2. Section 15 of the Customs Act, 1962 provides that rate of duty shall be :-
the rate in force on the date of presentation of bill of entry
or
the rate in force on the date of entry inward
whichever is later.
3. The air freight should not exceed 20% of FOB value. Hence actual air freight of 5,000 pounds has been restricted to 3,200 pounds (16,000 × 20%).
4. Where the insurance charges are not ascertainable, such cost shall be 1.125% of FOB value of the goods.

2. (a) (i) The said statement is not valid. Rule 14 has been amended to provide that interest is payable in either of the following two cases:-
- (a) CENVAT credit has been taken AND utilized wrongly.
 - (b) CENVAT credit has been erroneously refunded.

Since in the given case CENVAT credit has been taken wrongly **but has not been utilized**, so interest is not payable.

- (ii) The said statement is not valid. With the amendment in Rule 6 of CENVAT Credit Rules, 2004, rate for CENVAT credit reversal for exempted goods has been raised from 5% to 6%. Hence, Mr. Ajay Goel, a manufacturer of both dutiable and exempted goods, opting not to maintain separate accounts, has the option to pay an amount equal to 6% of the value of exempted goods.
- (b) (i) The Services by a veterinary clinic in relation to health care of animals or birds is not liable to service tax as the Mega Exemption Notification grants exemption from service tax to this service.
- (ii) The Services by way of public conveniences such as provision of facilities of washrooms are not taxable but exempt from service tax vide mega exemption notification.
- (c) The basic allowance to passengers other than tourists consists of:-
- (i) Used personal effects, excluding jewellery required for satisfying daily necessities of life.
 - (ii) Other articles which are carried on the person or in his accompanying baggage.

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

3. (a) Yes, the duty is payable on such testing equipments. The facts of the given case are similar to the case of ***Usha Rectifier Corpn. (I) Ltd. v. CCEX., New Delhi 2011 (263) E.L.T. 655 (S.C.)*** The Supreme Court observed that once the appellant had themselves made admission regarding the development of testing equipments in their own Balance Sheet, which was further substantiated in the Director's report, it could not make contrary submissions later on. Moreover, assessee's stand that testing equipments were developed in the factory to avoid importing of such equipments with a view to save foreign exchange, confirmed that such equipments were saleable and marketable. Hence, the Apex Court held that duty was payable on such testing equipments.

- (b) Yes, PSB Constructions is entitled to claim refund on service tax paid on construction activity so done by them. The facts of the given case are similar to the case of **CCE (A) v. KVR Construction 2012 (26) STR 195 (Kar.)**. The High Court of Karnataka, distinguishing the landmark judgment by Supreme Court in the case of **Mafatlal Industries v. UOI 1997 (89) E.L.T. 247 (S.C.)** relating to refund of duty/tax, held that service tax paid mistakenly under construction service although actually exempt, is payment made without authority of law. Mere payment of amount would not make it 'service tax' payable by the respondents. When once there is lack of authority to collect such service tax from the respondent, it would not give authority to Department to retain such amount and validate it. In view of the above, it was held that refund of an amount mistakenly paid as service tax could not be rejected on ground of limitation under section 11B of the Central Excise Act, 1944.
- (c) No, the application for remission of duty filed by the Landmark Laminates is not valid in law. The facts of the given case are similar to the case of **CCE v. Decorative Laminates (I) Pvt. Ltd. 2010 (257) E.L.T. 61 (Kar.)**. The High Court, while interpreting section 23, stipulated that section 23 states that only when the imported goods have been lost or destroyed at any time before clearance for home consumption, the application for remission of duty can be considered. Further, even before an order for clearance of goods for home consumption is made, relinquishing of title to the goods can be made; in such event also, an importer would not be liable to pay duty.

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

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

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

4. (a) No, the Department's plea is not justified in law. The facts of the given case are similar to the case of **CCE v. Tarpaulin International 2010 (256) E.L.T. 481 (S.C.)**.

The Apex Court opined that stitching of tarpaulin sheets and making eyelets did not change basic characteristic of the raw material and end product. The process did not bring into existence a new and distinct product with total transformation in the original commodity. The original material used i.e., the tarpaulin, was still called tarpaulin made-ups even after undergoing the said process. Hence, it could not be said that the process was a manufacturing process. Therefore, there could be no levy of Central excise duty on the tarpaulin made-ups.

