

The suggested answers for Indirect Taxes (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 TAXES

Answer to question nos. 1, 6 and 9 are compulsory. In addition thereto, answer any two questions from Part “A” and one question from Part “B”.

PART – A

Question 1

- (a) Briefly explain the following with reference to the provisions of the Central Excise Act, 1944:

(i) Curing

(ii) Broker or Commission agent.

(2 × 2 = 4 Marks)

- (b) SC Ltd. is a manufacturer of caustic soda, cement etc. It uses LSHS (Low Sulphur Heavy Stock) as fuel for generating electricity which in turn is captively consumed for the manufacture of final products. It has claimed CENVAT credit on LSHS on the reasoning that this is used ‘in relation to manufacture of final products’ and hence it is an input.

However, the department did not allow the credit as LSHS had been used to generate electricity, which is not excisable and hence LSHS could not be considered as input used as fuel. State with reasons whether the action taken by the department is covered by the CENVAT Credit Rules, 2004. You may take help of the decided case law(s), if any.

(4 Marks)

- (c) Explain the term ‘normal transaction value’ under the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. How is the term used for valuation of excisable goods?

(4 Marks)

- (d) A particular product of a manufacturer was exempt from duty. Subsequently, central excise duty was imposed on it. The manufacturer assessee continued to sell the product without any change in selling price. Later, he realised that he had paid higher quantum of duty. He filed a refund claim stating that there was no change in the price before and after imposition of duty and hence, the burden of duty has not been passed on to the buyer. Will his stand for refund claim be acceptable ? Discuss briefly.

(4 Marks)

- (e) State in brief the penal provisions under the Central Excise Act, 1944 and rules made thereunder if a manufacturer of excisable goods does not apply for registration. (4 Marks)

Answer

- (a) (i) As per section 2(c) of the Central Excise Act, 1944, ‘curing’ includes wilting, drying, fermenting and any process for rendering an unmanufactured product fit for marketing or manufacture.

- (ii) As per section 2(aaa) of the Central Excise Act, 1944, broker or commission agent means a person who in the ordinary course of business makes contracts for the sale or purchase of excisable goods for others.

- (b) In the present case, LSHS (low sulphur heavy stock) is used as fuel for generation of 'electricity', which in turn is used in relation to manufacture of final products.

As per rule 2(k)(i) of the CENVAT Credit Rules, 2004, goods used for generation of electricity used in or in relation to manufacture of final products or for any other purpose, within the factory of production, are inputs.

Thus, SC Ltd. can claim CENVAT credit on LSHS and hence, the action taken by the department is not covered by the CENVAT Credit Rules, 2004. The Apex Court in the case of CCE v. Solaris Chemtech Ltd. (2007) 214 ELT 481 (SC) has also confirmed that LSHS and furnace oil used for generation of electricity used for manufacture of final products are inputs eligible for CENVAT credit.

- (c) As per rule 2(b) of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, 'normal transaction value' means the transaction value at which the greatest aggregate quantity of goods are sold.

The term is used for valuation in case of depot transfer under rule 7, sale to related person under rule 9 and valuation in case of job-work under rule 10A of the said rules.

In case of depot transfer under rule 7, the value of the excisable goods is the normal transaction value of such goods sold from such depot at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment.

In case of sale to related person under rule 9, the value of the excisable goods is the normal transaction value at which these are sold by the related person at the time of removal, to buyers (not being related person); or where such goods are not sold to such buyers, to buyers (being related person), who sells such goods in retail.

Under rule 10A(ii), where the goods are not sold by the principal manufacturer at the time of removal of goods from the factory of the job-worker, but are transferred to some other place, the value of the excisable goods shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of said goods from the factory of job-worker.

- (d) In CCE v. Allied Photographics 2004 166 ELT 3(SC), it has been held that even if there is no change in price before and after assessment (i.e. before and after imposition of duty), it does not lead to the inevitable conclusion that incidence of duty has not been passed on to the buyer as such uniformity may be due to various factors. Thus, even if the price remains the same before and after imposition of duty, the assessee has to establish that he has not passed on the burden of duty to the buyer.

