PAPER – 8: INDIRECT TAX LAWS

Question No. 1 is compulsory

*Answer any **five** from the remaining **six** questions.*

Question 1

(a) *ABC Co. Ltd. procured the following inputs during the month of Jan 2011. Determine the amount of CENVAT credit available with necessary explanations for treatment of various items.*

Items	*Excise duty paid (Rs.)*
Raw materials	*52,000*
Manufacturing machine	*1,00,000*
Light diesel oil	*40,000*
Greases	*10,000*
Office equipment	*20,000*
Paints	*5,000*

(Note: M/s. ABC Co. Ltd. is not eligible to avail exemption under a notification based on value of clearances in a financial year) *(5 Marks)*

(b) *SSI & Co. is eligible for exemption in terms of Notification No. 8/2003-CE dated 1-3-2003 for the year 2010-11. It provides the following particulars with regard to the clearances of goods effected during the said year. Determine the duty payable in respect of the year 2010-11:*

Aggregate	*Rs. (in lakhs)*
Value of domestic clearance of goods with own brand name	*120*
Value of clearance of goods with the brand name of others (including Rs. 30 lakhs in respect of goods manufactured in a rural area)	*100*
Value of clearances for exports	*50*
Value of clearances for captive consumption	*40*
Value of clearances of exempted goods	*20*

(Assume rate of excise duty at 12%)

Show your workings with explanations where required. *(5 Marks)*

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 31.10.2010 which are relevant for May 2011 examinations.

(c) M/s. Commercial Goods Services, a goods transport agency, furnishes the following information in respect of services provided for the year ending March 31, 2011. Determine the value of taxable services and tax thereon under 'transport of goods by road' falling under section 65(105)(zzp) of the Finance Act, 1994.

		Rs.
(i)	Service provided to M/s. XYZ Co. Ltd.	30,00,000
(ii)	Freight for transport of food grains and pulses	1,50,000
(iii)	Service to an unregistered firm	6,00,000
(iv)	Service provided as a 'clearing and forwarding agent'	2,00,000
(v)	Composite service provided which includes packing/unpacking, loading, unloading in the course of transportation by road	2,00,000
(vi)	Service tax paid on input services used for providing goods transport agency services	72,000

(Provide suitable explanations where required) (5 Marks)

(d) From the following particulars compute net VAT payable by M/s. TAB & Co. for the period ending March 31, 2011.

	Inputs procured :	Rs.
(i)	Raw material at Nil VAT	10,00,000
(ii)	Raw material at 4% VAT	40,00,000
(iii)	Raw material at 12% VAT	20,00,000
Output		
(i)	Intra state sale of finished goods at 4% VAT (these goods were produced entirely from raw material at NIL VAT rate procured as inputs)	15,00,000
(ii)	Exempted sales (these goods were procured from raw material procured at 4% VAT to the extent of 50%)	20,00,000
(iii)	Sale of finished goods intrastate at 12% VAT	20,00,000
(iv)	Intrastate sale of raw material purchased at 4%	10,00,000
(v)	50% of the raw material produced at 12% VAT has been utilised to produce capital goods for the manufacturing process in TAB & Co's factory (Market Value):	15,00,000

Provide explanations where necessary. (5 Marks)

(e) Compute the assessable value of the machine imported by M/s. Exports India Pvt. Ltd., under the Customs Act, 1962.

	US$
FOB price of the machine	*10,000*
Air freight paid	*2,500*
Insurance for transit of machine	*Not Ascertainable*
Cost of development work in India	*Rs. 40,000*
Local agent's commission	*Rs.10,000*
Cost of local transport	*Rs.5,000*

Exchange rate applicable US $ 1 = Rs. 45

Provide explanation for your answer. *(5 Marks)*

Answer

(a) Computation of CENVAT credit available to ABC Co. Ltd. for purchases made during the month of January, 2011:

Particulars	CENVAT credit available (Rs.)
Raw materials	52,000
Manufacturing machine (1,00,000 × 50%) *(Note – 1)*	50,000
Greases	10,000
Paint	5,000
CENVAT credit available	1,17,000

Notes:

1. As per third proviso to rule 4(2)(a) of the CENVAT Credit Rules, 2004, assessee eligible for SSI exemption can avail CENVAT credit of the whole amount of the duty paid on the capital goods in the same financial year in which such goods are received. However, since ABC Co. Ltd. is not eligible for SSI exemption, CENVAT credit of only 50% is available in respect of the manufacturing machine in the year of purchase.
2. Light Diesel Oil is not an input as per the definition of inputs under rule 2(k) of the CENVAT Credit Rules, 2004. Hence, it is not eligible for the CENVAT credit.
3. Office equipment is not a capital good as per the definition of capital goods under rule 2(a) of the CENVAT Credit Rules, 2004.
4. It is assumed that the excise duty paid on various items includes education cess and secondary and higher education cess.

