

PAPER – 8: INDIRECT TAX LAWS

QUESTIONS

SSI

1. Arihant Enterprises is a manufacturing company. Following information is available for the financial year 2010-11:-

	Particulars	Rs. (in lakh)
(1)	Total value of clearances of goods bearing the brand name of Arihant Enterprises	150
(2)	Clearances of excisable goods without payment of duty to a unit in Special Economic Zone	40
(3)	Job work under Notification No. 84/94-CE dated 11.4.94	60
(4)	Job work under Notification No. 214/86-CE dated 25.3.86	80
(5)	Clearances of certain non-excisable goods manufactured by it	100
(6)	Total exports (including for Nepal and Bhutan Rs. 400 lakhs)	1,000

On the basis of above information, you are required to ascertain whether Arihant Enterprises is eligible for the benefit of small scale exemption under Notification No. 8/2003-C.E. dated 01.03.2003 during the year 2011-12.

Basic Concepts

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

Valuation

3. Examine the validity of the following statements:-
- (i) Excise Department can challenge the reasonability of MRP printed on the package.
 - (ii) Legal/penal actions can be taken in case the retail sale price is not mentioned or is unduly tampered after the removal.
 - (iii) Cost of return fare of vehicles will not be added for determining assessable value.

CENVAT credit

4. Briefly explain, with reference to a decided case law, can CENVAT credit be taken on the basis of private challans other than the prescribed documents?
5. Rolex Ltd. was engaged in the manufacture of electricity using naptha as fuel for generation of electricity. The electricity was partly used captively and partly sold outside

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to its joint ventures, vendors or given to the grid for distribution. Rolex Ltd. claimed the CENVAT credit on the naphtha used in the manufacture of the electricity. However, Department denied the credit on the ground that CENVAT credit on naphtha could not be admitted because part of the electricity was cleared outside the factory to the joint ventures, vendors etc.

Examine the veracity of the action taken by the Department with the help of a decided case law.

Registration under central excise

6. Examine whether the following categories of persons are exempted from obtaining registration under rule 9(2) of the Central Excise Rules, 2002.
 - (a) Sambhav Ltd. is a small scale unit exempt under Notification No. 8/2003 dated 01.03.2003.
 - (b) Central Government undertakings manufacturing excisable goods.
 - (c) Arahnath Enterprises is engaged in the manufacture of the excisable goods which are chargeable to nil rate of duty.

Remission of duty

7. Explain briefly, with reference to rule 21 of the Central Excise Rules, 2002 relating to remission of duty, the following:-
 - (i) Can remission of duty be granted on goods cleared from the factory after payment of duty, but which were destroyed by fire in transit?
 - (ii) Upon grant of remission of duty, does the CENVAT credit on inputs used in final product need to be reversed?

Settlement Commission

8. A show cause notice dated 09.08.2010 demanding duty to the tune of Rs.10,00,000 with interest as applicable has been received by AB Ltd. on the ground of clandestine removal of the products manufactured by it in the month of July, 2009. Penalty equal to duty demanded was also imposed. AB Ltd. had filed the ER-1 for the month of July on time. AB Ltd. wants to approach the Settlement Commission for this matter and accept the additional duty liability of Rs.10,00,000. In the year 2006, AB Ltd. had one of its case settled at Settlement Commission. Neither any penalty was imposed on it nor was it convicted for any offence in relation to this case.

AB Ltd. has approached you as a counsel for advising it in this regard. You are required to give your views with particular reference to the amendments made in the provisions of Settlement Commission by the Finance Act, 2010.

Value of taxable service

9. Explain, with the help of a decided case law, whether the value of SIM cards sold by the mobile phone companies to their subscribers would be included in value of taxable

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service under 'telecommunication service' or it is taxable as sale of goods under the Sales Tax Act?

Taxable services

10. Answer the following questions:-

- (i) Examine whether the following statements are true:-
 - (a) Unless the entire payment for the property is paid by the buyer after the completion of construction, the activity of construction would be deemed to be taxable under construction of residential complex service provided by the builder/promoter/developer.
 - (b) Works contract service provided in respect of canals, other than those primarily used for the purposes of commerce or industry is liable to service tax.
 - (c) Transport of petroleum and petroleum products through national waterway, inland water and coastal shipping is exempt from the service tax.
- (ii) The following particulars relate to various air journeys undertaken in Indian air carriers after 31.07.2010:

S. No.	Travel Particulars	Class	Gross value of Ticket (Rs.)
(i)	Dubai to Sri Lanka via Delhi. The traveller did not pass through immigration at Delhi.	Business	85,000
(ii)	Delhi to Goa	Economy	5,000
(iii)	Delhi to Mumbai	Business	17,000
(iv)	Delhi to London	Economy	30,000
(v)	Delhi to Amsterdam	Business	1,00,000
(vi)	Delhi to Guwahati	Business	35,000
(vii)	Guwahati to Delhi	Economy	15,000
(viii)	Delhi to Mumbai. The traveller won the low cost ticket in a lottery organized by the air carrier.	Economy	900

Compute the service tax payable in respect of all the journeys taken together. The various air carriers used for the above-mentioned air travels have not taken excise duty credit on inputs used for providing such taxable service and are not eligible for the benefit of *Notification No.6/2005 ST dated 01.03.2005*. The gross value of tickets do not include any statutory levy.

Services of promoting a 'brand' of goods, events, business entity etc.

11. Bahara Group of Industries is engaged in manufacture of a range of products and providing variety of services. The brand name of Bahara Group of Industries is being

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promoted by a well known celebrity without reference to any of its specific product or services. The Department contends that the services provided by the celebrity to Bahara Group of Industries would be classified under 'business auxiliary services'.

Examine whether the contention of the Department is correct?

Registration and SSP exemption

12. Examine the validity of the following statements:-

- (a) Exemption for small service providers under *Notification No. 6/2005 ST dated 01.03.2005* as amended is not applicable to the taxable services provided by a person under a brand name or trade name of another person.
- (b) An assessee providing more than one taxable service is required to make a separate application of registration for each of the taxable services provided by him.

Valuation of taxable services

13. Dolby Ltd. is engaged in providing services of renting of immovable property. For the month of March 2011, its receipts are as follows:-

Receipts	Amount (Rs.)
Rent of the building (including property tax of Rs. 1,50,000)	12,00,000
Vacant land, given on lease for construction of building at a later stage (Such building would be used for commercial purpose)	7,00,000
Let out vacant land solely used for farming purposes	15,00,000
Let out land to Dharmesh Circus	2,25,000
On the basis of the above information, compute the service tax payable by Dolby Enterprises under the category of 'renting of immovable property services' for the month of March 2011.	

Note: All the receipts are exclusive of service tax.

Composition scheme

14. Who are not eligible for composition scheme under the VAT regime? Discuss briefly.

VAT in special transactions

15. Write a brief note to explain the impact of VAT on lease transactions.

Computation of VAT

16. Compute the invoice value to be charged, amount of tax payable under VAT and input tax credit to be carried forward, if any, from the following information for the month of May, 2011:-

Particulars	
Purchase price of the goods (excluding VAT)	Rs. 1,20,000
Expenses incurred	Rs. 10,000

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Profit earned	Rs. 15,000
VAT rate on purchase of goods	12.5%
VAT rate on sale of goods	4%

Re-importation of goods produced/manufactured in India

17. Goods manufactured or produced in India, which were earlier exported and thereafter imported into India will be treated at par with other goods imported into India. Is the said proposition correct? Has any concession been provided on such import? Discuss briefly.

Importation, exportation and transportation of goods

18. Explain in brief the duty exemption to baggages under section 79(1) of the Customs Act, 1962.

Settlement Commission

19. Settlement Commission does not have the jurisdiction to settle cases relating to the recovery of drawback erroneously paid by the Revenue. Examine the validity of the statement with the help of a decided case law.

Valuation under Customs Act, 1962

20. Fraternity Corporations imported some goods by air at CIF price of 10,000 US\$. Freight paid was 3,000 US\$ and insurance cost was 1,000 US \$. The banker realized the payment from Fraternity Corporations at the exchange rate of Rs.45 per dollar. Central Board of Excise and Customs notified the exchange rate as Rs.44.50 per US \$. Find the value of the imported goods for the purpose of levying duty.

SUGGESTED ANSWERS/HINTS

1. In order to claim the benefit of exemption under *Notification No. 8/2003 – C.E.* in a financial year, the total turnover of a unit should not exceed Rs.400 lakh in the preceding year. For the purpose of computing the turnover of Rs. 400 lakh:-
- (i) clearances of goods bearing the own brand name would be included. Hence, clearances of Rs. 150 lakh of goods bearing the brand name of Arihant Enterprises would be included.
 - (ii) clearances to EOU, STP, SEZ etc. will not be considered. Therefore, clearances of excisable goods without payment of duty to a unit in Special Economic Zone of Rs. 40 lakh will not be included.
 - (iii) turnover of non-excisable goods has to be excluded. Therefore, clearances of non-excisable goods of worth Rs.100 lakh shall be excluded.
 - (iv) clearances exempted under job work notifications should not be considered. Therefore, exempted clearances of Rs. 140 lakh (60+80) lakh under job work notification will not be taken into account.

