

The suggested answers for Indirect Tax Laws (Paper 8) are based on the provisions as amended by the Finance Act, 2007 and notifications/circulars issued up to 30.04.2008 which are relevant for November 2008 examinations.

PAPER – 8: INDIRECT TAX LAWS

Answer all questions

PART - A

Question 1

- (a) How will the assessable value under the subject transaction be determined under section 4 of the Central Excise Act, 1944? Give reasons with suitable assumptions where necessary.

Contracted sale price for delivery at buyer's premises Rs. 9,00,000

The contracted sale price includes the following elements of cost:

(i) Cost of drawings and designs	Rs. 4,000
(ii) Cost of primary packing	Rs. 3,000
(iii) Cost of packing at buyer's request for safety during transport	Rs. 7,000
(iv) Excise duty	Rs.1,11,200
(v) VAT (Sales tax)	Rs. 37,000
(vi) Octroi	Rs. 9,500
(vii) Freight and insurance charges paid from factory to 'place of removal'	Rs. 20,000
(viii) Actual freight and insurance from 'place of removal' to buyer's premises	Rs. 42,300

(4 Marks)

- (b) Following transactions took place in the factory of JKA Ltd:

- (i) An imported consignment of raw materials was received vide bill of entry dated 2.12.07 showing the following customs duty payments:
Basic customs duty Rs. 25,000; Additional duty (CVD) Rs. 20,000; Special additional duty Rs. 5,800.
- (ii) A consignment of 1,000 kg of inputs was received. The excise duty paid as per the invoice was Rs. 10,000. While the input was being unloaded, 50 kg were damaged and were found to be not usable.
- (iii) A vehicle containing machinery was received. The machinery was purchased through a dealer and not from the manufacturer. The dealer's invoice no. 925 dated 3.4.07 marked 'original for buyer' certified that the excise duty paid by the manufacturer of machinery was Rs. 24,000. The dealer is registered with the Central Excise Authorities.

- (iv) Some inputs for final product were received. These were accompanied by a certified Xerox copy (photo copy) of invoice no. 286 dated 15.1.08 indicating that excise duty of Rs. 6,400 had been paid on inputs. The original or duplicate copy of invoice was not traceable.

Indicate the eligibility of CENVAT credit, in each case, under the CENVAT Credit Rules, 2004 with explanations where necessary. (4 Marks)

- (c) CTL Ltd. has a manufacturing unit situated in Lucknow. In the financial year 2006-07, the total value of clearances from the unit was Rs. 450 lakh. The break up of clearances is as under:

- (i) Clearances worth Rs. 50 lakh of certain non-excisable goods manufactured by it.
- (ii) Clearances worth Rs. 50 lakh exempted under specified job work notification.
- (iii) Exports worth Rs. 100 lakh (Rs. 75 lakh to USA and Rs. 25 lakh to Nepal).
- (iv) Clearances worth Rs. 50 lakh which were used captively to manufacture finished products that are exempt under notifications other than Notification No. 8/2003-CE dated 1.3.2003 as amended.
- (v) Clearances worth Rs. 200 lakh of excisable goods in the normal course.

Explain briefly, the treatment for various items and state, whether the unit will be eligible for the benefits of exemption under Notification No. 8/2003-CE dated 1.3.03 as amended for the year 2007-08. (7 Marks)

Answer

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

Contracted sale price	Rs.9,00,000
Less:	
Excise duty (Note – 1)	Rs.1,11,200
VAT (Note – 1)	Rs.37,000
Octroi (Note – 1)	Rs.9,500
Actual freight from "place of removal" to buyer's premises (Note – 2)	<u>Rs.42,300</u>
	<u>Rs.2,00,000</u>
Assessable value	<u>Rs.7,00,000</u>

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

1. the duty of excise, sales tax and other taxes, if any, actually paid or payable on the excisable goods shall be excluded [Section 4(3)(d) of the Central Excise Act, 1944].