(b) Computation of excise duty payable by M/s. SSI & Co. during the year 2010-11:-

Particulars	Rs. in lakh
Turnover to be excluded:	
Value of clearances for export *[Note – 1]*	50
Value of clearances for captive consumption *[Note – 1]*	40
Value of clearances of exempted goods *[Note – 1]*	20
Value of domestic clearance of goods with brand name of others (excluding goods manufactured in rural area) *[Note – 2]*	70
Turnover to be included:	
Value of domestic clearances with own brand name	120
Value of clearances of goods with brand name of others manufactured in rural area	30
Total	150

Tax liability

On 1st clearance of Rs. 150 lakh duty is	Nil
On clearances with brand name of others worth Rs. 70 lakh (excluding rural area clearances) duty @ 12% [Note 3]	8,40,000
Add: Education cess and secondary and higher education cess @ 3%	25,200
Total duty liability	8,65,200

Notes:

1. As per *Notification No. 8/2003 CE dated 01.03.2003*, export clearance, captive consumption and exempted clearances are not included in determining the limit of first Rs.150 lakh for SSI exemption.
2. As per *Notification No. 8/2003 CE dated 01.03.2003,* the clearances with the brand name of others which are ineligible for SSI exemption has to be excluded while determining the limit of Rs.150 lakh. However, clearances with the brand name of others manufactured in rural area are eligible for SSI exemption and hence, such clearances are included while determining the limit of Rs.150 lakh.
3. Export clearance, captive consumption and exempted clearances are exempted from excise duty. Thus, duty will be payable only in respect of the goods manufactured with brand name of others.

(c) Computation of value of taxable services and service tax payable thereon by Commercial Goods Services under transport of goods by road service for the year ending 31.3.2011:-

	Particulars	Rs.
(i)	Service provided to M/s XYZ Co. Ltd.	Not taxable
(ii)	Freight for transporting food grains/pulses	Exempt
(iii)	Service provided to an unregistered firm	6,00,000
(iv)	Service provided as clearing & forwarding agent	Not covered
(v)	Composite services provided which include packing/ unpacking, loading/unloading	2,00,000
	Gross Taxable Value	8,00,000
	Less: Abatement @ 75%	6,00,000
	Net taxable value	2,00,000
	Service tax payable @10.30%	20,600

Notes:

Item (i) Service has been provided to company. Hence, service tax is to be paid by the person paying freight and not by M/s Commercial Goods Services [Rule 2(d)(v) of the Service Tax Rules, 1994]

Item (ii) Freight for transporting food grains/pulses/fruit etc. is exempt *[Notification No. 33/2004 ST dated 03.12.2004]*

Item (iii) Since, Service has been provided to unregistered firm, service tax liability is on the service provider [Rule 2(d)(v) of the Service Tax Rules, 1994]

Item (iv) Service provided as 'clearing & forwarding agent' does not come under the purview of "transport of goods by road" service

Item (v) Composite services are included in the invoice issued by GTA and would form part of GTA *vide Circular No.104/07/2008-ST dated 06.08.2008* and are eligible for abatement.

As per rule 2(p) of the CENVAT Credit Rules, 2004, definition of output service specifically excludes goods transport agency service. Hence, CENVAT credit of the service tax of Rs. 72,000 paid on the input services used in providing GTA services cannot be availed.

