

PAPER – 8: INDIRECT TAX LAWS

Question No. 1 is compulsory

Answer any five questions from the remaining six questions.

(Wherever appropriate, suitable assumption/s should be made and indicated
in the answer by the candidate)

Question 1.

- (a) MNO Ltd. is in the manufacture of both excisable and non-excisable goods in their factory building rented by them from October 1, 2010 and have been occupying the same as a tenant. From the following particulars for the period October 1, 2010 to March 31, 2011, state briefly with suitable explanations, whether MNO Ltd. could claim the benefit of exemption in terms of Notification No. 8/2003-CE dated 1-3-2003 for the financial year 2011-12.

		₹ (in lakhs)
(i)	Clearances of branded goods	60
(ii)	Export Sales to Nepal	80
(iii)	Export Sales to USA and Canada	120
(iv)	Clearances of goods (duty paid based on Annual capacity of production under section 3A of the Central Excise Act, 1944)	70
(v)	Clearances of goods subject to valuation based on retail sale price under section 4A of the Central Excise Act, 1944(said goods are eligible for 30% abatement)	200
(vi)	Job work under Notification No. 214/86-CE dated 25-3-86	60

During the period April 1, 2010 to Sept 30, 2010 the previous tenant of the building presently occupied by MNO Ltd. had cleared excisable goods of the aggregate value of ₹120 lakhs.

(5 Marks)

- (b) The following information is provided in respect of manufacture of a product "X" for the purpose of captive consumption in the same factory. You are required to determine the value for purpose of duty of excise in terms of Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000:

	₹
Cost of direct materials (includes central excise duty ₹ 1,545)	16,545
Cost of direct employees	12,300
Works overheads	8,400

The suggested answers for Indirect Tax Laws (Paper 8) are based on the provisions as amended by the Finance Act, 2010 and notifications/circulars issued up to 30.04.2011 which are relevant for November 2011 examinations.

Quality control cost	4,300
Research & development cost	2,700
Administrative cost:	
Production related	3,000
Others	1,500
Selling and distribution cost	3,600
Scrap value realized	1,500

Make assumptions if required and provide suitable explanations. (5 Marks)

- (c) Raj & Co. provide the following details in respect of the services provided and the payments thereagainst received by them for the month of March 2011. Compute the value of taxable service under 'Business Auxiliary Service' falling under section 65(105) (zzb) of the Finance Act, 1994 and the service tax payable thereon:

		₹ Lakhs
(i)	Commission for procurement of services for their client M/s Shraddha & Co.	10
(ii)	Commission on distribution of UTI Mutual Fund products	16
(iii)	Customer care service provided on behalf of M/s Sweta & Co. Ltd	8
(iv)	Commission on purchase and sale of food grains	20
(v)	Commission on procurement of advertisements for publications company (No other service is provided)	4
(vi)	Charges for processing parts and accessories in the manufacture of cycles for use by the client (client has supplied inputs valued at ₹ 2 lakhs)	10

Make assumptions where required and provide suitable explanations. (5 Marks)

- (d) From the following information provided by M/s RA Ltd., registered under the VAT law in the State of Gujarat as dealer in consumer goods, compute the amount of VAT payable for the month of July 2011:

Purchase of raw material (within the State)

Item	Amount	Rate of VAT
	₹	
Goods 'X'	7,50,000	Exempt
Goods 'Y'	25,00,000	1%
Goods 'Z'	35,00,000	12.5%

Sales

Particulars of finished goods sold	State in which goods are sold	Value ₹	VAT/CST Rate %
(i) Produced from goods 'X'	Gujarat:	5,00,000	12.5% VAT
	Interstate sales to Maharashtra:	6,00,000	2% CST
(ii) Produced from goods 'Y'	Gujarat:	30,00,000	Exempt
(iii) Produced from goods 'Z'	Gujarat:	40,00,000	4% VAT

Raw materials valued at ₹ 5 lakhs of goods 'Z' have been transferred to the branch in Madhya Pradesh during the month. Assume 2% reduction in input credit on account of such transfer.

Make assumptions where required and provide suitable explanations (5 Marks)

- (e) Determine the assessable value for the purpose of Customs Act, 1962 from the following information in respect of import of a machine from UK:

(i)	FOB Value	£ 6,000
(ii)	Air Freight	£1,500
(iii)	Design and development charges paid in UK	£500
(iv)	Design and development charges paid in India	₹10,000
(v)	Commission paid to local agents 1% of FOB Value	
(vi)	Date of Bill of Entry 10-4-2011 (Exchange rate notified by CBEC £ 1 = ₹ 70)	
(vii)	Date of Entry Inward 20-4-2011 (Exchange rate notified by CBEC £ 1 = ₹ 65)	

Insurance charges are not ascertainable

Make assumptions where required and provide suitable explanations. (5 Marks)

Answer

- (a) Computation of value of clearances for home consumption in the financial year 2010-11

