

PAPER – 8: INDIRECT TAX LAWS

Question No. 1 is compulsory.

Answer any five questions from the remaining six questions.

Wherever necessary, suitable assumptions may be made and disclosed by way of note.

Working notes should form part of the respective answers.

Question 1

- (a) AB Engineers are manufacturers of a product which is subject to excise duty. They are also eligible for exemption in terms of Notification No. 8/2003 CE dated 01.03.2003 for the current financial year 2016-17. The following are the details of clearance of goods effected during the year 2016-17.

Item No.	Particulars	Amount (₹ in lakh)
1.	Value of clearance of their goods "AB" (own brand)	500
2.	Value of clearance of goods produced with other brand names	200
3	Clearance for captive consumption	150
4.	Export clearance	200
5.	Clearance of goods exempted under notification other than Notification No. 8/2003 CE.	100

Other information in respect of the above:

- (a) Item No. 2 - value of clearance with other brand names - includes goods manufactured in rural area ₹100 lakh.
- (b) Item No. 3 - value of clearance for captive consumption - final products are eligible for SSI Exemption.
- (c) Rate of excise duty – 12.5%.
- (d) Excise duty paid amounting ₹ 3 lakhs on inputs consumed in exempted clearance (Item No. 5)
- (e) Excise duty paid amounting ₹5 lakh on inputs consumed in exempted clearance (Item No. 1 – No opening or closing stock of inputs).

The Suggested Answers for Paper 8: Indirect Tax Laws are based on the provisions as amended by the Finance Act, 2015 and notifications/circulars issued up to 30.04.2016 which were relevant for November, 2016 examinations.

(f) Excise duty paid amounting ₹ 7.5 lakh on capital goods purchased in the current financial year (Exclusively for own brand - Item No. 1).

(g) Exports made by AB Engineers are exempt from duty (Item No. 4).

Calculate the total duty payable and duty payable in cash, if any, by AB Engineers for the current financial year 2016-17. Make assumptions if required and show the working notes separately. (5 Marks)

(b) New Bank of India Ltd. provides the following information for the month of April, 2016. Compute the value of taxable services and service tax payable. Rate of service tax including cess is 14.5%.

S. No.	Particulars	Amount (₹ in lakh)
1.	Interest received on various loans including home loan	2,000
2.	Administrative charges and folio charges collected.	120
3.	Value of sale and purchase of forward contract.	100
4.	Charges for credit card and debit card facilities extended	200
5.	Charges for ATM card transaction	200
6.	Commission received for DD, transfer and cheque collection	200
7.	Margin earned on reverse repo transactions	400

(5 Marks)

(c) You are required to compute the value of taxable services and service tax payable thereon from the gross amount charged in respect of the following transactions made available by A. Ltd. dealing in agriculture related services in the month of December, 2015:

Particulars	₹ in lakh
(i) Renting of agro-machinery	5.0
(ii) Cultivation of ornamental flowers	2.5
(iii) Processing of tomato ketchup	3.0
(iv) Plantation of rubber	3.5
(v) Processing of potato chips	1.5

This company is not entitled for small scale exemption in 2015-16. Assume the rate of service tax as 14.5%. (including Swachh Bharat Cess @ 0.5%). Explanation is to be given along with the working. (5 Marks)

(d) F. Ltd. imported a machine from UK in May, 2015. The details in this regard are as under:

- (i) FOB value of the machine: 10,000 UK Pound
- (ii) Freight (Air): 3000 UK Pound

- (iii) Licence fee, the buyer was required to pay in UK: 400 UK Pound
- (iv) Buying commission paid in India ₹ 20,000
- (v) Date of bill of entry 20.05.2015 and the rate of exchange notified by CBEC on this date was ₹99.00 per one pound. Rate of BCD was 7.5%.
- (vi) Date of arrival of aircraft was 25.05.2015 and the rate of exchange notified by CBEC on this date was ₹98.50 per pound and rate of BCD was 10%.
- (vii) Rate of additional customs duty was 12.5% and there was no special additional duty of customs.
- (viii) Insurance premium details were not available.

You are required to compute the assessable value of the machine for valuation of customs duty and the total duty payable. You may make suitable assumptions wherever required. (5 Marks)

Answer

- (a) Computation of excise duty payable by AB Engineers for current financial year 2016-17

Particulars		₹ in lakh
Clearances of goods with own brand name		500
Clearances of goods with brand name of others manufactured in rural area		<u>100</u>
Total clearances eligible for SSI exemption		600
Less: 1 st clearances of ₹ 150 lakh exempt under Notification No. 8/2003 CE	Note - 1	<u>150</u>
Dutiable clearances		450
Add: Captive consumption [Intermediate goods used captively in the manufacture of final products which are eligible for SSI exemption are exempt from excise duty.]		-
Add: Clearances with brand name of others [₹ 200 lakh - ₹ 100 Lakh]		<u>100</u>
Total dutiable clearances		550
Total excise duty payable @ 12.5%		68.75
Less: 100% CENVAT credit on capital goods		<u>7.50</u>
Excise duty payable in cash		<u>61.25</u>

Notes:

1. As per *Notification No. 8/2003 CE dated 01.03.2003*, while determining the limit of first ₹ 150 lakh eligible for SSI exemption:
 - (i) export clearances, captive consumption and exempted clearances are not included, and
 - (ii) clearances with the brand name of others which are ineligible for SSI exemption has to be excluded. However, clearances with the brand name of others manufactured in rural area are eligible for SSI exemption and hence, such clearances are included therein.

2. As per *Notification No. 8/2003 CE dated 01.03.2003*, excise duty paid on inputs consumed in 1st clearances of up to ₹ 150 lakh (exempt under *Notification No. 8/2003 CE*) is not available as CENVAT credit.