2. the cost of transportation from the place of removal up to the place of delivery of the excisable goods shall be deducted [Rule 5 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000].
 3. the cost of transportation, worth Rs. 20,000, from the factory to the place of removal shall not be excluded [Explanation 2 to rule 5 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000].
 4. cost of packing, Rs. 3,000 and Rs. 7,000 shall not be deducted. In this regard, it has been clarified that as per section 4 of the Central Excise Act, 1944, packing charges shall 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].
- (b) (i) As per rule 3(1)(vii) of the CENVAT Credit Rules, 2004, CENVAT credit of the additional duty leviable under section 3 of the Customs Tariff Act, 1975 viz., Countervailing Duty (CVD) shall be allowed to a manufacturer or producer of the final products. Thus, credit can be availed in respect of Rs.20,000 paid as additional duty (CVD).
- (ii) Rule 2(k) of CENVAT Credit Rules, 2004 inter alia provides that input means all goods used in or in relation to the manufacture of final products, whether directly or indirectly. Thus, the inputs lost before being issued for production cannot be termed as "used in or in relation to manufacture of final product". Hence, CENVAT credit in respect of 50 kg of inputs will not be available but CENVAT credit of Rs.9,500 on balance 950 kg of inputs can be availed.
- (iii) Clause (iv) of rule 9(1)(a) of CENVAT Credit Rules, 2004 provides that CENVAT credit shall be taken by manufacturer on the basis of an invoice issued by a first/second stage dealer. Further, as per rule 9 of Central Excise Rules, 2002, a first/second stage dealer requires registration. Thus, in the given case, CENVAT credit can be claimed against dealer's invoice since the dealer is registered with Central Excise Authorities.
- However, CENVAT credit in respect of capital goods shall be taken only for an amount not exceeding 50% of the duty paid on such capital goods in the same financial year and balance 50% shall be available in the subsequent financial year [Rule 4(2) of CENVAT Credit Rules, 2004]. Hence, CENVAT credit of Rs.12,000 will be available in the current financial year. Balance credit of Rs.12,000 can be availed in any subsequent year.
- (iv) Rule 9 of CENVAT Credit Rules, 2004 states that the CENVAT credit can be availed on the basis of invoice issued by a manufacturer. Thus, the credit can be availed on any copy of the invoice i.e., whether it is the invoice marked as "original for buyer" or "duplicate for transporter" as it is still an invoice issued. However, a

certified photocopy is not an invoice issued by the manufacturer. Thus, credit cannot be availed on the basis of a certified copy.

- (c) In order to claim the benefit of exemption under Notification No. 8/2003 – C.E. in a financial year, the total turnover of a unit should not exceed Rs.400 lakh in the preceding year. For the purpose of computing the turnover of Rs. 400 lakh:-
- (i) Turnover of non-excisable goods has to be excluded. Therefore, clearances of non-excisable goods of worth Rs.50 lakh shall be excluded.
 - (ii) Clearances exempted under job work notifications should not be considered. Therefore, exempted clearances of Rs.50 lakh under job work notification will be excluded.
 - (iii) Export turnover has to be excluded. However, export to Nepal and Bhutan cannot be excluded as these are treated as “clearance for home consumption”. Therefore, clearances worth Rs.75 lakh exported to USA will be excluded while clearances worth Rs.25 lakh exported to Nepal will be included.
 - (iv) Value of intermediate products manufactured has to be included if the final product is exempt under any notification other than Notification No. 8/2003-CE dated 1-3-2003*. Therefore, clearances worth Rs 50 lakh which were used captively to manufacture finished products exempt under notifications other than Notification No. 8/2003 will be included.
 - (v) Clearances of excisable goods of Rs.200 lakh in the normal course will be considered.

Therefore, for the year 2007-08, the turnover of CTL Ltd. for claiming the SSI exemption will be:-

$$= \text{Rs.450 lakh} - (\text{Rs.50 lakh} + \text{Rs.50 lakh} + 75 \text{ lakh}) = \text{Rs.275 lakh}$$

Since the turnover is less than Rs 400 lakh, CTL Ltd. will be eligible for exemption under Notification No. 8/2003 – CE.