S.No.	Particulars	₹ (in lakh)
(i)	Clearances of branded goods (Note-1)	Nil
(ii)	Export sales to Nepal (Note-1)	80
(iii)	Export sales to USA and Canada (Note-1)	Nil
(iv)	Clearances of goods on which duty has been paid under section 3A of the Central Excise Act	70

(v)	Clearances of goods subject to valuation under section 4A of the Central Excise Act (Note-2)	140
(vi)	Job work under Notification No. 214/86-CE (Note-1)	Nil
(vii)	Clearances of previous tenant of the building occupied by MNO Ltd. (Note- 3)	<u>120</u>
	Total	<u>410</u>

Notes:

- In order to claim the benefit of exemption under *Notification No. 8/2003 C.E. dated 01.03.2003* in a financial year, the total turnover of a unit should not exceed ₹ 400 lakh in the preceding financial year. *Notification No. 8/2003 C.E. dated 01.03.2003* provides that for the purpose of computing the turnover of ₹ 400 lakh,:-
 - clearances bearing the brand name or trade name of another person are excluded. It has been assumed that the branded goods are excisable goods and they bear the brand name of another person and not the brand name of MNO Ltd.
 - export turnover is excluded. However, exports to Nepal and Bhutan are not excluded as these are treated as "clearance for home consumption". It has been assumed that goods exported by MNO Ltd. to Nepal are excisable goods.
 - clearances under specified job work notifications are excluded and *Notification No. 214/86 CE dated 25.03.86* is one of the specified notification.
- In case of the goods subject to valuation under section 4A of the Central Excise act, 1944, value for the purpose of the SSI exemption would mean value fixed under section 4A i.e., retail sale price less abatement. Hence, value of such clearances would be ₹ 200 lakh × 70% = ₹ 140 lakh.
- For the purpose of computing the turnover of ₹ 400 lakh, all the clearances made by different manufacturers from the same factory are to be clubbed together. Hence, clearances, worth ₹ 120 lakh of previous tenant of the building occupied by MNO Ltd. have been added.

Conclusion: Since the value of clearances for home consumption exceeds ₹ 400 lakh in the financial year 2010-11, MNO Ltd. is not eligible to claim the benefit of exemption under *Notification No. 8/2003 – C.E. dated 01.03.2003* in the financial year 2011-12.

- As per rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, the value of the excisable goods used for captive consumption is 110% of the cost of production of such goods. The cost of production has to be computed as per the Cost Accounting Standard (CAS)-4.

Computation of cost of production as per CAS-4 and value of the excisable goods:-

Particulars	₹
Cost of direct materials ₹ 16,545	
Less: Central excise duty ₹ <u>1,545</u>	15,000
Cost of direct employees	12,300
Work overheads	8,400
Quality control cost	4,300
Research and development cost	2,700
Administrative cost (production related)	<u>3,000</u>
Total	45,700
Less: Scrap value realized	<u>1,500</u>
Cost of production as per CAS-4	<u>44,200</u>
Value of excisable goods [₹ 44,200 × 110%]	48,620

Notes:

1. It has been assumed that CENVAT credit is available on central excise duty paid on direct materials and hence, it has been deducted from the cost of direct materials in accordance with Cost Accounting Standard-4.
2. Administrative overheads in relation to activities other than manufacturing activities have not been included in cost of production [CAS-4].
3. Selling and distribution cost have been excluded from the cost of production as they are not in relation to production activity [CAS-4].

(c) Computation of value of taxable 'business auxiliary service' of Raj & Co. and service tax payable:-

S.No.	Particulars	₹ (in lakh)
(i)	Commission for procurement of services for their client M/s Shraddha & Co. (Note-1)	10.00
(ii)	Commission on distribution of UTI Mutual Fund products (Note-2)	Nil
(iii)	Customer care services provided on behalf of M/s Sweta & Co. Ltd. (Note-1)	8.00
(iv)	Commission on purchase and sale of food grains (Note-3)	Nil
(v)	Commission on procurement of advertisements for publication company (Note-4)	4.00
(vi)	Charges for processing parts and accessories in the manufacture of cycles for use by the client [₹ 10 lakh × 70%] (Note -5)	<u>7.00</u>
	Value of taxable services	<u>29.00</u>
	Service tax @10% [₹ 29 lakh × 10%]	2.90
	Education cess @ 2% [₹ 2.9 lakh × 2%]	0.058

Secondary and higher education cess @ 1% [₹ 2.9 lakh × 1%]	<u>0.029</u>
Service tax payable	<u>2.987</u>

Notes:

- Any service provided in relation to:-
 - any customer care service provided on behalf of the client
 - procurement of goods or services, which are inputs for the client
 is a business auxiliary service [Section 65(19)].
- Although distribution of mutual funds is taxable under business auxiliary services, service tax is payable by the mutual fund or asset management company, as the case may be, receiving such service [Rule 2(1)(d) of the Service Tax Rules, 1994].
- Commission on purchase and sale of food grains is exempt from service tax [Notification No. 13/2003 ST dated 20.06.2003].
- Merely procurement of advertisements for publication company is liable to service tax under business auxiliary service [Circular No. 96/7/2007 ST dated 23.08.2007].
- In case of processing of parts & accessories used in the manufacture of cycles for client, an abatement of 30% is granted from the gross amount charged subject to the fulfillment of the specified conditions [Notification No. 1/2006 ST dated 01.03.2006]. It has been assumed that all such conditions have been fulfilled by Raj & Co. The abatement is available when the gross amount charged is inclusive of the cost of inputs, whether or not supplied by the client. It has been assumed that inputs supplied by the client worth ₹ 2 lakh are included in ₹ 10 lakh charged for the said services.
- It has been assumed that Raj & Co. is not entitled for the exemption available to small service providers vide Notification No. 6/2005 ST dated 01.03.2005.