Further, excise duty paid on inputs consumed in clearances exempt under notification other than *Notification No. 8/2003* is also not available as CENVAT credit [Rule 6 of CENVAT Credit Rules, 2004].

3. Though units eligible for SSI exemption can avail CENVAT credit on capital goods, they can utilize the same only after crossing the limit of exempt clearances of ₹ 150 lakh.

An assessee eligible to avail SSI exemption is allowed to take the CENVAT credit in respect of capital goods for the whole amount of the duty paid on such capital goods in the same financial year [Third proviso to rule 4(2)(a) of the CENVAT Credit Rules, 2004].

- (b) Computation of value of taxable service and service tax payable by New Bank of India Ltd. for April, 2016

Particulars	₹
Interest received on various loans including home loans [Note 1]	-
Administration charges and folio charges collected	1,20,00,000
Value of sale and purchase of forward contract [Note 2]	-
Charges for credit card and debit card facilities extended	2,00,00,000
Charges for ATM card transactions	2,00,00,000
Commission received for DD, transfer and cheque collection	2,00,00,000
Margin earned on reverse repo transaction [Note 3]	-
Value of taxable services including service tax and Swachh Bharat Cess (SBC)	7,20,00,000

Value of taxable service ³ [₹ 7,20,00,000 × 100/114.5] (rounded off)	6,28,82,096
Service tax including cess @ 14.5% (rounded off)	91,17,904

Notes:

1. Service of extending loans including home loans in so far as the consideration is represented by way of interest is covered in the negative list under section 66D(n)(i) of the Finance Act, 1994.
2. Sale or purchase of forward contracts, being a transaction in money, is outside the scope of the definition of service.⁶
3. Reverse repo being a security, which is goods, is excluded from the definition of service.

(c) Computation of value of taxable service and service tax payable by A Ltd.

Particulars	₹
Renting of agro-machinery [Note 1]	-
Cultivation of ornamental flowers [Note 2]	-
Plantation of rubber [Note 3]	-
Processing of tomato ketchup [Note 4]	-
Processing of potato chips [Note 4]	-
Value of taxable service ⁸	Nil
Service tax	Nil

Notes:

1. Services relating to agriculture or agricultural produce by way of renting of agro-machinery are covered in negative list of services under section 66D(d)(iv) of the Finance Act, 1994.
2. Cultivation of ornamental flowers is included in the definition of agriculture and thus included in the negative list under section 66D(d)(i) of the Finance Act, 1994.

³ It is presumed that New Bank of India Ltd. is not eligible for small service provider's exemption and that the various amounts given in the question are inclusive of service tax.

⁶ It is presumed that forward contract is in relation to securities. However, even if the forward contract is in relation to commodities, the same will also be outside the scope of definition of service as such contracts would be covered under trading of goods involving transfer of title in goods on a future date at a pre-determined price.

⁸ It is presumed that the gross amount charged in respect of the transactions given in the question is inclusive of service tax.

3. Plantation crops are also covered in the definition of agriculture and thus included in the negative list under section 66D(d)(i) of Finance Act, 1994.
4. Potato chips and tomato ketchup are not agricultural produce and thus do not fall under clause (d) of section 66D of the Finance Act, 1994. However, conversion of potato and tomato into potato chips and tomato ketchup respectively amounts to manufacture since after such processing new products with different name, character and use emerge¹². Therefore, such processing will fall under clause (f) of section 66D and thus, not be liable to service tax.

(d) Computation of assessable value and total customs duty payable by F Ltd.

Particular	Amount (£)
FOB value	10,000
Add: License fee required to be paid in UK [Note – 1]	<u>400</u>
Customs FOB value	<u>10,400</u>
Exchange rate is ₹ 99 per £ [Note – 2]	
	₹
Value in rupees	10,29,600.00
Add: Air freight [Restricted to 20% of ₹ 10,29,600 (customs FOB value)] [Note – 3]	2,05,920.00
Insurance @ 1.125% of ₹ 10,29,600 [Note – 4]	11,583.00
Buying commission is not includible in the assessable value [Note – 5]	<u> </u>
	12,47,103.00
Add: Landing charges @ 1% [Note – 6]	<u>12471.03</u>
Assessable value	12,59,574.03
Rate of duty is 10% [Note – 7]	
Add: Basic custom duty @ 10% (₹ 12,59,574.03 × 10%) – rounded off	<u>1,25,957.00</u>
Value for additional duty of customs - Section 3(2) of the Customs Tariff Act, 1975	13,85,531.03
Add: Additional duty of customs @ 12.5% - rounded off	1,73,191.00
Customs duty payable	2,99,148
Education Cess and secondary and Higher Education Cess	<u>8,974</u>

¹² It is presumed that it does not undertake any manufacturing activity. Further, the processing of tomato ketchup and potato chips undertaken by it is on job-work basis and the excise duty payable on such processing is discharged by the principal manufacturer.

(3% of ₹ 2,99,148) [rounded off]	
Total customs duty payable [rounded off]	3,08,122

Note:

1. Engineering and design charges paid in UK, licence fee relating to imported goods payable by the buyer as a condition of sale, materials and components supplied by the buyer free of cost and actual insurance charges paid are all includible in the assessable value - Rule 10(1)(c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [hereinafter referred to as Customs Valuation Rules].
2. Rate of exchange notified by CBEC on the date of filing of bill of entry has to be considered [Third proviso to section 14 of the Customs Act, 1962].
3. In case of goods imported by air, freight cannot exceed 20% of FOB value [Second proviso to rule 10(2) of the Customs Valuation Rules].
4. Insurance charges, when not ascertainable, have to be included @ 1.125% of FOB value of goods [Clause (iii) of first proviso to rule 10(2) of the Customs Valuation Rules].
5. Buying commission is not included in the assessable value [Clause (a)(i) of sub-rule (1) of rule 10 of the Customs Valuation Rules].
6. Landing charges @ 1% of the CIF value are includible in the assessable value, whether actually incurred or not [Clause (ii) of first proviso to rule 10(2) of the Customs Valuation Rules].
7. Rate of duty will be the rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later [Proviso to section 15 of the Customs Act, 1962].