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- (v) export turnover has to be excluded. However, export to Nepal and Bhutan cannot be excluded as these are treated as "clearance for home consumption". Therefore, clearances worth Rs.600 lakh exported to other countries will be excluded while clearances worth Rs.400 lakh exported to Nepal and Bhutan will be included.

Therefore, for the year 2010-11, the turnover of Arihant Enterprises, for claiming the SSI exemption will be:-

=Rs. (150 + 400) lakh = Rs. 550 lakh

Since the turnover of Arihant Enterprises exceeds Rs. 400 lakh in the previous year 2010-11, it will not be eligible for SSI exemption under *Notification No. 08/2003 dated 01.03.2003* in the financial year 2011-12.

2. (i) Yes, excise duty is attracted on the excisable goods manufactured in the State of Jammu and Kashmir. Though originally the Central Excise Act, 1944 did not apply to Jammu and Kashmir, its application was extended to the same with the enactment of Taxation Laws (Extension to Jammu and Kashmir) Act, 1954.
- (ii) **Section 3(1A)** of the Central Excise Act, 1944 provides that the excise duty shall be levied and collected on all excisable goods other than salt which are produced or manufactured in India by, or on behalf of, Government, as they apply in respect of goods which are not produced or manufactured by Government. Thus, **excise duty will be payable on goods manufactured by, or on behalf of, the Government (both Central & State) also.**
3. (i) **The statement is not correct.** The Central Excise Department cannot challenge the reasonability of MRP printed on the package. It can only satisfy itself that there is a declaration of MRP in prescribed form [*ITC Ltd. v. CCEx., New Delhi 2004 (171) ELT 433 (SC)*].
- (ii) **The statement is correct.** If the retail sale price is not mentioned on the excisable goods or is unduly tampered after the removal, then
- (i) such goods shall be liable to confiscation and
- (ii) the retail sale price of such goods shall be ascertained in the manner prescribed by the Central Government and such price shall be deemed to be the retail sale price.
- (iii) **The statement is correct.** Earlier, *Circular No. 643/34/2002-CX dated 1st July 2002* as amended *inter alia* clarified that cost of return fare of vehicles was to be included in the assessable value of the excisable goods.

The said clarification, to this extent, has been withdrawn and it has been re-clarified vide **Circular No. 923/13/2010 – CX dated 19.05.2010** that cost of return fare of vehicles is not required to be added for determining value. This clarification has been issued in view of the Tribunal's decisions in case of *DCW Ltd. v. CCE 2007 (217) ELT 541 (Mad.)* and *Haldia Petrochemicals Limited v. CCEx. Haldia 2009 (233) E.L.T. 344 (Tri. - Kolkata)*.

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4. Yes, CENVAT credit can be taken on the basis of private challans other than the prescribed documents. The issue whether private challans other than the prescribed documents are valid for taking MODVAT credit under the Central Excise Rules, 1944 has been decided by the High Court in case of **CCEx. v. Stelko Strips Ltd. 2010 (255) ELT 397 (P & H)**.

The High Court placed reliance on its decision in the case of *CCE v. M/s. Auto Spark Industries CEC No. 34 of 2004* decided on 11.07.2006 wherein it was held that once duty payment is not disputed and it is found that documents are genuine and not fraudulent, the manufacturer would be entitled to MODVAT credit on duty paid on inputs.

The High Court also relied on its decision in the case of *CCE v. Ralson India Ltd. 2006 (200) ELT 759 (P & H)* wherein it was held that if the duty paid character of inputs and their receipt in manufacturer's factory and utilization for manufacturing a final product is not disputed, credit cannot be denied.

Thus, the High Court held that MODVAT credit could be taken on the strength of private challans provided the same were not found to be fake and there was a proper certification that duty had been paid. Although, the principle enunciated in the aforesaid judgment is with reference to the erstwhile Central Excise Rules, 1944, the same may apply with regard to the CENVAT Credit Rules, 2004.

5. The facts of the given case are similar to the case of **Maruti Suzuki Ltd. v CCE (2009) 240 ELT 641 (SC)**. In the said case, the Court observed that the statutory definition of the word "input" in rule 2(g) in the erstwhile CENVAT Credit Rules, 2002 [now rule 2(k) in the CENVAT Credit Rules, 2004], can be divided into three parts, namely :

- (i) Specific part
- (ii) Inclusive part
- (iii) Place of use

All the three parts of the definition, namely, specific part, inclusive part and place of use, are required to be satisfied before an input becomes an eligible input.

(I) SPECIFIC PART

"Input" is defined to **mean** all goods, except light diesel oil, high speed diesel oil and petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not.

Therefore, the crucial requirements, as per this part, are as follows:-

- (a) All goods "used in or in relation to the manufacture" of final products qualify as "input".
- (b) Presupposition that the element of "manufacture" must be present.

On account of the use of the expression "used in or in relation to the manufacture of final product", use of input in the manufacturing process, be it direct or indirect and the absence of the input in the final product become irrelevant.

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Electricity may not have any concern with the manufacture of the finished product, but it is an ancillary activity which is anterior to the process of manufacture of the final product. It is on account of the use of the above expression “used in relation to manufacture” that such an activity of electricity generation comes within the ambit of the definition.

(II) INCLUSIVE PART

Input **includes**:

- (a) Lubricating oils, greases, cutting oils and coolants;
- (b) Accessories;
- (c) Paints;
- (d) Packing materials;
- (e) Input used as fuel;
- (f) Input used for generation of steam or electricity.

The Court elucidated that, in each case, it has to be established that inputs mentioned in the inclusive part is “used in or in relation to the manufacture of final product”. Unless and until the said input is used in or in relation to the manufacture of final product within the factory of production, the said item would not become an eligible input.

(III) PLACE OF USE

Supreme Court held that the definition of “input” brings within its fold, inputs used for generation of electricity or steam, provided such electricity or steam is used within the factory of production for manufacture of final products or for any other purpose.

The excess electricity cleared to the grid for distribution or to the joint ventures, vendors, and that too for a price (sale), electricity generated cannot be said to be “used in or in relation to the manufacture of final product, within the factory”.

Hence, from the above discussion, it could be inferred that Rolex Ltd. was entitled to credit on the eligible inputs utilized in the generation of electricity to the extent to which they were using the produced electricity within their factory (for captive consumption). However, it was not entitled to CENVAT credit to the extent of the excess electricity sold to joint ventures, vendors etc.

6. (a) Central Board of Excise and Customs, as per the power given under **rule 9(2) of the Central Excise Rules, 2002, vide Notification No.36/2001-CE. (NT) dated 26.06.2001**, has exempted the small scale units having the slab exemption based on value of clearances under a notification from obtaining registration. However, they have to give the declaration when their clearances touch Rs. 90 lakh. Hence, Sambhav Ltd. is exempt from obtaining registration provided it gives the declaration when its clearances touch Rs. 90 lakh.

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- (b) **No, the Central Government undertakings manufacturing excisable goods are not exempted from obtaining registration.** The provisions of section 6 of the Central Excise Act, 1944 read with rule 9 of the Central Excise Rules, 2002 apply in respect of every person who manufactures or produces excisable goods **(including Central/State Government Undertakings or undertakings owned or controlled by autonomous corporations)** in India.
- (c) Central Board of Excise and Customs, as per the power given under **rule 9(2) of the Central Excise Rules, 2002, vide Notification No.36/2001-CE. (NT) dated 26.06.2001**, has exempted the persons who manufacture the excisable goods, which are chargeable to nil rate of duty or are fully exempt from duty by a notification subject to the declaration to be made in a specified form, from obtaining registration. Hence, Arahath Enterprises is exempt from obtaining registration provided it furnishes the declaration in the specified form.
7. (i) Remission of duty is granted when the goods are lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as unfit for consumption, at any time before removal.
- Hence, in this case remission of duty cannot be granted under rule 21 of the Central Excise Rules, 2002 as goods have already been cleared from the factory after payment of duty.
- (ii) Yes, as per sub-rule (5C) of rule 3 of the CENVAT Credit Rules, 2004, where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under rule 21 of the Central Excise Rules, 2002, the CENVAT credit taken on the inputs used in the manufacture or production of said goods shall be reversed.
8. The advice to AB Ltd. would be two fold. First would be regarding the eligibility to make an application before Settlement Commission and second would be regarding the conditions to be fulfilled by AB Ltd. for making an application to the Settlement Commission.