Thus, the refund claim of the manufacturer will not be acceptable.

- (e) As per section 9(1)(a) of the Central Excise Act, 1944, any person who contravenes the provisions of rules regarding registration of a unit (required under section 6 of the Act), shall be punishable with imprisonment upto seven years and fine (without limit) if the duty leviable on the excisable goods exceeds Rs.1,00,000. The imprisonment should be minimum for six months unless there are special and adequate reasons for granting lesser punishment. However, if the duty leviable on goods is less than Rs.1,00,000, imprisonment upto three years or fine or both can be imposed.

Under rule 25 of the Central Excise Rules, 2002, where any manufacturer or producer engages in manufacture, production or storage of any excisable goods without having applied for registration, all such goods shall be liable to confiscation. Moreover, such manufacturer/producer shall also be liable to a penalty not exceeding the duty on such excisable goods or Rs.2,000, whichever is greater.

Question 2

- (a) P Ltd. manufactures two products namely 'A' and 'B'. 'A' is a specified product under section 4A of the Central Excise Act, 1944. The sale prices of products 'A' and 'B' are Rs.50 per unit and Rs.30 per unit respectively. The sale prices of both the products include 14% basic excise duty plus 2% education cess and 1% secondary and higher education cess. Central sales tax @ 3% is also included in both the selling prices.

1,00,000 units each of the two products were removed from the factory for sale. Calculate the total excise duty liability of P Ltd. on both the products assuming that 40% abatement is permissible under section 4A on product 'A'. (5 Marks)

- (b) What is the 'relevant date' for claiming refund under section 11B of the Central Excise Act, 1944? (4 Marks)
- (c) What are the documents required to be submitted for filing claim of rebate by an exporter? (4 Marks)
- (d) K Ltd. is a manufacturer of glass fibre reinforced plastics, which are used for roofing sheets and partition. It is manufactured by impregnating plastics with glass to give stiffness and increased insulated capacity. Mention the relevant rule of "General Interpretative Rules", which is applicable here for the classification of the product. (2 Marks)

Answer

- (a) Computation of duty liability in case of product 'A'

	Rs.
Retail sale price (Rs.50 x 1,00,000)	50,00,000
Less: 40% abatement	<u>20,00,000</u>
Assessable value under section 4A	<u>30,00,000</u>
Excise duty + cess @ 14.42% on Rs.30,00,000	<u>4,32,600</u>

Note : Sale price of product 'A' is taken as its retail sale price as it includes central sales tax, excise duty and cesses.

Computation of duty liability in case of product 'B'

	Rs.
Sale price (Rs.30 x 1,00,000)	30,00,000
Less : Central sales tax (Rs.30,00,000 x 3/103)	<u>87,379</u>
Price inclusive of excise duty & cess	<u>29,12,621</u>
Excise duty payable (Rs.29,12,621 x 14.42)/114.42	<u>3,67,069</u>

- (b) The relevant dates for claiming refund under section 11B of the Central Excise Act, 1944 in different circumstances are given in the following table:

Particulars	Relevant date
(i) In case of exports	
(a) by sea or air	Date of departure of the ship or aircraft
(b) by land	Date on which the goods pass the frontier
(c) by post	Date of despatch of goods by post office
(ii) In case of goods returned to factory for being remade, refined etc.	Date of entry into factory
(iii) In case of goods to which banderols are required to be affixed if removed for home consumption but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India	Date of entry into the factory
(iv) In case of reduction of duty in case of compounded levy scheme	Date of reduction
(v) In case of a person, other than the manufacturer	Date of purchase of the goods by such person
(vi) In case of provisional assessment	Date of adjustment of duty after final assessment
(vii) In case of a refund arising as a consequence of judgment, decree, order or direction of Appellate Authority, Tribunal, any court	Date of such judgment, decree, order or direction

(viii) In case of goods exempt from payment of duty vide a special order issued under section 5A(2)	Date of issue of such order
(ix) In any other case	Date of payment of duty

Note: Any four cases of relevant dates can be given in the answer.

