

PAPER – 8 : INDIRECT TAXES

QUESTIONS

EXCISE

Excisability

1. Odyssey Machines Limited manufactures C.I. castings which are captively consumed for producing C.I. Chilled Rolls. These Chilled Rolls are exempted from payment of excise duty. Revenue alleges that C.I. castings which are intermediary product, are marketable. Therefore, excise duty is payable on them as the final product is exempt from duty. However, the Revenue fails to prove the marketability of C.I. castings.

Discuss, with reference to a decided case law, if any, whether the allegation made by the Revenue is justifiable.

Classification

2. Some of the products manufactured by the assessee - Rehmaan Research Lab Pvt. Ltd (RRLPL) were under consideration. As per the assessee, the products under consideration were ayurvedic medicines covered under the Central Excise Tariff – Chapter-30 chargeable to duty at the rate of 10% advalorem. However, the Department contended that these products were classifiable under Chapter 33 – Cosmetic or toilet preparations, essential oils etc. - of the Tariff. Therefore, the said products would invite the duty at the rate of 40% advalorem.

Department applying the common parlance test raised the plea that these products were cosmetics such as skin beautification creams, lotions, moisturisers, shampoos, etc., and sold to the hotels, beauty parlours etc. It relied on the literature published by M/s. RRLPL on the Skin Care Naturals thereby suggesting that the use of biotique products would make the skin beautiful and would help the user retain the bloom of youth. It was also submitted by the Revenue that these products were treated as cosmetic products by the customers.

Do you think that Department's plea is valid in law?

CENVAT credit

3. Canarys Water Conservancy Machinery Co. Limited is engaged in manufacturing water pipes. Compute the CENVAT credit admissible to Canarys Water Conservancy Machinery Co. Limited. The excise duty paid at the time of purchase of following goods is:-

	(in Rs.)
Raw steel	12,000
Water pipe making machine	25,000

Lubricating oil	2,000
Equipments used in the office	10,000
Petrol	15,000
Pollution control equipment	22,000
Components, spares and accessories used in machinery	12,000

Notifications, departmental clarifications and trade notices

4. Can circulars issued by CBEC be given primacy over the decisions of the Court?

Duty based on production capacity

5. Explain the provisions relating to levy of excise duty on the basis of capacity of production.

Interest on delayed refund

6. Explain briefly, provisions relating to interest on delayed refund of amount deposited under the proviso to section 35F.

Central Excise Rules, 2002

7. Explain the validity of the following statements with reference to Central Excise Rules, 2002:-
 - (a) Inputs received in the factory may be removed as such for further processing to a job worker without payment of excise duty.
 - (b) The date of removal of any excisable goods being captively consumed within the factory of production is the date on which the final product in the production of which such goods are being used is removed.
 - (c) The assessee can pay duty on the goods, removed from the factory in the month of December 2008, electronically through internet banking till 6.01.2009.
 - (d) Goods removed from a 100% Export Oriented Unit to Domestic Tariff Area are exempt from the duty of excise.

Valuation

8. Surat Cloth Mills delivered 1000 meters of cloth to Purvanchal Readymade Garments on 10.01.2009 from its depot located at Ahmedabad @ Rs. 110 per meter. The goods were dispatched to the depot from the factory located in Surat on 05.01.2009. Ex-factory price on 05.01.2009 was Rs. 90 per meter. The sales of identical variety of cloth effected from Ahmedabad depot on the two relevant dates is as follows:-

On 05.01.2009		On 10.01.2009	
Cloth sold (in meters)	Rate per meter (Rs.)	Cloth sold (in meters)	Rate per meter (Rs.)
100	135	200	120
850	125	1,000	110
500	120	550	115
450	115	375	108

Calculate the assessable value of 1,000 meters of cloth sold by Surat Cloth Mills.

SSI

9. The value of clearances from four units of Wago Corporation Limited (WCL) during 2008-09 are as follows:-

Units situated at	Value of clearances (Rs. in lakh)
Guwhati	120
Patna	100
Delhi	130
Chennai	170

WCL sought your advice as a consultant whether benefit under Notification No. 8/2003 shall be available to WCL during 2009-10. You are required to indicate your advice in this context.

Bonds

10. Discuss briefly, the provisions governing the execution of bonds by banks.

Demand

11. Duriyan Corporation Limited (DCL) are engaged in the manufacture of both cold rolled (dutiable) and hot rolled (non-dutiable) steel pattas and patties. As per rule 6 of CENVAT Credit Rules, 2004, the assessee producing non-dutiable final products are not entitled to CENVAT credit in respect of duty paid on inputs. However, the assessees producing both dutiable and non-dutiable final products can avail themselves of CENVAT credit on all inputs, (including the inputs going into the production of non-dutiable goods) subject to the condition that they shall "pay an amount equal to 10% of the value of the exempted goods". Hence, DCL made payment at 10% while selling the non-dutiable goods. Department contended that 10% recovery from the buyer is liable to be deposited with the Central Government in view of the provisions of Section 11D of the Central Excise Act, 1944

Do you think the Department's contention is tenable in law?

Refund

12. Power Software Technologies Ltd. (PSTL) has paid excess amount of interest under section 11AB of Central Excise Act, 1944. Consequently, a refund claim for the said interest has been filed by PSTL under section 11B. The Department raises the objection to the refund claim on the ground that section 11B merely provides for refund of duty paid erroneously and not the interest. Do you think that the objection raised by the Department is valid in law?

Appeals

13. The adjudicating authority passed an order against the assessee – Rainbow Industries. Rainbow Industries carried the matter in appeal before Commissioner (Appeals) and succeeded. Revenue preferred appeal before the Tribunal. At the hearing of the appeal before the Tribunal, the representative of Rainbow Industries raised a preliminary objection as to maintainability of the appeal on the ground that the appeal had been filed by Commissioner of Central Excise himself, instead of by the Central Excise Officer authorized by the Commissioner, as required by Section 35B(2) of the Central Excise Act, 1944.

Do you think the assessee's contention is valid in law?

CUSTOMS

Basic concepts

14. Illustrate the points of differences between pilferage of goods under section 13 and loss/destruction of goods under section 23 of the Customs Act, 1962.

Duty drawback

15. Solaris Experts Limited has exported goods worth Rs. 1,00,000 (FOB Value). Ascertain whether Solaris Experts Limited is entitled to duty drawback given that the rate of duty drawback on such export of goods is 0.9%.

Valuation

16. Sonika International Corporation (SIC) has imported a machine by air from United States. Bill of entry is presented on 18.07.2008. However, entry inwards is granted on 7.08.2008.

The relevant details of the transaction are provided as follows:-

CIF value of the machine imported	\$ 13,000
Air freight paid	\$ 2,800
Insurance charges paid	\$ 200

Rate of exchange as announced by	As on 18.07.2008	As on 7.08.2008
CBEC	1 US \$=Rs 46	1 US \$=Rs 45.80
RBI	1 US \$=Rs 46.10	1 US \$=Rs 46.10

Calculate the assessable value (in rupees) for the purposes of levy of customs duty.

Make suitable assumptions wherever necessary.

Warehousing

17. Foreguson Steel Industries imported certain goods and kept them in warehouse. However, the goods were not removed from the warehouse at the expiration of the statutory time period during which such goods were permitted under section 61 to remain in a warehouse.

Foreguson Steel Industries sought to relinquish the title to such goods under the proviso to section 68. However, the Department contended that since the goods were deemed to be improperly removed from the warehouse (considering the over stay of such goods in the warehouse) under section 72(1)(b), the case would not fall under section 68 and thus proviso to section 68 could not be invoked. It was submitted that before invoking the proviso to section 68, the conditions of section 68 must be fulfilled which was not done in the instant case.

Do you think that the Department's contention is tenable?

Importation, exportation and transportation of goods

18. Mayoni Export House has exported certain goods to Canada through sea. The person-in-charge of the ship carrying the export goods at the custom station is ready to cause the ship to depart from that custom station. However, he comes to know that he cannot cause or permit the ship to depart from that customs station until a written order to that effect has been given by the proper officer. He has approached you for knowing the conditions to be fulfilled before issue of such an order. What would you advice him?

Power to arrest under section 104 of the Act

19. Rohan Aggarwal, the assessee, was summoned under section 108 of the Customs Act, 1962 to give his statement in the inquiry. He filed the application for anticipatory bail in the sessions court which were disposed of on the ground of being pre-mature. However, he later moved to the High Court which granted him anticipatory bail with a direction to the authorities that he should not be arrested without giving a ten days' prior notice to him.

Revenue contended that the order passed by the High Court was illegal and erroneous. Explain, with the help of a decided case law, if any, whether the stand taken by Revenue is sustainable in law.

Power to take samples

20. Enumerate briefly, the provisions relating to the power of custom authorities to draw samples under section 144 of the Customs Act, 1962.