Eligibility to make an application before Settlement Commission: AB Ltd. can make an application to Settlement Commission as the following conditions prescribed under section 32E of the Central Excise Act, 1944 are being fulfilled in this case:

- (i) A show cause notice has been received by AB Ltd.
- (ii) The additional amount of duty which AB Ltd. would be accepting in the application to the Settlement Commission exceeds Rs.3,00,000.
- (iii) AB Ltd. has filed ER-1 showing production, clearance and central excise duty paid for the month of July, 2009.
- (iv) Prior to 08.05.2010, cases involving short levy of duty on goods in respect of which no proper record were maintained by the assessee in his daily stock register could not be settled in the Settlement Commission. However, with effect from, 08.05.2010, the Finance Act, 2010 has amended section 32E so as to remove the

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prohibition on filing of applications for the settlement of cases where an assessee admits short-levy for goods in respect of which he has not maintained proper records (i.e. cases of misdeclaration, clandestine removal etc.).

- (v) Prior to 08.05.2010, the assessee was allowed to apply for settlement under section 32E only once. However, with effect from, 08.05.2010, the Finance Act, 2010 has relaxed this restriction. Now, the assessee can apply for settlement more than once if it does not fall in any of the three cases mentioned in section 32-O of the Central Excise Act, 1944. The said three cases where the assessee cannot apply for settlement more than once are:
- (a) where the order of settlement provides for imposition of penalty on the ground of concealment of particulars of duty liability; or
 - (b) where after passing of the settlement order, the applicant is convicted of any offence under the Central Excise Act in relation to that case; or
 - (c) the case of the applicant is sent back to the Central Excise Officer by the Settlement Commission.

The case of AB Ltd. does not fall in any of the three cases mentioned in section 32-O.

Conditions to be fulfilled by AB Ltd. for making an application to Settlement Commission:

- (i) AB Ltd. will have to make full and true disclosure of his duty liability not disclosed before the Central Excise Officer, the manner in which such liability has been derived and the particulars of the goods in respect of which it admits short levy on account of clandestine removal.
- (ii) Application will have to be accompanied with a fees of Rs.1000.
- (iii) AB Ltd. will have to pay Rs.10,00,000 (additional amount of excise duty accepted by him) along with applicable interest.

AB Ltd. will be informed that once it makes an application under section 32E, it will not be allowed to withdraw the same.

9. The issue as to whether the value of SIM cards sold by the mobile phone companies to their subscribers has to be included in value of taxable service under 'telecommunication service' or it is taxable as sale of goods under the Sales Tax Act has been decided by the High Court in case of **CCE v. Idea Mobile Communications Ltd. 2010 (19) STR 18 (Ker.)**. The High Court, while examining the functioning of a SIM card, admitted that SIM card is a computer chip having its own SIM number on which telephone number can be activated. SIM card is a device through which customer gets connection from the mobile tower. Unless the SIM card is activated, service provider cannot give service connection to the customer because signals are transmitted and conveyed through towers and through SIM card communication signals reach the customer's mobile instrument. Hence, it can be inferred that it is an integral part required to provide mobile service to the customer.

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Further, SIM card has no intrinsic value or purpose other than use in mobile phone for receiving mobile telephone service from the service provider. Thus, the Court accepted the view that SIM cards were not goods sold or intended to be sold to the customer, but supplied as part of service.

Consequently, it held that the value of SIM card supplied by the assessee would form part of the value taxable service on which service tax was payable by the assessee.

10. (i) (a) The statement is true. Explanation inserted in section 65(105)(zzzh) by Finance Act, 2010 provides as follows:-

The construction of a **complex** which is intended for sale, wholly or partly, by a builder or any person authorised by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or a person authorised by the builder before the grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) is deemed to be service provided by the builder to the buyer.

(b) The statement is false. Notification No. 41/2009 ST dated 23.10.2009 has exempted the works contract service provided in respect of canals, other than those primarily used for the purposes of commerce or industry.

(c) The statement is true. Notification No. 30/2009 ST dated 31.08.2009 exempted the taxable service provided to any person in relation to the transport of petroleum and petroleum products through national waterway, inland water and coastal shipping from whole of the service tax leviable thereon.

(ii) With effect from 01.07.2010, the Finance Act, 2010 has expanded the scope of air passenger transport service by including domestic journeys and international journeys undertaken in any class within its ambit. Therefore, all the journeys will be liable to service tax under transport of passengers by air service as computed below:

Computation of service tax payable

S. No.	Travel Particulars	Service tax (including education cess @ 2% and secondary and higher education cess @ 1% (Rs.))
(i)	Dubai to Sri Lanka via Delhi [Refer Note 1]	Nil
(ii)	Delhi to Goa [Refer Note 2]	103
(iii)	Delhi to Mumbai [Refer Note 2]	103
(iv)	Delhi to London [Refer Note 3]	515
(v)	Delhi to Amsterdam [Refer Note 4]	10,300
(vi)	Delhi to Guwahati [Refer Note 5]	Nil

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(vii)	Guwahati to Delhi [Refer Note 5]	Nil
(viii)	Delhi to Mumbai [Refer Note 2]	92.7
	Total	11,114 (rounded off)

Notes:

- (1) Air transport of persons in transit in the course of international journey who have not passed through immigration is exempt from service tax [**Notification No. 25/2010 ST dated 22.06.2010**].
 - (2) In case of domestic air journey (all class) service tax is leviable @ 10% of the gross value of the ticket or Rs.100 per journey, whichever is less [**Notification No. 26/2010 ST dated 22.06.2010**].
 - (3) In case of international air journey undertaken in economy class service tax is leviable @ 10% of the gross value of the ticket or Rs.500 per journey, whichever is less [**Notification No. 26/2010 ST dated 22.06.2010**].
 - (4) Concessional service tax is not available in case of international air journey undertaken in business class. Service tax would be leviable @ 10.3% of the gross value of the ticket.
 - (5) Air transport of passengers embarking on a journey originating or terminating in an airport located in any of the North-Eastern States have been exempted from service tax [**Notification No. 27/2010 ST dated 22.06.2010**].
11. **The contention of the Department is not correct.** D.O.F. No. 334/1/2010-TRU dated 26.02.2010 clarifies that if the brand name / house mark etc. is promoted by a celebrity without reference to any specific product or services etc., it is difficult to classify it under 'business auxiliary services'. Such activities, like mere establishing goodwill or adding value to a brand would fall under the newly introduced service of promoting a 'brand' of goods, events, business entity etc. under section 65(105)(zzzzq)].
 12. (a) **The statement is absolutely valid.** Exemption for small service providers under Notification No. 6/2005 ST dated 01.03.2005 as amended is not applicable to taxable services provided by a person under a brand name or trade name, whether registered or not, of **another** person.
 (b) **The statement is not valid.** As per rule 4(4) of the Service Tax Rules, 1994, where an assessee is providing more than one taxable service, he may make a single application mentioning therein all the taxable services provided by him.
 13. **Computation of service tax payable by Dolby enterprises for the month of March, 2011:-**

Particulars		Amount (Rs.)
Rent of the building	12,00,000	
Less: Property tax (Note – 1)	<u>1,50,000</u>	10,50,000

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Vacant land, given on lease for construction of building at a later stage to be used for commercial purpose	<u>7,00,000</u>
Value of taxable services	<u>17,50,000</u>
Service tax @ 10% = Rs. 17,50,000 × 10%	1,75,000
Add: Education cess payable @ 2% = Rs. 1,75,000 × 2%	3,500
Add: Secondary and education cess payable @ 1% = Rs. 1,75,000 × 1%	<u>1,750</u>
Amount of service tax payable	<u>1,80,250</u>

Notes:

1. As per **Notification No. 24/2007 ST dated 22.05.2007**, deduction of property tax is allowed from the gross amount to arrive at the value of taxable service of renting of immovable property.
 2. As per **explanation 1 to section 65(105)(zzzz)**, immovable property does not include vacant land solely used for farming purposes and land used for circus. Hence, receipts of Rs. 15,00,000 and Rs. 2,25,000 are not liable to service tax.
- 14.** Small dealers having gross turnover exceeding Rs 5 lakhs but less than Rs 50 lakhs have option of composition scheme. They will have to pay a small percentage of gross turnover. They will not be entitled to any input tax credit. However, the following are **not eligible** for the composition scheme:
- (i) a manufacturer or a dealer who sells goods in the course of inter-State trade or commerce; or
 - (ii) a dealer who sells goods in the course of import into or export out of territory of India; or
 - (iii) a dealer transferring goods outside the State otherwise than by way of sale or for execution of works contract; or
 - (iv) a manufacturer/dealer who makes inter-State purchases; or
 - (v) a dealer/manufacturer who issues vatable invoices.
- 15. Impact of VAT on lease transactions:-**
1. Lease is chargeable to tax by virtue of sub – clause (d) of clause 29A of Article 366 of the Constitution of India. This is a tax on the transfer of right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.
 2. The **taxable event is the transfer of right to use** any goods and hence immovable property is not covered.
 3. The **taxable turnover** means the valuable consideration paid or payable for any sale in a given period. Certain States have provided for deduction of interest or finance charges for the purpose of determination of taxable turnover.
 4. Lease of an asset in the course of inter-State trade cannot be subject to VAT.