*Note - It is assumed that the value of clearances of final products manufactured from such intermediate products is not included in the total turnover of Rs.450 lakh of the unit.

Question 2

- (a) M/s Ganga Marketing supplies 12 bottles of mineral water in a single package to Speed Airways (airline company).

Maximum retail price was printed on the package. However, individual bottle of 200 ml. each did not carry such maximum retail price (M.R.P) as these were to be distributed to the passengers by the airline company and not intended for resale. M/s Ganga Marketing pays duty of excise assessing the goods under section 4 of the Central Excise Act, 1944.

The Department has taken a view that the package of 12 bottles is not a wholesale package. The airline company itself is the ultimate consumer. Hence, the package of 12 bottles itself is a 'retail package' and duty is payable on the basis of MRP under section 4A of the Central Excise Act, 1944.

Examine briefly, with the help of decided case law, if any, whether the stand taken by the Department is correct in law. (5 Marks)

- (b) M/s Om Processors, a job worker, was engaged in the processing of manmade fabrics received from the principal supplier. The job worker (assessee) had undertaken to discharge all the duty liabilities under the Central Excise Act, 1944. The assessee received manmade fabrics on declaration from the principal supplier that the said fabrics had polyester content below 70%; processed the same and cleared the processed fabrics claiming the benefit of concessional rate of duty available to manmade fabrics containing polyester below 70%. On the basis of chemical examination by the Department, it was found that the fabrics contained polyester in excess of 70% and thus would attract higher rate of duty. A show cause notice was issued invoking the extended period of limitation under section 11A of the Central Excise Act, 1944 demanding differential duty and penalties on the ground of mis-declaration on the part of the assessee. Briefly discuss, with reference to decided case law, whether the stand taken by the Department is correct in law. (5 Marks)
- (c) M/s Raj Fibres had filed an appeal to the High Court on Aug. 11, 2008 under section 35G of the Central Excise Act, 1944 aggrieved by an order passed by the Appellate Tribunal. The order appealed against was received by the assessee on Jan. 1, 2008. The High Court dismissed the appeal petition on the ground that the same had been filed beyond the period provided for filing an appeal under section 35G of the Act and the court had no power to condone the delay. M/s Raj Fibres urged before the High Court that the provisions of the Limitation Act, 1963 should be made available and the delay in presenting the appeal ought to be condoned. State briefly, with reference to decided case law, if any, whether the High Court could condone the delay in presenting the appeal pursuant to the provisions of the Limitation Act, 1963 as urged by M/s Raj Fibres. (5 Marks)

Answer

- (a) No, the stand taken by the Department is not valid in law. Section 4A(2) of the Central Excise Act, 1944 stipulates that value of the goods notified by the Central Government under section 4A(1) of the Act shall be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow. For the purpose of valuation under section 4A of the Central Excise Act, 1944, there should be requirement under the provisions of the Standards of Weights and Measures Act, 1976 or the rules made there under or any other law to declare the retail price of such goods on the package.

With effect from 14.01.2007, Standards of Weights and Measures (Packaged Commodity) Rules, 1977 have been amended to provide inter alia that MRP is not

required to be printed in case of sale to institutional consumers. Institutional consumers have been defined as those consumers who buy packaged commodities directly from the manufacturers/packers for service industry like airways, railways etc. Thus, Speed Airways, being an institutional consumer, package of mineral water bottles meant for them is not required to bear any MRP. Hence, in the present case, the goods are to be valued under section 4 and not under section 4A of the Central Excise Act, 1944.

- (b) Proviso to section 11A(1) of the Central Excise Act, 1944 stipulates that the extended period of limitation can be invoked only in case of short payment of duty by reason of fraud, collusion, or willful mis-statement or suppression of facts with the intention to evade the payment of duty.