SERVICE TAX

Taxability of Services

21. Examine the validity of following statements:-

- (a) Hindustan Infosystems is engaged in study, analysis, design and programming of information technology software. The said services are taxable under the category 'business auxiliary services'.
- (b) The services provided by a money changer in relation to dealing of foreign currency (buying or selling), at specified rates, without separately charging any amount as commission for such dealing, is not liable to service tax as foreign exchange broking under 'banking and other financial services'.
- (c) The services provided by a consulting engineer engaged in providing consultancy in the discipline of computer software engineering shall be exempt under the category 'consulting engineer's service'.
- (d) Some transporters undertake door- to-door transportation of goods or articles and they have made special arrangements for speedy transportation and timely delivery of such goods or articles. Such services are known as 'Express Cargo Service' with assurance of timely delivery. Such 'Express cargo service' is covered under 'courier agency service'.

Assessment Procedure

22. Explain the provisions relating to best judgment assessment under section 72 of the Finance Act, 1994 as amended.

Comparative valuation of service tax under a works contract service and under construction of complex service

23. Ramakrishna Development Corporation (RDC) – a real estate developer – is engaged in construction of a residential complex (consisting of more than 20 houses) named Apple County for Almeco Builders. The particulars are as follows:-

Contracted Price (excluding VAT, if leviable)	Rs. 25,00,000
Steel supplied by Almeco Builders to RDC	Rs.1,00,000
Excise duty paid on :-	
(a) capital goods used in providing construction service	Rs. 40,000
(b) inputs used in relation to construction service	Rs. 17,000

Service tax paid on input services used in
construction service

Rs. 25,000

You are required to calculate the net service tax payable by Ramakrishna Development Corporation in the following two cases:-

- (a) The aforesaid contract for construction of residential complex involves the transfer of property in goods and materials involved in the construction of residential complex of worth Rs. 2,50,000. VAT of Rs. 10,000 has been paid on the said goods and materials. RDC has opted to pay service tax under Composition Scheme.
- (b) The aforesaid contract for construction of residential complex does not involve any transfer of property in goods and materials used in the construction of residential complex. It is to be noted that RDC has opted to avail the abatement of service tax equal to 67% under notification no. 1/2003 dated 1.03.2006.

Due date for e-payment of Service Tax

24. Discuss briefly, the due date for e-payment of service tax.

Refund of service tax to exporters of goods

25. Boston Exporters Pvt. Ltd. exports goods to USA in August 2008. Singh Transporters transports these export goods by road in a truck from the inland container depot to the port of export and issues a consignment note to the exporter. Boston Exporters Pvt. Ltd. wishes to claim the refund of service tax paid on the service of transport of the said goods from the inland container depot to the port of export. You are required to state:-
- (a) Who shall be the person liable to pay service tax on the aforesaid services provided by Singh Transporters?
 - (b) Do you think that Boston Exporters Pvt. Ltd. is entitled to the refund of service tax paid on the services provided by Singh Transporters? If yes, briefly discuss the conditions to be fulfilled for the said purpose and the time limit for filing the refund claim.

SUGGESTED ANSWERS/HINTS

1. The facts of the given case are similar to the case of *White Machines v. CCE*, Delhi 2008 (224) ELT 347, wherein the Apex Court observed that if the intermediary product (C.I. castings) was marketable, then the excise duty would be payable because the final product i.e. C.I. Chilled Rolls was exempted from the payment of excise duty. However, the Tribunal failed to record any finding regarding marketability of the said intermediary product i.e. C.I. castings. Hence, it was held that in the absence of any findings recorded

by the Tribunal regarding the marketability, duty could not be levied on the goods in question.

Hence, it can be concluded that the allegation made by the Revenue is not justifiable.

2. No, the Department's plea is not valid in law. The facts of the given case are similar to the case of CCEx., Delhi v. Ishaan Research Lab Private Ltd. 2008 (230) ELT 7 wherein the Apex Court held that the said products would invite the duty as "ayurvedic medicines" at the rate of 10% advalorem and not at the rate of 40% advalorem as claimed by the Revenue since all these products were produced under the Drugs License issued under the Drugs and Cosmetics Act, 1940. Further, label of the product specified the medicinal properties of the product and there was a specific claim that this was not a cosmetic product.

The Supreme Court clarified that the common parlance test is not "be all and end all" of the matter. Merely because the product could be put to cosmetic use, that would not by itself make it a cosmetic product provided there was a rightful claim made that it was an ayurvedic product on the factual basis, and it contained the medicinal ayurvedic medicament.

Note - The headings cited in the case law mentioned above may not co-relate with the headings of the present Excise Tariff as this case relates to an earlier point of time.

3. Computation of CENVAT credit admissible to Canarys Water Conservancy Machinery Co. Ltd.:-

Particulars	Rs.
Raw steel	12,000
Water pipe making machine (Note – 1)	12,500
Lubricating oil	2,000
Pollution control equipment (Note – 1)	11,000
Components, spares and accessories used (Note – 1 & 4)	<u>6,000</u>
Total CENVAT credit admissible	<u>43,500</u>

Notes:-

1. 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)(a) of the CENVAT Credit Rules, 2004].
2. Rule 2(a) of the CENVAT Credit Rules, 2004 excludes equipment or appliance used in an office from the definition of capital goods. Therefore, CENVAT credit of duty paid on equipments used in office of worth Rs. 10,000 shall not be admissible.

3. Rule 2(k)(i) of the CENVAT Credit Rules, 2004 specifically excludes petrol from the definition of inputs. Therefore, CENVAT credit of duty paid on petrol of worth Rs. 15,000 shall not be admissible.
4. Circular no. 276/110/96 – TRU has clarified that spares, components and accessories need not necessarily fall in Chapter 82, 84, 85 or 90 of Tariff. The only condition is that they should be the spares, parts or components of machinery specified in clause (i) of rule 2(a) of CENVAT Credit Rules, 2004.
4. The Apex Court, in case of CCEx., Bolpur v. Ratan Melting and Wire Industries 2008 (12) STR 416, has decided that circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by executive are concerned, they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the Court to declare what the particular provision of statute says and not for the Executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law.

Therefore, the circulars issued by CBEC cannot be given primacy over the decisions of the Court.
5. Section 3A as introduced by Finance Act, 2008, contains the provisions relating to levy of excise duty on the basis of capacity of production. It provides as follows:-
 1. Notified goods - Central Government, having regard to:
 - (a) the nature of the process of manufacture or production of excisable goods of any specified description,
 - (b) the extent of evasion of duty in regard to such goods or
 - (c) such other factors as may be relevant,
 may specify such goods as notified goods and there shall be levied and collected duty of excise on such goods on the basis of production capacity of the factory.
 2. Determination of annual capacity – The Central Government may prescribe the manner for determination of the annual capacity of production of the factory by an officer not below the rank of Assistant Commissioner of Central Excise.

If the factory is not working for part of the year – annual production will be calculated on proportionate basis of the annual capacity of production.

If the factors determining production capacity are changed during the year – annual capacity will be re-determined on a proportionate basis having regard to such alteration or modification.

3. Procedure for levy and collection of duty - The duty of excise on notified goods shall be levied, at such rate, on the unit of production or, as the case may be, on the basis of such factors relevant to the production, as the Central Government may, by notification in the Official Gazette, specify, and collected in such manner as may be prescribed.

However, if the factory does not work for a continuous period of 15 days or more in a month, the duty calculated shall be proportionately reduced, subject to prescribed conditions.

4. Goods manufactured by 100% EOU - The provisions of this section shall not apply to goods produced or manufactured, by a 100% Export Oriented Undertaking (EOU) and brought to any other place in India.
6. Section 35FF, inserted by Finance Act, 2008, provides for payment of interest on pre-deposit made by an appellant who succeeds in appeal, if the amount of pre-deposit is not refunded within three months from the date of communication of the order of the appellate authority to the adjudicating authority.

Section 35FF provides that where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (appellate authority), under the first proviso to section 35F, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate specified in section 11BB after the expiry of three months from the date of the communication of the order of the appellate authority, till the date of refund of such amount.

7. (a) The statement is absolutely valid. Rule 16A of Central Excise Rules, 2002 provides that any inputs received in a factory may be removed as such or after being partially processed to a job worker for further processing, testing, repair, re-conditioning or any other purpose subject to the fulfillment of conditions specified in this behalf by the Commissioner of Central Excise having jurisdiction.
- (b) The statement is not correct. The date of removal of any excisable goods being captively consumed within the factory of production is the date on which these goods are issued for such use and not the date on which the final product in the production of which such goods are being used is removed [Explanation to rule 5(2) of Central Excise Rules, 2002].
- (c) The statement is absolutely justified. Rule 8(1) of the Central Excise Rules, 2002 has been amended to provide that the duty on the goods removed from the factory or the warehouse during a month shall be paid by the 6th day of the following month, if the duty is paid electronically through internet banking.

- (d) The statement is incorrect. Goods removed from a 100% Export Oriented Unit to Domestic Tariff Area are liable to duty of excise. Rule 17 of Central Excise Rules, 2002 provides that goods shall be removed from a 100% Export Oriented Unit to Domestic Tariff Area under an invoice by following the procedure specified in rule 11, and the duty leviable on such goods shall be paid by utilizing the CENVAT credit or by crediting the duty payable to the account of the Central Government in the manner specified in rule 8 of the said rules.