Question 2

- (a) Z Ltd. is a manufacturer of excisable goods. From the following information made available regarding central excise duty paid on procurement of inputs etc., during January 2016, you are required to determine the amount of CENVAT credit available to this company giving explanations for the treatment of the given items:

S.No.	Particulars	Central excise duty paid (₹)
(i)	Inputs used in factory of manufacture	1,00,000
(ii)	Goods for use in generation of electricity for self-consumption	50,000
(iii)	Cement for construction of a godown in the factory	15,000
(iv)	Goods for laying of foundation for support of capital goods	25,000

(v)	Goods primarily for personal use of employees in staff colony	20,000
(vi)	Consumable stores for use in manufacture of goods	15,000

Z Ltd. is not eligible for SSI exemption under Notification No. 8/2003 C.E. dated 01.03.2003. (4 Marks)

(b) Discuss whether service tax is chargeable in respect of Goods Transport Agency service in each of the following independent cases:

- (i) Transportation of organic manures ₹50,000.
- (ii) Transportation of goods by a single goods carriage ₹1,800.
- (iii) Transportation of military equipments ₹25,000.
- (iv) Transportation of polyester fibre ₹15,000.

Necessary explanation is also to be given. (4 Marks)

(c) Y Ltd. provided works contract services in December, 2015 as per following details:

S.No.	Particulars	Total amount charged (₹)
(i)	Installation of machinery	2,00,000
(ii)	Completion and finishing service (plastering of a building)	1,00,000
(iii)	Repairs of machinery	50,000
(iv)	Additions to damaged structure	2,50,000
(v)	Installation of electrical fittings of immovable property	75,000

You are required to compute the taxable value of services and service tax payable thereon for the month of December, 2015 assuming rate of service tax as 14% and Swachh Bharat Cess as 0.5%. Y Ltd. is not eligible for small scale benefit under Notification No. 33/2012 ST dated 20.06.2012. Explanation must be stated for the working. (4 Marks)

(d) A person makes an unauthorised import of goods liable to confiscation. After adjudication, Assistant Commissioner provides an option to the importer to pay fine in lieu of confiscation. It is proposed to impose fine (in lieu of confiscation) equal to 50% of margin of profit. The following particulars are made available:

- Assessable value ₹3,00,000
- Total duty payable ₹1,20,000
- Market value ₹5,00,000

You are required to calculate amount of fine and total payment to be made by importer to clear the consignment. (4 Marks)

Answer**(a) Computation of CENVAT credit available with Z Ltd.**

Particulars	₹
Inputs used in factory of manufacture [Note 1]	1,00,000
Goods for use in generation of electricity for self-consumption*[Note 1]	50,000
Cement for construction of a godown in the factory [Note 2]	-
Goods for laying of foundation for support of capital goods [Note 2]	-
Goods primarily for personal use of employees in staff colony [Note 2]	-
Consumable stores for use in manufacture of goods [Note 1]	<u>15,000</u>
Total CENVAT credit available	1,65,000

Note:

- As per the definition of the inputs under rule 2(k) of the CENVAT Credit Rules, 2004, there is a specific inclusion with regard to the following: -

- all goods used in the factory by the manufacturer of the final product, and
- all goods used for generation of electricity for self-consumption²⁴.

Hence, the CENVAT credit of the excise duty paid on the aforesaid goods is available.

- As per the definition of inputs under rule 2(k) of the CENVAT Credit Rules, 2004, there is specific exclusion with regard to the following: -

- goods used for construction of a building or a civil structure or part thereof,
- goods used for laying of foundation for support of capital goods, and
- goods used in residential colony when the same are used primarily for personal use or consumption of any employee.

Thus, CENVAT credit cannot be claimed in respect of the above goods.

- It has been assumed that goods for use in generation of electricity for self-consumption are inputs and not capital goods.
- (b) (i) **Exempt.** Transportation of organic manure by goods transport agency (GTA) is exempt vide *Notification No. 25/2012 ST dated 20.06.2012* (hereinafter referred to as Mega Exemption Notification).
- (ii) **Not exempt.** Transportation of goods by a GTA on a consignment transported in a single carriage is exempt vide Mega Exemption Notification only if the gross amount charged for such transportation does not exceed ₹ 1,500.

²⁴ It is presumed that goods for use in generation of electricity for self-consumption are inputs and not capital goods.