Similar view was expressed by the Apex Court in case of Padmini Products v. CCE (1989) 43 ELT 195 (SC), wherein it was held that failure to pay duty might not necessarily be due to fraud or collusion or willful misstatement or suppression of facts or contravention of any of the provisions of the Act. If facts of the case revealed that the appellant had acted bona fide, such act would not attract the penal provisions under section 11A of the Act. If the facts were otherwise, then the penalty would be levied.

In the given case, there was no requirement for the assessee (processor) to verify the correctness of the declaration filed by the principal (suppliers). Further, there was no allegation that the assessee was a party to such mis-declaration by the principal supplier. Therefore, extended period of limitation could not be invoked against the assessee. Thus, the action taken by the Department is not valid in law.

- (c) The Apex Court in the case of CCE v. Punjab Fibres Ltd. (2008) 223 ELT 337 (SC) has held that there is no provision for condonation of delay in section 35H of the Central Excise Act, 1944 i.e., the High Court was not empowered to condone delay in filing reference application. The Court also observed that the right or privilege to claim benefit of a provision for condonation of delay could be governed only by the law in force at the time of delay.

Though the above-mentioned case pertains to a reference application under section 35H of the Central Excise Act, 1944, the principle enunciated therein may also be applied to an appeal filed under section 35G of the Act as section 35G also does not provide for any condonation of delay in filing an appeal.

Hence, in the instant case, the High Court is justified in holding that the Court has no power for condonation of delay in filing an appeal.

Question 3

- (a) Discuss briefly, whether excise duty is attracted on the excisable goods manufactured in the following cases:
- (i) in the State of Jammu and Kashmir;
 - (ii) by or on behalf of the Government.

- (b) What is the period of provisional attachment of property during the pendency of any proceeding under section 11A or section 11D of the Central Excise Act, 1944?
- (c) Under what circumstances, the rebate of excise duty paid on exported goods can be granted to the exporter in case of export of good to Nepal?

Note - Rebate of excise duty paid on exported goods is granted to Government of Nepal.

- (d) If a manufacturer manufactures various products, can he avail CENVAT credit on some products and exemption under Notification No. 8/2003-CE dated 1.3.03 on some other products?
- (e) Briefly discuss, the residual penalty under rule 27 of the Central Excise Rules, 2002.

(2×5=10 Marks)

Answer

- (a) (i) Yes, excise duty is attracted on the excisable goods manufactured in the State of Jammu and Kashmir. Though originally the Central Excise Act, 1944 did not apply to Jammu and Kashmir, its application was extended to the same with the enactment of Taxation Laws (Extension to Jammu and Kashmir) Act, 1954.
- (ii) Section 3(1A) of the Central Excise Act, 1944 provides that the excise duty shall be levied and collected on all excisable goods other than salt which are produced or manufactured in India by, or on behalf of, Government, as they apply in respect of goods which are not produced or manufactured by Government. Thus, excise duty will be payable on goods manufactured by, or on behalf of, the Government (both Central & State) also.
- (b) Provisional attachment of property can be done for a period of 6 months [Section 11DDA (2)].
This period can be extended with written permission of Chief Commissioner of Central Excise. However, total period of extension cannot be more than two years [First proviso to section 11DDA(2)].
However, if the assessee has made an application to the Settlement Commission, that period will be excluded for the purpose of calculating the time limit of two years [Second proviso to section 11DDA(2)].
- (c) Rebate of excise duty paid on goods exported to Nepal shall be granted to the Government of Nepal subject to the following conditions:
 - (a) rebate shall not, in each case, exceed the aggregate of the duty of Customs and additional duty of Customs levied by His Majesty's Government of Nepal on such goods when they are imported into Nepal from any country other than India;
 - (b) the excisable goods shall be exported after payment of duty, directly from a factory or warehouse except as otherwise permitted by the Central Board of Excise and Customs by a general or special order;