- (c) An exporter has to submit the following documents for filing claim of rebate:
- (i) a request on the letterhead of the exporter containing claim of rebate, A.R.E. 1 numbers and dates, corresponding invoice numbers and dates, amount of rebate on each A.R.E. 1 and its calculations
 - (ii) original copy of the A.R.E. 1
 - (iii) invoice issued under rule 11
 - (iv) self attested copy of shipping bill
 - (v) self attested copy of bill of lading
 - (vi) disclaimer certificate (in case where claimant is other than exporter)
- (d) In this case, rule 3(b) of the General Interpretative Rules will apply as the product is a 'composite item'. Rule 3(b) provides that mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale should be classified on the basis of material or component which gives the product its essential character.

Therefore, since plastic is the more essential item in the product, applying the test of essentiality, the product will be classified under plastic items under the appropriate heading of the tariff. Same view was expressed in the case of *Kemrock Industries and Exports Ltd. v. CCE (2007) 210 ELT 497 (SC)*

Question 3

- (a) Briefly explain the provisions of sub rule (5B) of rule 3 of the CENVAT Credit Rules, 2004 regarding the value of input or capital goods, on which CENVAT credit has been taken, is written off fully, before being put to use. (4 Marks)
- (b) Discuss briefly the provisions of rule 4(4) of the Central Excise Rules, 2002 regarding storage of non-duty paid goods outside the factory. (4 Marks)
- (c) Mention any four important types of bonds with their purpose for use under the central excise laws. (4 Marks)
- (d) Write a note on publication of information in respect of certain person in certain cases under the Central Excise Act, 1944. (3 Marks)

Answer

- (a) Sub-rule (5B) of rule 3 of the CENVAT Credit Rules, 2004 provides that if the value of any,

- (i) input, or
- (ii) capital goods before being put to use,

on which CENVAT credit has been taken is written off fully or where any provision to write off fully has been made in the books of account, then the manufacturer shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods. However, if the said input or capital goods is subsequently used in the manufacture of final products, the manufacturer shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules.

- (b) As per rule 4(4) of the Central Excise Rules, 2002, the storage of non-duty paid goods outside the factory can be permitted by the Commissioner of Central Excise subject to such safeguards as he may specify. Such storage outside the factory premises is permissible in exceptional circumstances having regard to the nature of the goods and shortage of storage space in the factory.
- (c) Bond is a collateral security and its purpose is to secure compliance with the rules and procedures laid down under the excise law. The types and purpose of the bonds are given below.

Type of bond	Purpose
B - 1 Surety/Security	Export of goods without payment of duty (Rule 19)
B - 2 Surety/Security	Provisional Assessment
B - 3	Despatch of excisable goods removed for rewarehousing and export therefrom without payment of duty
B - 11	Provisional release of seized goods
B – 17 Surety/Security	Composite bond of 100% EOUs/EPZ for assessment, export, accounting and disposal of excisable goods obtained free of duty

Note: Any four types of bonds can be given in the answer.

- (d) Section 37E of the Central Excise Act, 1944 provides that the Central Government may publish the name and other particulars of any person relating to any proceeding under the central excise law, in such manner as it thinks fit, if in its opinion it is in public interest to do so. However, the publication in relation to any penalty can be made only after the time for presenting an appeal to the Commissioner (Appeals) or the Appellate Tribunal expires without an appeal being presented or the appeal, if presented, gets disposed of.

In case of a firm, company or other association of persons, the name (s) of partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association may also be published if circumstances justify such publication.

Question 4

- (a) State the matters, which can be referred for advance ruling under section 23C of the Central Excise Act, 1944. (5 Marks)
- (b) Which goods, bearing the brand name or trade name of others, are eligible for exemption available to small-scale units? (5 Marks)
- (c) A manufacturer purchased certain inputs from Z. The assessable value was Rs.20,000 and the central excise duty was calculated at Rs.3,296 making the total amount of invoice at Rs.23,296. However, the buyer manufacturer paid only Rs.20,800 to Z in full settlement of this bill. How much CENVAT credit can be availed by the manufacturer and why? (3 Marks)
- (d) A merchant manufacturer gets the goods manufactured according to his design and specifications from a job worker. Who will be called as manufacturer under the central excise law? (2 Marks)