- (iii) **Exempt.** Transportation of military equipments by GTA is exempt vide Mega Exemption Notification.
- (iv) **Not exempt.** Since transportation of cotton is exempt vide Mega Exemption Notification, service tax will be payable on transportation of polyester fiber by goods transport agency.
- (c) **Computation of value of taxable services and service tax payable thereon by Y Ltd.**

Particulars	₹
Installation of machinery (₹ 2,00,000 × 40%) [Note 1]	80,000
Completion and finishing service plastering of a building (₹ 1,00,000 × 70%) [Note 2]	70,000
Repairs of machinery (₹ 50,000 × 70%) [Note 2]	35,000
Additions to damaged structure (₹ 2,50,000 × 40%) [Note 1]	1,00,000
Installation of electrical fittings of immovable property (₹ 75,000 × 70%) [Note 2]	<u>52,500</u>
Total taxable value of services	3,37,500
Service tax (₹ 3,37,500 × 14%)	47,250
Add: Swachh Bharat Cess (₹ 3,37,500 × 0.5%) (rounded off)	<u>1,688</u>
Service tax payable	48,938

Notes:

1. Installation of machinery and additions to damaged structures on land to make them workable are original works and value of service portion for original works is 40% of the total amount charged for the works contract [Rule 2A(ii)(A) read with clause (a) of Explanation 1 to rule 2A of the Service Tax (Determination of Value) Rules, 2006].
 2. Value of service portion in works contracts for repair of goods, completion and finishing services such as plastering, and installation of electrical fittings of immovable property is 70% of the total amount charged for the works contract [Rule 2A(ii)(B) of the Service Tax Valuation Rules].
- (d) **Computation of amount of redemption fine and total payment to be made by the importer**

Margin of profit = Market value – Total cost of the goods to importer

= ₹ 5,00,000 – (₹ 3,00,000 + ₹ 1,20,000)

= ₹ 80,000

Proposed amount of fine = 50% of Margin of profit

= ₹ 80,000 × 50%

= ₹ 40,000

As per proviso to sub-section (1) of section 125 of the Customs Act, 1962, redemption fine should not exceed the market price of the goods confiscated, minus the duty chargeable thereon.

Maximum redemption fine = Market price of goods confiscated- Duty chargeable

= ₹ 5,00,000 – ₹ 1,20,000

= ₹ 3,80,000

Since the proposed amount of fine is less than the maximum amount of fine permissible under section 125, the redemption fine payable by the importer would be ₹ 40,000.

Total payment to be made by the importer to clear the consignment:

= [Total duty payable + Amount of fine]

= ₹ 1,20,000+ ₹ 40,000 = ₹ 1,60,000

Question 3

- (a) *H Ltd. is a manufacturer of goods. It clandestinely removed its goods for further sale, to a firm, named R. Traders, who is related to H Ltd. The Commissioner (Adjudication) imposed penalty on R. Traders under rule 25 of the Central Excise Rules, 2002. You are required to write a brief note on the legality of Departmental action, based on a decided case law, if any. (4 Marks)*
- (b) *In the case of Ltd., wherein the Commissioner (Appeals) remanded the proceeding back to the Adjudicating Authority, the Department contended that by an amendment in law, the powers of remand which were previously granted to the Commissioner (Appeals) were taken away in the service tax matters. You are required to write a brief note on the legality of the Department's contention with the help of a decided case law, if any. (4 Marks)*
- (c) *In the case of K Ltd., which was the receiver of taxable service, appropriate services tax was paid by it. Later on, there was a downward revision of the charges for taxable service and as a result the question of refund for such excess service tax paid arose. Since the receiver of service had borne the incidence of service tax, K. Ltd. claimed for the refund of the tax so paid. The Department contended that recipient of service was not entitled to file a refund claim and also raised the issue of unjust enrichment. You are required to write a note on the Department's contention, with the help of a decided case law, if any. (4 Marks)*
- (d) *Govias & Sons, steamer agents, had filed Import General Manifest (IGM) and dealt with the goods at different stages of shipment including compliance requirements under the Customs Act, 1962. They had acted on behalf of the master of the vessel.*

There was short landing of goods in the above case in which IGM was filed by Govias & Sons and a penalty under the Customs Act was levied on them. Write a brief note on the validity of levy of penalty in this case. (4 Marks)

Answer

- (a) Penalty under rule 25 of the Central Excise Rules, 2002 can be imposed only on the following category of persons:

- (i) producer;
- (ii) manufacturer;
- (iii) registered person of a warehouse;
- (iv) a registered dealer; or
- (v) an importer who issues an invoice on which CENVAT credit can be taken.

Further, in case of *CCEx. v. Balaji Trading Co. 2013 (290) ELT 200 (Del.)*, the High Court held that penalty under rule 25 would apply only in respect of categories of persons mentioned in rule 25 of the said rules.

In the given case, if R. Traders is not a registered dealer, it does not fall in any of the above category. Consequently, the action of the Department is not valid in law and penalty under rule 25 cannot be imposed on R. Traders.

However, if R. Traders is a registered dealer, penalty under rule 25 can be imposed on it. Consequently, the action of the Department is valid in law.

- (b) The issue as to whether the Commissioner (Appeals), exercising powers under Chapter V of the Finance Act, 1994, has the power to remand the proceedings back to the adjudicating authority, has been addressed by the High Court in the case of *Commissioner of Service Tax v. Associated Hotels Ltd. 2015 (37) STR 723 (Guj.)*.

The High Court held that section 85(4) of the Finance Act, 1994 is worded widely and gives ample powers to the Commissioner (Appeals) while hearing and disposing of the appeals to pass such orders as he thinks fit including an order enhancing tax, interest or penalty. Such powers inherently contain the power to remand a proceeding for proper reasons to the adjudicating authority.

Even though there is a specific provision in sub-section (5) of section 85 of the Finance Act, 1994 which requires the Commissioner (Appeals) to follow the same procedure and exercise same powers in making orders under section 85, as he does while hearing the appeals under the Central Excise Act, 1944 (under central excise, Commissioner (Appeals) does not have the power to remand), sub-section (5) itself starts with the expression "subject to the provisions of this Chapter".

Further, Delhi High Court in the case of *Commissioner v. World Vision 2011 (24) STR 650 (Del.)* has also held that under section 85(4) of Finance Act, 1994, the Commissioner (Appeals) has the power to remand back the case to the adjudicating authority for fresh consideration.