- (c) the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture or warehouse or within such extended period as the Commissioner of Central Excise may in any particular case allow;
- (d) when the goods are exported by land, the export shall take place through any of the prescribed land customs stations or such other check-post as may be specified by the Central Board of Excise and Customs.
- (d) No, if a manufacturer manufactures various products, he has to avail CENVAT for all items or opt for exemption for all products.
This view has been upheld in CCE v. Ramesh Foods Products (2004) 174 ELT 310 (SC), where it has been held that simultaneous availment of CENVAT credit on some products and exemption on some other products is not permissible.
- (e) Rule 27 of the Central Excise Rules, 2002 stipulates that where no other penalty is provided in the rules therein or in the Act, a breach of these rules shall be punishable with a penalty which may extend to Rs. 5,000 and with confiscation of the goods in respect of which the offence is committed.

PART - B

Question 4

- (a) Calculate the VAT liability for the period Jan. 1, 2007 to Jan. 31, 2007 from the following particulars:
Inputs worth Rs. 1,00,000 were purchased within the State. Rs. 2,00,000 worth of finished goods were sold within the State and Rs. 1,00,000 worth of goods were sold in the course of inter-State trade. VAT paid on procurement of capital goods worth Rs. 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 3%, show the total tax liability under the State VAT law and under the Central Sales Tax Act. (5 Marks)
- (b) Calculate the net service tax payable under the provision of rule 2A of the Service tax (Determination of Value) Rules, 2006 relating to determination of value of services in the execution of a works contract from the following particulars:

(i) Gross amount for the works contract (excluding VAT)	Rs 1,00,000
(ii) Value of goods and materials sold in the execution of works contract	Rs. 70,000
(iii) CENVAT credit on (ii) above	Rs. 1,000
(iv) Service tax paid on input services	Rs. 1,000
(v) CENVAT credit on capital goods issued in the provision of works contract service	Rs. 1,000
(vi) Service tax rate	2.36%

Make suitable assumptions and provide explanations where required.

Answer

(a) Computation of the tax liability for the period Jan. 1, 2007 to Jan. 31, 2007:-

	Rs.
Inputs purchased in the month	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) (Rs.12,500 + Rs.12,500)	25,000
Output tax	8,000
CST for Inter-State sale	3,000
State VAT liability (Rs.8,000 – Rs.25,000)	Nil
Excess credit	17,000
Central sales tax to be paid (Rs.3,000 – Rs.17,000)	Nil
Excess credit carried forward to subsequent period	14,000

(b) Computation of the Net service tax payable:-

	Rs
Gross amount charged (excluding VAT)	1,00,000
Less: Value of goods and materials	<u>70,000</u>
	<u>30,000</u>
Service tax @ 12.36%	3,708
Less: CENVAT credit of service tax paid on input service + CENVAT credit of excise duty paid on capital goods (50%) [Rs 1,000 + (50% of Rs 1,000)] [Note 2]	<u>1,500</u>
Net service tax payable	<u>2,208</u>

Notes –

1. CENVAT credit of Rs.1,000 on value of goods and materials sold in the execution of works contract shall not be available to the assessee.
2. CENVAT credit in respect of capital goods shall be taken only for an amount not exceeding 50% of the duty paid on such capital goods in the same financial year and balance 50% shall be available in the subsequent financial year [Rule 4(2) of the CENVAT Credit Rules, 2004].

Question 5

- (a) XYZ Co. was involved in the services of unloading of coal from wagon tipping system, stacking/reclaiming of coal to stacker reclaimer system and feeding of coal to boiler bunkers through conveyer system. The Department had taken a view that the charges received by XYZ Co. for such activity were taxable under the category of 'cargo handling services' in terms of section 65(105) (zr) read with section 65(23) of the Finance Act, 1994. M/s XYZ Co. claimed that the services rendered by it cannot be brought under 'cargo handling service' as it is engaged only in the handling of coal from railway wagons to the required destination of the thermal power station wherein machines are used with the aid of some manpower.