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5. **Transfer of right to use does not presuppose ownership** of the goods. A sub-lease of an asset also is taxable unless specifically exempt under the State VAT Law.
6. **Sale of leased asset** after the end of the lease period is taxable as a **normal sale**.
7. The maintenance of leased asset involving supply of materials for maintenance/repair by the lessor will not amount to a works contract as there would be no transfer of property in such materials to the lessee. Hence, there should be **no VAT on the value of materials supplied during maintenance/repair** of the leased asset.
8. The assets given on lease will be **generally capitalized** by the lessor in his books and will be treated as capital assets. Thus, provision relating to input tax credit on capital goods will apply.
9. The lessor would pay VAT at the time of procurement of goods. However, liability to pay VAT on lease rentals will be spread over the tenure of the lease. Therefore, some States have provided for utilization of input credit for paying output tax only over the entire period of lease

16. Computation of invoice value:-

Particulars	Rs.	Rs.
Cost of goods purchased		1,20,000
Add: VAT (Since credit of VAT paid is available, it is not added to the cost)		Nil
Add: Expenses	10,000	
Add: Profit margin	15,000	25,000
Product Sale Value		1,45,000
Add: VAT @ 4%		5,800
Invoice Value		1,50,800

Computation of amount of tax payable under VAT:-

VAT charged on sales	5,800
Less: Input credit of VAT paid on purchases @ 12.5% on 1,20,000	15,000
Tax Payable under VAT	Nil

Input tax credit of Rs. 9,200 (Rs. 15000-Rs. 5,800) is carried forward to the next month i.e. June, 2011.

17. **The given proposition is correct** i.e., goods produced in India, which were earlier exported and thereafter imported into India will be treated at par with other goods imported into India **[Section 20 of the Customs Act, 1962]**.

However, the following notifications have provided certain concessions in this regard:

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- (i) **Concessional duty payable in case of re-importation of goods exported for repairs or exported under duty drawback, rebate etc.**

S.No.	Description of goods exported	Amount of import duty payable if re-imported
1.	Goods exported under claim for duty drawback, rebate of excise duty, bond without payment of duty, etc.	Amount of incentive availed of at the time of export
2*.	Goods exported for repairs abroad	Fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not), insurance and freight charges, both ways.

Conditions to be satisfied for claiming the above two concession/exemptions:-

(a) Time-limit for re-importation

The time limit for re-importation is 3 years. This is extendable to 5 years.

(b) Same goods

The exported goods and the re-imported goods must be the same.

(c) No change in ownership

In case of point (2*), the ownership of the goods should also not have changed.

[Notification no. 94/96 Cus. dated 16.12.1996]

- (ii) **Exemption to re-import of goods and parts thereof for repairs, reconditioning, reprocessing, remaking or similar other process**

S.No.	Goods manufactured in India and re-imported for	Time-limit for re-importation from the date of exportation	Other conditions to be satisfied
1.	Repairs or for reconditioning	3 years In case of export to Nepal, such time-limit is 10 years.	(a) Goods must be re-exported within six months (extendable till one year) of the date of re-importation. (b) The Assistant Commissioner/Deputy Commissioner of Customs is satisfied as regards identity of the goods.
2*.	(a) Reprocessing (b) Refining (c) Re-making (d) Subject to any process	1 year	(c) The importer at the time of importation executes a

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	similar to the processes referred to in clauses (a) to (c) above.		bond.
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[Notification no.158/95 Cus. dated 14.11.1995]

Note: In 2* above, if any loss of imported goods is noticed during such operation, such loss shall be exempted from whole of the custom duties subject to the satisfaction of Assistant/ Deputy Commissioner of Customs.

18. Section 79(1) of the Customs Act, 1962 exempts the bona fide baggage of the passengers. Following baggage is passed free of duty-

- (i) articles in use by passenger/crew for the minimum period prescribed by the Baggage Rules, 1998. These Rules, as on date, do not prescribe any minimum period for use of articles by the passenger/crew. However, totally unused articles may not be held as bona fide baggage.
- (ii) articles for use by passenger or his family or bona fide gifts or souvenirs within the limits prescribed in the aforesaid Baggage rules.

19. The statement is not correct. The question, as to whether Settlement Commission has the jurisdiction to settle cases relating to the recovery of drawback erroneously paid by the Revenue, was answered in affirmative in case of **Union of India v. Cus. & C. Ex. Settlement Commission 2010 (258) ELT 476 (Bom.)**.

In the instant case, the contention of the Revenue was that the recovery of duty drawback does not involve levy, assessment and collection of customs duty as envisaged under section 127A(b) of the Customs Act, 1962. Therefore, the said proceedings could not be treated as a case fit to be applied before the Settlement Commission. However, the contention of the respondent was that the word "duty" appearing in the definition of "case" is required to be given a wide meaning. The Customs Act provides for levy of customs duty as also the refund thereof under section 27. The respondent contended that the provisions relating to refund of duty also extend to drawback as drawback is nothing but the return of the customs duty and thus, the proceedings of recovery of drawback would be a fit case for settlement before the Commission.

The High Court noted that the Settlement Commission while considering the aforesaid question of its jurisdiction for taking up the cases relating to drawback had considered the definition of "drawback" as defined in rules relating to drawback as also the definition of the word "case" as defined in section 127A(b) and after referring to the various judgments of the Tribunal came to the conclusion that the Commission had jurisdiction to deal with the application for settlement. The High Court stated that the reasons given by the Settlement Commission in support of its order are in consonance with the law laid down by the Supreme Court in the case of *Liberty India v. Commissioner of Income Tax* (2009) 317 ITR 218 (SC) wherein the Supreme Court has observed that drawback is

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nothing but remission of duty on account of statutory provisions in the Act and Scheme framed by the Government of India.

The High Court thus, concluded that the duty drawback or claim for duty drawback is nothing but a claim for refund of duty may be as per the statutory scheme framed by the Government of India or in exercise of statutory powers under the provisions of the Act. Thus, the High Court held that the Settlement Commission has jurisdiction to deal with the question relating to the recovery of drawback erroneously paid by the Revenue.

20. Computation of assessable value:-

CIF value	10,000 US \$
Less: Freight	3,000 US \$
Less: Insurance	<u>1,000 US \$</u>
Therefore, FOB value	<u>6,000 US \$</u>
Assessable value for customs purpose:	
FOB value	6,000 US \$
Add: Freight (20% of FOB value)	1,200 US \$
Add: Insurance (actual)	<u>1,000 US \$</u>
CIF for customs purpose	8,200 US \$
Add: 1% for landing charges	<u>82 US \$</u>
Value for Customs purpose	8,282 US \$
Exchange rate as per CBEC	Rs. 44.50 per US \$
Assessable value	= Rs. 44.50 x 8,282 US \$
	= Rs. 3,68,549

IMPORTANT AMENDMENTS MADE BETWEEN 01.05.2010 TO 31.10.2010

Students may note that the Study Material for Indirect Tax Laws contain all the relevant amendments made by the Finance Act, 2010. Further, circulars/notifications issued up to 30.04.2010 have also been incorporated therein. The following are the amendments which have been made between 01.05.2010 to 31.10.2010. It may be carefully noted that for the students appearing in May 2011 exams, the amendments made by the notifications, circulars and other legislations up to 31.10.2010 are relevant.

A. EXCISE

Notifications:

1. Clean Energy Cess levied from 01.07.2010

Clean energy cess announced in the Budget has been levied on coal @ Rs.50 per tonne with effect from 01.07.2010. Exemption has been granted in respect of education cess and secondary higher education cess leviable on such products. Further, exemption has been granted in respect of goods produced or extracted as per traditional and customary rights enjoyed by local tribals in Meghalaya without any license or lease.

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The procedures relating to exemption, registration, recovery, demand, interest, refund, offences, penalty etc. in respect of such cess are being governed by the provisions as applicable under the Central Excise Act, 1944 in regard to like matters.

Clean Energy Cess Rules, 2010 have been notified which prescribe the procedures relating to registration, payment of cess, filing of returns, maintenance of records etc. All coal producers would have to register with the designated officer within 30 days and pay cess on the removal of the produce from their mines. The new levy will be paid on the basis of self assessment. The cess should be shown separately in the invoice or bill issued by the producers.

[Notification Nos. 1-6/2010 CEC dated 22.06.2010 and Notifications Nos. 28-29/2010 CE dated 22.06.2010]

2. Following amendments have been made in the CENVAT Credit Rules, 2004:

(i) CENVAT credit cannot be used for paying Clean Energy Cess

Rule 3(4) of the CENVAT Credit Rules, 2004 has been amended to provide that the CENVAT credit of any duty specified in sub-rule (1) of rule 3 cannot be utilized for payment of the Clean Energy Cess.

[Notification No. 26/2010 CE(NT) dated 29.06.2010]

(ii) Reversal of CENVAT credit not required when goods are removed for the use of foreign diplomatic missions/consular missions/career consular offices/diplomatic agents

Rule 6(6) of the CENVAT Credit Rules, 2004 has been amended to provide that provisions of the sub-rule (1), (2), (3) and (4) shall not apply in a case where the excisable goods are removed without payment of duty for the use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents in terms of the provisions of *Notification No. 6/2006- CE dated 01.03.2006*.

In other words, neither any CENVAT credit be reversed nor any amount be paid when excisable goods are removed without payment of duty for the above purpose.

[Notification No. 27/2010 CE(NT) dated 01.07.2010]

(iii) Dumpers or Tippers eligible capital goods for availing CENVAT credit

Rule 2(a) of the CENVAT Credit Rules, 2004 has been amended so as to provide that dumpers or tippers used for providing site preparation and clearance, excavation, earth moving and demolition services and mining services would be treated as capital goods if they are registered in the name of such output service provider.

[Notification No. 25/2010 CE (NT) dated 22.06.2010]

(iv) Components, spares and accessories of motor vehicles, dumpers or tippers used for providing prescribed taxable services eligible for CENVAT credit as capital goods

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Rule 2(a) of the CENVAT Credit Rules, 2004 has been amended so as to provide that components, spares and accessories of motor vehicles, dumpers or tippers, as the case may be, used to provide the prescribed taxable services would be treated as capital goods.

[Notification No. 29/2010 CE (NT) dated 24.09.2010]

- (v) **ER-5 and ER-6 to be filed electronically if excise duty of Rs.10,00,000 or more is paid in the preceding financial year**

With effect from 01.06.2010, the CENVAT Credit Rules, 2004 have been amended to provide that the following statements/returns shall be filed electronically if the manufacturer of final products has paid total excise duty of Rs.10,00,000 or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year:

- (i) Information relating to principal inputs - **ER-5** [Rule 9A(1) of the CENVAT Credit Rules, 2004]
- (ii) Monthly return of receipt and consumption of each of principal inputs - **ER-6** [Rule 9A(3) of the CENVAT Credit Rules, 2004]

Further, the quarterly return of CENVATABLE invoices submitted by the first/second stage dealer under Rule 9(8) of the CENVAT Credit Rules, 2004 shall be filed electronically unconditionally.

[Notification No. 21/2010 CE (NT) dated 18.05.2010]

3. With effect from 01.06.2010, the Central Excise Rules, 2002 have been amended to provide that the following statements/returns shall be filed electronically if the manufacturer of final products has paid total excise duty of Rs.10,00,000 or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year:
- (i) Annual Financial Information Statement - **ER-4** [Rule 12(2) of the Central Excise Rules, 2002]
 - (ii) Monthly return by EOU - **ER-2** [Rule 17(3) of the Central Excise Rules, 2002]

[Notification No. 20/2010 CE (NT) dated 18.05.2010]

Circulars

4. **Cost of return fare of vehicles not to be added for determining assessable value**

Circular No. 634/34/2002-CX dated 1st July 2002 as amended *inter alia* clarified that cost of return fare of vehicles was to be included in the assessable value of the excisable goods. The clarification to this extent has been withdrawn and it has been re-clarified that cost of return fare of vehicles is not required to be added for determining value. This clarification has been issued in view of the Tribunal's decisions in case of *DCW Ltd. v. CCE* [2007 (217) ELT 541 (Mad.)] and *Haldia Petrochemicals Limited v. CCEx. Haldia* [2009 (233) E.L.T. 344 (Tri. - Kolkata)]

[Circular No. 923/13/2010 – CX dated 19.05.2010]

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5. Pickling and oiling is not manufacture

It has been clarified that the process of pickling and oiling does not amount to manufacture.

"Pickling is removing surface oxides from metals by chemical or electro chemical reaction" and pickle means "the chemical removal of surface oxides (scale) and other contaminants such as dirt from metal by immersion in an aqueous acid solution." Therefore it can be said that the process of pickling is only a chemical cleaning process to remove scales and dirt from the metal by immersion in chemical solution and does not result in emergence of any new commercially different commodity.

The Tribunal has also in the case of *Resistance Alloys [1996 (84) ELT 507 (T)] & Bothra Metal Industries [1998 (99) E.L.T. 120 (Tribunal)]* held that the process of pickling being preparatory process to drawing of wire does not amount to manufacture.

Therefore it has been clarified that mere undertaking the process of oiling and pickling as preparatory steps do not amount to manufacture.

[Circular No. 927/17/2010-CX dated 24.06.2010]

6. Polyester Staple Fibre manufactured out of PET scrap and waste bottles is a textile material classifiable under Section XI of the Central Excise Tariff

It has been clarified that polyester staple fibre manufactured out of PET scrap and waste bottles is nothing but a textile material and hence will be classified as textile material under heading 55032000 under Section XI and not as article of plastic in Chapter 39.

[Circular No. 929/19/2010-CX dated 29.06.2010]

7. Superintendents empowered to adjudicate cases involving duty and/or CENVAT credit upto Rs. 1 Lakh in individual show cause notices

Circular No. 752/68/2003-CX dated 01.10.03 as amended has been further amended to confer the power of adjudication on Superintendents for cases involving duty and/or CENVAT credit upto Rs.1 Lakh in individual show cause notices. However, they would not be eligible to decide cases which involve excisability of a product, classification, eligibility of exemption, valuation and cases involving suppression of facts, fraud etc. Consequently, the Assistant/Deputy Commissioners are now empowered to adjudicate cases involving duty upto Rs.5 lakh (except the cases where Superintendents are empowered to adjudicate).

[Circular No. 922/12/ 2010-CX dated 18.05.2010]

8. Exempted goods not to be exported under bond

Notification No. 42/2001-CE (NT) dated 26.06.01 prescribes the procedures and conditions for export without payment of duty under bond. The said notification has been amended vide *Notification No. 24/2010-CE (NT) dated 26.05.10* to provide that goods which are exempted from payment of duty or chargeable to nil rate of duty shall not be allowed to be exported under bond. Since, 100% EOU's are required to export the goods

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under bond, in terms of Customs and Excise notifications, the exports from 100% EOU's have been specifically excluded from the purview of this amendment.

The rationale behind the amendment made in *Notification No. 42/2001-CE (NT) dated 26.06.01* has been explained vide a circular. As a policy, the Government does not tax exports. There are different methodologies and procedures for refund in different situations. If the goods are exempted, then the department has prescribed a detailed procedure for refund of input taxes through *Notification No. 21/2004-CE (NT) dated 06.09.2004*, wherein a detailed procedure requiring verification of details like manufacturing process, input-output ratio, wastages etc., by the departmental officer is prescribed. The reason for the same is that in case of exempted goods, the department does not exercise control. In order to avoid such detailed verification and scrutiny by the department for claiming of refund of input taxes, some of the exporters were exporting the exempted goods under bond and claiming refund under rule 5 of the CENVAT Credit Rules, 2004, though a bond is executed only when goods are liable for payment of excise duty. If there is no excise duty then there is no question of exporting under bond. This was the reason for amending *Notification No. 42/2001-CE (NT) dated 26.06.01* in the above manner.

[Circular No. 928/18/2010-CX dated 28.06.2010]

9. **Goods cleared from an EOU for sale in DTA, when actual sale transaction does not take place at the time of clearance but on a subsequent date, to be valued by sequential application of Rules 3 to 9 of the Customs Valuation Rules (Determination of Price of Imported Goods), 2007**

The value of goods cleared from an 100% Export Oriented Undertaking to a depot from where the sale thereof to Domestic Tariff Area is effected through consignment agents will have to be determined by sequential application of Rules 3 to 9 of the Customs Valuation Rules (Determination of Price of Imported Goods), 2007.

The same view has been expressed by the CESTAT in following cases

- (a) Endress Hauser Flowtec (I) Pvt Ltd. [2009 (237) ELT 598 (T)]
- (b) Morarjee Brembana Ltd. [2003 (154) ELT 500 (T)]
- (c) Uniworth Textile Ltd. [2009 (244) ELT 401 (T)]

The earlier clarification issued vide *Circular No 268/85-CX.8 dated 29-09-1994* clarifying that valuation of goods in such situations will have to be done in accordance with the Rule 8 of the Customs Valuation Rule (Determination of Price of Imported Goods), 1988 as it existed then has been withdrawn.

[Circular No. 933/23/2010 CX dated 16.08.2010]

10. **Goods supplied to UN or an international organisation exempted from additional and special additional duty of excise**

All goods falling under the Schedule to the Central Excise Tariff Act, when supplied to the United Nations or an international organisation for their official use, have been exempted from the whole of the additional and special additional duty of the excise.

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Condition to be satisfied

Above exemption will be available only if the manufacturer produces a certificate before the jurisdictional Assistant /Deputy Commissioner of Central Excise from the United Nations or the international organisation that the goods are intended for such use.

Meaning of international organization

"International organisation" means an international organisation to which the Central Government has declared, in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947, that the provisions of the Schedule to the said Act shall apply.

[Notification No. 33/2010 CE dated 19.10.2010]

B. SERVICE TAX

Notifications:

1. Air travel of specified persons exempted

With effect from 01.07.2010, air transport of following persons have been exempted from service tax:

- (a) persons in transit in the course of international journey who have not passed through immigration;
- (b) crew members on board the aircraft.

[Notification No. 25/2010 ST dated 22.06.2010]

2. Maximum service tax for domestic air journey (all class) Rs.100 and Rs.500 for international air journey (economy class)

In case of domestic air journey (all class) service tax is leviable @ 10% of the gross value of the ticket or Rs.100 per journey, whichever is less. In case of international air journey undertaken in economy class service tax is leviable @ 10% of the gross value of the ticket or Rs.500 per journey, whichever is less. These special provisions apply only where excise duty credit has not been taken on inputs used for providing such taxable service.

Economy class means the class attracting the lowest standard fare and where there is only one class of travel, that class. This notification has become effective from 01.07.2010.

[Notification No. 26/2010 ST dated 22.06.2010]

3. Air journeys originating/terminating in North-Eastern States exempted

With effect from 01.07.2010, air transport of passengers embarking on a journey originating or terminating in an airport located in any of the North-Eastern States (Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura) or at Bagdogra located in West Bengal have been exempted from service tax.

[Notification No. 27/2010 ST dated 22.06.2010]

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4. Construction of complex service in relation to Jawaharlal Nehru National Urban Renewal Mission and Rajiv Awaas Yojana exempted

With effect from 01.07.2010, the construction of complex service in relation to Jawaharlal Nehru National Urban Renewal Mission and Rajiv Awaas Yojana has been exempted from service tax.

[Notification No. 28/2010 ST dated 22.06.2010]

5. Abatement of 75% for construction services

With effect from 01.07.2010, service tax is payable on 25% of the gross amount charged in case of “commercial or industrial construction services” and “construction of complex services” provided the gross amount charged includes the value of goods and materials supplied/provided/used for providing the taxable service and the cost of land. This exemption is not available in cases where the taxable services provided are only completion and finishing services.

[Notification No. 29/2010 ST dated 22.06.2010]

6. Sponsorship services provided for tournaments/championships organised by specified bodies exempted

With effect from 01.07.2010, the sponsorship services provided for the tournaments or championships organised by the following bodies has been exempted from service tax:

- (i) National Sports Federations or Federations affiliated to such National Sports Federations, where the participating teams or individuals represent any District, State or Zone;
- (ii) Association of Indian Universities – Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India (for the physically challenged), Special Olympics Bharat (for the mentally challenged);
- (iii) Central Civil Services Cultural and Sports Board;
- (iv) Indian Olympic Association as part of National Games;
- (v) Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme.

[Notification No. 30/2010 ST dated 22.06.2010]

7. Specified services provided within a port or an airport exempted

A negative list of services provided within a port or an airport has been notified with effect from 01.07.2010. In other words, the following services provided within a port or an airport have been exempted from service tax with effect from 01.07.2010:

- (i) repair of ships/boats/vessels owned by the Government (including Navy or Coast Guard or Customs) but excluding Government owned Public Sector Undertakings;
- (ii) repair of ships/boats/vessels where such repair amounts to ‘manufacture’ as per section 2(f) of the Central Excise Act, 1944;
- (iii) supply of water;

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- (iv) supply of electricity;
- (v) treatment of persons by a dispensary, hospital, nursing home or multi-specialty clinic (except cosmetic or plastic surgery service);
- (vi) services provided by a school or centre to provide formal education other than those services provided by commercial coaching or training centre;
- (vii) services provided by fire service agencies
- (viii) pollution control services.

[Notification No. 31/2010 ST dated 22.06.2010]

8. Taxable services provided for distribution of electricity exempted

Taxable services provided by a distribution licensee, a distribution franchisee, or any other person authorized to distribute power under the Electricity Act, 2003 for distribution of electricity have been exempted from service tax.

[Notification No. 32/2010 ST dated 22.06.2010]

9. Exemption to transport of goods by the Government railways extended till December 2010

Service tax levy on transport of goods by the Government railways and transport of goods by rail otherwise than in containers would be applicable from January 2011 instead of July 2010. Consequently, exemption for transport of notified goods like defence military equipments, railways equipment /materials, postal mail bags by rail and abatement of 70% of the gross amount charged for transport of goods by the Government railways and transport of goods by rail otherwise than in containers would be effective from January 2011.

[Notification No. 33-35/2010 ST dated 22.06.2010]

10. Exemption to advance received prior to 01.07.2010 towards new services and existing services whose scope have been widened vide the Finance Act, 2010

Advance payments received prior to 01.07.2010 towards eight new services introduced by the Finance Act, 2010 have been exempted from payment of service tax. Similarly, advances received prior to 01.07.2010 towards activities brought into service tax net on account of expansion of scope of existing services vide the Finance Act, 2010 have also been exempted from payment of service tax. However, such an exemption would not be available to commercial training or coaching services and renting of immovable property service.

For example, service tax would not be payable in case of a domestic air journey performed after 01.07.2010 if the payment for the ticket of such journey has been made prior to 01.07.2010. However, this exemption would be available only if the advance is received by the service provider/ person liable to pay the tax and not by an agent, who in turn transfers such amount to such person after 01.07.2010.

[Notification No.36/2010 ST dated 28.06.2010 as corrected vide corrigendum dated 29.07.2010]

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11. Service tax paid on service provided by airports authority to an exporter for export of goods eligible for refund

Service tax paid on certain taxable services that are used in relation to or for export of goods are eligible for refund under *Notification No. 17/09 ST dated 07.07.2009*. The said Notification covers port service within its ambit but does not include 'airport service'. Such anomaly has been corrected by amending the said Notification so as to include 'airport service' in the list of eligible services under the said refund scheme.

[Notification No. 37/2010 ST dated 28.06.2010]

12. Exemption to commercial or industrial construction of wharves, quays, docks etc. within the port

With effect from 01.07.2010, commercial or industrial construction when provided wholly within the port or other port, for construction, repair, alteration and renovation of wharves, quays, docks, stages, jetties, piers and railways has been exempted from service tax.

[Notification No. 38/2010 ST dated 28.06.2010]

13. Air ticket to be considered a valid invoice/bill/challan under rule 4A of the Service Tax Rules, 1994

Rule 4A of the Service Tax Rules, 1994 has been amended to provide that in case of aircraft operation services, the ticket (in any form, including electronic form whatever may be the name) showing the name of the passenger, description of the journey and the amount of service tax collected would be deemed to be the invoice/ bill /challan for the purposes of the rule. The ticket would be a valid invoice/ bill /challan even if it does not contain registration number of the service provider or the classification of the service received or address of the service receiver.

As per the provisions of rule 4A of the Service Tax Rules, 1944, invoice/ bill/ challan is required to be issued by the provider of taxable service within 14 days of the provision of the taxable service or the receipt of the consideration. In case of air-travel, the airlines or the agent may not issue a separate invoice to the passenger but may issue the ticket showing the price of such ticket as well. In such a case, the requirement of an invoice would cast an additional compliance burden on the service provider. Therefore, the above amendment has been made in the said rule.

[Notification No.39/2010 ST dated 28.06.2010 as corrected vide corrigendum dated 30.06.2010]

14. Abatements available to specified services to continue when provided wholly within a port/airport

The following services when provided wholly within an airport or a port or other port will continue to be eligible for the abatements available to them under *Notification No.1/2006 ST dated 01.03.2006*:

- (a) Renting of a cab
- (b) Erection, Commissioning & Installation Service

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- (c) Goods Transport Agency service
- (d) Commercial or Industrial construction
- (e) Construction of complex
- (f) Transport of goods by rail

Definitions of port, other port and airport services were amended vide the Finance Act, 2010 so as to provide *inter alia* that all services provided entirely within the airport/port premises would be classified under these services. This would have led to the situation where abatements and exemptions presently available under individually defined taxable services would get denied when provided within airport or port merely as they would now be taxable under newly introduced taxable services. This Notification has been issued to take care of such situations.

[Notification No. 40/2010 ST dated 28.06.2010 as corrected by corrigendum dated 30.06.2010 and Notification No. 43/2010 ST dated 30.06.2010]

15. Exemptions available to cargo handling agency and storage or warehouse keeper in respect of agricultural produce, air transport of export goods etc. to continue when provided wholly within port/airport

With effect from 01.07.2010, the following services when provided wholly within the port or other port or airport have been exempted from payment of service tax:

- (i) taxable service provided by a cargo handling agency in relation to, agricultural produce or goods intended to be stored in a cold storage;
- (ii) taxable service provided by storage or warehouse keeper in relation to storage and warehousing of agricultural produce or any service provided for storage of or any service provided by a cold storage;
- (iii) taxable service in relation to transport of export goods in an aircraft by an aircraft operator;
- (iv) taxable service of site formation and clearance, excavation and earthmoving and demolition and such other similar activities.

Exemptions to these services are already available under their respective category. The above exemption has been provided in view of the classification of these services getting changed when provided wholly within a port or an airport.

[Notification No. 41/2010-ST, dated 28.06.2010]

16. Commercial or Industrial Construction provided wholly within the airport exempt from service tax

With effect from 01.07.2010, commercial or industrial construction when provided wholly within the airport has been exempted from payment of service tax.

The definition of commercial or industrial construction *inter alia* excludes services of such kind provided in respect of airports. On account of the amendment in the definition of

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airport service, commercial or industrial construction when provided wholly within the airport would be classified as airport service. Therefore, the exclusion to such construction has been provided by way of the above exemption notification.

[Notification No. 42/2010-ST dated 28.06.2010]

17. Service tax payable on transmission and distribution of electricity upto 26th February and 21st June, 2010 respectively not required to be paid

The Central Government vide the powers conferred by section 11C of the Central Excise Act, 1944 read with section 83 of the Finance Act, 1994 has directed that service tax payable on all taxable services, which was not being levied in accordance with a generally prevalent practice, provided by a person to any other person in relation to:

- (a) transmission of electricity is not required to be paid for the period up to 26.02.2010;
- (b) distribution of electricity is not required to be paid for the period up to 21.06.2010.

It is important to note here that transmission and distribution of electricity have been exempted from service tax with effect from 27.02.2010 and 22.06.2010 vide *Notification Nos. 11 and 32/2010* respectively.

[Notification No. 45/ 2010-ST dated 20.07.2010]

18. Outdoor Catering for Mid-Day Meal Scheme exempted from service tax

Taxable service of outdoor catering provided by a Non Government Organisation registered under any Central Act or State Act, under the Centrally assisted Mid-Day Meal Scheme has been exempted from the whole of service tax leviable thereon.

[Notification No. 47/2010 ST dated 03.09.2010]

19. Monetary limits for adjudication of penalty under service tax revised

Central Board of Excise and Customs has revised the monetary limits for adjudication of penalty by Central Excise Officers by amending *Notification No. 30/2005-ST dated 10.08.2005* in the following manner:

Sr. No.	Central Excise Officer	Amount of service tax or CENVAT credit specified in a notice for the purpose of adjudication under Section 83A
(1)	Superintendent of Central Excise	Up to Rs.1,00,000 (excluding the cases relating to taxability of services or valuation of services and cases involving extended period of limitation)
(2)	Assistant/Deputy Commissioner of Central Excise	Up to Rs.5,00,000 (except cases where Superintendents are empowered to adjudicate.)

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(3)	Joint Commissioner of Central Excise	Rs.5,00,000 to Rs.50,00,000
(4)	Additional Commissioner of Central Excise	Rs.20,00,000 to Rs.50,00,000
(5)	Commissioner of Central Excise	Without limit.

[Notification No. 48/2010 ST dated 08.09.2010]

20. Optional Composition Scheme for Distributor or Selling Agents of Lotteries

An optional mode of payment of service tax has been provided to a distributor or selling agent of lotteries by inserting sub-rule (7C) in rule 6 of the Service Tax Rules, 1994. The distributor or selling agents rendering the taxable service of promotion, marketing or organising/assisting in organising lottery can discharge their service tax liability in the following manner instead of paying service tax @10%:

Where the guaranteed lottery prize payout is > 80%	Rs. 6000/- on every Rs 10 Lakh (or part of Rs 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw.
Where the guaranteed lottery prize payout is < 80%	Rs. 9000/- on every Rs 10 Lakh (or part of Rs 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw.

In case of online lottery, the aggregate face value of lottery tickets will be the aggregate value of tickets sold. The distributor or selling agent will have to exercise such option within a period of one month of the beginning of each financial year. The option once exercised cannot be withdrawn during the remaining part of the financial year.

For the financial year 2010-11, the distributor or selling agent will have to exercise such option by 07.11.2010. The new service provider can exercise such option within one month of providing the service. Once exercised, the option cannot be withdrawn during the remaining part of that financial year.

The expressions "distributor or selling agent", "draw", "online lottery" and "organising state" will have the same meaning as is assigned to them under Lottery (Regulation) Rules, 2010.

[Notification No. 49/2010 ST dated 08.10.2010]

21. Persons marketing lottery tickets to authorized Distributors/Selling Agents opting for new Composition Scheme exempt from service tax

Persons marketing the lottery tickets, other than the authorized distributors or selling agents, have been exempted from service tax if the distributor or selling agent avails of optional composition scheme notified vide *Notification No. 49/2010 ST dated 08.10.2010* in respect of such lottery during the financial year.

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However, the exemption will not be available when such person markets lottery tickets to the distributors or selling agents who have not opted for the above-mentioned composition scheme.

Here, “distributor or selling agent” will have the meaning as is assigned to them under Lottery (Regulation) Rules, 2010.

[Notification No. 50/2010 ST dated 08.10.2010]

Circulars:

22. Clarification in respect of availment of CENVAT credit on input services

The following has been clarified relating to availment of CENVAT credit on input services:

1. CENVAT credit of service tax paid can be availed in cases where the service tax becomes payable on the basis of debit/credit notes and debit/credit entries in books of account or by any other mode as mentioned in Explanation (c) to section 67 for transactions between associate enterprises. The debit/credit entry in the books of account and like is to be deemed to be payment for service for the purpose of determining eligibility to take CENVAT credit.
2. CENVAT credit of service tax can be availed where a service receiver does not pay the full invoice value and the service tax indicated thereon due to reasons like discount, unsatisfactory service etc. provided he has paid the amount of service tax (whether proportionately reduced or the original amount) to the service provider. The credit taken would be equivalent to the amount that is paid as service tax. However, in case of subsequent refund or extra payment of service tax, the credit would have to be altered accordingly.

[Circular No. 122/03/2010 ST F. No. 137/71/2009 CX.4 dated 30.04.2010]

23. Clarification on applicability of service tax on laying of cables under or alongside roads and similar activities

The taxability of following activities has been clarified:

- laying of cables under or alongside roads,
- shifting of overhead cables to underground on account of renovation/widening of roads;
- laying of electrical cables under or alongside roads/railway tracks;
- electrification of railways, installation of street-lights, traffic lights, flood-lights etc.

The chargeability of the above activities under specific categories of service has been explained in the following table:

S. No.	Taxable service	Coverage of the above activities under the respective services
1.	Commercial or industrial construction services	Only such electrical works that are parts of (or which result in emergence of a fixture of)

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		buildings, civil structures, pipelines or conduits are covered under this taxable service. Further, such activities undertaken in respect of roads, railways, transport terminals, bridges, tunnels and dams are outside the scope of levy of service tax under this taxable service.
2.	Erection, commissioning or installation services	Activity resulting in emergence of an erected, installed and commissioned plant, machinery, equipment or structure or resulting in installation of an electrical or electronic device (i.e. a machine or equipment that uses electricity to perform some other function) are covered under this taxable service,
3.	Works Contract	Activities excluded from aforesaid two services would generally remain excluded from this taxable service as well.
4.	Site formation and clearance, excavation, earthmoving and demolition services	Services provided independently and not as part of a complete work are covered under this taxable service. Thus, site formation and excavation activities provided in respect of a complete work like that of laying of cables under the road will not be taxable.

Further, the taxable status of various activities, on which disputes have arisen is clarified in the following table:

S. No.	Activity	Taxable Service/Non-taxable service	Relevant category of service	Relevant clause of Section 65(105) of the Finance Act, 1994
1.	Shifting of overhead cables/wires for any reasons such as widening/renovation of roads	Non-taxable service	-	-
2.	Laying of cables under or alongside roads	Non-taxable service	-	-
3.	Laying of electric cables between grids/sub-stations/transformer stations en route	Non-taxable service	-	-

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4.	Installation of transformer/ sub-stations undertaken independently	Taxable service	Erection, commissioning or installation services	(zzd)
5.	Laying of electric cables up to distribution point of residential or commercial localities/complexes	Non-taxable service	-	-
6.	Laying of electric cables beyond the distribution point of residential or commercial localities/complexes.	Taxable service	Commercial or industrial construction' or 'Construction of complex' service	(zzq)/(zzzh)
7.	Installation of street lights, traffic lights flood lights, or other electrical and electronic appliances/devices or providing electric connections to them	Taxable service	Erection, commissioning or installation services	(zzd)
8.	Railway electrification, electrification along the railway track	Non-taxable service	-	-

The clarifications are essentially general in nature. Thus, facts and circumstances of each case will have to be considered while applying these clarifications. The pending disputes /cases may be decided based on the clarifications contained in this circular.

[Circular No.123/5/2010-TRU dated 24.05.2010]

24. Architect/Chartered Engineer/Licensed Surveyor notified as 'authority competent' to issue a completion certificate in respect of residential/commercial complex

With effect from 01.07.2010, a registered architect or a registered chartered engineer or a licenced surveyor of the local body of the city/town/village/development or planning authority (in addition to any Government authority) have been notified as competent authority to issue a completion certificate in respect of residential or commercial or industrial complex, as a precondition for its occupation.

[M.F.(D.R.) Order No. 1/2010 dated 22.06.2010]

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25. Underwriting commission received by the Primary Dealers for the auction of Government Securities not liable to service tax

The terms 'underwriting' and 'underwriter' as provided in the Finance Act, 1994 and further defined in the Securities and Exchange Board of India (Underwriters) Rules, 1993, pertain to dealing in securities of a body corporate. In other words, service tax is leviable on underwriting only when the securities of a body corporate are underwritten.

Though the Government securities are issued by the Reserve Bank of India (RBI), which is a 'body corporate' in terms of section 3(2) of the RBI Act, 1934, Government securities are not securities of a body corporate as the Government securities are sovereign securities having zero default risk and RBI of India only manages the issue as also the auction of Government Securities on behalf of the Government of India.

The Primary Dealers registered with the RBI (as opposed to registration with the Securities Exchange Board of India) deal in Government Securities, issued by the RBI on behalf of the Government of India, as a part of the central Government's market borrowing program.

Therefore, it has been clarified that service tax liability does not arise on Underwriting Fee or Underwriting Commission received by the Primary Dealers during the course of the dealing in Government Securities.

[Circular No.126/08/2010 ST dated 10.08.2010]

26. Donations and grants-in-aid received by a Charitable Foundation imparting free livelihood training to the youth not liable to service tax

It has been clarified that donations and grants-in-aid received from different sources by a Charitable Foundation imparting free livelihood training to the poor and marginalized youth, will not be treated as 'consideration' received for such training and thus not subjected to service tax under 'commercial training or coaching service as donation or grant-in-aid is not specifically meant for a person receiving such training or to the specific activity, but is in general meant for the charitable cause championed by the registered Foundation. There is no relationship other than universal humanitarian interest between the provider of donation/grant and the trainee. In such a situation, service tax is not leviable, since the donation or grant-in-aid is not linked to specific trainee or training.

[Circular No.127/09/2010 ST dated 10.08.2010]

27. Construction; erection, commissioning or installation; repair services etc. in the nature of on-going works contract to be classified as works contract service from 1st June 2007 even if the contract is entered before that date

In respect of on-going works contracts entered till 31st May, 2007, composition scheme to be available only when service tax has not been paid till 31st May, 2007

- (i) With effect from 01.06.2007, when the new service 'Works Contract' service was made effective, classification of construction; erection, commissioning or installation; repair services in the nature of works contract would undergo a change in case of long term contracts even

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though part of the service was classified under the respective taxable service prior to 01.06.2007 as 'works contract' describes the nature of the activity more specifically. Therefore, as per the provisions of section 65A of the Finance Act, 1994, it would be the appropriate classification for the part of the service provided after that date.

- (ii) The on-going works contract, entered till 31.05.2007, satisfying rule 3(3) of the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 only would be entitled for Composition Scheme. Rule 3(3) casts an obligation for exercising an option to choose the scheme prior to payment of service tax in respect of a particular works contract. Once such an option is made, it is applicable for the entire contract and cannot be altered.

Therefore, in case a contract where the provision of service commenced prior to 01.06.2007 and any payment of service tax was made under the respective taxable service before 01.06.2007, the said condition under rule 3(3) was not satisfied and thus no portion of that contract would be eligible for composition scheme. On the other hand, even if the provision of service commenced before 01.06.2007 but no payment of service tax was made till the taxpayer opted for the composition scheme after its coming into effect from 01.06.2007, such contracts would be eligible for opting of the composition scheme.

The Board's previous *Circular No. 98/1/2008-ST dated 04.01.2008* and the ratio of judgment of the High Court of Andhra Pradesh in the matter of *M/s. Nagarjuna Construction Company Limited vs. Government of India (2010 TIOL 403 HC AP ST)* are in line with the above interpretation.

[Circular No.128/10/2010 ST dated 24.08.2010]

28. Monetary limits of adjudication under section 73 revised

The monetary limits for adjudication of penalty by Central Excise Officers have been revised by the Central Board of Excise and Customs vide *Notification No. 48/2010 ST dated 08.09.2010*. Under the revised limits, Superintendents have been empowered to adjudicate cases involving service tax upto Rs. 1 lakh in a show cause notice. Similar monetary limits for the purpose of adjudication under section 73 have been prescribed vide *Circular No. 130/12/2010 ST dated 20.09.2010*.

Further, in respect of the above powers of adjudication conferred on the Superintendents, the following has been clarified vide the circular:

- (i) The Superintendents would be competent to decide cases that involve service tax and / or CENVAT credit upto Rs. one lakh in individual show cause notices.
- (ii) They would not be competent to decide cases that involve taxability of services, valuation of services, eligibility of exemption and cases involving suppression of facts, fraud, collusion, willful mis-statement etc.
- (iii) They would be competent to decide cases involving wrong availment of CENVAT credit upto a monetary limit of Rs. one lakh.

[Circular No. 130/12/2010 ST dated 20.09.2010]

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29. New services introduced vide the Finance Act 2010 to be classified under the residual category of the Export of Services Rules, 2005 and Taxation of Services (Provided from Outside India and Received in India) Rules, 2006

New services notified through the Finance Act, 2010 fall under rule 3(1)(iii) and rule 3(iii) of the Export of Services Rules 2005 and the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 respectively. In other words, under both the Export and Import Rules, the new services will fall under the residual category.

[Circular No. 129/11/2010-ST dated 21.09.2010]

C. CUSTOMS

Notifications:

1. Extension of time period for filing drawback claim under rule 5 of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995

Proviso to rule 5(1) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 has been substituted with a new proviso. Rule 5(1) provides that a claim for drawback shall be filed within three months from the date on which an order permitting clearance and loading of goods for exportation is made by proper officer of customs.

The new proviso lays down that the said period of three months may be extended by a period of three months by Assistant/Deputy Commissioner on an application accompanied with a fees of 1% of the FOB value of exports or Rs. 1000/- whichever is less and a further period of six months by Commissioner of Customs/Commissioner of Customs and Central Excise on an application accompanied with a fees of 2% of the FOB value or Rs. 2000/- whichever is less.

[Notification No. 48/2010 Cus. (N.T.) dated 17.06.2010]

2. Change in time periods available under rules 6, 7, 15 and 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995

Following amendments have been made in the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995:

(i) The time period for the following has been extended from sixty days to three months:

- (a) making an application to the Commissioner of Central Excise/Commissioner of Customs and Central Excise for determination of the amount or rate of drawback [Rule 6].
- (b) making an application to the Commissioner of Central Excise/Commissioner of Customs and Central Excise for determination of the amount or rate of drawback where the amount or rate of drawback is low [Rule 7].

Further, the aforesaid periods of three months may be extended by a period of three months by Assistant/Deputy Commissioner on an application accompanied with a fees of 1% of the FOB value of exports or Rs. 1000/- whichever is less and a further

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period of six months by Commissioner of Central Excise/Commissioner of Customs and Central Excise on an application accompanied with a fees of 2% of the FOB value or Rs. 2000/- whichever is less.

- (ii) The extended period of nine months for filing a supplementary claim under rule 15 will now be available on making an application accompanied with a fees of 1% of the FOB value of exports or Rs. 1000/- whichever is less. Further, the said period may be extended by six months by Commissioner of Customs/Commissioner of Customs and Central Excise on an application accompanied with a fees of 2% of the FOB value or Rs. 2000/- whichever is less [Rule 15].
- (iii) The time period available to an exporter for producing evidence of realisation of export proceeds, where the drawback has been recovered by the Government due to non-realisation of the export proceeds by the exporter, has been reduced from one year to three months from the date of realisation of sale proceeds provided the sale proceeds have been realised within the period permitted by the Reserve Bank of India [Rule 16A].

Further, the aforesaid period of three months may be extended by a period of nine months by Commissioner of Customs/Commissioner of Customs and Central Excise on an application accompanied with a fees of 1% of the FOB value of exports or Rs. 1000/- whichever is less.

[Notification No. 49/2010 Cus. (N.T.) dated 17.06.2010]

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3. Clarification on determination of assessable value in case of sale of warehoused goods before being cleared for home consumption

The following issue has been clarified:

Issue: Whether the assessable value of the warehoused goods which are sold before being cleared for home consumption should be taken as the price at which the original importer has sold the goods, before a Bill of Entry for home consumption is filed?

Clarification: With effect from 10.10.2007, section 14 of the Customs Act has been amended to provide that the value of the imported goods shall be the transaction value of goods. Transaction value is defined to mean the price actually paid or payable for the goods *when sold for export to India* for delivery at the time and place of importation. In the instant case, the goods are sold after being warehoused, therefore, it cannot be said that export of goods is not complete and thus the sale of warehoused goods cannot be considered a *sale for export to India*. Hence, the price at which the imported goods are sold after warehousing them in India does not qualify to be the transaction value as per section 14.

However, as per erstwhile section 14, applicable to period prior to October 2007, the value of the imported goods is deemed to be the price at which such or like goods are

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ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, or as the case may be, *in the course of international trade*. In this case also, the sale of imported goods made after warehousing cannot be considered to have been made *in the course of international trade* and hence, the price at which such sale takes place cannot be the assessable value in terms of erstwhile section 14.

[Circular No.11/2010 dated 03.06.2010]