(d) Computation of VAT payable by M/s. RA Ltd. for the month of July, 2011

	Particulars	₹
(A)	Output VAT payable	
	(i) On sale of finished goods produced from Goods 'X' within Gujarat (₹ 5,00,000 × 12.5%)	62,500
	(ii) On sale of finished goods produced from Goods 'Z' within Gujarat (₹ 40,00,000 × 4 %)	<u>1,60,000</u>
	Total (A)	<u>2,22,500</u>
(B)	Input tax credit available	
	(i) Goods 'X' (Exempt)	Nil

(ii) Goods 'Y' (Note-2)	Nil
(iii) Goods 'Z' transferred to branch (₹ 5,00,000×10.5%)	52,500
(iv) Remaining Goods 'Z' after transfer to the branch [₹ (35,00,000- 5,00,000)×12.5%]	<u>3,75,000</u>
Total (B)	<u>4,27,500</u>
Net VAT payable = (A)-(B)	(2,05,000)
CST payable (₹ 6,00,000×2% = (₹ 12,000) on inter-state sale of goods produced from Goods 'X' would be paid from the balance of credit of ₹ 2,05,000.(Note-3)	<u>12,000</u>
Balance input credit carried forward to next month	<u>1,93,000</u>

Notes:

1. It is assumed that there is no opening and closing inventory. Hence, entire purchases of the raw materials have been used to manufacture the respective finished goods.
2. Goods utilized in the manufacture of exempted goods are not eligible for input tax credit. Hence, no input tax credit is available in respect of VAT paid on purchase of Goods 'Y' as they have been used to produce goods which are exempt from VAT.
3. Input tax credit can be used to set off the central sales tax payable on the inter-state sales.

(e) Computation of assessable value of machine:-

Particulars	£	₹
FOB Value	6,000.00	
Add: Air Freight [since the goods are imported by air, the freight would be restricted to 20% of FOB value as per rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 – hereinafter referred to as Customs Valuation Rules]	1,200.00	
Insurance charges [since they are not ascertainable, they have been taken at 1.125% of FOB value as per rule 10(2) of the Customs Valuation Rules]	67.50	
Design charges paid in UK [included on the presumption that the same have been paid for design & development work under taken in UK –Rule 10(1)(b) of the Customs Valuation Rules]	<u>500.00</u>	
	7,767.50	
Value in Indian Rupees = £ 7,767.50 × ₹ 70 [Exchange Rate of ₹ 70 notified by the CBEC on the date of presentation of bill of entry has been considered]		5,43,725.00

for currency conversion purposes as per section 14 of the Customs Act, 1962]		
Commission paid to local agents [included as per rule 10(1) of the Customs Valuation Rules-1% of (6,000 × 70)]		<u>4,200.00</u>
CIF Value		5,47,925.00
Landing charges [1% of CIF Value as per Rule 10(2) of the Customs Valuation Rules]		<u>5,479.25</u>
Assessable Value		<u>5,53,404.25</u>
Assessable Value (rounded off)		5,53,404.00

Note: Design & development charges paid in India have not been considered on the presumption that the same have been paid for design & development work undertaken in India. Rule 10(1)(b) of the Customs Valuation Rules provides for inclusion of only those design & development charges which have been paid for design & development work undertaken elsewhere than in India.

Question 2

- (a) Discuss with a brief note the validity of the following statements with reference to the Cenvat Credit rules, 2004.
- Credit of input services used in the repairs or renovation of factory or office is not available.
 - Credit of capital goods can be availed where such capital goods are exclusively used in the manufacture of dutiable goods with respect to which benefit under Notification No. 1/2011-CE dated 1-3-2011 is availed.
 - Cenvat Credit of duty paid on capital goods used outside the factory of manufacturer for generation of electricity for captive use within the factory is allowed. (3 × 2 = 6 Marks)
- (b) With reference to the provisions of the Finance Act, 1994 relating to service tax, write a brief note on the following:
- Vacant land given on lease or license for construction of a building or temporary structure at later stage to be used for furtherance of business or commerce
 - Activities relating to promotion of a brand of goods, events, business entity.
 - Air transport of crew members on board the air craft. (3 × 2 = 6 Marks)
- (c) Write a brief note with reference to the provisions of the customs Act, 1962 on the assessment of "Packaged Software" where affixation of Retail Sale Price (RSP) is : (i) mandatory and (ii) not required under the Standards of Weights and Measures Act, 1976. (3 Marks)