Answer

- (a) The following matters can be referred for advance ruling under section 23C of the Central Excise Act, 1944:
 - (i) classifications of any goods under the Central Excise Tariff Act, 1985;
 - (ii) applicability of a notification issued under section 5A(1) having a bearing on the rate of duty;
 - (iii) principles to be adopted for the purposes of determination of value of goods under the provisions of the Central Excise Act, 1944;
 - (iv) notifications issued, in respect of duties of excise under the Central Excise Act, 1944, the Central Excise Tariff Act, 1985 and any duty chargeable under any other law for the time being in force in the same manner as duty of excise leviable under the Central Excise Act, 1944;
 - (v) admissibility of credit of excise duty paid or deemed to have been paid on the goods used in or in relation to the manufacture of the excisable goods;
 - (vi) determination of the liability to pay excise duty on any goods under the Central Excise Act, 1944.

Note: Any five matters can be given in the answer.

- (b) As per Notification No. 8/2003 dated 01.03.2003 as amended, the small scale exemption is available in respect of the goods bearing the brand name or trade name of others in the following instances:

- (a) where the goods, being in the nature of components or parts of any machinery or equipment or appliances, are cleared for use as original equipment in the manufacture of the said machinery or equipment or appliances by following the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001;
 - (b) where the goods bear a brand name or trade name of -
 - (i) the Khadi and Village Industries Commission; or
 - (ii) a State Khadi and Village Industry Board; or
 - (iii) the National Small Industries Corporation; or
 - (iv) a State Small Industries Development Corporation; or
 - (v) a State Small Industries Corporation;
 - (c) where the goods are manufactured in a factory located in a rural area;
 - (d) where the goods are account books, registers writing pads and file folders falling under Heading 4820 or 4821 of the First Schedule.
- (c) As per rule 3(1) of the CENVAT Credit Rules, 2004, a manufacturer of final products is allowed to take credit of excise duty paid on any input or capital goods received in the factory of manufacture of final product. Thus, in case of inputs or capital goods the eligibility of availing CENVAT credit does not depend upon making the payment for such inputs or capital goods to the supplier.

Therefore, the manufacturer can avail full CENVAT credit of Rs.3296, provided Z does not claim the refund of the excess excise duty paid by him.

- (d) Excise duty liability arises when goods are manufactured. Thus, only if the goods are manufactured during job work, excise duty liability will arise. It will be immaterial as to who has supplied the raw material. However, if an item is only repaired or the process undertaken by the job worker does not amount to manufacture, there will not be any duty liability.

Thus, in the given case the job-worker will be the manufacturer as he is the one who manufactures the goods as per the design and specifications of the merchant manufacturer.

Question 5

- (a) Discuss whether remission of duty will be granted under the Central Excise Rules, 2002, in the following cases:
 - (i) Loss of molasses due to auto combustion in sugar factory.
 - (ii) Normal evaporation, storage and handling losses of petroleum products.
 - (iii) There was natural calamity in the factory, but the department was not intimated in time. (2 × 3 = 6 Marks)
- (b) What do you mean by scrutiny of assessment in view of the self- assessment procedure under central excise? (3 Marks)

- (c) SP Ltd. purchased capital goods worth Rs.11,44,200, inclusive of excise duty @ 14.42%, on 1.4.2007. CENVAT credit attributable on such capital goods was duly accounted for. You are required to compute the amount of CENVAT credit to be reversed, if the capital goods were removed, after being used, on 2.11.2008. (3 Marks)
- (d) State the obligation of a small-scale unit to file declaration under the following circumstances:

Year	Turnover (Rs. in lakhs)
2006-07	45
2007-08	80
2008-09	100

(3 Marks)