Therefore, Department's contention that Commissioner (Appeals) does not have power to remand back a case in service tax matters is not tenable in law.

- (c) The facts of the given case are similar to the case of *CCus CEx& ST v. Indian Farmers Fertilizers Coop. Limited* 2014 (35) STR 492 (All). In this case, the High Court relied on the case of *Mafatlal Industries Ltd. v. Union of India* 1997 (89) ELT 247 wherein the Supreme Court held that where the burden of the duty has been passed on, the claimant cannot say that he has suffered any real loss or prejudice. The real loss or prejudice is suffered in such a case by the person who has ultimately borne the burden and it is only that person who can legitimately claim its refund.

Applying the ratio of the Mafatlal's case, the High Court held that since the assessee, being the recipient of taxable service, had borne the incidence of service tax themselves; there was no question of unjust enrichment as per section 11B of the Central Excise Act 1944. Hence, the assessee was entitled to claim refund of excess service tax paid consequent upon the downward revision of the charges payable by it. Section 11B of the Central Excise Act 1944 is applicable to service tax vide section 83 of the Finance Act, 1994.

Therefore, Department's contention is not correct in law.

- (d) The issue in the given case is that whether penalty for short landing of goods, which is imposable on the person-in-charge of the conveyance under clause (a) of section 116 of the Customs Act, 1962, can be imposed on the steamer agent.

Under section 148 of the Customs Act, 1962, an agent appointed by the person-in-charge of the conveyance and any person who represents himself to any officer of customs as an agent of any such person-in-charge is liable for fulfilment of all obligations imposed on such person-in-charge under the Customs Act and to penalties and confiscation, if any. In case of a vessel, master of the vessel is the person-in-charge [Section 2(31) of the Customs Act, 1962].

It has been held by Madras High Court in case of *Caravel Logistics Pvt. Ltd. v. Joint Secretary (RA)* 2013 (293) ELT 342 (Mad.) that when the assessee conducted all affairs in compliance with the provisions of the Act, he stepped into shoes of/acted on behalf of master of vessel (the person-in-charge). It held that conjoint reading of the relevant provisions of the Customs Act makes it clear that penalty imposable on person-in-charge in case of short-landing of goods can also be imposed on the agent appointed by him.

Applying the ratio of the said judgement to the case at hand, it can be concluded that the imposition of penalty on the steamer agent is valid in law.

Note – Answers to all sub-parts of question 3 are based on interpretation of case laws. The answers given above are based on particular legal decisions wherein the facts of the case and issue under consideration are similar to the facts given and issue(s) raised in the questions. However, it may also be possible to answer some of these questions on the basis of other case laws wherein the facts and issue(s) are similar.

Question 4

- (a) With reference to the changes w.e.f. 01.03.2015, write a brief note on the following:
- Rule 11(7) of the Central Excise Rules, 2002 regarding issuance of invoice.
 - Rule 8(4) of the Central Excise Rules, 2002 regarding recovery of duty and penalty. (2 × 2 = 4 Marks)
- (b) Show Cause Notice (SCN) was issued on 30.06.2015 in a fraud case. SCN was received by assessee on 10.07.2015. The adjudication order was received on 15.10.2015. The amount of service tax involved was ₹ 2 lakh. With reference to the changes w.e.f. 14.05.2015, write a brief note on the amount of penalty in the following cases, with explanation if any:
- Assessee paid the tax, interest and penalty on 30.07.2015.
 - Assessee paid tax, interest and penalty on 05.11.2015.
 - Assessee paid tax, interest and penalty on 05.12.2015. (4 Marks)
- (c) With reference to amendments w.e.f. 01.04.2015 in the notification on exemption of specified services, write a brief note whether the following services are exempted or not:
- Treatment of effluent by common effluent treatment plant operator.
 - Intermediate production process of alcoholic liquor for home consumption on job work basis. (2 × 2 = 4 Marks)
- (d) (i) With reference to the changes in the Customs, Central Excise Duties and Service Tax Duty Drawback Rules, 1995, briefly state whether an exporter who has already filed a duty draw back claim under All Industry Rates, can file an application for fixation on special brand rate.
- (ii) Write a brief note on the changes effected with respect to levy of penalty under the Customs Act for improper exportation of non-prohibited dutiable goods. (2 × 2 = 4 Marks)

Answer

- (a) (i) Earlier, rule 11(7) of the Central Excise Rules, 2002 provided that the provisions of rule 11 apply *mutatis mutandis* to goods supplied by a first stage dealer or a second stage dealer.
- With effect from 01.03.2015, the said sub-rule has been amended to also apply the provisions of rule 11 *mutatis mutandis* to goods supplied by an importer who issues an invoice on which CENVAT credit can be taken.
- (ii) Rule 8(4) of the Central Excise Rules, 2002 laid down that the duty as assessed under rule 6 and the interest under rule 8(3) would be recovered in accordance with the

provisions of section 11 in the same manner as they are applicable for recovery of any duty/other sums payable to the Central Government.

With effect from 01.03.2015, rule 8(4) has been amended to provide that duty as assessed under rule 6 and mentioned in the return filed under these rules, the interest under rule 8(3) and penalty under rule 8(3A) will be recovered in accordance with the provisions of section 11.

- (b) As per section 78(1) of the Finance Act, 1994, in fraud cases, the person who has been served notice is, in addition to the service tax and interest specified in the notice, also liable to pay a penalty equal to 100% of the amount of such service tax.

However, if the service tax and interest is paid within 30 days of the date of service of notice, the amount of penalty is reduced to 15% of such service tax provided such reduced penalty is also paid within the period so specified [Clause (i) of second proviso to sub-section (1) of section 78 of the said Act].