Briefly explain, with reference to relevant provisions and case law, if any, whether the stand taken is correct in law. (5 Marks)

- (b) M/s Krishna Computer Colour Lab. is in the business of developing and printing of colour photographic films. It develops the negatives supplied by the customer and provides positive prints as per the order placed by the customer. The Department has demanded service tax on the entire amount charged from the customers without deduction of any amount towards cost of materials.

The assessee's contention is that no service tax could be charged on the material content since service tax is only a tax on services and not on goods. Therefore, the assessee has sought to bifurcate the gross receipts on account of processing of photographs into the portion attributable to goods and those attributable to services so that service tax could be paid with respect to the value of service alone in their case.

Briefly explain, with regard to decided case law, if any, whether the stand taken by M/s Krishna Computer Colour Lab. is correct in law. (5 Marks)

Answer

- (a) The facts in the case are similar to the matter decided by the Rajasthan High Court in S.B. Construction Company v. UOI (2006) 4 STR 545. The High Court has held that the service tax has been levied on cargo handling, i.e. on such services which undertake the activities of packing, unpacking, loading, unloading of goods to be transported by any means of transportation namely truck, rail, ship or aircraft. In the instant case, the services provided by the company under the contract is distinct i.e., transporting coal from wagons to thermal power station by conveyor belt and not by any means of transportation. Thus, the services rendered by the company cannot fall under the ambit of cargo handling services and as such is not liable to service tax.

- (b) Yes, the request of M/s. Krishna Computer Colour Lab is valid in law.

In a similar case in Adlabs v. CCE 2006 (2) STR 121, the Bangalore Tribunal held that the assessee was entitled to deduction of the cost of materials which were used during the course of providing the services of photography while computing the value of taxable services.

However, when the issue as to whether photography service included any sale of materials had come up for consideration before the Supreme Court in the case of C.K. Jidheesh 2006 (1) STR 3 (SC) and in case of Rainbow Color Lab & Anr. v. State of M.P. & Ors. 2001 (134) ELT 332(SC), it was decided that photography contracts were pure service contracts in which there was no element of sale of goods. Hence, the question of bifurcating the receipts into an element of goods and the element of service could not and did not arise. Relying upon these two judgments, in case of Laxmi Color Pvt. Ltd. v. CCE 2006 (3) STR 363 (New Dehi – CESTAT), the Tribunal held that the appellant was not entitled to any deduction in respect of cost of goods used during the course of providing service.

However, the decisions in case of Rainbow Color Lab case and C.K. Jidheesh case were overruled by the Supreme Court in case of Bharat Sanchar Nigam Ltd. v. UOI 2006 (2) STR 161. Therefore, when the issue again cropped up in case of Shilpa Colour Lab. V. CCE (2007) 8 STT 102 (Tri.-Banglore), the Tribunal held that in the services relating to photography, if certain goods and materials were consumed, the value of those goods and materials could not be included in the value of taxable service. The Tribunal also observed that its earlier decision in the Adlabs case was correct and legal in the light of the Supreme Court decision in the Bharat Sanchar Nigam case.

Hence, the stand taken by M/s Krishna Colour Lab. is correct in law.

Question 6

- (a) State whether the following are taxable under the provisions of the Finance Act, 1994 relating to service tax:-
 - (i) Services provided in connection with the management of an organization by a management consultant having no professional qualification.
 - (ii) Advance payment received from the service recipient by a person rendering construction services under section 65(105) (zzzh) of the Act. (4 Marks)
- (b) 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 January, 2008.
 - (ii) A provider of taxable service under an unregistered brand name of another person. Aggregate value of taxable services was Rs. 6,00,000 up to 31.3.08. (4 Marks)
- (c) Write a brief note to explain the impact of VAT on lease transactions. (4 Marks)
- (d) 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. (4 Marks)
- (e) Who are not eligible for composition scheme under the VAT regime? Discuss briefly. (4 Marks)