Answer

- (a) (i) The given statement is **not valid** as the definition of input service under rule 2(l) of the CENVAT Credit Rules, 2004 specifically includes services used in relation to renovation or repairs of a factory or an office relating to such factory. Thus, credit on such services is available.
- (ii) The said statement is **not valid**. No credit can be availed on capital goods which are used exclusively in manufacture of exempted goods or in providing exempted service. Since, goods in respect of which the benefit of an exemption under *Notification No. 1/2011-CE dated the 01.03.2011* is availed are exempted goods (as per the amended definition of exempted goods), credit of capital goods used exclusively in manufacture of such goods is not allowed [*Circular No. 943/04/2011-CX dated 29.04.2011*].
- (iii) The said statement is **valid**. Capital goods used outside the factory of manufacturer for generation of electricity for captive use within the factory are capital goods eligible for CENVAT credit. Such capital goods have been specifically included in the amended definition of capital goods as provided under rule 2(a) of the CENVAT Credit Rules, 2004.
- (b) (i) Renting of a vacant land which is given on lease or licence for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce has been made liable to service tax by the Finance Act, 2010 under the category of renting of immovable property service under section 65(105)(zzzz) of the Finance Act, 1994. Explanation 1 to section 65(105)(zzzz) of the Finance Act, 1994 defining immovable property has been amended to include such land.
- (ii) Services provided under a contract for promotion or marketing of a brand of goods, service or event or endorsement of name, trade name, logo or house mark of a business entity by appearing in advertisement and promotional event have been brought under the service tax net vide the Finance Act, 2010 vide section 65(105)(zzzzq) of the Finance Act, 1994. Carrying out any promotional activity for such goods, service or event will also attract service tax. The services can be provided to any person by any other person either through a business entity or otherwise.
- (iii) The definition of passenger under section (77c) of the Finance Act, 1994 was amended by the Finance Act, 2010 to the effect that air transport of crew members on board the aircraft became taxable. However, simultaneously, *Notification No. 25/2010 ST dated 22.06.2010* was issued to exempt the air travel of the crew members on board the aircraft.
- (c) (i) Where the affixation of retail sale price on packaged software is mandatory, (i.e. the software is covered under the provisions of section 4A of the Central Excise Act, 1944), the assessable value for the purpose of charging additional duty of customs leviable under section 3(1) of the Customs Tariff Act, 1975 is deemed to be the retail sale price declared on such packaged software less the amount of abatement,

if any, granted by the Central Government under section 4A of the Central Excise Act, 1944.

- (ii) Where the affixation of retail sale price on packaged software is not required under the Standards of Weights and Measures Act, 1976, the assessable value for the purpose of charging additional duty of customs leviable under section 3(1) of the Customs Tariff Act, 1975 is the value computed as per the provisions of section 14 of the Customs Act, 1962 less the value representing consideration for transfer of right to use such packaged software.

The affixation of retail sale price will not make any difference in respect of assessment of other duties of customs.

Question 3

- (a) *M/s XYZ Co. Ltd is engaged in the manufacture and sale of machine parts for sugar machinery. The goods were sold at certain prices on the basis of which excise duty was paid at the time to removal from the factory. Following certain negotiations with the customers the price of goods already cleared were retrospectively revised upward. Consequently M/s XYZ Co. Ltd issued supplementary invoices to its customers and realized the differential price as per the said invoices. Differential excise duty consequent upon the said revision in prices was also calculated and remitted to the Government account. A show cause notice has been issued on M/s XYZ Co. Ltd by the excise department demanding interest on delayed payment of duty under section 11AB of the Central Excise Act, 1944. Discuss with a brief note whether the stand taken by the central excise department is correct in law. You may refer to decided case law if any in support of your answer.* (6 Marks)

- (b) *"Efficient Collections" (EC) entered into a license agreement with the Airport authority in terms of which EC were granted the right to collect entrance fee from visitors to the airport. The central excise department has issued a showcase notice on EC claiming service tax on the collections made by EC on the ground that these are services provided to a customer in the Airport and hence taxable under the Finance Act, 1994.*

Discuss with reference to decided case law if any whether the stand taken by the central excise department is correct in law. (6 Marks)

- (c) *PQR Ltd. imported certain machine parts and filed a Bill of Entry in the usual course. The said machine parts are entitled for concessional rate in terms of a notification. The assessee PQR Ltd. omitted to claim the benefit of the aforesaid notification at the time of filing and assessment of the Bill of Entry. Later when PQR Ltd., discovered about the benefit under the notification as aforesaid they filed a refund claim for the excess amount paid as customs duty under section 27 of the Customs Act, 1962. There was no assessment order since the duty was paid on the basis of the Bill of Entry filed in the usual course. The refund claim was rejected on the ground that section 27 of the Customs Act, 1962 could be invoked only if an assessment order has been passed and duty payment made pursuant thereto. Discuss with a brief note and decided case law if any whether the stand of the department is correct in law.* (3 Marks)

Answer

- (a) As per section 11A(2B) of the Central Excise Act, 1944, the assessee in default is not served with the demand notice under section 11A(1) of the Act if he makes payment of the unpaid duty on the basis of his own ascertainment or as ascertained by a Central Excise Officer. Further, Explanation 2 to this sub-section provides that such payment is not exempt from interest chargeable under section 11AB. Section 11AB which deals with interest on delayed payment of duty also reiterates the same position.