Further, if the service tax and interest is paid within 30 days of the receipt of the adjudication order, the amount of penalty is reduced to 25% of such service tax provided such reduced penalty is also paid within the period so specified Clause (ii) of second proviso to sub-section (1) of section 78 of the said Act].

- (i) Since in the given case, the tax, interest and penalty are paid by 30.07.2015 which is within 30 days of the service of show cause notice (10.07.2015), the penalty payable would be 15% of ₹ 2,00,000 (service tax involved) i.e., ₹ 30,000.
 - (ii) Since in the given case, the tax, interest and penalty are paid by 05.11.2015 which is within 30 days of the receipt of adjudication order (15.10.2015), the penalty payable would be 25% of ₹ 2,00,000 (service tax involved) i.e., ₹ 50,000.
 - (iii) Since in the given case, the tax, interest and penalty are paid by 05.12.2015 which is after 30 days of the receipt of adjudication order (15.10.2015), the penalty payable would be 100% of ₹ 2,00,000 (service tax involved) i.e., ₹ 2,00,000
- (c) (i) **Exempt.** Services by operator of Common Effluent Treatment Plant by way of treatment of effluent have been exempted from 01.04.2015 by amending Mega Exemption Notification No. 25/2012 ST dated 20.06.2012.
- (ii) **Taxable.** Consequent to imposition of service tax on services by way of manufacture of alcoholic liquor for human consumption, exemption available vide mega exemption notification for carrying out an intermediate production process as job work in relation to alcoholic liquor for human consumption has been withdrawn.
- (d) (i) With effect from 22.11.2014, rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 has been amended to provide that application for Special Brand Rate cannot be made where a claim for drawback under rule 3 or rule 4 has been made.

In other words, where the exporter has already filed a duty drawback claim under All Industry Rates (AIR) Schedule, he cannot request for fixation of Special Brand Rate of drawback. Thus, the exporter should determine prior to export of goods, whether to claim drawback under AIR or Special Brand Rate.

- (ii) Provisions relating to penalty for improper exportation of non-prohibited dutiable goods etc. have been amended to provide for a penalty not exceeding 10% of the duty sought to be evaded or ₹ 5,000, whichever is higher. Further, such penalty will be subject to the provisions of section 114A(ii) of the Customs Act, 1962.

Also, where the duty and the interest are paid within 30 days from the date of communication of the order, the amount of penalty will be reduced to 25% of the penalty so determined [Proviso to clause (ii) of section 114 of the Customs Act, 1962].

Question 5

- (a) *V Ltd. transferred goods from Surat factory to their sales depot at Chennai on 30.06.2015. On that date, the ex-factory value of those goods were ₹ 12,000 and normal transaction value at Chennai depot was ₹ 10,000; the rate of central excise duty was 15%. These goods were sold from Chennai on 25.07.2015. On this date, the normal transaction value at the Chennai depot was ₹ 14,000 and the rate of central excise duty was 17.5%. V Ltd. paid duty on ₹ 10,000 at 15% for the clearance from factory on 30.06.2015. The Department contended that the duty must have been paid on ₹ 14,000 at 17.5%.*

You are required to write a brief note on the Department's claim with reasons. (4 Marks)

- (b) *Swamy Ltd. of Chennai acquires the business of SA Ltd. at Johannesburg, South Africa. Swamy Ltd. entered into a contract with M/s Krish & Krish Architects, Chennai to do the interiors of the building of new business at South Africa. The Service Tax Department issued a notice demanding service tax based on the Place of Provision of Services Rules, 2012. Discuss briefly the applicability of the Place of Provision of Services Rules, 2012 to Ms Krish & Krish as the work to be done is outside the taxable territory. (4 Marks)*
- (c) *Write a brief note on the applicability of service tax in the following cases.*
- (i) *Whether the representation service provided by an Indian bank to a foreign MTSO (Money Transfer Service Operator) in relation to money transfer to a beneficiary in India falls in the category of intermediary service.*
- (ii) *Whether serviced tax is leviable on the services provided as mentioned in (i) above by an intermediary/agent located in India (in taxable territory) to MTSO's located outside India. (4 Marks)*
- (d) *M/s Impex imported some consignment of goods on 01.6.2016. A bill of entry for warehousing of goods was presented on 05.6.2016 and the materials were duly warehoused. The goods were subject to duty @ 50% ad valorem. In the meanwhile, on 01.07.2016, an exemption notification was issued reducing the effecting customs duty @ 30%, ad valorem. M/s Impex filed their bill of entry for home consumption on 01.08.2016*

claiming duty @ 30% ad valorem. However, Customs Department charged duty @ 50% ad valorem being the rate on the date of clearance into the warehouse.

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

- (i) the rate of duty applicable for clearance for home consumption in this case.*
- (ii) whether the rate of exchange on 01.08.2016 could be adopted for purpose of conversion of foreign currency into local currency.* (4 Marks)

Answer

- (a) No, the Department's claim is not valid in law.

Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 provides that in case where the goods are transferred by the assessee to his depot and not sold at factory gate, the assessable value for such goods cleared from factory and sold from depot shall be normal transaction value of such goods at the depot at/ about the same time at which the goods being valued are removed from the factory.

In the given case, normal transaction value at the depot on the date of removal from the factory, i.e. 30.06.2015 (time of removal) is ₹10,000.

Further, rule 5(1) of the Central Excise Rules, 2002 provides that the applicable rate of duty shall be the rate of duty in force on the date when such goods are removed from the factory. Hence, the rate of duty, in the given case, will be 15% (rate prevalent on 30.06.2015).

Since V Ltd. has paid the duty on correct value and at correct rate, Department's claim is not correct in law.