8. Computation of assessable value:-

1. In the given case, since goods are sold from depot, transaction value (viz. Rs. 110 per meter) cannot be accepted for ascertaining the assessable value of the goods. The value of the said goods shall be determined as per rule 7 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.
2. Rule 7 of the said rules stipulates that if excisable goods are sold from a depot after their clearance from the place of removal, the value shall be the "normal transaction value" of such goods sold from such other place (depot) at the time of removal from factory/warehouse. Hence, the normal transaction value of 1,000 meters of cloth sold from the Ahmedabad depot on 05.01.2009 shall be taken as assessable value.
3. (a) Circular no. 354/81/2000 dated 30.06.2000 clarifies that "normal transaction value" under rule 2 of the aforementioned rules is the transaction value at which the greatest aggregate quantity of goods from depots etc., are sold at or about the time of removal of the goods from the factory/warehouse.
(b) Further, with regard to greatest aggregate quantity, circular no. 643/34/2002-CX dated 01.07.2002 clarifies that
 - (i) the time period should be taken as the whole day and,
 - (ii) the transaction value of the "greatest aggregate quantity" would refer to the price at which the largest quantity of identical goods are sold on a particular day, irrespective of the number of buyers.
4. Accordingly, the price at which the largest quantity of identical variety of cloth is sold on 05.01.2009 shall be taken as greatest aggregate quantity. The largest quantity sold during the day is 850 meters of cloth. The price at which it is sold i.e. Rs. 125 shall be considered for computing the normal transaction value.

Therefore, assessable value of the goods = 1,000 mtrs. × Rs.125 = Rs. 1,25,000

9. In order to claim the benefit of exemption under Notification No. 8/2003 – C.E. dated 01-03-2003 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, the turnover of all the units of a manufacturer shall be clubbed. In the given case, it has been clearly provided that all the four units belong to WCL. Therefore, the aggregate value of clearances of WCL during 2008-09 is:-

= Rs. (120+100+130+170) lakh = Rs. 520 lakh

Since, the aggregate value of clearances of WCL exceeds Rs. 400 lakh during 2008-09, the benefit of exemption under Notification No. 8/2003 shall not be available to Wago Corporation Limited during 2009-10.

10. The provisions governing the execution of bonds by banks are as follows:
 - (i) When the State Bank of India or a scheduled bank gives a guarantee for a registered person with or without deposit of security; the guarantee bond should provide a period of validity and an extra period during which obligations arising during the period of validity to be enforced. The time limit for enforcement of obligation should be at least two years.
 - (ii) Where there is a need for extension of the period of validity of bank guarantee furnished by the bank on behalf of a party in pursuant to an order of an original or appellate authority or any other reasons, it should be done by means of supplementary deed of bank guarantee on a stamp paper.
11. The issue, as to whether the 10% recovery from the buyer under rule 6(3) of CENVAT Credit Rules, 2004 is liable to be deposited with the Central Government in view of the provisions of Section 11D of the Central Excise Act, 1944, was decided by the large bench of the Tribunal in case of Unison Metals Ltd. v. CCE 2006 (204) ELT 323.

The Tribunal referred to the case of Mafatlal Industries Ltd. v. UOI 1997 (89) E.L.T. 247 wherein the Supreme Court held that section 11D provides that only that amount which has been collected by the manufacturer from the buyer as duty of excise shall be paid over to the State.

Therefore, the larger bench held that the scheme of the Law is that manufacturers should not collect amounts falsely representing them as Central Excise duty and retain them, thus, unjustly benefiting themselves. Since, under rule 6(3) of the said rules, the 10% amount remains already paid to the Revenue, and no amount is retained by the assessee, section 11D has no application.

CBEC, examining the matter in the light of above judgment, accepted the Tribunal's decision in above case and issued clarification under Circular no. 870/8/2008-CX dated 16-5-2008. It stated that as long as the amount of 8% or 10% is paid to the Government in terms of rule 6(3) of the CENVAT Credit Rules, the provisions of section 11D shall not apply even if the amount is recovered from the buyers. The said 10% amount should be shown in the invoice as "10% amount paid under rule 6 of the CENVAT Credit Rules, 2004".

Hence, in the light of above discussion, it could be inferred that Department's contention is not tenable in law.

12. Finance Act 2008 has amended section 11B to extend the benefit of 'refund of duty of excise' to 'refund of duty of excise and interest, if any paid on such duty'. Consequently,

new section provides that any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner/Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed.

Prior to this amendment, an identical view was taken by the High Court in case of CCEx. v. Northern Minerals Ltd. 2007 (216) ELT 198 (P & H), when a similar issue came up for consideration before it.

From the above discussion, it can be inferred that PSTL is entitled to the refund claim for the said interest. The objection raised by Department is not valid in law.

13. The facts of the given case are similar to the case of Commr. Of C.Ex. & Cus. v. Shree Ganesh Dyeing & Ptng. Works 2008 (232) ELT 775 (Guj.) wherein the Court decided that analyzing sub-section 2 of section 35 of Central Excise Act, 1944, it could be inferred that when a person is statutorily entitled to delegate powers to another person to file an appeal on behalf of the first named person, it goes without saying that the power which can be delegated is the power which the first named person would be entitled to exercise. Hence, until and unless the Commissioner himself is entitled to file an appeal, there is no question of the Commissioner authorising another officer to file appeal on behalf of the Commissioner. The language of the latter part of sub-section (2) of Section 35B of the Act itself makes this more than abundantly clear when the provision uses the phrase 'to appeal on his behalf'.

Therefore, if an appeal has been preferred by Commissioner himself, the appeal would be valid and shall be treated to be a valid appeal in eyes of law. Thus, the Tribunal is not entitled to dismiss the appeal thus filed.

Hence, in the instant case, the assessee's contention is not valid.

CUSTOMS

14. Difference between:-

Basis	Pilferage of goods under section 13	Loss or destruction of goods under section 23
Meaning	The word 'pilfer' means to steal, especially in small quantities; petty theft.	The word 'lost' or 'destroyed' refers to total loss of goods i.e. loss is forever and beyond recovery. Abandonment of goods is possible where the importer is unwilling/unable to take the delivery of the imported goods.
Duty on goods	The importer shall not be	Assistant/Deputy Commissioner of

	liable to pay the duty leviable on such goods.	Customs shall remit the duty paid on such goods.
Subsequent restoration of goods	Where the pilfered goods are restored to the importer after pilferage, the importer become liable to duty.	In case of destruction of goods, the restoration is out of question.
Applicability of provisions to warehoused goods	Provisions of section 13 do not apply to warehoused goods.	Provisions of section 23 apply to warehoused goods also.
Onus to prove the pilferage/destruction or loss of goods	The onus to prove the pilferage does not lie on the importer as it is obvious at the time of examination by the proper officer.	The importer has to prove the loss/destruction to the satisfaction of the Assistant / Deputy Commissioner of Customs.
Time of occurrence of pilferage or loss/destruction	The imported goods must have been pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse.	The imported goods must have been lost/destroyed at any time before clearance for home consumption under section 47 or in case of warehoused goods, at any time before an order for permitting the deposit of goods in a warehouse under section 60.

15. As per rule 8(1) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, 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.

In the given case, rate of duty drawback is less than 1% of FOB value.

However, amount of drawback = 0.9% of FOB value = 0.9% of Rs. 1,00,000 = Rs. 900, which is more than Rs. 500. Hence, Solaris Experts Limited is entitled to duty drawback.

16. Computation of assessable value for Sonika International Corporation:-

	\$
CIF Value of the machine imported	13,000
Less: Air freight paid	2,800
Less: Insurance paid	<u>200</u>

FOB (Free on Board) Value	10,000
Add: Air freight (Note – 1)	2,000
Add: Insurance (actually paid)	<u>200</u>
CIF Value of the machine	12,200
Add: Landing charges (Note – 2)	<u>122</u>
Assessable value (in dollars)	<u>12,322</u>

Assessable Value (in rupees) = \$ 12,322 × Rs. 46 = Rs. 5,66,812

Notes - For the purpose of ascertaining the assessable value of imported goods:-

1. air freight shall not exceed twenty per cent of the FOB (Free on Board) value of the goods [Second proviso to rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

Since, in given case, actual air freight paid is 28% of the FOB value, air freight is restricted to 20% of FOB value (20% of \$10,000) i.e. \$ 2,000.

2. landing charges at the rate of 1% of the CIF value of the imported goods, shall be included, whether ascertainable or not [First proviso to rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
3. the rate of exchange shall be the rate of exchange as in force on the date on which a bill of entry is presented under section 46 [Third proviso to section 14(1) of Customs Act, 1962].

Explanation to section 14(1) further clarifies that rate of exchange shall be the rate as notified by CBEC.

17. No, the Department's contention is not tenable in law. The similar issue was decided in case of J.K. Cement Works v. CCEx. & Cus. 2008 (223) ELT 138 (Raj.), wherein the Rajasthan High Court observed that it is not necessary to fulfil conditions for clearance of warehoused goods prescribed in main provision for invoking the proviso to section 68. The High Court explained that the only condition for invoking the proviso is that order of clearance of goods for home consumption should not have been passed and goods must still be in the warehouse. The High Court stated that it is immaterial for the purpose of invoking the proviso that the goods remained in warehouse beyond permitted time limit.