Answer

- (a) (i) Yes, as per section 65(65), no academic or professional qualification is required in order to be taxable under the category of 'management or business consultant' service. In case, a person is not professionally qualified and is providing service of management consultancy, he is still liable to pay service tax on the taxable value of services provided by him.
- (ii) Section 67(3) of the Finance Act, 1994 stipulates that the gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service. Thus, the advance payment received from the service recipient by a person rendering construction services under section 65(105) (zzzh) shall be liable to service tax.
- (b) (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 31.01.2008.
- (ii) Yes, a provider of taxable service under a registered 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 as basic exemption for small service provider is not available to a service provider who provides taxable service under a trade name or brand name, whether registered or not, of another person.
- (c) 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 should 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.

Note – Any four points can be mentioned in the above answer

- (d) 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 3% 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 State 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.

- (e) Small dealers having gross turnover exceeding Rs 5 lakhs but less than Rs 50 lakhs have option of composition scheme. They will have to pay a small percentage of gross turnover. They will not be entitled to any input tax credit.

However, the following 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.

PART - C

Question 7

A consignment of 800 metric tonnes of edible oil of Malaysian origin was imported by a charitable organization in India for free distribution to below poverty line citizens in a backward area under the scheme designed by the Food and Agricultural Organization. This being a special transaction, a nominal price of US\$ 10 per metric tonne was charged for the consignment to cover the freight and insurance charges. The Customs House found out that at or about the time of importation of this gift consignment there were following imports of edible oil of Malaysian origin:

S. No.	Quantity imported in metric tonnes	Unit price in US \$ (CIF)
1.	20	260
2.	100	220
3.	500	200
4.	900	175
5.	400	180
6.	780	160

The rate of exchange on the relevant date was 1 US \$ = Rs. 43.00 and the rate of basic customs duty was 15% ad valorem. There is no countervailing duty or special additional duty. Calculate the amount of duty leviable on the consignment under the Customs Act, 1962 with appropriate assumptions and explanations where required. (5 Marks)

Answer

Determination of transaction value of the subject goods:-

In the instant case, while determining the transaction value of the goods, following factors need consideration:-

1. In the given case, US \$10 per metric tonne has been paid only towards freight and insurance charges and no amount has been paid or payable towards the cost of goods. Thus, there is no transaction value for the subject goods. Consequently, we have to look for transaction value of identical goods under rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [Customs Valuation (DVIG) Rules, 2007].
2. Rule 4(1)(a) of the aforementioned rules provides that subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued. In the six imports given during the relevant time, the goods are identical in description and of the same country of origin. It may be presumed that they were produced by the same person. Even otherwise, such consignments can be accepted as identical goods.

3. Further, clause (b) of rule 4(1) of the said rules requires that the comparable import should be at the same commercial level and in substantially same quantity as the goods being valued. Since, nothing is known about the level of the transactions of the comparable consignments, it is assumed to be at the same commercial level.
4. As far as the quantities are concerned, the consignments of 20 and 100 metric tonnes cannot be considered to be of substantially the same quantity. Hence, remaining 4 consignments are left for our consideration.
5. However, the unit prices in these 4 consignments are different. Rules 4(3) of Customs Valuation (DVIG) Rules, 2007 stipulates that in applying rule 4 of the said rules, if more than one transaction value of identical goods is found, the lowest of such value shall be used to determine the value of imported goods. Accordingly, the unit price of the consignment under valuation shall be US \$ 160 per metric tonne.

Computation of amount of duty payable:-

CIF value of 800 metric tonnes:

$$= 800 \times 160 = \text{US } \$ 1,28,000$$

At the exchange rate of \$ 1 = Rs.43

CIF Value (in Rupees)	=	Rs.55,04,000
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Add: Landing Charges at 1%	=	<u>Rs.55,000</u>
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	=	<u>Rs.55,59,040</u>
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15% of Ad Valorem duty

on Rs.55,59,040	=	Rs.8,33,856
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Add: Education cess @ 2%

(rounded off)	=	Rs.16,677
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Add: Secondary and higher education

cess @ 1% (rounded off)	=	Rs.8,339
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Total custom duty payable	=	Rs.8,58,872
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Question 8

M/s IES Ltd. (assessee) imported certain goods at US \$ 20 per unit from an exporter who was holding 30% equity in the share capital of the importer company. Subsequently, the assessee entered into an agreement with the same exporter to import the said goods in bulk at US \$ 14 per unit. When imports at the reduced price were effected pursuant to this agreement, the Department rejected the transaction value stating that the price was influenced by the relationship and completed the assessment on the basis of transaction value of the earlier imports i.e. at US \$20 per unit under rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules 2007, viz transaction value of identical goods. State briefly, whether the Department's action is sustainable in law, with reference to decided cases, if any. (5 Marks)

Answer

No, the Department's action is not sustainable in law. Rule 2(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 inter alia provides that persons shall be deemed to be "related" if one of them directly or indirectly controls the other. The word "control" has nowhere been defined under the said rules. As per the common parlance, the control is established when one enterprise holds at least 51% of the equity shareholding of the other company. However, in the instant case, the exporter company held only 30% of shareholding of the assessee. Thus, exporter company did not exercise a control over the assessee. So, the two parties cannot be said to be related.

The fact that assessee had made bulk imports could be a reason for reduction of import price. The burden to prove under valuation lies on the Revenue and in absence of any evidence from the Department to prove under-valuation, the price declared by the assessee is acceptable.

In the light of foregoing discussion, it could be inferred that Department's action is not sustainable in law.

Question 9

- (a) Explain briefly, the significance of Indian customs waters under the Customs Act, 1962.
- (b) Section 14 of the Customs Act, 1962, with effect from 10.10.2007, and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 are now fully compatible. Explain with a brief note.
- (c) Can warehoused goods be transferred from one warehouse to another under the Customs Act, 1962?
- (d) What is the minimum and maximum rate or amount of duty drawback prescribed under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 made under section 75 of the Customs Act, 1962? Explain with a brief note.
- (e) Briefly discuss, the procedure for confiscation of goods or imposition of penalty under section 124 of the Customs Act, 1962. (2×5=10 Marks)

Answer

- (a) 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 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].

Note - Any two points can be mentioned in the above answer.

- (b) As per erstwhile section 14 of the Customs Act, 1962, the 'Customs value' was 'deemed value'. However, the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 provided that the value of the imported goods should be based on the concept of 'transaction value' according to WTO Valuation Agreement. The Finance Act, 2007 has substituted a new section 14 for the earlier section 14 with an aim to rectify this anomaly. New section 14 speaks of transaction value. Consequently, the existing valuation rules have also been replaced by new valuation rules, separately for imported goods and export goods. Hence, now there is no inconsistency between the section and rules and these are now fully compatible.
- (c) Yes, section 67 of the Customs Act, 1962 permits removal of warehoused goods to other warehouse under bond, with the permission of the proper officer, subject to such conditions as may be prescribed.
- (d) Minimum rate of duty drawback - Rule 8(1) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 provides that no amount or rate of drawback shall be determined in respect of any goods, the amount or rate of drawback of which would be less than one per cent of the F.O.B. value thereof, except where the amount of drawback per shipment exceeds five hundred rupees.

Maximum rate of duty drawback - Rule 8A of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 provides that the drawback amount or rate shall not exceed one third of the market price of the export product.

- (e) Section 124 of the Customs Act, 1962 provides that before confiscating goods or imposing any penalty on any person, a show cause notice must be issued to the owner of goods giving grounds for confiscation or imposition of penalty and he should be given an opportunity to make representation and being heard. The show cause notice can be issued only with the prior approval of the officer of customs not below the rank of Deputy Commissioner of Customs.

The notice and the representation, at the request of the person concerned, can be oral.