In the given case, the assessee has paid the enhanced duty on the increased prices of the goods on account of negotiations with the customers, on his own ascertainment. Therefore, in view of the above provisions, interest would be leviable on the differential duty paid by the assessee.

The Supreme Court has also conformed to the above position in the case of *CCE v. International Auto Ltd.* 2010 (250) E.L.T. 3 (S.C.) wherein it has held that it becomes clear from the scheme of section 11A(2B) and section 11AB of the Act that interest is levied for loss of revenue caused on any count. In this case also, the price, on the date of removal/clearance of the goods, was not correct i.e., it was understated. The enhanced duty was leviable on the corrected value of the goods on the date of removal. When the differential duty was paid after the date of clearance, it indicated short-payment/short-levy on the date of removal, hence, interest which was for loss of revenue, became leviable under section 11AB of the Act.

In view of the above discussion, the stand taken by the Central Excise Department is correct in law.

- (b) Yes, the stand taken by the Central Excise Department that the services provided by the Efficient Collections (EC) are taxable under Finance Act, 1994 and that EC is liable to pay service tax thereon are correct in law. As per amended section 65(105)(zzm) of the Finance Act, 1994, any service provided to any person, by airports authority or by any other person, in any airport is liable to service tax and all such services would be classified under the category of 'airport service'. In view of the amended definition, the services provided by EC would be liable to service tax under 'airport services'.

Further, the High Court in the case of *CCE v. P. C. Paulose* 2010 (19) STR 487 (Ker.) has held that even though the respondent was not providing the service in the Airport which was done by the Airport Authority, once the licence was given by the Airport Authority to the respondent to permit entry and allow enjoyment of the services provided there to the customers, respondent, in fact, became the service provider, though he was only acting as an agent under the licence agreement with the Airport Authority. Therefore, the High Court held that respondent being the service provider was liable to pay the service tax.

Note: It may be mentioned that the finding of the High Court has been confirmed by the Supreme Court in *P. C. Paulose v. CCEx. & Cus.* 2011 (21) STR 353.

- (c) Section 27(1) of the Customs Act, 1962, *inter alia* provides that any person claiming refund of any duty and interest:

- (i) paid by him in pursuance of an order of assessment; or
- (ii) borne by him,

may make an application for refund of such duty and interest.

Since clauses (i) and (ii) of sub-section (1) of section 27 have the expression 'or' in between them, it is clear that application for refund cannot only be made in pursuance of an assessment order but also when the duty is borne by the applicant. In fact, section 27(1)(ii) aims to cover those very cases where the duty is paid by a person without an order of assessment.

The above conclusion has also been confirmed by the High Court in the case of *Aman Medical Products v. CCus. 2010 (250) E.L.T. 30 (Del.)* wherein the High Court has held that it is not necessary that a refund can be claimed only when the duty paid by the importer is in pursuance to an order of assessment. The refund can also be claimed when the duty paid by the importer is 'borne by him'.

In view of the above discussion, the stand taken by the Department is not correct in law.

Note: This case has been appealed to Supreme Court and appeal is pending in 2010(256)ELT A57(Supreme Court).

Question 4

- (a) *The assessee M/s T & Co. Ltd were engaged in the manufacture of 'tarpaulin made ups'. This was nothing but tarpaulin cloth prepared by making a solution of wax, aluminum stearate and pigments that were mixed. The solution was heated in a vessel and was transferred to a tank. Grey cotton canvas fabric was then dipped into the solution and passed through two rollers, whereafter the canvas was dried by exposure to sun. The tarpaulin made ups were prepared by cutting the cloth into various sizes and stitched and eyelets were fitted. The central excise department has issued a show cause notice to M/s T & Co. Ltd. that the tarpaulin made ups prepared by means of cutting, stitching and fixing eyelets amounts to manufacture under the Central Excise Act, 1944. Write a brief note with reference to decided case law if any whether the department's view in the matter is legally sustainable. (6 Marks)*
- (b) *M/s Sure Shot are in the business of providing photography services. These services involved besides shooting photographs activities such as developing and printing the exposed films. M/s Sure Shot availed the benefit of Notification No 12/2003-ST dated 20-6-2003 which provides exemption for materials that are sold by the service provider to the extent of the value of such materials from the value of taxable services. The department has issued a show cause notice that the value of materials actually consumed during the processing of exposed films cannot be excluded from the gross value of the services. M/s Sure shot had paid VAT on the materials consumed in providing the photography services to its customers. Discuss with a brief note and decided case law if any whether the stand taken by the department is correct in law for purposes of levy of service tax in terms of the Finance Act, 1994. (6 Marks)*