Answer

- (a) (i) Yes. Loss of molasses due to auto combustion in sugar factory is an unavoidable accident and hence, remission is admissible [Shankar Sugar Mills v. CCE 1994 (71) ELT 753 (Tri.)].
- (ii) Yes. Remission can be granted in case of normal evaporation, storage and handling losses of petroleum products.
- (iii) Yes. Remission cannot be denied simply because there was delay in giving intimation to the Department. If there is a natural calamity in the factory, procedural lapse cannot come in the way of benefit [Bengal Chem. & Pharmaceuticals Ltd. v. CCE 2003 (158) ELT 327].
- (b) In view of the self-assessment procedure wherein the assessee himself assesses the duty liability, the Departmental officers have been entrusted with the responsibility of scrutinizing the assessment for verification of its correctness.
- For this purpose, the proper officer may on the basis of information contained in the return filed by the assessee and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee on the goods removed, in the manner to be prescribed by the Board [Rule 12(3)]. Sub-rule 4 of rule 12 casts a responsibility on every assessee to make available to the proper officer all the documents and records for verification as and when required by such officer.
- (c) As per the second proviso to rule 3(5) of the CENVAT Credit Rules, 2004, where any capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer shall pay an amount equal to the CENVAT credit taken on the said capital goods reduced by 2.5% for each quarter of a year or part thereof from the date of taking the CENVAT credit.

No. of quarters or part thereof expired from 1.4.2007 to 2.11.2008 = 7 quarters

Amount of CENVAT credit taken = $(11,44,200 \times 14.42)/114.42$ = Rs.1,44,200

Amount of CENVAT credit to be reserved = Rs.1,44,200 – (17.5% of Rs.1,44,200)
= Rs.1,18,965

- (d) SSI units whose turnover is more than prescribed limit (called specified limit) have to file a declaration in a prescribed form. The specified limit is defined as Rs.60 lakh below the exemption limit. The exemption limit was Rs.100 lakh in 2006-07. However, from 01.04.2007 it was raised to Rs.150 lakh. Thus, the specified limit for the year 2006-07 is Rs.40 lakh and from 2007-08 onwards it has been increased to Rs.90 lakh.

Therefore, the unit was required to file the declaration in the year 2006-07, as the turnover was Rs.45 lakh (more than Rs.40 lakh). However, such declaration has to be filed only once in the lifetime of the assessee and not every year. Therefore, the unit is not required to file the declaration again in the year 2008-09 when its turnover is anticipated to cross the limit of Rs.90 lakh.

PART – B

Question 6

- (a) Explain briefly, with reference to the provisions of the Customs Act, 1962, the following:
- (i) Bill of export
 - (ii) Import report (2 × 2 = 4 Marks)
- (b) Answer the following with reference to the provisions of section 14 of the Customs Act, 1962 and the rules made thereunder:
- (i) What shall be the value, if there is a price rise between the date of contract and the date of actual importation?
 - (ii) Whether the payment for post-importation process is includible in the value if the same is related to imported goods and is a condition of the sale of the imported goods?
 - (iii) Bill of entry was filed on 27.10.2008. Will you apply the exchange rate notified by the Central Board of Excise and Customs on 25.9.2008 or notified on 25.10.2008? (2 × 3 = 6 Marks)
- (c) BL Ltd. imported Super Kerosene Oil (SKO) and stored it in a warehouse. An ex-bond bill of entry for home consumption was filed and duty was paid as per rate prevalent on the date of presentation of such bill of entry; and the order for clearance for home consumption was passed. On account of highly combustible nature of SKO, the importer made an application to permit the storage of such kerosene oil in the same warehouse until actual clearance for sale/use. The application was allowed. When the goods were actually removed from the warehouse, the rate of duty got increased. The department demanded the differential duty. The company challenged the demand. Whether it will succeed? Discuss briefly taking support of decided case law(s), if any. (5 Marks)

- (d) What are the conditions required to be fulfilled by the importer to make the imported goods eligible for preferential rate of duty prescribed by the Central Government by notification under section 25 of the Customs Act, 1962? (5 Marks)