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

- (b) The High Court in the case of **CCEx. & ST v. Volvo India Ltd. 2011 (24) S.T.R. 25 (Kar.)** held that the question as to whether the assessee is liable to pay service tax falls squarely within the exception carved cut in section 35G of the Central Excise Act, 1944, '*an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment*', and the High Court has no jurisdiction to adjudicate the said issue. The appeal lies to the Apex Court under section 35L of the Central Excise Act, 1944, which alone has exclusive jurisdiction to decide the said question.
 - (c) No, BSF is not liable to pay custom duty. The facts of the given case are similar to the case of **Commissioner of Customs (Import), Mumbai v. Konkan Synthetic Fibres 2012 (278) E.L.T. 37 (S.C.)**. The Supreme Court stated that it was a settled proposition in a fiscal or taxation law that while ascertaining the scope or expressions used in a particular entry, the opinion of the expert in the field of trade, who deals in those goods, should not be ignored, rather it should be given due importance. The Court, on referring to the case of **Collector of Customs v. Swastik Woollens (P) Ltd. 1988 (37) E.L.T. 474 (S.C.)**, held that when no statutory definition was provided in respect of an item in the Customs Act or the Central Excise Act, the trade understanding, i.e. the understanding in the opinion of those who deal with the goods in question was the safest guide. Therefore, statement of the textile commissioner that the product imported by the assessee was covered under said notification needs to be accepted. Thus, the Supreme Court concluded that the imported goods were covered under the exemption notification.
5. (a) (i) According to provisions of section 23F(1) of Central Excise Act, 1944 where on a representation from commissioner or otherwise, it is proved that an advance ruling was obtained by the concerned applicant by **fraud or misrepresentation of facts**, the authority for advance ruling can declare the advance ruling as void ab initio [from the beginning]. Consequently, all the provisions of the Central Excise Act shall apply to the applicant as if such ruling had never been made. Copy of such order is sent to the Commissioner of Central Excise.
- (ii) The Central Excise Tariff Act, 1985 incorporates five Rules of Interpretation.

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

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

- (b) (i) (a) According to provisions of Section 89(1)(a) of Finance Act, 1994 with effect from 28.05.2012, whoever knowingly evades the payment of service tax under this chapter shall be punishable with imprisonment depending upon the amount involved.

Since in the given case, Mr. Mohit has provided Consulting Engineer's Services of ₹ 60 lakhs during the month of January, 2013 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. Mohit can face imprisonment upto three years in accordance with provisions of Section 89(1)(i) of Finance Act, 1994.

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

As in the present case Mr. Chintu avails and utilizes credit of taxes of ₹45 lakhs during the quarter ending March, 2013 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. Chintu can be sent for imprisonment up to one year as per provisions of Section 89(1)(ii) of Finance Act, 1994.

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

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

Further, the States who have continued the old incentive schemes in the form

of exemption/deferment considered the following additional issues:

- (i) the units enjoying exemption under the old law should not be put to disadvantageous position under the VAT system.
 - (ii) the units purchasing inputs without payment of any tax should be allowed to enjoy the benefit under the new system also.
- (c) The statement is not correct. As per section 125 of the Customs Act, 1962, whenever confiscation is ordered, the adjudicating officer may provide an option to the owner of the goods to pay redemption fine in lieu of confiscation if the importation or exportation of goods is prohibited. However, if importation or exportation of goods is not prohibited, the option to pay redemption fine shall be given to the owner of goods.