- (c) *M/s SRT Ltd. had imported certain goods and got them cleared for home consumption. Later the customs department found that the goods have been improperly imported and are liable for confiscation under section 111 of the Customs Act, 1962 even though the same are cleared and not available for the seizure. Consequently the goods were confiscated under section 111(d) of the Customs Act, 1962 and a penalty under section 112(a) was levied. The authority has also imposed redemption fine under section 125 of the Customs Act, 1962. Discuss with a brief note whether the penal action and redemption fine can be legally upheld in the facts of the case.* (3 Marks)

Answer

- (a) The facts of the given case are similar to the one decided by the Apex Court in the case of *CCE v. Tarpaulin International*. 2010 (256) E.L.T. 481 (S.C.) In this case, the Apex Court has observed that stitching of tarpaulin sheets and making eyelets does not change the basic characteristic of the raw material as the process does not bring into existence a new and distinct product different from the original commodity. The original material used i.e., the tarpaulin, is still called tarpaulin made-ups even after undergoing the said process. Hence, the Supreme Court has held that process of making tarpaulin made ups by cutting, stitching the tarpaulin fabric and fixing eyelets therein cannot be said to be a manufacturing process liable to excise duty.

Therefore, in view of the above-mentioned judgement, the Department's view in the matter is not legally sustainable.

- (b) The facts of the given case are similar to the case of *CCE v. Vahoo Colour Lab*. 2010 (18) S.T.R. 548 (P & H). In the instant case, the High Court, following the judgment of *Bharat Sanchar Nigam Ltd. v. Union of India*, 2006 (2) S.T.R. 161 (S.C.) has observed that processing of photography cannot be completed without the developing and printing process.

The photography films, printing papers, chemicals and envelopes are the integral and essential ingredients to complete the process of photography and thus, the components of sale of photography, developing and printing etc. are clearly distinct and discernible than that of photography service. The High Court has, therefore, held that photography is in the nature of works contract involving the elements of both sale and service and thus service tax would not be leviable on the sale portion.

However, rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 (referred to as Rules hereafter) (applicable from 18.04.2006) provides that the expenditure or costs incurred by the service provider in the course of providing taxable service forms integral part of the taxable value of the service provided and therefore, should be included in the value of the taxable service. Such expenditure or costs would be included even if they are separately indicated in the invoice or bill issued by the service provider to his client. Such expenditures or costs can be excluded from the value of the taxable services only if the same are incurred by the service provider as a 'pure agent' of the service receiver.

- (c) The intent of the question is to check the students' knowledge regarding imposition of redemption fine and levy of penalty when goods are not available for confiscation. Hence, the following answer has been given in reference of the same.

The High Court in the case of *CCus. (Imports) v. Finesse Creation Inc. 2009 (248) ELT 122 (Bom.)* has held that redemption fine can only be imposed when the goods are available and can be redeemed. The High Court has explained that if the goods are not available, they cannot be confiscated and consequently cannot be redeemed. Once goods cannot be redeemed, redemption fine cannot be imposed.

Therefore, the imposition of redemption fine is not legally correct in the instant case.

Penalty under section 112 can be imposed *inter alia* when a person omits to do any act which would render such goods liable for confiscation under section 111. Therefore, penalty can be imposed in the given case.

Notes: This ruling of the High Court has been maintained by the Supreme Court in Commissioner v. Finesse Creation Inc. 2010 (255) E.L.T. A120 (SC).

Question 5

- (i) Write a brief note on who could be considered as a 'related person' under section 4(3)(b) of the Central Excise Act, 1944.
- (ii) Briefly explain the following expression under the Central Excise At, 1944:- "Place of removal". (2 × 3 = 6 Marks)
- (b) (i) State briefly the provision regarding rejection of value and determination of value by central excise officer under Rule 4 of the Service Tax (Determination of Value) Rules, 2006.
- (ii) Explain briefly the invoice method for computation of VAT. (2 × 3 = 6 Marks)
- (c) Explain with a brief note with reference to the Customs Act, 1962 how duty ought to be determined where the imported goods consist of articles liable to different rates of duty and imported as a "set of articles" (3 Marks)

Answer

- (a) (i) As per section 4(3)(b) of the Central Excise Act, 1944, persons are deemed to be "related", if:-
- (i) they are inter-connected undertakings
 - (ii) they are relatives
 - (iii) amongst them the buyer is a relative and a distributor of the assessee or a sub distributor of such distributor, or
 - (iv) they are so associated that they have interest, directly or indirectly, in the business of each other.
- (ii) As per section 4(3)(c) of the Central Excise Act, 1944, "place of removal" means –