The High Court clarified that the relinquishment of title does not absolve the importer from total liability. Only the liability to pay the duty is appropriated towards goods which vest in Revenue or such other specified authority. The other liabilities in respect of such goods including rent, interest etc. remain payable. The High Court added that acceptance of this option is not subject to discretion of proper officer, but only to fulfilment of conditions prescribed in proviso to section 68 of Customs Act, 1962.

The High Court rejected the Revenue's contention that the case must first come within the domain of section 68 to invoke the proviso because if the importer is able to pay full duty, the question of exercise of option for relinquishment would not arise. Therefore, to permit exercise of option of relinquishment only on fulfilment of conditions of section 68(b) would nullify the effect of the proviso which was introduced to mitigate the hardship arising from non - removal of imported goods from warehouse. The High Court explained that even when order for clearance of goods under section 71(2) has been made, proper authorization and payments have to be made, before the goods are removed from warehouse.

18. As per section 42 of the Customs Act, 1962, the person-in-charge of the conveyance which has brought any imported goods or has loaded any export goods at a customs station shall not cause or permit the conveyance to depart from that customs station until a written order to that effect has been given by the proper officer.

Subsection (2) of section 42 stipulates the conditions to be fulfilled before such order can be issued. No such order shall be given until:-

- (a) The person-in-charge of a conveyance has answered the questions put to him under Section 38;
 - (b) The provisions of section 41 have been complied with;
 - (c) The shipping bills or bills of export, the bills of transshipment, if any and such other documents, as the proper officer may require, have been delivered to him;
 - (d) All duties leviable on any stores consumed in such conveyance and all charges and penalties due in respect of such conveyance or from the person-in-charge thereof have been paid or the payment secured by such guarantee or deposit of such amount as the proper officer may direct;
 - (e) The person-in-charge of the conveyance has satisfied the proper officer that no penalty is leviable on him under section 116 or the payment of any penalty that may be levied upon him under that section has been secured by such guarantee or deposit of such amount as the proper officer may direct;
 - (f) In any case where any export goods have been loaded without payment of export duty or in contravention of any provision of this Act or any other law for the time being in force in relation to export of goods-
 - (i) Such goods have been unloaded, or
 - (ii) Where the Assistant Commissioner/Deputy Commissioner is satisfied that it is not practicable to unload such goods, the person-in-charge of the conveyance has given an undertaking, secured by such guarantee or deposit of such amount as the proper officer may direct, for bringing back the goods to India.
19. The stand taken by Revenue is valid. A similar issue was decided by Supreme Court in Union of India v. Padam Narain Aggarwal 2008 (231) ELT 397 wherein the Apex Court

observed that power to arrest a person by a Custom Officer under section 104 of the Customs Act, 1962 is statutory in character and cannot be interfered with. Supreme Court further noted that the law, on one hand, allows a Custom Officer to exercise power to arrest a person who has committed certain offences, and on the other hand, takes due care to ensure individual freedom by laying down norms and providing safeguards so that the power of arrest is not abused or misused by the authorities. 'Blanket' order of bail may amount to an invitation to commit an offence or a passport to carry on criminal activities.

Supreme Court pronounced that on the facts and in the circumstances of the present case, above directions could not be said to be legal or in consonance with law. Firstly, the order passed by the High Court was a blanket one and granted protection to respondents in respect of any non-bailable offence. Secondly, it illegally obstructed, interfered and curtailed the authority of Custom Officers from exercising statutory power of arresting a person said to have committed a non-bailable offence by imposing a condition of giving ten days' prior notice, a condition not warranted by law. Hence, the order granting the anticipatory bail to the accused was set aside.

Therefore, it can be concluded that, in the given question, the stand taken by Revenue is sustainable in law.

20. Section 144 of the Customs Act, 1962 provides the necessary power to the customs authorities to draw adequate samples of any goods in the presence of the owner of the goods.

The proper officer of the customs can take the samples for:

- examination or testing, or
- ascertaining the value thereof, or
- any other purpose of this Act.

Samples may be taken on

- the entry; or
- clearance of any goods; or
- at any time while such goods are being passed through the customs area.

After the purpose for which a sample was taken is carried out, such sample shall, if practicable, be restored to the owner, but if the owner fails to take delivery of the sample within 3 months of the date on which the sample was taken, it may be disposed of in such manner as the Commissioner of Customs may direct [Sub-section (2)].

SERVICE TAX

21. (a) The statement is incorrect. The services of study, analysis, design and programming of information technology software are taxable under the category of 'information technology software services' under section 65(105)(zzzze) of the Finance Act, 1994 as amended by Finance Act 2008. Prior to this amendment, any information technology software service was taxable under the category of 'business auxiliary service'.
- (b) The statement is absolutely correct. Circular No. 96/7/2007 ST dated 23.08.2007 clarifies that moneychangers are authorized by RBI to buy and sell foreign exchange at the prevalent market rates. Buying or selling of foreign exchange by such persons without separately charging any amount as commission or brokerage does not fall within the scope of foreign exchange broking and is not liable to service tax under section 65(105)(zm) of the Finance Act, 1994 as amended.
- (c) The statement is incorrect. By amending the definition of taxable consulting service provided under sub – clause (g) of clause (105) of section 65, Finance Act 2008 has included the consultancy services in the field of computer software engineering within the scope of taxable services provided by a consulting engineer. Hence, the said services are no longer exempt and are taxable under the category 'consulting engineer's service'.
- (d) The statement is absolutely correct. Circular No. 96/7/2007 ST dated 23.08.2007 clarifies that the nature of service provided by 'Express Cargo Service' provider falls within the scope and definition of the courier agency. Hence, the said service is liable to service tax under courier agency service under section 65(105)(f)] of the Finance Act, 1994 as amended.
22. The Finance Act, 2008 has inserted a new section 72 to empower the Central Excise Officer to make best judgment assessment. The provisions of new section are as follows:

If any person, liable to pay service tax,—

- (a) fails to furnish the return under section 70;
- (b) having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder,

the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.

23. (a) A contract for the construction of a new residential complex can be classified as a 'works contract' provided there is a transfer of property in goods involved in the execution of such contract leviable to tax as sale of goods [Explanation to section 65(105)(zzzza) of the Finance Act, 1994 as amended].

Therefore, a contract can be classified as a work contract if following two conditions are cumulatively satisfied:-

- (i) There is a transfer of property in goods involved in the execution of specified contract, and
- (ii) Such transfer is leviable to tax as sale of goods.

Thus, the contract in the instant case is a works contract. Now, since, the assessee has opted for Composition Scheme; valuation shall be made as per the provisions of Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007.

Calculation of net service tax payable by RDC under Composition Scheme:-

Particulars	Rs.
Gross amount charged (excluding VAT)	25,00,000
Service tax @4.12%	1,03,000
Less: CENVAT credit of excise duty paid on capital goods (50%) (Note – 4)	20,000
Less: CENVAT credit of service tax paid on input service	<u>25,000</u>
Net service tax payable	<u>58,000</u>

Notes –

1. Since, the assessee has opted for Composition Scheme, value of transfer of property in goods and materials involved in the construction of residential complex of worth Rs. 2,50,000 shall be included in the gross amount charged for the works contract.
2. VAT of Rs. 10,000 paid on transfer of property in goods involved in the execution of the said works contract shall not be included in gross amount charged for the works contract [Explanation to rule 3(1) of Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007].
3. CENVAT credit of Rs.17,000 on inputs used in relation to said works contract shall not be available to the assessee [Rule 3(2) of Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007].
4. 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)(a) of the CENVAT Credit Rules, 2004].

5. The value of material supplied by customer, Rs. 1,00,000, is not required to be added, in case of composition scheme under works contract service.
- (b) Since, the contract does not involve the transfer of property in goods and materials used in the construction of residential complex, the contract cannot be termed as a works contract. The services provided by RDC are taxable under the category of 'construction of complex service'.

Moreover, as the assessee has opted for paying service tax under Notification No. 1/2006 dated 01.03.2006, he has to fulfill the following conditions:-

1. The services provided are not merely the services of completion and finishing services in relation to residential complex, referred to in sub-clause (b) of clause (30a) of section 65 of the Finance Act.
2. The CENVAT credit of duty on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004; or
3. The service provider has not availed the benefit under the Notification No. 12/2003-ST, dated the 20th June, 2003.

Calculation of net service tax payable by RDC under Notification No.1/2006:-

Particulars	Rs.
Contracted Price	25,00,000
Add: Value of materials supplied by customer	<u>1,00,000</u>
Gross amount charged	26,00,000
33% of Gross amount charged	<u>8,58,000</u>
Net service tax payable @12.36% (rounded off)	<u>1,06,049</u>

24. Due dates for e-payment of service tax:-

Rule 6(1) of Service Tax Rules, 1994 provides the due dates for e-payment of service tax as follows:-

S.No.	Where the assessee is	Service tax shall be paid to the credit of Central Government
1	An individual or proprietary firm or partnership firm	by the 6th day of the month immediately following the quarter in which the payments are received towards the value of taxable services.