- (b) Rule 5 of the Place of Provision of Services Rules, 2012 (PoPS) provides that in case of a service that is 'directly in relation to immovable property', the place of provision is where the immovable property is located.

On application of rule 5 in the instant case, place of provision of service is South Africa.

Rule 8 of the PoPS provides that place of provision of service is the location of the service receiver where both service provider and service receiver are located in the taxable territory.

Since in the given case, both service provider and service receiver are located in taxable territory⁵⁷, the place of provision would be the location of the service receiver i.e. Chennai.

As per rule 14 of the PoPS, if the place of provision of service is determinable in terms of more than one rule, the rule that occurs later prevails.

⁵⁷ It is presumed that Swamy Ltd. is a service provider with a single registration - either centralized or otherwise - in Chennai.

Therefore, the place of provision in this case is Chennai (as per rule 8) and the service is taxable in India.

- (c) (i) In terms of rule 2(f) of the Place of Provision of Services Rules, 2012 (PoPS), intermediary means a broker, an agent or any other person who arranges/facilitates a provision of a service (hereinafter called the 'main service') between two/more persons, but does not include a person who provides the main service.

An Indian bank, acting as an agent to foreign MTSO, facilitates the provision of money transfer service by the foreign MTSO to a beneficiary in India and receives commission or fee in return [Circular No.180/06/2014 ST dated 14.10.2014].

Hence, the Indian Bank falls in the category of intermediary and representation service provided by such Bank is intermediary service.

- (ii) Charging section 66B, *inter alia*, provides that service tax is chargeable on the taxable services only when they are provided in the taxable territory.

Rule 9(c) of the PoPS provides that the place of provision of intermediary service is the location of the service provider.

Thus, place of provision of service provided by an intermediary/agent located in India to MTSO located outside India is India (i.e. taxable territory), and is thus liable to service tax [Circular No.180/06/2014 ST dated 14.10.2014].

- (d) (i) Section 15(1)(b) of the Customs Act, 1962 provides that in the case of goods cleared from a warehouse, rate of duty applicable is the rate of duty in force on the date on which a bill of entry for home consumption in respect of such goods is presented.

In the given case, since M/s Impex has filed the bill of entry for home consumption on 01.08.2016, rate of duty is the rate prevalent on the said date viz. 30%.

- (ii) Third proviso to section 14 of the Customs Act, 1962 provides that the rate of exchange notified by the CBEC as prevalent on the date of presentation of bill of entry for warehousing is the applicable rate of exchange for conversion of foreign currency into local currency.

Therefore, in the given case, rate of exchange that would be prevalent on date of presentation of bill of entry for warehousing i.e. 05.06.2016 and not the one prevalent on date of presentation of bill of entry for home consumption i.e., 01.08.2016, would be adopted.

Question 6

- (a) Explain briefly, whether the following persons require registration under Central Excise Act, 1944:

(i) 100 % EOU

(ii) State Transport Corporation manufacturing excisable goods.

- (iii) *Persons who manufacture excisable goods chargeable to nil rate of duty.*
- (iv) *Importer who issues CENVATable invoice.*

OR

P Ltd. failed to provide correct information to the Excise Department. Explain with reasons whether Department can allege suppression of facts as provided in section 11(4) of the Central Excise Act, 1944. (4 Marks)

- (b) *T Ltd. is engaged in some construction activity which is exempted by notification. There is a sub-contractor who provides interior decorator services which are used by T Ltd. in relation to construction service provided by it. Write a brief note with reference to the Finance Act, 1994 and notifications issued there under whether the interior decorator service so provided shall also be treated as exempted in terms of the said notification.* (4 Marks)
- (c) *Mr. Foster, who is the author and owner of the copy right of a book "Way to heaven", has entered into an agreement with "Sure Publishers" on 15.07.2015 for its publication. In terms of the agreement, the copy right is transferred to "Sure Publishers" for a lump sum amount of ₹ 5 lakh. An invoice was issued by Mr. Foster on 15.7.2015 and payment was received on 27.12.2015. Determine with reasons, by way of a brief note, the point of taxation for purpose of service tax. Ignore any exemptions available in respect of the service and assume that the transaction is liable to service tax.* (4 Marks)
- (d) *Explain the conditions for redeeming authorization under duty free import authorization scheme as per Foreign Trade policy 2015-2020.* (4 Marks)

Answer

- (a) (i) No, as 100% EOU is deemed to be registered under rule 9 of the Central Excise Rules, 2002. However, such unit shall be required to get itself registered if it removes excisable goods to domestic tariff area (DTA) or procure excisable goods from DTA [Rule 9(2) of Central Excise Rules, 2002 read with Notification No. 36/2001 C.E.(N.T.) dated 26.6.2001].
- (ii) Yes, as per section 3(1A) of the Central Excise Act, 1944, provisions of levy of central excise duty apply in respect of all excisable goods produced/manufactured in India by/on behalf of, Government as they apply in respect of goods not produced/manufactured by Government.
Consequently, Central/ State Government Undertakings or undertakings owned or controlled by autonomous corporations are also required to obtain registration in India.
- (iii) No, because manufacturers of goods which are chargeable to 'Nil' rate of duty are exempted from registration [Rule 9(2) of Central Excise Rules, 2002 read with Notification No. 36/2001 C.E.(N.T.) dated 26.6.2001].

(iv) Yes, as per rule 9(1) of the Central Excise Rules, 2002, an importer who issues a CENVATable invoice is required to take registration.

- (a) Suppression of facts means failure to disclose full information with the intent to evade payment of duty.

However, mere omission on part of assessee to provide correct information does not constitute 'suppression of facts' as said expression used in section 11A of the Central Excise Act, 1944 is accompanied by very strong words as "fraud" and "collusion" and, therefore, has to be construed strictly.

Supreme Court, in the case of *Continental Foundation Joint Venture v. CCE*, (2007) 216 ELT 177 (SC), elaborated that mere omission to give correct information is not suppression of facts unless it was deliberate to evade the payment of duty..

Therefore, in the given case, the Excise Department cannot allege suppression of facts.

- (b) No, the interior decoration service provided by the sub-contractor to T Ltd. for being used in relation to construction service provided by T Ltd. is not exempt from service tax.

According to section 66F(1) of the Finance Act, 1994, reference to a service (main service) by nature/description in the Finance Act, 1994 shall not include reference to a service which is used for providing the main service.

Therefore, the benefit of exemption available to the construction service (main service) will not be available to the interior decorator service (service used for providing the main service) unless the interior decoration service provided by the sub-contractor independently and by itself falls in the ambit of the exemption. Further, exact language of the exemption notification should also be considered i.e., whether it exempts the specific service by using the words viz., "service by way of" or it exempts other services too by using the words "services in relation to".

- (c) Since in the present case, the whole amount of consideration i.e., ₹ 5,00,000/- is ascertained at the time of entering into agreement itself, one of the essential requirements of rule 8 of Point of Taxation Rules, 2011 (PoTR) does not get satisfied. Resultantly, rule 8 becomes inapplicable in the present case.

Thus, point of taxation will be determined in accordance with general rule 3 of the PoTR. Since invoice has been issued within 30 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 two dates will be the point of taxation:

Date of invoice 15.07.2015

Date of payment 27.12.2015

Thus, point of taxation is 15.07.2015.

- (d) The conditions for redeeming authorization under Duty Free Import Authorization scheme (DFIA) as per Foreign Trade Policy 2015-2020 are as follows:-

It is necessary to establish that inputs actually used in manufacture of the export product should only be imported under the authorization and inputs actually imported must be used in the export product, for redeeming the DFIA. The name/description of the input in the DFIA must match exactly with the name/description endorsed in the shipping bill.

Further, quantity of input to be allowed under DFIA shall be in proportion to the quantity of input actually used/ consumed in production.

Aforesaid provisions will also be applicable for supplies to SEZs and supplies made under deemed exports.

Question 7

- (a) *Having accepted the orders on identical issues for the previous years in respect of the same assessee, can be Central Excise Department agitate the same matter in appeal for the subsequent years?*

Write a brief note on the above, with reference to provisions of Central Excise Act, 1944, and decided case law, if any. (4 Marks)

- (b) *Write a brief note, with reference to section 96E of Finance Act, 1994, regarding applicability of advance ruling pronounced by the authority for advance ruling* (4 Marks)

- (c) *Write a brief note on the relaxation available to banking companies and financial institutions and Goods Transport Agency under rule 4A of the Service Tax Rules, 1994 regarding issue of invoice, bills or challan.* (4 Marks)

- (d) *Explain the relevant dates as provided in section 26(2) of the Customs Act, 1962 for purpose of refund of duty under specified circumstances, namely:*

(i) *goods exported out of India*

(ii) *relinquishment of title to goods*

(iii) *goods destroyed or rendered valueless.* (4 Marks)

Answer

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

However, the Supreme Court in the case of *C.K Gangadharan v. CIT, Cochin, 2008 (228) ELT 497* has held that merely because Revenue has not preferred an appeal in some cases, it would not prevent the Revenue to prefer an appeal in another case if it is in the public interest or there is just cause for doing so or for a pronouncement by the higher Court when divergent views are expressed by the different High Courts.

Further, it may be noted that section 35R(2) of Central Excise Act, 1944, *inter alia*, provides that where in pursuance of any instruction issued by CBEC with regard to fixing monetary

limits for filing appeal etc., Central Excise Officer has not filed any appeal against any decision passed under the provisions of the Act, then it shall not preclude such officer from filing appeal in any other case involving the same or similar issues or questions of law.

- (b) As per section 96E of the Finance Act, 1994, the advance ruling pronounced by the Authority for advance ruling shall be binding only-

- (a) on the applicant who had sought it;
- (b) in respect of any matter on which advance ruling can be sought, (i.e. any matter referred to in sub-section (2) of section 96C of the Finance Act, 1994];
- (c) on the Principal Commissioner of Central Excise/Commissioner of Central Excise, and the Central Excise authorities subordinate to him, in respect of the applicant.

The advance ruling would be binding unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

- (c) The relaxations available to banking companies and financial institution and goods transport agency under rule 4A of Service Tax Rules, 1994 regarding issue of invoice, bills or challan are as follows:-

- (i) A banking company/a financial institution including non-banking financial company (NBFC) can issue an invoice that may not be serially numbered and may not contain the address of the service receiver [First proviso to rule 4A(1) of Service Tax Rules, 1994].
- (ii) The time limit for issuance of invoice in case of banking company/a financial institution including NBFC is 45 days as against 30 days available to other general service providers [Fourth proviso to rule 4A(1) of Service Tax Rules, 1994].
- (iii) Any document issued by a goods transport agency containing the details of the consignment note number and date, gross weight of the consignment and other required information is taken to be as the invoice, bill or challan [Second proviso to rule 4A(1) of Service Tax Rules, 1994].

- (d) The relevant dates provided under Explanation to section 26A(2) of the Customs Act, 1962 for purpose of refund of duty under specified circumstances are as follows:-

	Case	Relevant date
(i)	Goods exported out of India	Date on which the proper officer makes an order permitting clearance and loading of goods for exportation
(ii)	Relinquishment of title to the goods	Date of such relinquishment
(iii)	Goods being destroyed or rendered valueless	Date of such destruction or rendering of goods commercially valueless