- (i) a factory or any other place or premises where excisable goods are being produced or manufactured
 - (ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty
 - (iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory
- (b) (i) The provisions of rule 4 of the Service Tax (Determination of Value) Rules, 2006 are as under:-
- (i) The Central Excise Officer is empowered to satisfy himself as to the accuracy of any information or document furnished for valuation. The provisions of rule 3 do not restrict or put to question such power of the Central Excise Officer.
 - (ii) The Central Excise Officer can reject the value determined by the service provider and issue a show cause notice to him, if he is of the opinion that the value determined by such service provider is not in accordance with the provisions of the Finance Act, 1994 or these rules. The service provider would then be required to show cause why the value of taxable service should not be fixed at the amount specified in such notice.
 - (iii) The Central Excise Officer, after giving such service provider an opportunity of being heard, will determine the value of such taxable service in accordance with the provisions of the Finance Act, 1994 and these rules.
- (ii) Under invoice method, at each stage of sales, VAT is imposed on the full sales value and VAT paid at the earlier stage is allowed as set off. Hence, at every stage the difference between the VAT payable at the time of sales and VAT paid at the time of purchases is required to be paid.
- Under this method, at each stage, VAT is charged separately in the invoice. It is the most common and popular method of computing VAT. In India also this method is followed for computation of State-Level VAT and CENVAT. It is also known as the 'Tax Credit Method' or 'Voucher Method'.
- (c) The provisions relating to calculation of duty in case of goods imported as 'set of articles' are contained in section 19 of the Customs Act, 1962. As per section 19, if the articles in the set are liable to duty at different rates, duty will be charged at the highest rate. Even articles not liable to duty would be chargeable to such highest rate.

However, if the importer is able to produce evidence regarding the value of any of the articles liable to different rates of duty, the article would be charged to duty separately at the rate applicable to it. Further, if accessories/spare parts/maintenance and repairing implements of any article are compulsorily supplied with the article and if no separate charge is made for such supply, they would be chargeable at the same rate of duty as that of the article.

Question 6

- (a) Write a brief note with reference to the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 on the provisions relating to the following cases:
- (i) Consequence of goods not being used for intended purposes.
 - (ii) Defective, damaged, unsuitable, surplus goods returned to manufacturer.
 - (iii) Goods lost or destroyed by natural causes or unavoidable accident and not used for intended purpose. (6 Marks)

OR

- (a) (i) Write a brief note under the Central Excise Act, 1944 in the context of provisions relating to 'payment of duty under protest'.
(ii) Briefly state the provisions under the Central Excise Rules, 2002 with respect to filing of 'Annual Installed Capacity Statement'. (2 × 3 = 6 Marks)
- (b) (i) Briefly explain whether the provisions of 'deemed registration' under rule 4(5) of the Service Tax Rules, 1994 are applicable in case of centralized registration.
(ii) What are the circumstances under which VAT registration could be cancelled? Write a brief note. (2 × 3 = 6 Marks)
- (c) Explain briefly the powers of review to the Commissioner of Customs under section 129D(2) of the Customs Act, 1962 in respect of decisions taken by adjudicating authority subordinate to him. (3 Marks)

Answer

- (a) The provisions of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 in relation to the following cases are explained as under:
- (i) Consequence of goods not being used for intended purpose:-
If the material received at concessional rate of duty is not used for intended purpose, the manufacturer is liable to pay the amount equal to the difference between the duty leviable on such goods without the concession available under these rules and that already paid, if any, at the time of removal from the factory of the manufacturer of the subject goods, along with interest.
The provisions of section 11A and section 11AB of the Central Excise Act, 1944 apply *mutatis mutandis* for effecting such recoveries.
- (ii) Defective, damaged, unsuitable, surplus goods returned to manufacturer:-
If the manufacturer on receiving the subject goods finds them to be defective or damaged or unsuitable or surplus to his needs, he may return the subject goods to the original manufacturer of the goods.

Such returned goods are added to the non duty paid stock of the manufacturer of the subject goods and dealt with accordingly.

- (iii) Goods lost or destroyed by natural causes or by unavoidable accident and not used for intended purpose:-

If the goods are lost or destroyed by natural causes or by unavoidable accident during transport from

- the place of procurement to the manufacturer's premises or
- from the manufacturer's premises to the place of procurement or
- during handling or storage in the manufacturer's premises,

the manufacturer is liable to pay the amount equal to the difference between the duty leviable on such goods without the concession available under these rules and that already paid, if any, at the time of removal from the factory of the manufacturer of the subject goods, along with interest.

The provisions of section 11A and section 11AB apply *mutatis mutandis* for effecting such recoveries also.

- (a) (i) If the assessee does not agree to the classification or assessable value of goods determined by the excise authorities, he can file an appeal and till the time the appeal is decided, can pay the duty under protest if no stay is obtained from Appellate Authorities. However, if the appeal is not decided in his favour and the appellate remedy is exhausted, the assessee will lose the right to pay duty under protest. The time limit of one year for claiming refund of excise duty does not apply if duty is paid under protest.

The assessee will inform the Superintendent/Inspector of Central Excise that he is paying duty under protest in writing. He will mark invoices or monthly/quarterly returns indicating the goods on which duty is paid as 'under protest'. In case of lump-sum duty payment of past demand, he may record the fact of duty payment under protest in the PLA, CENVAT account or Daily Stock Account.

- (ii) Every assessee has to submit to the Superintendent of Central Excise an Annual Installed Capacity Statement declaring the annual production capacity of the factory for the financial year to which the statement relates by 30th April of the succeeding financial year in Form ER-7 [Rule 12(2A)].

However the assessee's manufacturing biris, matches, reinforced cement concrete pipes under prescribed conditions are exempt from the submission of Annual Installed Capacity Statement.

- (b) (i) An application for service tax registration is made to the Superintendent of Central Excise under rule 4(1) of the Service Tax Rules, 1994. As per rule 4(5), registration certificate is to be granted by the Superintendent of Central Excise within seven days from the date of receipt of application and that the certificate is deemed to be granted if the same is not issued by the Department within the said seven days.

However, centralized registration is granted by the jurisdictional Commissioner of Central Excise under rule 4(2) of the Service Tax Rules, 1994 and no time-limit for the grant of the same has been prescribed for such a case.

Thus, it can be inferred that the provisions of deemed registration under rule 4(5) are attracted only in case where the registration is applied under rule 4(1) to the Superintendent of Central Excise and not in case of centralized registration applied under rule 4(2) to the jurisdictional Commissioner of Central Excise. The High Court in the case of *Karamchand Thapar & Bros. (Coal Sales) Ltd. v. UOI 2010 (20) S.T.R. 3 (Cal.)* has also conformed to the above view.

- (ii) VAT registration can be cancelled in following circumstances:
- (i) discontinuance of business; or
 - (ii) disposal of business; or
 - (iii) transfer of business to a new location; or
 - (iv) annual turnover of a manufacturer or a trader dealing in designated goods falls below the specified amount.
- (c) Section 129D(2) empowers the Commissioner of Customs to review any decision taken by the adjudicating authority subordinate to him. The Commissioner may on its own, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any order to satisfy himself as to the legality or propriety of the order.

Thereafter, the Commissioner may direct such authority or any officer of customs subordinate to him to apply to the Commissioner (Appeals) to determine such points as may be specified by him.

Such an order has to be made within a period of 3 months from the date of communication of the decision or order of the adjudicating authority.

Question 7

- (a) (i) *Write a brief note on the classification of incomplete/unfinished articles with reference to Rule 2(a) of the Interpretative Rules to the First Schedule of the Central Excise Tariff.*
- (ii) *Write a brief note on the matters with respect to which an appeal does not lie before the Customs Excise Service Tax Appellate Tribunal against any order passed by Commissioner (Appeals), under section 35B of the Central Excise Act, 1944*
- (2 × 3 = 6 Marks)
- (b) (i) *Briefly state the charges/services that are specifically excluded from the category of special services provided by builder to the prospective buyer of a residential/commercial complex under section 65(105)(zzzu) (sic.) section 65(105)(zzzzu) of the Finance Act, 1994.*

- (ii) *State briefly the key principles adopted by the States under The VAT laws with regard to incentive schemes.* (2 × 3 = 6 Marks)
- (c) *Explain briefly how the terms 'warehouse', 'warehoused goods' and 'warehousing station' are defined in the Customs Act, 1962.* (3 Marks)

Answer

- (a) (i) As per rule 2(a)(i) of the Interpretative Rules to First Schedule of the Central Excise Tariff, if any particular heading refers to a finished/complete article, the incomplete/unfinished form of that article would also be classified under the same heading provided the incomplete/unfinished goods have the essential characteristics of the finished goods.
- (ii) As per section 35B of the Central Excise Act, 1944, the matters in respect of which an appeal does not lie before the Customs Excise Service Tax Appellate Tribunal against any order passed by Commissioner (Appeals) are as follows:-
- (a) case of loss of goods during transit or during their processing in a warehouse or in storage in a factory or a warehouse
 - (b) rebate of excise duty on export goods or on excisable materials used in the manufacture of export goods or goods exported without payment of duty (except exports to Nepal or Bhutan);
 - (c) CENVAT credit which is utilized for payment of excise duty on final products
- (b) (i) Special services provided by a builder to the prospective buyer of a residential/commercial complex under section 65(105)(zzzzu) of the Finance Act, 1994 do not include the following service/charges:-
- (a) Management, maintenance or repair services
 - (b) Commercial or industrial construction and construction of complex
 - (c) Services in relation to parking place
- (ii) The key principles adopted by the States while framing various incentive schemes under the VAT laws are as under:
- (i) VAT chain should not be disturbed.
 - (ii) There should not be any further revenue loss to the States.
 - (iii) The Department should be able to track the transactions and should ensure that there is no evasion/avoidance of tax due to the policy.
- Further, the States who have continued the old incentive schemes in the form of exemption/deferment considered the following additional issues:
- (i) the units enjoying exemption under the old law should not be put to disadvantageous position under the VAT system.
 - (ii) the units purchasing inputs without payment of any tax should be allowed to enjoy the benefit under the new system also.

- (c) As per section 2(43) of the Customs Act, 1962, 'warehouse' means a public warehouse appointed under section 57 or a private warehouse licensed under section 58.

Section 2(44) of the Customs Act, 1962 defines 'warehoused goods' to mean goods deposited in a warehouse.

As per section 2(45) of the Customs Act, 1962, 'warehousing station' means a place declared as a warehousing station under section 9.