Answer

- (a) (i) As per section 2(5) of the Customs Act, 1962, bill of export means a bill of export referred to in section 50. Section 50 inter alia provides that the exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported by land, a bill of export in the prescribed form.
- (ii) As per section 2(24) of the Customs Act, 1962, import report means the report required to be delivered under section 30. Section 30 inter alia provides that the person-in-charge of a vehicle carrying imported goods or any other person as may be notified by the Central Government shall, in the case of a vehicle, deliver to the proper officer an import report within twelve hours after its arrival in the customs station, in the prescribed form.
- (b) (i) As per the amended section 14(1) of the Customs Act, 1962, the value of imported or export goods shall be their transaction value. The old concept of deemed value has been dispensed with. Accordingly, the value of the goods shall be the price of contract (i.e., the transaction value), even if there is price rise subsequently.
- (ii) On account of insertion of explanation to rule 10(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the payment for post-importation process is includible in the value of the imported goods if the same is related to such imported goods and is a condition of the sale thereof.
- (iii) The third proviso to section 14(1) of the Customs Act, 1962 inter alia provides that for imported goods, value under section 14(1) shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46. The rate of exchange applicable for a month is generally notified by the Board in the preceding month. Hence, the rate notified on 25.09.08 will apply for the bill of entry filed on 27.10.2008.
- However, it may be noted that the rate of exchange is not notified during the preceding month as a rule as the power to determine the rate of exchange given to the Board vide clause (a) of the explanation to section 14 of the Customs Act, 1962 is open ended.
- (c) Yes, the company will succeed. The facts of the given situation are similar to the case of CCUs vs. Biecco Lawrie Ltd. 2008 (223) ELT 3 (SC) wherein the Supreme Court has held that where duty on the warehoused goods is paid and out of charge order for home consumption is made by the proper officer in compliance of the provisions of section 68, the goods removed in smaller lots have to be treated as cleared for home consumption and importer would not be required to pay anything more.

Further, section 49 of the Customs Act, 1962 inter alia also provides that imported goods entered for home consumption if stored in a public warehouse, or in a private warehouse

on the application of the importer that the same cannot be cleared within a reasonable time shall not be deemed to be warehoused goods for the purposes of this Act, and accordingly the provisions of Chapter IX shall not apply to such goods.

- (d) The Government may by notification under section 25 of the Customs Act, 1962 prescribe preferential rate of duty in respect of imports from certain preferential areas. The importer will have to fulfill the following conditions to make the imported goods eligible for preferential rate of duty:
- (i) At the time of importation, he should make a specific claim for the preferential rate.
 - (ii) He should also claim that the goods are produced or manufactured in such preferential area.
 - (iii) The area should be notified under section 4(3) of the Customs Tariff Act, 1975 to be a preferential area.
 - (iv) The origin of the goods shall be determined in accordance with the rules made under section 4(2) of the Customs Tariff Act, 1975.

Question 7

- (a) Briefly explain the law relating to private warehouses. What are the guidelines for storage of sensitive goods in such warehouses? (6 Marks)
- (b) Who has the powers to -
- (i) appoint inland container depots;
 - (ii) appoint land customs stations;
 - (iii) specify limits of customs area; and
 - (iv) appoint public warehouse at places notified under the Customs Act, 1962?
- (1 × 4 = 4 Marks)
- (c) Explain the provisions of section 146 of the Customs Act, 1962 regarding licensing of customs house agents. (5 Marks)

Answer

- (a) According to section 58 of the Customs Act, 1962, at any warehousing station, the Assistant/Deputy Commissioner may licence private warehouses where dutiable goods or any other imported goods may be deposited. However, where public warehouses are available, private warehouses are not permitted.

The Assistant Commissioner may cancel the licence by giving one month notice in writing to the licensee or if the licensee has contravened any provisions of the Customs Act, 1962 or any of the conditions of the licence. However, the cancellation of the licence in the latter case can be done only by giving the licensee a reasonable opportunity of being heard.

In case of sensitive items, the following guidelines are to be observed:

- (i) Applicants should produce a Solvency Certificate from a Scheduled Bank of repute for a value not less than Rs.50 lakhs;
- (ii) Such warehouses should not be located in residential areas;
- (iii) The premises should be secure, possess fire-fighting provisions and be easily accessible to the customs officers;
- (iv) Goods deposited should be fully insured for a value at least equal to the customs duty;
- (v) The proprietor/partner/director must not be involved in any customs or excise offence;
- (vi) A cash deposit/ bank guarantee equal to 25% of the duty liability (effective duty foregone) will be taken for each consignment.

Note: Any three guidelines can be given in the answer.

- (b) (i) Section 7 of the Customs Act, 1962 empowers the Central Board of Excise and Customs to appoint inland container depots.
- (ii) Section 7 of the Customs Act, 1962 empowers the Central Board of Excise and Customs to appoint land customs stations.
- (iii) Section 8 of the Customs Act, 1962 empowers the Commissioner of Customs to specify limits of customs area.
- (iv) Section 57 of the Customs Act, 1962 empowers the Assistant/Deputy Commissioner of Customs to appoint public warehouse at places notified under the Customs Act, 1962.
- (c) Section 146 of the Customs Act, 1962 stipulates that no person shall carry on the business as an agent relating to the entry or departure of a conveyance or the import or export of goods at any customs station unless such person holds a licence granted in this behalf in accordance with the regulations.

The Board may make regulations for the purpose of carrying out the provisions of this section and, in particular, such regulation may provide for:

- (i) the authority by which a licence may be granted under the section and the period of validity of any such licence;
- (ii) the form of the licence and the fees payable therefor;
- (iii) the qualifications of persons who may apply for a licence and the qualifications of persons to be employed by a licensee to assist him in his work as an agent;
- (iv) the restrictions and conditions subject to which licence may be granted;
- (v) the circumstances in which a licence may be suspended or revoked;
- (vi) the appeals, if any, against an order of suspension or revocation of a licence, and the period within which such appeals shall be filed.

Question 8

- (a) Explain the obligation cast on person-in-charge on arrival of vessels or aircrafts in India under section 29 of the Customs Act, 1962. (5 Marks)
- (b) Explain the term 'joint venture in India' under the explanation to section 28E(c) of the Customs Act, 1962 for the purpose of advance ruling. (5 Marks)
- (c) A show cause notice demanding customs duty was issued in case of clearances made by a 100% Export Oriented Undertaking (EOU) to Domestic Tariff Area (DTA). Is the show-cause notice defective in law? (3 Marks)
- (d) What do you mean by assessment of goods under the Customs Act, 1962? (2 Marks)

Answer

- (a) Section 29(1) of the Customs Act, 1962 provides that the person-in-charge of a vessel or an aircraft entering India from any place outside India shall not cause or permit the vessel or aircraft to call or land:

- (i) for the first time after arrival in India; or
- (ii) at any time while it is carrying passengers or cargo brought in that vessel or aircraft at any place other than a customs port or a custom airport, as the case may be.

Sub-section (2) of section 29 provides that the above provisions are not applicable in relation to any vessel or aircraft, which is compelled by accident, stress of weather or other unavoidable cause to call or land at a place other than a customs port or customs airport. However, in such a case the person-in-charge of such vessel or aircraft has the following obligations cast on him:

- (i) He shall have to report the arrival of the vessel/landing of the aircraft to the nearest customs officer or the officer-in-charge of a police station and shall produce the log book belonging to the vessel or the aircraft if demanded.
 - (ii) He shall not without the consent of any such officer permit any goods carried in the vessel or the aircraft to be unloaded from, or any of the crew or passengers to depart from the vicinity of, the vessel or the aircraft. However, passengers and crew can be allowed to depart from the vicinity of, or the goods can be removed from, the vessel/aircraft if the same is necessary for reason of health, safety or preservation of life or property.
 - (iii) He shall comply with any directions given by any such officer with respect to any such goods.
- (b) As per section 28E (c) of the Customs Act, 1962 which defines an applicant eligible for advance ruling, a joint venture in India is an eligible applicant. The concept of joint venture in India has been explained in a new explanation inserted in the definition of the applicant.

The explanation clarifies that joint venture in India means a contractual arrangement whereby two or more person undertake an economic activity which is subject to joint

control and one or more of the partners or participants or equity holders is a non resident having substantial interest in such arrangement.