2	In other cases (company or HUF)	by the 6th day of the month immediately following the calendar month in which the payments are received towards the value of taxable services.
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25. (a) Boston Exporters Pvt. Ltd. shall be the person liable to pay service tax. In relation to taxable service provided by a goods transport agency, the person for paying service tax shall be the consignor or consignee who is paying the freight (Boston Exporters Pvt. Ltd. in the instant case) [Rule 2(1)(d)(v) of Service Tax Rules,1994].
- (b) Yes, Boston Exporters Pvt. Ltd. is entitled to the refund of service tax paid on the services provided by Singh Transporters.

Notification No. 41/2007 ST dated 06.10.2007 provides that:-

- (i) Refund of service tax - where the service receiver is an exporter of goods and he has used any service out of the services specified in the said notification during the course of export of goods, the exporter can claim a refund of the service tax paid on such service.
- (ii) Procedure for claiming refund in the normal course - the service provider must collect the service tax from the exporter (service receiver) and deposit the same to the credit of the Central Government. Thereafter, the exporter can apply for the refund of the service tax so paid.
- (iii) Procedure for claiming refund if exporter is the person liable to pay service tax - where the exporter (service receiver) himself is the person liable to pay the service tax, the exporter must directly pay the tax to the Government account and apply for the refund of the same.

In the given case, the services provided by Singh Transporters, for transport of goods from the inland container depot to the port of export, is a service specified under the aforementioned notification. Further, since Boston Exporters Pvt. Ltd. is the person liable to pay service tax, it must pay the service tax directly to the Government and apply for the refund of the same.

Conditions for claiming refund:-

The exporter of the goods must satisfy the following conditions in order to be eligible for refund of service tax:-

- (a) the exemption shall be claimed by the exporter of the goods for the specified services received and used by the exporter for export of the said goods;
- (b) the exemption claimed by the exporter shall be provided by way of refund of service tax paid on the specified services used for export of the said goods;

- (c) the exporter claiming the exemption has actually paid the service tax on the specified services;
- (d) no CENVAT credit of service tax paid on the specified services used for export of said goods has been taken under the CENVAT Credit Rules, 2004;
- (e) the said goods have been exported without availing drawback of service tax paid on the specified services under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995;
- (f) exemption or refund of service tax paid on the specified services used for export of said goods shall not be claimed except under this notification.

Time limit for filing refund claim:-

The claim of refund is required to be filed within 60 days from the end of the relevant quarter during which the said goods have been exported. Since, in the given case, the goods have been exported in the quarter ending September '08, Boston Exporters Pvt. Ltd. is required to file the claim for refund of service tax till 29th November, 2008.

IMPORTANT AMENDMENTS MADE BETWEEN 01.05.2008 TO 31.10.2008

Students may note that the Study Material for Indirect Tax Laws contains all the relevant amendments made by the Finance Act, 2008. Further, circulars/notifications issued up to 30.04.2008 have also been incorporated therein. The following are the amendments which have been made between 01.05.2008 to 31.10.2008. It may be carefully noted that for the students appearing in June 2009 exams, the amendments made by the notifications, circulars and other legislations up to 31.10.2008 are relevant.

A. EXCISE

1. Following amendments have been made in the Central Excise Rules, 2002:

(i) Rule 12(2A) inserted- Annual Installed Capacity Statement

This rule provides that every assessee shall submit to the Superintendent of Central Excise, an Annual Installed Capacity Statement declaring the annual production capacity of the factory for the financial year to which the statement relates in Form ER-7 by the 30th April of the succeeding financial year.

However, the Central Government may specify assessee or class of assessee who may not require to submit such an Annual Installed Capacity Statement.

For the year 2007-08, the said statement shall be furnished by 31st October, 2008.

[Notification No. 38/2008 CE (NT) and Notification No. 39/2008 CE (NT) dated 29.09.2008]

(ii) Amendments to rule 17 - Removal of goods by a 100% EOU for DTA

Notification No. 23/2008 CE (NT) dated 23.05.2008 has amended rule 17 of the Central Excise Rules, 2002 with effect from 01.06.2008 as follows:-

(a) Rule17(1)Monthly payment of duty by 100% EOUs

In case of removal of excisable goods from 100% Export Oriented Unit (EOU) to Domestic Tariff Area (DTA), the duty leviable on such goods shall be paid by utilizing the CENVAT credit or by crediting the duty payable to the account of the Central Government in the manner specified in rule 8. Thus, duty can be paid monthly in case of removals from 100% EOUs also.

(b) Rule17(4)Scrutiny by the proper officer

The proper officer may on the basis of information contained in the return filed by the unit under rule 17(3), 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.

(c) Rule17(5)Furnishing of documents and records by assessee

Every assessee shall make available to the proper officer all the documents and records for verification as and when required by such officer.

(d) Amendment of Form ER-2

Notification No. 24/2008 CE (NT) dated 23.05.2008 has amended Form ER-2 - form prescribed for monthly return for 100% EOU in respect of goods manufactured, goods cleared and receipt of inputs and capital goods.

2. Following amendment has been made in the CENVAT Credit Rules, 2004:

Proviso to rule 3(1)(xi) of the CENVAT Credit Rules, 2004

The amount equal to excise duty paid on the capital goods at the time of debonding of the unit in terms of the para 8 of Notification No. 22/2003 CE dated 31.03.2003 (which exempts certain goods when brought into 100% EOU / STP complex)shall be allowed as CENVAT credit.

[Notification No. 35/2008 CE (NT) dated 24.09.2008]

3. Pan Masala notified for the purpose of charging duty on the basis of capacity of production

Section 3A, as inserted by the Finance Act, 2008, contains the provisions to charge excise duty on the basis of capacity of production in respect of notified goods.

Notification No. 29/2008 CE (NT) dated 01.07.2008 has notified pan masala [falling under tariff item 2106 90 20 of the First Schedule to the Central Excise Tariff Act, 1985 (except the pan masala containing not more than 15% betel nut)] and pan masala containing tobacco, commonly known as gutkha (falling under tariff item 2403 99 90 of the said Tariff Act) manufactured with the aid of packing machine and packed in pouches, for the purpose of section 3A.

In this regard, Notification No. 30/2008 CE (NT) dated 01.07.2008 has notified the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008. They have come into force on the 1st day of July, 2008.

Further, Notification No. 32/2008 CE (NT) dated 28.08.2008 has granted rebate of duty on Pan Masala containing tobacco (gutkha) on which duty of excise has been paid under section 3A of the Central Excise Act, 1944, on their exportation out of India on or after 1st July, 2008, to any country except Nepal and Bhutan subject to the conditions, limitations and procedures prescribed therein.

4. Condition of paying excise duty from account current, done away with, in the following cases:

- (a) Notification No. 39/2004 CE (NT) dated 25.11.2004 inter alia exempts class of manufacturers, who manufacture certain specified excisable goods prescribed therein and have paid excise duty of less than Rs.100 lakh from account current during the preceding financial year, from filing the annual information relating to principal inputs and monthly return of receipt and consumption of each of the principal inputs.

Notification No. 41/2008 CE (NT) dated 29.09.2008 has amended the said notification so as to remove the condition of paying the stipulated amount of duty from account current i.e., in cash. Now, the duty can be paid by utilizing the CENVAT credit also.

Consequently, now the manufacturers of the prescribed excisable goods shall be exempted from filing the annual information relating to principal inputs and monthly return of receipt and consumption of each of the principal inputs if they have paid the duty of less than Rs.100 lakh during the financial year, by any mode - either in cash or by utilizing CENVAT credit.

- (b) Notification No. 17/2006 CE (NT) dated 01.08.2006 inter alia exempts the assessee who have paid excise duty of less than Rs.100 lakh from account current during the financial year, from filing of the Annual Financial Information Statement.

Notification No. 42/2008 CE (NT) dated 29.09.2008 has amended the said notification so as to remove the condition of paying the stipulated amount of duty from account current i.e., in cash. Now, the duty can be paid by utilizing the CENVAT credit also.

Consequently, now the asseessee shall be exempted from filing the Annual Financial Information Statement if they have paid the duty of less than Rs.100 lakh during the financial year, by any mode - either in cash or by utilizing CENVAT credit.

5. Proviso to clause (2) of Notification No. 35/2001 CE (NT) dated 26.06.2001*

If a person has more than one premise requiring registration, he may obtain a single registration for all such premises if following conditions are satisfied:-

- (i) such person manufactures Compressed Natural Gas (falling under heading 2711 of the of First Schedule to the Central Excise Tariff Act, 1985), and
- (ii) all the premises fall within the jurisdiction of one Chief Commissioner of Central Excise, and
- (ii) he has submitted the details of all such premises along with the application for registration.

However, prior intimation shall be given before starting any additional premises subsequent to obtaining such registration:

Further, if the assessee is registered under the existing provision, he may apply for fresh registration or file amendment to the registration as the case may be, in accordance with provisions of this notification.

[Notification No.43/2008-CE (NT) dated 06.10.2008]

*Note - Clause (2) of Notification No. 35/2001 CE (NT) dated 26.06.2001 prescribes that if the person has more than one premises requiring registration, separate registration certificate shall be obtained for each of such premises.

6. SSI exemption extended to SSIs producing specified packing materials bearing the brand name of another person

Notification No. 47/2008 CE dated 01.09.2008 has amended Notification No. 8/2003 CE dated 01.03.2003 to extend the benefit of small scale exemption of excise duty to SSIs producing goods bearing the brand name or trade name of another person if these goods are in the nature of packing materials, namely, printed cartons of paper or paper board, metal containers, HDPE woven sacks, adhesive tapes, stickers, PP caps, crown corks, metal labels.

However, this exemption shall be restricted to Rs.90 lakh for the remaining part of the financial year 2008-09.

7. Clarification of certain issues relating to rule 6(3) of the CENVAT Credit Rules, 2004

Circular No. 868/6/2008 CX dated 09.05.2008 has clarified the following issues with regard to rule 6(3) of the CENVAT Credit Rules, 2004*:

S.No.	Question	Answer
1.	Whether an assessee availing option (i) or option (ii) under rule 6(3) is allowed to take CENVAT Credit of duty paid on inputs and input services which are used for both dutiable and exempted goods or services.	Yes, credit on such inputs and input services is allowed. However, an assessee following option (i) or (ii) under rule 6(3) shall not be allowed to take CENVAT credit of duty paid on those inputs and input services which are used exclusively for the manufacture of exempted goods or provision of exempted services [refer Explanation II of rule 6(3)]. For the purpose of the calculation of amount under formula given under rule 6(3A), the total CENVAT credit taken on inputs and input services does not include excise duty paid on inputs or service tax paid on input services which are used exclusively for the manufacture of exempted goods or provision of exempted services.
2.	Whether an assessee availing option (i) in respect of certain exempted goods/services can also avail option (ii) in respect of other exempted goods or services simultaneously?	An assessee opting for either of the option is required to avail the said option for all the exempted goods manufactured by him and all the exempted services provided by him and the option once exercised during a financial year (F.Y.) cannot be withdrawn during the remaining part of the FY. Therefore, the same assessee cannot avail both option (i) and option (ii) simultaneously during a financial year. [Explanation I to Rule 6(3)].
3.	Assessee opting for option (i) is required to pay an amount equivalent to 10% of value of exempted goods or 8% of value of exempted services. What is the scope of term "value" for the said purpose	Value of the exempted goods is the transaction value as determined in terms of section 4 of the Central Excise Act, 1944 or value determined under section 4A. However, in case of goods chargeable to specific rate of duty, the value, shall be the transaction value to be determined under section 4. Value of the exempted service is the gross amount charged for providing the exempted service [without abatement].

4.	What is the accounting code to be followed by the assessee who is required to pay 8% or other amount for the exempted service under Rule 6(3).	For the present, the assessee can pay the said amount under the accounting code applicable for service tax i.e. 0044.
5.	Whether input services distributor can also opt for option (i) or option (ii)?	As ISD does not provide any service, and is like a trader, the question of availing either of the options would not arise.
6.	Whether export of service without payment of service tax under Export of Service Rules shall be treated as exempted service for the purpose of rule 6(3)?	No, export of services without payment of service tax are not to be treated exempted services.
7.	What is the manner for calculation of CENVAT Credit amount attributable to inputs used in or in relation to the manufacture of exempted goods?	It is required to be done on the basis of actual consumption of inputs used and the quantification may be made based upon the stores/production records maintained by the manufacturer. Further, a certificate from Cost Accountant/Chartered Accountant giving details of quantity of inputs used in the manufacture of exempted goods, value thereof and CENVAT credit taken on these input may be submitted at the end of the year.
8.	Whether credit in respect of input services covered by rule 6(5) would be required to be taken into account for determination of amount payable as per formula provide in rule 6(3A).	No, the credit attributable to services mentioned in sub-rule (5) shall not be taken into account for determination of amount under rule 6(3A).

*Note - Rule 6(3) pertains to an assessee opting not to maintain separate CENVAT credit accounts for dutiable and exempted outputs. Such assessee has to opt for one of the following two options:

- (i) Pay an amount equal to 10% of the value of the exempted goods or 8% of the value of the exempted services. Exempted service includes non-taxable service also.

OR

- (ii) Pay an amount equivalent to the CENVAT credit attributable to inputs and input services used in or in relation to manufacture of exempted goods or for provision of exempted services. Rule 6(3A) prescribes the conditions and procedure to determine the amount of CENVAT credit attributable to exempted outputs.

Schemes under rule 6(3) are optional and each individual scheme is comprehensive and self-contained. An assessee can exercise the option in relation to all his activities as an assessee and the option is not available only in relation to a part of his activity and the option once exercised cannot be withdrawn during the said financial year.

8. Section 11D not applicable to amount collected under rule 6(3) of the CENVAT Credit Rules, 2004

It has been clarified that so long as the amount of 8% or 10% is paid to the Government in terms of rule 6(3) of the CENVAT Credit Rules, 2004*, the provisions of section 11D shall not be applied even if the amount is recovered from the buyers. As per section 11D, the Central Government shall be liable to recover any amount which has been collected as excise duty and not paid to the credit of the Central Government. It is to be noted that the CENVAT credit can be taken by the buyer only if it is a payment of duty in terms of rule 3(1) of the aforementioned rules. Therefore, the CENVAT credit of the said amount of 8% or 10% cannot be taken since such payment is not a payment of duty in terms of rule 3(1) of the said rules. So, the said 10% amount should be shown in the invoice as "10% amount paid under rule 6 of the CENVAT Credit Rules, 2004".

[Circular No. 870/08/2008-CX dated 16.05.2008]

*Note - W.e.f. 01.04.2008, rule 6(3) of the CENVAT Credit Rules, 2004 has been amended and it provides for payment of an amount equal to 10% of value of the exempted goods, instead of 10% of the price of the exempted goods as provided earlier. The value is to be determined as per section 4 or 4A of the Central Excise Act, 1944 read with rules made thereunder.

9. Guidelines for provisional attachment of property under section 11DDA of the Central Excise Act, 1944

The key points of guidelines issued to implement section 11DDA of the Act to maintain uniformity in its implementation are as follows:-

- (a) The types of offences which may be considered for provisional attachment of property (resorted only when the duty or CENVAT Credit alleged is more than Rs. 25 lakhs) are as follows:
 - 1. When the goods are removed without the cover of an invoice and without payment of duty, or without declaring the correct value.
 - 2. CENVAT Credit has been taken without receipt of goods or on the basis of Excise duty invoices or other documents which a person has a reason to believe as not genuine.

3. Excise duty invoice is issued without delivery of goods.
 4. Refund or rebate is claimed in a fraudulent manner.
- (b) The property which is attached is immovable property/ properties which is/ are used for commercial purpose. If immovable property is not sufficient to protect the interest of revenue then movable property can be attached
 - (c) The property provisionally attached shall be of value as nearly as may be equivalent to that of the amount demanded in the proceedings under section 11A or Section 11D of the Act.
 - (d) Provisional attachment of the property shall be made only between sunrise and sunset.
 - (e) After attachment, the proper officer shall prepare an inventory and specify in it the place where it is lodged or kept and shall hand over a copy of the same to the defaulter or the person from whose charge the property is distrained.
 - (f) All such property as is by the Code of Civil Procedure, 1908 exempted from attachment and sale for execution of a Decree of a Civil Court shall be exempt from provisional attachment. The decision of the Commissioner of Central Excise in this regard shall be final.

[Circular No. 874/12/2008-CX dated 30.06.2008]

B. CUSTOMS

Clarification in respect of procedure for sanctioning the custom duty refunds under section 27(2) of Customs Act, 1962

It has been clarified that in terms of sub-section (2) of section 27, the concerned Assistant/Deputy Commissioner of Customs has to go through:-

- (i) the facts of the case and the material placed before him in order to determine whether the amount claimed by an applicant is refundable to him or not, and
- (ii) the details of audited Balance Sheet and other related financial records, certificate of the Chartered Accountant etc., submitted by the applicant in order to decide whether the applicant had not passed on the incidence of the duty and interest thereon, if any, to any other person.

The Order-in-Original passed by the Assistant/Deputy Commissioner of Customs in the adjudication process should be a speaking order providing specific details including the relevant financial records that are relied upon to arrive at a conclusion whether the burden of duty or interest, as the case may be, has been passed on or not.

Refund orders issued in a routine and casual manner thereby sanctioning the amount but crediting the same to the Consumer Welfare Fund without going through the factual details of the case and the due process as provided in the first proviso cannot be

considered as a complete and speaking order [Circular No.7/2008-Cus dated 28.05.2008].

C. SERVICE TAX

Notification No. 18/2008 ST dated 10.05.2008 has notified 16.05.2008 as the date on which the services introduced by the Finance Act, 2008 have become effective. Further, the amendments made in the existing service vide the Finance Act, 2008 have also become effective from 16.05.2008.

Exemptions:

1. Exemption from service tax on specified taxable services received by an exporter and used for export of goods – three more services notified

With effect from 16.05.2008, Notification No. 24/2008 ST dated 10.05.2008 has amended Notification No.41/2007 ST dated 06.10.2007 which exempts certain specified taxable services received by an exporter and used for export of goods. The following services received by an exporter and used for export of goods have also been exempted vide this notification subject to fulfillment of conditions specified therein:-

S.No.	Sub-clause of clause (105) of section 65	Description of taxable service	Conditions
1	Section 65(105)(zm)	services of purchase or sale of foreign currency, including money changing provided to an exporter in relation to export goods.	exporter shall produce evidence to prove that the services specified in column (3) are in relation to goods exported.
2	Section 65(105)(zzk)	services of purchase or sale of foreign currency, including money changing provided to an exporter in relation to export goods.	exporter shall produce evidence to prove that the services specified in column (3) are in relation to goods exported.
3	Section 65(105)(zzzzj)	services of supply of tangible goods for use, without transferring right of possession and effective control of tangible goods, provided to an exporter in relation to goods exported by the exporter.	exporter shall produce evidence to prove that the services specified in column (3) are used in relation to export of goods.

2. Abatement of 30% from the gross amount charged in case of services provided in relation to chit

Notification No. 27/2008 ST dated 27.05.2008 has amended Notification No. 1/2006 ST dated 01.03.2006 so as to provide an abatement of 30% in case of services provided in relation to chit from the gross amount charged for such service.

“Chit” has been defined to mean a transaction whether called chit, chit fund, chitty, kuri, or by any other name by or under which a person enters into an agreement with a specified number of persons that every one of them shall subscribe a certain sum of money (or a certain quantity of grain instead) by way of periodical installments over a definite period and that each subscriber shall, in his turn, as determined by lot or by auction or by tender or in such other manner as may be specified in the chit agreement, be entitled to the prize amount.

3. Exemption from service tax leviable on services taxable under section 65(105)(zzzzj) provided to GTA for use in transportation of goods by road

Notification No. 29/2008 ST dated 26.06.2008 has exempted from the whole of the service tax, the service of supply of a goods carriage [taxable under section 65(105)(zzzzj)], without transferring right of possession and effective control of such goods carriage), provided by any person to a goods transport agency for transportation of goods by road in the said goods carriage.

Others:

4. Following amendments have been made in the Service Tax Rules, 1994:

- (i) Amendments in rule 6

- (a) Explanation to third proviso to rule 6(1)

For the removal of doubts, it is hereby declared that where the transaction of taxable service is with any associated enterprise, any payment received towards the value of taxable service, in such case shall include any amount credited or debited, as the case may be, to any account, whether called ‘Suspense account’ or by any other name, in the books of account of a person liable to pay service tax [Notification No. 19/2008 ST dated 10.05.2008].

- (b) Rule 6(7B) - option to pay 0.25% of the gross amount in case of services provided in relation to purchase or sale of foreign currency

It provides that the person liable to pay service tax in relation to purchase or sale of foreign currency, including money changing, provided by a foreign exchange broker, including an authorised dealer in foreign exchange or an authorized money changer, referred to in sub-clauses (zm) and (zzk) of clause (105) of section 65 of the Act, shall have the option to pay an amount calculated at the rate of 0.25% of the gross amount of currency exchanged

towards discharge of his service tax liability instead of paying service tax at the rate specified in section 66 of Chapter V of the Act.

However, such option shall not be available in cases where the consideration for the service provided or to be provided is shown separately in the invoice, bill or, as the case may be, challan issued by the service provider.

Illustration

Buying rate \$US 1 = Rs.38, selling rate \$US 1 = Rs.40

- (i) Person exchanged \$100 for equivalent rupees

Transaction value = Rs.3800 (Rs.38 x 100)

Service tax payable = Rs.9.5 (0.25% x 3800)

- (ii) Person exchanged equivalent rupees for \$100

Transaction value = Rs.4000 (40 x 100)

Service tax payable = Rs.10 (0.25% x 4000).

[Notification No. 19/2008 ST dated 10.05.2008]

- (c) Rule 6(1A) - amendment of Form ST-3

Notification No. 31/2008 ST dated 02.09.2008 has amended service tax return Form ST-3. Sub-rule (1A) empowers the assessee to pay advance service tax on his own volition and adjust the amount so paid against the service tax which he is liable to pay for the subsequent period.

- (ii) Amendment in rule 4A

With effect from 16.05.2008, in rule 4A, the words "to a customer" have been substituted by the words "to any person" [Notification No. 19/2008 ST dated 10.05.2008].

- (iii) Amendment in rule 4B

With effect from 16.05.2008, in rule 4B, the words "to the customer" have been substituted by the words "to the recipient of service" [Notification No. 19/2008 ST dated 10.05.2008].

5. Following amendments have been made in the Export of Services Rules, 2005 and the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006:

- (a) With effect from 16.05.2008, Export of Services Rules, 2005 and the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 have been amended vide Notification No. 20/2008 ST dated 10.05.2008 and Notification No. 21/2008 ST dated 10.05.2008 so as to categorise the newly

specified taxable services under Rule 3. Taxable services have been categorised as under:

Sl. No.	Taxable service	Sub-clause of section 65(105)	Export of Services Rules, 2005	Taxation of Services (Provided from Outside India and Received in India) Rules, 2006
1.	Information technology software services	zzzze	Category 3 [Rule 3(1)(iii)]	Category 3 [Rule 3(iii)]
2.	Investment management services provided under ULIP	zzzzf	Category 3 [Rule 3(1)(iii)]	Category 3 [Rule 3(iii)]
3.	Stock exchange services in relation to securities	zzzzg	Category 2 [Rule 3(1)(ii)]	Category 2 [Rule 3(ii)]
4.	Commodity exchange services	zzzzh	Category 2 [Rule 3(1)(ii)]	Category 2 [Rule 3(ii)]
5.	Processing and clearing house services	zzzzi	Category 2 [Rule 3(1)(ii)]	Category 2 [Rule 3(ii)]
6.	Supply of tangible goods services	zzzzj	Category 3 [Rule 3(1)(iii)]	Category 3 [Rule 3(iii)]
7.	Internet telecommunication services	zzzu	Category 3 [Rule 3(1)(iii)]	Category 3 [Rule 3(iii)]

- (b) Similarly, Notification No. 21/2008 ST dated 10.05.2008 has amended the "Taxation of Service (Provided from Outside India and Received in India) Rules, 2006" by inserting a proviso after clause (iii) of rule 3. The proviso lays down that where the supply of tangible goods service [section 65(105)(zzzzj)] is received by a recipient located in India, then such taxable service shall be treated as taxable service provided from outside India and received in India subject to the condition that the tangible goods supplied for use are located in India during the period of use of such tangible goods by such recipient."
- (c) Notification No. 20/2008 ST dated 10.05.2008 has amended Export of Services Rules, 2005 by inserting a second proviso after the first proviso to clause (iii) of sub-rule (1) of rule 3. The new proviso provides that where the supply of tangible goods service [section 65(105)(zzzzj)] is provided to a recipient located outside India, then such taxable service shall be treated as export of taxable service subject to the

condition that the tangible goods supplied for use are located outside India during the period of use of such tangible goods by such recipient.

6. Amendments to abatement notification

With effect from 16.05.2008, Notification No. 22/2008 ST dated 10.05.2008 has made the following amendments in Notification No.1/2006 ST dated 01.03.2006 which prescribes various abatements in respect of certain taxable services specified therein:

In the said notification,

S.no.	in case of	for the words	the words that have been substituted are
1	mandap keeper services	to the client	to any person
2	convention services	client	recipient of service
3	erection, commissioning or installation service	customer	recipient of service

7. With effect from 16.05.2008, Notification No. 23/2008 ST dated 10.05.2008 has amended the following notifications in the manner given below:

S.No.	In Notification No.	for the words	the words that have been substituted are
1	18/2002 ST dated 16.12.2002: It exempts 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.	to a client	to any person
2	33/2004 ST dated 03.12.2004: It exempts the taxable service provided by a goods transport agency to a customer, in relation to transport of fruits, vegetables, eggs or milk by road in a goods carriage, from the whole of service tax leviable thereon.	to a customer	to any person
3	34/2004 ST dated 03.12.2004: It exempts the taxable service provided by a goods transport	to a customer	to any person

	agency to a customer, in relation to transport of goods by road in a goods carriage, from the whole of service tax where- (i) the gross amount charged on consignments transported in a goods carriage does not exceed rupees one thousand five hundred; or (ii) the gross amount charged on an individual consignment transported in a goods carriage does not exceed rupees seven hundred fifty.		
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8. Service Tax (Provisional Attachment of Property) Rules, 2008

These rules introduced by Notification No.30/2008 ST dated 01.07.2008 with effect from 01.07.2008 provide as follows:-

Rule 3 - Procedure for provisional attachment of property

- (a) The Assistant or the Deputy Commissioner of Central Excise, after due verification of the facts and circumstances of the case, for the purpose of protecting the interest of revenue, during the pendency of any proceeding under section 73/73A of the Finance Act, 1994, may forward a proposal for provisional attachment of property belonging to a person on whom a notice has been served under section 73(1)/73A(3) of the Act, to the Commissioner in the format prescribed in these Rules.
- (b) The Commissioner may cause service of a notice on such person who can make a submission in this regard within 15 days of service of the notice.
- (c) Upon consideration of submission, the Commissioner may pass an order to attach the property provisionally.

Rule 4 - The property that can be attached

- (1) Value of property attached shall be of value as nearly as may be equivalent to that of the amount of pending revenue against such person.
- (2) The movable property of such person shall be attached only if the immovable property available for attachment is not sufficient to protect the interest of revenue.

Rule 5 - Obligations of person whose property has been attached provisionally

The said person or his representative shall not mortgage, lease, transfer, deliver or deal with the attached property in any manner except with the previous approval of the Commissioner of Central Excise.

Rule 6 - Period for which order of provisional attachment of property remains in force

Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the service of the order passed.

However, Chief Commissioner of Central Excise may grant an extension for a maximum period of two years.

9. Guidelines in respect of provisional attachment of property

Circular No. 103/06/2008 ST dated 01.07.2008 has issued the following guidelines in respect of provisional attachment of property for the purposes of protecting the interests of revenue during the pendency of any proceedings under section 73 or section 73A of the Act:

1. The following types of offences committed by a service provider or an exporter may be considered for provisional attachment of property:-
 - (a) Provision of a taxable service without the cover of an invoice or any other document, as prescribed, and without payment of tax;
 - (b) Provision of a taxable service without declaring the correct value for payment of service tax, where a portion of value of taxable service, in excess of invoice price, is received by him or on his behalf but not accounted for in the books of account.
 - (c) Taking of CENVAT credit without the receipt of goods or services specified in the document based on which the said credit has been taken;
 - (d) Taking of CENVAT credit on invoices or other documents which a person has reasons to believe as not genuine;
 - (e) Issue of service tax invoice or any other document, without providing or to be providing a taxable service, as specified in the said invoice or other document;
 - (f) Claiming of refund or rebate in a fraudulent manner such as on invoice or other documents which a person has reason to believe as not genuine.
2. The provisional attachment of property shall be resorted only in a case where the service tax or CENVAT credit alleged to be involved is more than Rs.25 lakh.
3. Personal property of a sole proprietor or partners shall not be attached. Personal property means any movable or immovable property which is in personal use of the sole proprietor or partner. However, immovable property/ properties which is/ are used for commercial purpose may be provisionally attached. Movable property should be attached only if the immovable property available for attachment is not sufficient to protect the interests of revenue.

It should also be ensured that such attachment does not hamper the normal business of the assessee. This would mean that inputs required for provision of a service should not be attached by the department.

4. Provisional attachment of the property shall not be excessive, that is to say, the property provisionally attached shall be of value as nearly as may be equivalent to that of the amount demanded in the proceedings under section 73 or section 73A of the Act.
 5. The provisional attachment of the property of the concerned person shall be made after sunrise and before sunset and not otherwise.
 6. After provisional attachment of the property, the Central Excise Officer shall prepare an inventory of the property attached and specify in it the place where it is lodged or kept and shall hand over a copy of the same to defaulter or the person from whose charge the property is distrained.
 7. All such property as is by the Code of Civil Procedure, 1908 exempted from attachment and sale for execution of a decree of a Civil Court shall be exempt from provisional attachment. The decision of the Commissioner of Central Excise in this regard shall be final.
10. Clarification of issues relating to service tax levy on goods transport road services
- Circular No. 104/07/2008-ST dated 06.08.2008 has clarified the following issues relating to service tax levy on goods transport by road services:

- (i) Issue: GTA provides service to a person in relation to transportation of goods by road in a goods carriage. The service provided is a single composite service which may include various intermediary and ancillary services such as loading/unloading, packing/unpacking, transshipment, temporary warehousing. For the service provided, GTA issues a consignment note and the invoice issued by the GTA for providing the said service includes the value of intermediary and ancillary services. In such a case, whether the intermediary or ancillary activities is to be treated as part of GTA service and the abatement should be extended to the charges for such intermediary or ancillary service?

Clarification: GTA provides a service in relation to transportation of goods by road which is a single composite service. GTA also issues consignment note. The composite service may include various intermediate and ancillary services provided in relation to the principal service of the road transport of goods. Such intermediate and ancillary services may include services like loading/unloading, packing/unpacking, transshipment, temporary warehousing etc., which are provided in the course of transportation by road. These services are not provided as independent activities but are the means for successful provision of the principal service, namely, the transportation of goods by road. The contention that a single composite service should not be broken into its components and classified as separate services is a well-accepted principle of classification. As clarified earlier vide F.No. 334/4/2006-TRU dated 28.2.2006 (para 3.2 and 3.3) and F. No. 334.1/2008-TRU dated 29.2.2008 (para 3.2 and 3.3), a composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service and accordingly classified. While taking a view, both

the form and substance of the transaction are to be taken into account. The guiding principle is to identify the essential features of the transaction. The method of invoicing does not alter the single composite nature of the service and classification in such cases are based on essential character by applying the principle of classification enumerated in section 65A. Thus, if any ancillary/intermediate service is provided in relation to transportation of goods, and the charges, if any, for such services are included in the invoice issued by the GTA, and not by any other person, such service would form part of GTA service and, therefore, the abatement of 75% would be available on it.

- (ii) Issue: GTA providing service in relation to transportation of goods by road in a goods carriage also undertakes packing as an integral part of the service provided. It may be clarified whether in such cases service provided is to be classified under GTA service.

Clarification: Cargo handling service [Section 65(105)(zr)] means loading, unloading, packing or unpacking of cargo and includes the service of packing together with transportation of cargo with or without loading, unloading and unpacking. Transportation is not the essential character of cargo handling service but only incidental to the cargo handling service. Where service is provided by a person who is registered as GTA service provider and issues consignment note for transportation of goods by road in a goods carriage and the amount charged for the service provided is inclusive of packing, then the service shall be treated as GTA service and not cargo handling service.

- (iii) Issue: Whether time sensitive transportation of goods by road in a goods carriage by a GTA shall be classified under courier service and not GTA service?

Clarification: On this issue, it is clarified that so long as, (a) the entire transportation of goods is by road; and (b) the person transporting the goods issues a consignment note, it would be classified as 'GTA Service'.

11. Clarifications of service tax issues relating to units in SEZ

Circular No. 105/08/2008 -ST dated 16.09 2008 has clarified the service tax issues relating to units in Special Economic Zones. It has been observed that there has been lack of clarity in the field formations administering service tax as regards the applicability of service tax levy on units located in SEZ. This lack of clarity has resulted in certain problems especially with respect to service tax administration. The issues and the proposed actions are mentioned below:

- (i) Non-payment of service tax by SEZ units providing taxable service outside SEZ

There is no exclusion to SEZs in the Chapter V of the Finance Act, 1994 Taxable services received by SEZ units and SEZ developers for consumption within the SEZ are exempt for service tax under notification No. 4/2004-ST, dated 31.3.2004. However, service tax is applicable on taxable services provided by SEZ units,

except such services which are exempt by notification No. 4/2004-ST. The C &AG, has pointed out instances, where SEZ units in Chennai & Cochin were providing taxable services like manpower supply service, technical testing and analysis service etc., to units / persons outside SEZ, without payment of service tax. In this regard the Ministry of Commerce (MOC) has observed that monitoring and collection of service tax does not come under the jurisdiction of the Development Commissioner and that such responsibility rests with the jurisdictional service tax (or CX & ST) authorities under the Central Board of Excise and Customs. Therefore, field formations should ensure that SEZs units, providing taxable services to any person for consumption in DTA (or providing any taxable service which is otherwise not exempt), or is otherwise liable to pay service tax under the service tax law, take registration with the jurisdictional service tax authorities and discharge their service tax liability in terms of the Finance Act, 1994.

(ii) Refund of Service Tax on taxable services used for the purposes of exports of goods by SEZ units

Refund of service tax paid on certain taxable services used in export of goods is permitted under notification 41/2007-ST. This notification prescribes that the refund would be allowed by the jurisdictional Deputy Commissioner/Assistant Commissioner of Central Excise. Doubts have arisen as to the authority that would process these claims when made by SEZ, i.e., the SEZ authorities or jurisdictional service tax authorities. As stated above, the Ministry of Commerce has already opined that administering the service tax law is responsibility of CBEC. Refund of service tax is to be processed by the respective jurisdictional authority administering service tax law. Accordingly, it is clarified that the SEZ units, claiming refund of service tax, should take registration with the jurisdictional ST authorities and file their claims there.

RECENT AMENDMENTS IN DIRECT TAXES AND INDIRECT TAXES

Students are advised to study thoroughly the Supplementary Study Paper-2008 on Direct Taxes and Indirect Taxes for the Final Course. This contains the amendments made by the Finance Act, 2008 as well as the significant Notifications/Circulars issued between 01.05.2007 and 30.04.2008. This Supplementary Study Paper is available at various branch and regional sales counters of the Institute. This RTP contains the significant amendments made through notifications/circulars issued between 1.5.2008 and 31.10.2008.

This is very important since considerable weightage is being given to the latest amendments in the examinations. Students may note that the Board of Studies has come out with a publication "Select Cases in Direct and Indirect Taxes [2008] – An Essential Reading for Final Course". This contains important recent judgments of Supreme Court, High Court and Appellate Tribunal in both Direct Taxes and Indirect Taxes.