(d) Computation of Net VAT payable by M/s. TAB & Co.:-

Output VAT payable

S.No.	Particulars	Rs.
1.	Intra-state sale of goods at 4% VAT (Rs.15,00,000 × 4%) (manufactured out of exempted material)	60,000
2.	Sale of finished goods at 12% VAT (Rs.20,00,000 × 12%)	2,40,000
3.	Sale of raw materials purchased at 4% VAT (Rs.10,00,000 × 4%)	40,000
	Total (A)	3,40,000

Input tax credit available

S.No.	Particulars	Rs.
1.	Purchase of raw material @ 4% VAT (50% of Rs.40,00,000 x 4%) *(Note – 1)*	80,000
2.	Purchase of 12% VAT including purchases used for capital goods produced (12% of Rs.20,00,000) *(Note – 2)*	2,40,000
	Total (B)	3,20,000

Net VAT payable = (A) - (B) = Rs.3,40,000 – Rs.3,20,000 = Rs.20,000.

Notes:

1. Input tax credit for goods used to produce exempted goods will not be allowed. Hence, 50% of the input tax credit has been disallowed on purchases of goods at 4% VAT and utilized to produce exempted goods.
2. Input tax credit on raw materials is allowed even if the same has been consumed to produce capital goods. Hence, full input tax credit on goods purchased at 12% VAT has been allowed.

(e) Computation of assessable value of machine for customs duty:-

FOB price of the machine	US$ 10,000.00
Add: Air freight (Maximum 20% of FOB) (Note-1)	US$ 2,000.00
Insurance charges (1.125% of FOB) (Note-2)	US$ 112.50
Value (excluding local agent commission)	12,112.50
CIF value in Indian rupees = (Rs.12,112.5 × 45)	Rs.5,45,062.5
Add: Local agent commission (Note-4)	10,000
CIF Value	5,55,062.5
Add: Landing charges (1% of CIF) (Note-6)	5,550.62
Assessable value	5,60,613.12
Assessable value (rounded off)	Rs.5,60,613

Notes:

1. Air freight cannot exceed 20% of FOB value of the goods [Second proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007]
2. Cost of insurance is taken at 1.125% of FOB value of the goods [First proviso to rule 10(2)].
3. Cost of local transport is not includible in assessable value as it is a post importation activity.
4. Local agent commission is not a buying commission and hence, includible in assessable value [Rule 10(1)(a)].
5. Cost of development work in India is not includible in the assessable value [Rule 10(1)(b)].
6. Landing charges should be 1% of CIF value [First proviso to rule 10(2)].

Question 2

(a) *Briefly explain whether the following statements are correct with reference to the Central Excise Act, 1944 and the changes effected by the Finance Act, 2010.*

   (i) *Penalty can be imposed under Section 11A(2B) in case where the assessee pays duty and interest voluntarily before issue of show cause notice.*

   (ii) *Time limit for passing of the settlement order in terms of Section 32F(6) is nine months from the last day of the month in which the application was made and no extension of this period is permissible.*

   (iii) *An assessee cannot apply for settlement more than once under Section 32-O.*

(3 x 2 = 6 Marks)

(b) *Explain briefly the correctness of the following statements with reference to the Finance Act, 1994 relating to service tax and the changes effected by the Finance Act, 2010.*

   (i) *With regard to residential complex service (Section 65(105)(zzzh) unless the entire payment for the property is paid by the buyer after completion of construction, the activity of construction would be deemed to be a taxable service.*

   (ii) *The application of the rules in respect of classification of services under Section 65A have been excluded in the case of specific taxable services.* *(2 x 3 = 6 Marks)*

(c) *Explain briefly with reference to the changes effected by the Finance Act, 2010 to the Customs Tariff Act, 1975 how additional customs duty has to be determined in respect of goods imported requiring MRP based assessment under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955.* *(3 Marks)*

Answer

(a) (i) False. The Finance Act, 2010 has inserted explanation 3 to section 11A(2B) which clarifies that no penalty under any of the provisions of this Act (Central Excise Act, 1944) or the rules made thereunder can be imposed in case of voluntary payment of duty and interest before issuance of show cause notice.

Note: The above statement can also be answered as false on the reasoning that it is the duty and interest which is paid voluntarily by the assessee under section 11A(2B) before issue of show cause notice and no penalty can be imposed under this section.

(ii) *False*. Finance Act, 2010 has amended section 32F(6) by adding a proviso to the aforesaid section which provides that Settlement Commission can extend time-limit for passing of the settlement order for a further period not exceeding three months for reasons to be recorded in writing by the Settlement Commission.

(iii) *False*. Finance Act, 2010 has amended section 32-O thereby providing that the assessee is now entitled to apply for settlement more than once.