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

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

OR

(a) Procedure of Excise Audit, 2000:-

- (i) Selection of Assessee:** Depending upon the manpower availability, about 300 to 400 units are selected for conducting audit during a financial year. Selection of the unit is based taking into account the 'risk-factors'.
- (ii) Desk Review:** The auditors are assigned the assessee to be audited at the beginning of the financial year. They are required to gather as much information about the assessee as possible by interacting with the assessee.
- (iii) Gathering and documenting information:** The auditor may also require certain documents or information from the assessee to complete his preliminary investigation. For this, he may write letter to the assessee or send him a questionnaire to obtain this information.
- (iv) Touring of the premises:** The auditor then visits the unit of the assessee to see the actual running of the unit, the systems that are followed for maintaining records in various sections and the system of movement of goods and the related documents within the unit.
- (v) Audit Plan:** Based on his experiences and the information gathered so far about the assessee, the auditor prepares an 'audit plan'. The idea of developing audit plan is to list the areas which, as per the auditor are the vulnerable areas from the revenue point of view. A well thought audit plan generally increases the success of audit result manifolds.
- (vi) Verification:** The auditors visit the unit of the assessee on a scheduled date (informed to the assessee in advance) and carry out the scrutiny of the records of the assessee as per the audit plan. The purpose of verification (carried out in presence of the assessee) is to reasonably ensure that no amount, which as per the Central Excise law is chargeable to duty, escapes taxation.
- (vii) Audit Objection and Audit Para:** Where the auditor finds instances of short payment of duty or non-observance of Central excise procedures, he is required to discuss the issue with the assessee. After explanation provided by the assessee, if the auditor is satisfied that such non-tax compliance has occurred, he records the same as an 'Audit Objection' or 'Audit Para' of the 'draft audit report' that he would be preparing at the end of the verification process.
- (viii) Audit Report:** At the end of the process of verification, the auditor prepares an 'Draft Audit Report' which provides (issue or para wise) the issue in brief, the reply or the explanation of the assessee, the reason for the auditor not being satisfied with the reply, the amount of short payment (if tabulated) and the recoveries of the same (if could be made at the spot). It is then submitted to the superior officers for review after which it becomes final and in cases where the disputed amounts have not already been paid by the assessee at

the spot, demand notices are issued by the Department for their recoveries.

- (b) (i) As per rule 6 of the Place of Provision of Services Rules, 2012, place of provision of services provided by way of admission to, or organization of, a cultural, artistic, sporting, scientific, educational, or entertainment event, or a celebration, conference, fair, exhibition, or similar events, and of services ancillary to such admission, shall be the place where the event is actually held. Since in the given case, event is held in India, place of provision of services is India.
 - (ii) As per rule 7 of the Place of Provision of Services Rules, 2012, where any service referred to in rules 4, 5, or 6 is provided at more than one location, including a location in the taxable territory, its place of provision shall be the location in the taxable territory where the greatest proportion of the service is provided. In the given case, notwithstanding the fact that the greatest proportion of service is outside the taxable territory, the place of provision will be the place in the taxable territory where the greatest proportion of service is provided, which in this case is Kerala.
 - (c) Section 76(1)(b) of the Customs Act, 1962 *inter alia* provides that no drawback shall be allowed in respect of any goods, the market price of which is less than the amount of drawback due thereon. In this case, the market price of the goods is ₹ 75,000, which is less than the amount of duty drawback, i.e. $1,000 \text{ kg} \times ₹ 100 = ₹ 1,00,000$. Hence, no duty drawback shall be allowed.
7. (a) (i) As per section 35B of the Central Excise Act, 1944, the matters in respect of which an appeal does not lie before the Customs Excise Service Tax Appellate Tribunal against any order passed by Commissioner (Appeals) are as follows:-
- (a) case of loss of goods during transit or during their processing in a warehouse or in storage in a factory or a warehouse
 - (b) rebate of excise duty on export goods or on excisable materials used in the manufacture of export goods or goods exported without payment of duty (except exports to Nepal or Bhutan);
 - (c) CENVAT credit which is utilized for payment of excise duty on final products
- (ii) Section 4(3)(b) of Central Excise Act, 1944 states that persons shall be deemed to be related if:
- (a) they are inter-connected undertakings;
 - (b) they are relatives;
 - (c) amongst them the buyer is a relative and a distributor of the assessee, or a sub-distributor of such distributor; or
 - (d) they are so associated that they have interest, directly or indirectly, in the business of each other.

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

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

Earlier of the following two dates:

Date of debit in the books of account of person receiving the service [which is Bansal Ltd. in the present case]	31.07.2013
Date of making the payment [by Bansal Ltd. in the present case]	23.10.2013

Thus, Point of Taxation will be 31.07.2013.

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

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