- (c) Yes, the show cause notice issued is defective in law as in respect of clearances made by a 100% export oriented undertaking (EOU) to domestic tariff area, the duty to be paid by the 100% EOU is the duty of excise and not customs duty. Therefore, show cause notice using the word 'customs duty' instead of 'central excise duty' is not maintainable. Similar view was expressed in the case of CCE v. Suresh Synthetics (2007) 216 ELT 662 (SC).
- (d) The provisions regarding assessment of goods are contained in section 17 of the Customs Act. After the bill of entry is filed, it is assessed by the appraisers of the customs department. There are two systems of assessment:
 - (i) First appraisalment system or first check procedure: In this type of assessment, goods are examined first and then assessed [Section 17(2)].
 - (ii) Second system of assessment or second check procedure: In this type of assessment, goods are assessed first and then examined [Section 17(4)].

PART – C

Question 9

- (a) Explain in brief the manner of determination of value as per rule 3 of the Service Tax (Determination of Value) Rules, 2006. (4 Marks)
- (b) What action can be taken by the department in case of misuse of service tax credit? (3 Marks)
- (c) The value of service provided by a consulting engineer is Rs.10,00,000. He has paid Rs.50,000 as cess under section 3 of the Research and Development Cess Act, 1986. What is the amount of service tax payable by him? (3 Marks)
- (d) Whether a manufacturer of excisable goods, who has paid service tax on freight, can himself take credit of service tax paid, if such transportation service is in relation to the manufacture and clearance of his final products? (3 Marks)
- (e) The goods manufactured by a company got destroyed by fire. The payment of duty was ordered to be remitted. Is the company required to reverse the CENVAT credit taken on input services used in manufacture of such destroyed goods? (2 Marks)

Answer

- (a) As per rule 3 of the Service Tax (Determination of Value) Rules, 2006, the value of taxable service, the consideration for which is not wholly or partly consisting of money, shall be determined by the service provider in the manner described below. However, the same is subject to the provisions of section 67.
 - (i) The value of such taxable service shall be equivalent to the gross amount charged by the service provider to provide similar service to any other person in the ordinary course of trade. The gross amount charged is the sole consideration.

- (ii) Where the value cannot be determined in accordance with above clause, the service provider shall determine the equivalent money value of such consideration. However, such value shall in no case be less than the cost of provision of such taxable service.
- (b) The following actions can be taken by the Department in case of misuse of service tax credit:
 - (i) Penalty extending upto Rs.2,000 can be levied if a person has taken CENVAT credit in respect of input service wrongly [Rule 15(3) of the CENVAT Credit Rules, 2004];
 - (ii) Penalty prescribed under section 78 of the Finance Act, 1994 shall also be levied on the output service provider if the CENVAT credit in respect of input services has been taken or utilized wrongly by reason of fraud, collusion etc. with an intent to evade payment of service tax [Rule 15(4) of the CENVAT Credit Rules, 2004];
 - (iii) The special audit, in cases where credit of duty availed or utilized is not within the normal limits etc., prescribed under section 14AA of the Central Excise Act, 1944 can be ordered in case of misuse of service tax credit.
- (c) Notification No. 18/2002 dated 16.12.2002 provides exemption to the taxable services provided by a consulting engineer to a client on transfer of technology from so much of the service tax leviable thereon as is equivalent to the amount of cess paid on the said transfer of technology under the provisions of section 3 of the Research and Development Cess Act, 1986.

Thus, service tax payable will be computed in the following manner:

Value of taxable services	= Rs.10,00,000
Service tax @ 12.36%	= Rs.1,23,600
Less : Cess paid	= <u>Rs.50,000</u>
Net service tax payable	= <u>Rs. 73,600</u>

- (d) Credit of service tax paid on freight is eligible in case of the manufacturer who pays service tax for inward transportation and satisfies the definition of input service. For outward freight, credit is admissible upto the place of removal.
- (e) As per rule 3(5C) of the CENVAT Credit Rules, 2004, where on any goods manufactured by an assessee, the payment of duty is ordered to be remitted, the credit taken on inputs used in the manufacture of said goods shall be reversed. Thus, there is no requirement for the reversal of CENVAT credit taken on input services used in the manufacture of such goods.