Note: The above statement can also be answered as false on the reasoning that since an application for settlement is made under section 32E, settlement cannot be applied for under section 32-O.

(b) (i) The statement is correct. The Finance Act, 2010 has added an explanation to section 65(105)(zzzh) to the effect that the construction of a complex which is intended for sale wholly or in part by a builder or any person authorized by the builder, before during or after construction except in cases where no sum is received from or on behalf of the buyer before issue of completion certification by the competent authority is to be deemed to be a service provided by the builder to the buyer.

(ii) The statement is correct. With effect from 1.7.2010, the Finance Act, 2010 has provided that the provisions of section 65A shall not apply to any service when the same is rendered entirely within (i) the port or (ii) other port; or (iii) the Airport of Civil enclave.

Now port service means any service rendered within a port or other port in any manner. Similar changes have been effected in respect of airport services as well.

(c) The Finance Act, 2010 has amended the first proviso to section 3(2)(ii) of the Customs Tariff Act, 1975 to provide that the value of the imported goods for the purpose of charging countervailing duty (CVD) in respect of goods chargeable to excise duty on the basis of Maximum Retail Sales Price under Medical and Toilet Preparation (Excise Duties) Act, 1955 would be deemed to be the retail sale price declared on such imported goods less the amount of abatement, if any, from such retail price as the Central Government may, by notification in the Official Gazette, allow in respect of such like article.

Moreover, where on any imported goods more than one retail price is declared, the maximum of such retail sale price shall deemed to be the retail sale price for the purpose of this section.

Question 3

(a) *PQR & Co. is engaged in the business of fabrication and erection of structures of various types on contract basis. They entered into a contract with M/s. XYZ Co. for fabrication, assembly and erection on turn key basis of a waste water treatment plant. This activity involved procurement, supply, fabrication, transportation of various duty paid components and finally putting up a civil construction and erection of the waste water treatment plant and commissioning the same. The entire fabrication is done at site. The pressure testing was carried out as such until it was wholly built. The excise department has issued a show cause notice that the fabrication at site amounted to manufacture of excisable goods since the plant came into existence in an unassembled form, as per drawings and designs approved by the client, M/s. XYZ Co. before the fabrication activity was undertaken. Therefore, according to the department, excise duty was payable on the value of the plant excluding the value of the civil work. Briefly discus with reference to case law whether the show cause notice is sustainable in law. (5 Marks)*

(b) *Sweet Sugar Mills is engaged in the manufacture of sugar. Government of India had issued directions under the Sugar Control Order for sugar companies to maintain buffer stock of sugar of certain quantity for a specified period. In order to compensate the sugar mill the Government had extended buffer stock subsidy towards storage, interest and insurance charges in respect of the buffer stock of sugar actually held by the sugar mill. The department has issued a show cause notice to the assessee raising a demand of service tax on the ground that the amount received by the sugar mill as buffer subsidy is covered under the taxable service of 'storage and warehousing'. Discuss briefly with reference to decided case law whether the action of the department is sustainable in law. (5 Marks)*

(c) *The customs authorities had confiscated the gold carried by Mr. Lovegold from Bahrain. Mr. Lovegold informed the customs authorities that he was filing an appeal against the order of confiscation. The customs authorities informed Mr. Lovegold that the confiscated goods had been handed over to the warehouse of the custom house for disposal and consequently auctioned the confiscated goods. Discuss briefly the validity of the action taken by the customs authorities with the help of decided case law. Also discuss the validity of the claim of Mr. Lovegold in seeking market value of the confiscated goods and whether he is liable to pay the duty, fine and penalty imposed by the original authority. (5 Marks)*

Answer

(a) No, the show cause notice is not sustainable in law. The facts of the case are similar to the case of *Larsen & Toubro Ltd. v. UOI 2009 (243) E.L.T. 662 (Bom.)*. The High Court opined that mere bringing of the duty paid parts in an unassembled form at one place, i.e. at the site, does not amount to manufacture of a plant. Simply collecting together at site the various parts would not amount to manufacture unless an excisable movable product (say a plant) comes into existence by assembly of such parts.

In the present case, as the petitioner had stated that the waste water treatment plant did not come into existence unless all the parts were put together and embedded in the civil work. Waste water treatment plant did not become a plant until the process which included the civil work, was completed. