

The suggested answers for Indirect Tax Laws (Paper 8) are based on the provisions as amended by the Finance Act, 2008 and Notifications/Circulars issued up to 31.10.2008 which are relevant for June 2009 examinations.

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Answer all questions.

SECTION-A

Question 1

- (a) Determine the total amount of excise duty payable on a machine using the details given below:

	Rs.
(i) Sale price of the machine excluding taxes and duties	2,00,000
(ii) Sales tax	20,000
(iii) Cost of durable and returnable packing included in the sale price given at (i) above	5,000
(iv) Design and development charges paid by buyer on behalf of seller to a third party	20,000
(v) Warranty charges charged separately by the seller	5,000
Rate of excise duty	16%
Education cess	3%

Calculations should be supported by notes, wherever required. (5 Marks)

- (b) X, a manufacturer purchased 500 kgs of inputs on 1.10.2007. Total assessable value of inputs was Rs. 10,000 and excise duty of 16% and 2% of excise duty as education cess was paid on the input. On the day of receipt itself, inputs were sent to the job worker. Job worker sent back 50% of the inputs on 1.4.2008 and balance 50% on 31.5.2008. X received back the processed the inputs on the same day. Calculate the CENVAT credit required to be reversed or that can be availed on relevant dates and net availment and reversal in the financial years 2007-08 and 2008-09. (5 Marks)
- (c) Y & Co. is a small scale unit located in a rural area and is availing the benefit of small scale exemption under Notification No. 8/2003-C.E. during the year 2007- 08. Determine the value of the first clearances of the unit and duty liability on the basis of data given below:-

	Rs.
(1) Total value of clearances of goods with own brand name	75,00,000
(2) Total value of clearances of goods with brand name of other parties	90,00,000
(3) Clearances of goods which are totally exempt under another notification (other than an exemption based on quantity or value of clearances)	35,00,000

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Normal rate of Excise duty - 16%

Education cess @ 3% of Excise duty.

Calculations should be supported with appropriate notes.

It may be assumed that the unit is eligible for exemption under Notification No. 8/2003.

(5 Marks)

Answer

(a) Computation of total amount of excise duty payable:-

Particulars	Rs.
Sale price of the machine excluding taxes and duties	2,00,000
Add : Design and development charges (Note-3)	20,000
Add: Warranty charges (Note-4)	5,000
Less : Cost of durable and returnable packing (Note-2)	<u>5,000</u>
Assessable value	<u>2,20,000</u>
Excise duty @ 16%	35,200
Education cess @ 3%	<u>1,056</u>
Total excise duty payable (Rs. 35,200 + Rs. 1,056)	<u>36,256</u>

Notes:

1. Sales tax is not included since the definition of transaction value as per section 4 specifically excludes sales tax paid or payable on the goods.
 2. Cost of durable and returnable packing shall not form a part of transaction value.
 3. Design and development charges are essential for the purpose of manufacture and to make the product marketable. Hence, they have to be included in the assessable value, since payment is 'in connection with sale'.
 4. If the warranty charges are charged separately and are not considered as "price" of the goods by the assessee, then warranty charges will be includible in the transaction value forming basis of the valuation [Circular No. 354/81/2000-TRU dated 30.06.2000].
- (b) As per rule 4(5) of CENVAT Credit Rules, 2004, a manufacturer or output service provider is entitled to claim CENVAT credit on the inputs that are cleared to a job worker for further processing, testing, repair, re-conditioning, or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose provided the goods are returned back in the factory within 180 days of their being sent to the job worker. In case inputs are not returned within 180 days, the manufacturer or provider of output service shall pay an amount equivalent to the CENVAT credit

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attributable to the inputs or capital goods by debiting the CENVAT credit or otherwise, but the manufacturer or provider of output service can take the CENVAT credit again when the inputs or capital goods are received back in his factory or in the premises of the provider of output service.

	Rs.
CENVAT credit that can be taken on 1.10.2007 (Rs. 10,000×16.32%)	1,632
CENVAT credit that should be reversed on 30.3.2008	1,632
 CENVAT credit availed and reversed in financial year 2007-08	 1,632
 CENVAT credit that can be taken on 1.4.2008 (50% of Rs. 1,632)	 816
CENVAT credit that can be taken on 31.5.2008 (50% of Rs. 1,632)	816
 CENVAT credit availed in financial year 2008-09	 1,632

(c) Computation of the value of first clearances and the duty liability:-

Particulars	Rs.
1. Value of clearances of goods with own brand name	75,00,000
2. Value of clearance of goods with brand name of other parties (Note-1)	<u>90,00,000</u>
Total value of first clearances	<u>1,65,00,000</u>
Value on which duty is chargeable (Rs. 1,65,00,000 – 1,50,00,000) = Rs. 15,00,000	
Excise duty payable @ 16% (Rs. 15,00,000 × 16%)	2,40,000
Education cess payable @ 3% (Rs. 2,40,000 × 3%)	<u>7,200</u>
Total excise duty payable	<u>2,47,200</u>

Notes:

1. SSI units in rural area are eligible to clear goods with other's brand name availing the exemption as per Notification No. 8/2003.
2. Notification No. 8/2003 also provides that value of clearances of goods totally exempt under other notifications need not be taken into account for calculation of aggregate value of first clearances.

Question 2

- (a) M/s ABC Ltd. was a cement manufacturer. The company used ropeway system for bringing crushed limestone from the mines located 4 - 5 kms away from the factory. A part of ropeway system was installed in the factory and the system was controlled from

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the factory. M/s ABC Ltd. availed CENVAT credit on parts / spares for ropeway system treating the same as capital goods. The Central Excise Department denied CENVAT credit on the ground that ropeway is used for transporting raw materials from the mines to the factory and can not be considered as material handling system within the factory premises. Examine, with the help of a decided case law, whether the stand taken by the Department is correct in law. (5 Marks)

- (b) A Port Trust used cement concrete armour units in the harbour for keeping water calm. Each unit weighed about 50 tons and is like a tripod and keeps water calm and tranquil. These units are essentially in prismoid form and were made to order. They are harbour or location specific. The Central Excise Department contended that the armour units are excisable goods and chargeable to duty. Examine the validity of the Department's contention in the light of decided case law. (5 Marks)
- (c) I Scream Ltd. is engaged in manufacture of ice-cream falling under sub-heading 2105 of the Central Excise Tariff Act, 1985. The company supplied the ice cream in four litres pack to catering industry or hotels, who sell the same in scoops. The pack contained a declaration that the pack was not meant for retail sale. The Department contended that packs have to be assessed on the basis of value arrived at as per the provision of section 4(A) of Central Excise Act, 1944, which provides for assessment based on M.R.P and not under section 4 of the Central Excise Act, 1944. Assessee contended that the ice-cream pack sold was a bulk pack of 4 litres which was not meant to be sold in retail and they were not required to print the Maximum Retail Price and hence the transaction was a wholesale transaction and assessment under section 4 of the Central Excise Act, 1944 was correct. (5 Marks)

Further contention of the assessee was that they are entitled to exemption under rule 34 of the Standard of Weights and Measures (PC) Rules, which exempts packs meant for industrial use. Examine whether the stand taken by the Department is correct in the light of decided case law.

Answer

- (a) No, Department's stand is not correct in law. Rule 2(a) of CENVAT Credit Rules, 2004, inter alia, provides that capital goods means goods "used in the factory of the manufacturer of final products". The Department's contention is that ropeway is used for transporting raw material from mines located 4-5 kms away and hence it can not be said to have been used in the factory.

The facts of the given case are similar to the case of M/s. Birla Corporation Ltd. v. CCE 2005 (186) ELT 266 (SC). In the instant case, the Apex Court followed the principle laid down in case of J.K. Udaipur Udyog Ltd. v. CCE, Jaipur-II 2001 (130) E.L.T. 996 wherein the same question arose for consideration and the facts were almost identical. Therefore, the assessee was entitled to the CENVAT credit of the spares of the ropeway system because the ropeway system, used to bring the crushed lime stone from the mines to the factory, could be covered under the expression 'precincts of the premises' in the definition of the factory under section 2(e) of the Central Excise Act, 1944. Thus,

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ropeway system is used within the factory. Therefore, parts/spares for ropeway system are covered under the definition of capital goods. Hence CENVAT credit is admissible.

- (b) The facts of the given case are similar to the case of Board of Trustees v. CCE 2007 (216) ELT 513 (SC). The Supreme Court held that in order to constitute “goods”, twin tests have to be satisfied, namely, process constituting manufacture and secondly marketability. In the present case, the second test of marketability was in issue.

In this case, armour blocks, in prisomoid form, were made to order and were of certain specifications. They were harbour or location specific. It would depend on the water level required to be maintained in the harbour. There was no evidence to show that these blocks could be used in any other harbour. Moreover, the Department failed to prove marketability of the impugned goods. Therefore, assessee's contention, that goods are not capable or being bought and sold in the market, has to be accepted. Therefore, Department's stand is not correct and no duty is payable on the goods.

- (c) The issue is covered by a decision of the Supreme Court in the case of Jayanti Food Processing (P) Ltd. v. CCE 2007 (215) ELT 327. It was held that the product was not covered by the provision of section 4A of the Central Excise Act, 1944.

The Supreme Court held that firstly, the assessee could not be said to be “retail dealer” because four litre pack of ice-cream was not being sold directly to the consumer, but to the intermediary i.e. hotels.

Secondly, four litre pack of ice-cream could have been covered under the definition of “retail package” only if such package had been intended for retail sale for consumption by an individual or a group of individuals. However, the package specifically displayed that “the pack was not meant for retail sale”. Moreover, hotel could not be covered in term of ‘individual or a group of individuals’. Hence, the ice-cream package could not be termed as “retail package”. Therefore, the assessee was not required under Standards of Weight and Measures Act and the rules there under to print the MRP on the package

Lastly, the Apex Court agreed with the contention of the asseesee that they were entitled to exemption under rule 34 which exempts the product from requirement of affixing maximum retail price on the pack. Rule 34 of the Standard of Weights and Measures (Packaging Commodity) Rules, 1977 exempts the package specially packed for the purpose of servicing any industry. Supreme Court concluded that the sale of pack of ice-cream to the retail industry was squarely covered in the term “servicing any industry”.

Hence, it could be inferred that, since, the requirement of affixing maximum retail price is a pre-condition for application of section 4A of the Central Excise Act, 1944, assessment under section 4 is correct.

Question 3

- (a) Explain special procedure and facilities made available to large tax payer under rule 12BB of Central Excise Rules, 2002 in respect of intermediate goods. (6 Marks)
- (b) What are the provisions relating to the payment of excise duty on used capital goods cleared by an assessee on which CENVAT credit has been availed? (2 Marks)

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- (c) What are the situations in which duty can be remitted under rule 21 of Central Excise Rules, 2002. (2 Marks)

Answer

- (a) Rule 12BB of Central Excise Rules, 2002 provides that a large tax payer may remove excisable intermediate goods from any of his registered premises to his other registered premises for further use in the manufacture of other excisable goods (subject goods).

For this purpose, he should satisfy the following conditions:

1. Either of the following conditions must be satisfied:-
 - (i) Subject goods should be manufactured out of the intermediate goods and cleared on payment of excise duties within six months from the date of receipt of intermediate goods, or
 - (ii) The subject goods should be manufactured out of the intermediate goods and exported out of India, under a bond or letter of undertaking, within six months from the date of receipt of intermediate goods.
 2. Removal should be made under a transfer challan/invoice.
 3. Transfer challan should be serially numbered and should contain details of registration number, name, address, description, classification, time and date of removal, mode of transport, vehicle number and name of consignee unit and registration number.
 4. If goods manufactured out of intermediate goods are not cleared/exported out of India within six months, duties on intermediate goods are required to be paid with interest under section 11AB of the Central Excise Act, 1944.
 5. If intermediate goods are used in exempted subject goods, recipient unit has to pay duty on intermediate product along with interest under section 11AB.
- (b) Second proviso to rule 3(5) of the CENVAT Credit Rules, 2004, as amended with effect from 13.11.2007, provides the method to be adopted for payment of duty on used capital goods.
- If the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer/provider of output service shall pay an amount equal to the CENVAT credit taken on the said capital goods reduced by 2.5 percent for each quarter of a year or part thereof from the date of taking the CENVAT credit.
- (c) Rule 21 of the Central Excise Rules, 2002 provides that where it is shown to the satisfaction of Commissioner, empowered to remit the duty, that:-
- (i) goods have been lost or destroyed by natural causes or,
 - (ii) by unavoidable accident or
 - (iii) the goods have become unfit for consumption or for marketing.
- at any time before removal, he may remit the duty payable on such goods.

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SECTION-B

Question 4

(a) Purchases by S & Co. for the month of December are as follows:

- (1) Rs. 1,00,000 at 4% VAT
- (2) Rs. 5,00,000 at 12.5% VAT.

Sales of S & Co. for the month of December are as follows:

- (1) Sales of Rs. 3,00,000 at 4% VAT
- (2) Sales of Rs. 3,00,000 at 12.5% VAT.

Compute eligible input tax credit and VAT payable for the month. (3 Marks)

(b) Calculate the value of taxable service of 'X' Transport Company engaged in the business of transport of goods by road. Give reasons for taxability or exemption of each item. No freight is received from any of the specified category of consignor/consignee. Suitable assumptions may be made wherever required. X does not avail CENVAT credit:

	Rs.
1. Total freight charges received by 'X' during the year	13,50,000
2. Freight charges received for transporting fruits	1,25,000
3. Freight collected for transporting small consignment for persons who paid less than Rs. 750 for each consignment	75,000
4. Freight collected for transporting goods in small vehicles for persons who paid less than Rs. 1,500 per trip	1,50,000
	(7 Marks)

Answer

(a) Computation of input tax credit and VAT payable:-

	Rs.
Input tax paid by S & Co on Rs. 1,00,000 @ 4%	4,000
Input tax paid by S & Co on Rs. 5,00,000 @ 12.5%	<u>62,500</u>
Total input tax credit eligible	<u>66,500</u>
Output tax payable on Rs. 3,00,000 @ 4%	12,000
Output tax payable on Rs. 3,00,000 @ 12.5%	<u>37,500</u>
Total tax payable	<u>49,500</u>
Net input tax allowed to be carried over (Rs. 66,500-Rs. 49,500)	17,000
VAT payable by S & Co.	Nil

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(b) Computation of value of taxable service:

	Rs.
Total freight collected	13,50,000
Less : Freight charges received for transporting fruits (Note-1)	1,25,000
Less : Freight collected less than Rs. 750/- for each consignment (Note-2)	75,000
Less : Freight collected for transporting goods in small vehicles for persons who paid less than Rs. 1,500/- per trip (Note-2)	<u>1,50,000</u>
Balance freight charges	10,00,000
Less : Abatement of 75 % (Note-3)	<u>7,50,000</u>
Value of taxable service	<u>2,50,000</u>

Notes:

1. Taxable service provided by a goods transport agency in relation to transport of vegetables, eggs or milk by road is exempt from service tax (Notification No. 33/2004 dated 03.12.2004).
2. Service tax is exempt where:
 - (i) the gross amount charged on all consignments transported in a goods carriage does not exceed Rs. 1,500/- or
 - (ii) the gross amount charged on an individual consignment transported in a goods carriage does not exceed Rs. 750/-(Notification No. 34/ 2004 dated 3.12.2004).
3. As per Notification No. 13/2008 dated 1.3.2008, service tax is required to be paid on 25% of the gross amount charged i.e. 75% of the gross amount charged is allowed as abatement.

Question 5

- (a) The assessee owned a collection centre, which was engaged in drawing of human blood, urine and stool samples on behalf of the principal laboratory in a metro city for conducting pathological tests. The assessee sent the samples through courier and received commission for such service. Department demanded service tax on the ground that the activity amounted to promotion or marketing of the service provided by the principal and hence covered under business auxiliary service. With reference to legal provisions and case law, examine the stand taken by the Department. (5 Marks)
- (b) The assessee used to finance the purchase of vehicles manufactured by a leading automobile company which used to sell the vehicles through its distributors. Assessee financed part of the vehicle cost to the purchaser of vehicle after getting, an agreement with the purchaser providing the right of repossession of the vehicle in case buyer of the vehicle defaulted in paying installment. Immediately on sale, purchaser of the vehicle became the owner and vehicle was registered in his name. The Department seeks to

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levy service tax in the category of "Banking and other Financial Services." Examine whether Department's stand is correct in terms of legal provisions' and case law.(5 Marks)

Answer

- (a) Section 65 (106) of the Finance Act, 1994 defines technical testing and analysis services. However, any testing or analysis done for the purpose of determination of the nature of diseased condition, identification of a disease, prevention of any disease or disorder in human beings or animals has been excluded from the scope of this service. In this case, the Department's contention is that assessee is providing business auxiliary service to the laboratory and is not eligible for the exemption since assessee is not performing laboratory functions.

Similar issue came up before Punjab & Haryana High Court in the case of CCE v. Dr. Lal Path Lab (P) Ltd. 2007 (8) STR 337 (P&H). High Court held that merely because the assessee renders any incidental service like putting across or dropping of the name of the principal laboratory, it does not get covered by the definition of business auxiliary service. The activity of drawing of test sample is covered by the exception to technical testing and analysis service under section 65(106) of the Finance Act, 1994.

- (b) The issue was examined by the Customs Excise, Service Tax Appellate Tribunal (CESTAT), Mumbai in the case of Bajaj Auto Finance Ltd. v. CCE, Pune 2007 (7) STR 423. The Tribunal distinguished between hire purchase agreement and hire purchase finance agreement. In the case of former, the title to the goods remains with the hire purchase company. Payments are considered as hire charges and when all periodical payments are made, title to the goods is transferred to the customer provided he exercises such an option. In the case of latter, title to the goods vests with the purchaser right from the beginning and hire purchase company has only a right to take over possession for non payment of loan.

It was also quoted that since the appellants herein have the right and control over the goods, it cannot be concluded that they had entered into a hire purchase agreement with their customers for the reason that in all hire purchase finance agreements, terms and conditions giving the finance company control over the goods, exist. Since hire purchase finance is not covered by the definition of banking and other financial services under section 65(10) of the Finance Act, 1994, service tax is not attracted. This judgment has been affirmed later on by the Apex Court in CCE v. Bajaj Auto Finance Ltd. 2008 (10) STR 433 (SC).

Question 6

- (a) What are the purchases not eligible for input tax credit of VAT paid? (6 Marks)
- (b) What are the provisions relating to best judgement assessment under Service Tax Law? (2 Marks)
- (c) State whether the following services are taxable under the provisions of the Finance Act, 1994 relating to service tax:

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- (i) A practising Chartered Accountant representing a client before Income Tax Officer in assessment proceeding. (2 Marks)
- (ii) Royalty received from the publisher by an author of a text-book for printing and publishing his book. (2 Marks)
- (d) Give four illustrations to explain the scope of service rendered by a consulting engineer. (4 Marks)
- (e) List out any four services brought under the service tax net by the Finance Act, 2008. (4 Marks)

Answer

- (a) Input tax credit is not allowed on the following purchases.
 - (i) purchases from unregistered dealers;
 - (ii) purchases from registered dealer who opt for composition scheme under the provisions of the Act;
 - (iii) purchase of goods as may be notified by the State Government;
 - (iv) purchase of goods where the purchase invoice is not available with the claimant or there is evidence that the same has not been issued by the selling registered dealer from whom the goods are purported to have been purchased;
 - (v) purchase of goods where invoice does not show the amount of tax separately;
 - (vi) purchase of goods, which are being utilized in the manufacture of, exempted goods;
 - (vii) goods in stock, which have suffered tax under an earlier Act but under VAT Act they are covered under exempted items;
 - (viii) purchase of goods used for personal use/consumption or provided free of charge as gifts (partial credit is available in the State of Maharashtra);
 - (ix) goods imported from outside the territory of India (commonly known as high seas purchases);
 - (x) goods imported from other States viz. inter-State purchases.

Note: Any 4 points may be given.

- (b) 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

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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.

- (c) (i) Services provided or to be provided by a practicing chartered accountant in his professional capacity, to a client, relating to representing the client before any statutory authority in the course of proceedings initiated under any law for the time being in force, by way of issue of notice, from the whole of service tax leviable thereon under section 66 of the Finance Act, 1994 as amended (Notification No. 25/2006 ST dated 13.7.2006).
- (ii) As per section 65(55a) of the Finance Act, 1994, "intellectual property right" means any right to intangible property, namely, trade marks, designs, patents or any other similar intangible property, under any law for the time being in force, but does not include copyright. Therefore, any royalty or other payment related to publishing involving copyright is not liable to tax.
- (d) Consulting engineer service would include
 - (i) Design engineering
 - (ii) Pre design services/project report
 - (iii) Supervision or construction and project management
 - (iv) Feasibility study
 - (v) Supervision of commissioning and initial operation
 - (vi) Post operation and management
 - (vii) Trouble shooting and technical services including establishing system and procedures for an existing plant.
- (e) Following new services have been brought under tax net by the Finance Act, 2008:-
 1. Services in relation to information technology software for use in the course, or in furtherance of business or commerce.
 2. Services provided in relation to management of investment under unit linked insurance business, commonly known as ULIP.
 3. Services provided by a recognized stock exchange in relation to securities.
 4. Services provided by a recognized or registered association (commodity exchange) in relation to sale or purchase of any goods or forward contracts.
 5. Services provided by a processing and clearing house in relation to processing, clearing and settlement of transactions in securities, goods or forward contracts.
 6. Services provided in relation to supply of tangible goods without transferring right of possession and effective control of the tangible goods.
 7. Services provided in relation to internet telecommunication.

Note: Any four services may be given.

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SECTION-C

Question 7

From the following particulars, determine the assessable value of the imported equipment giving explanation for each item:

	Rs.
1. FOB cost of equipment (Japanese Yen)	2,00,000 Yen
2. Freight charges in Japanese Yen	20,000 Yen
3. Charges for development connected to equipment paid in India	Rs. 60,000
4. Insurance charge paid in India for transportation from Japan	Rs. 15,000
5. Commission payable to agent in India	Rs. 15,000
Exchange rate as per RBI is 1 Yen = Rs. 0.45	
Exchange rate as per CBEC is 1 Yen = Rs. 0.50	
Landing charges: one percent of CIF cost	

(5 Marks)

Answer

Computation of assessable value:-

FOB value	2,00,000 Yen
Add: Freight from Japan (Note – 1)	<u>20,000 Yen</u>
Total (in yen)	2,20,000 Yen
Exchange rate applicable is 1 Yen = Rs. 0.50 (Note – 4)	
Total (in rupees)	Rs. 1,10,000
Add : Insurance charges	<u>Rs. 15,000</u>
Total	Rs. 1,25,000
Add : Commission (Note – 2)	<u>Rs. 15,000</u>
CIF value	Rs. 1,40,000
Add : Landing charges @ 1% of CIF value	<u>Rs. 1,400</u>
Assessable value	<u>Rs. 1,41,400</u>

Notes:

1. Freight from Japan is includible in the assessable value.
2. Agency commission paid in India is not a buying commission and hence will be added to CIF value.

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3. Charges for development paid in India do not form part of assessable value because as per rule 10(1)(b)(iv) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, only the development undertaken at a place other than India shall form a part of assessable value.
4. Currency conversion rate as notified by CBEC is to be taken into consideration.

Question 8

ABC imported a vessel 'Waterloo' for the purpose of breaking from XYZ Ltd. of U.K. A memorandum of understanding was signed between the buyer and seller on 2.6.97 and ABC took delivery of the vessel on 4.6.97. Vessel drifted and landed in the yard of B in a damaged condition on 9.6.97. On 24.6.97, ABC filed application to concerned Assistant Commissioner for extension of time to file bill of entry, which was granted on 12.8.97. ABC paid Rs. 24 crores to XYZ Ltd. towards the purchase price of the vessel. Thereafter, ABC sold the vessel to B for Rs. 12 crores and B filed bill of entry on 12.9.97. Assessing authority assessed the ship taking the value as Rs. 24 crores and ship was taken over by B after assessment order was passed. 'B' argues that assessable value should be taken as Rs. 12 crores since the vessel was damaged because of the storm which made the vessel drift during appellate proceedings. No application for abatement of duty was made before the assessing authority by ABC or B. Examine whether benefit of relief under section 22 of the Customs Act, 1962 to reduce the value and thereby duty can be extended to B under the above circumstances. The assessment order in respect of bill of entry was passed on 23.12.97. (5 Marks)

Answer

Supreme Court held that in order to claim the benefit of the abatement under section 22, the party claiming the abatement has to satisfy the Assessing Authority that a case has been made out under section 22 for abatement of duty on damaged or deteriorated goods. In the absence of any claim made under section 22 in writing to the Assessing Authority, the appellant (B) could not claim the abatement under section 22 and the Assessing Authority did not record rightly to its satisfaction that the appellant was entitled to the abatement of duty.

In this case, damage occurred in Indian shore. Importer sought extension of time to file bill of entry. But, thereafter remitted the purchase price and sold the vessel to B. B in turn filed the bill of entry and the vessel was assessed. No application was made by the buyers i.e. importer (ABC) to the Assistant Commissioner for any abatement of duty on damaged goods.

The transaction between the importer (ABC) and the respondent (B) cannot be described as the transaction of purchase and sale during the course of international trade. Any sale of goods carried out, after the act of 'import' within the meaning of the Act is over, can only be described as a sale in the course of domestic trade and not a sale in the course of international trade. Therefore, the appellant i.e. buyer (B) who had purchased the vessel in the course of domestic trade was not entitled to seek any abatement of duty under section 22 of the Customs Act, 1962 on the ground on which it claimed before the Appellate Authority.

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Hence, in the light of above discussion, it can be inferred that the assessable value of the ship shall be the transaction value at which the importer (ABC) has paid at the time of importation i.e. Rs. 24 crores.

Question 9

- (a) Is a person entitled to inspect or obtain copies of report made by any Officer to the Settlement Commission? Can the Settlement Commission furnish copies of such report?
(2 Marks)
- (b) Under what circumstances, provisional assessment under section 18 of the Customs Act, 1962 can be made?
(2 Marks)
- (c) Explain briefly, legal provisions relating to pilfered goods under the Customs Act, 1962.
(2 Marks)
- (d) Explain briefly, legal provisions relating to power to summon persons under the Customs Act, 1962.
(2 Marks)
- (e) Define customs area.
(2 Marks)

Answer

- (a) As per the provisions of section 127G of the Customs Act, 1962, no person shall be entitled to inspect or obtain copies of any report made by any officer of customs to the Settlement Commission, but the Commission may, in its discretion, furnish copies thereof to any such person on an application and on payment of specified fee.

However, for the purpose of enabling any person whose case is under consideration to rebut any evidence brought on record against him in any such report, the Commission shall furnish a certified copy of relevant part of such report on receipt of an application and payment of fee as specified in rules.
- (b) According to provisions of section 18 of the Customs Act, 1962, provisional assessment can be resorted to in the following cases:-
 - (i) Where the proper officer is satisfied that an importer or an exporter is not able to produce documents or information necessary for assessment.
 - (ii) Where proper officer deems it necessary to subject the imported or export goods to chemical or other test for the purpose of assessment of duty thereon.
 - (iii) Where proper officer deems it necessary to make further enquiry.
- (c) Pilferage does not mean loss of total package. Normally claim for pilferage would be under following circumstances:
 - a. there should be evidence of tampering with packages.
 - b. there would be blank space for missing article on package.
 - c. Missing article would be unit article.

FINAL EXAMINATION : JUNE, 2009

According to section 13 of the Customs Act, 1962, if any imported goods are pilfered after unloading and before proper officer has passed an order for clearance for home consumption or deposit in warehouse, the importer shall not be liable to pay duty leviable on such goods.

However, where such goods are restored to the importer, he becomes liable to pay duty.

- (d) Section 108 of the Customs Act, 1962 provides that any Gazetted Officers of Customs shall have the power to summon any person either to present himself for enquiry or produce a document or any other thing in any inquiry which the officer is making under the Act. All persons who are summoned shall be bound to attend either in person or by an authorized agent and state the truth, make statement, produce document and other things.
- (e) As per section 2(11) of the Customs Act, 1962, customs area means the area of a customs station and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities.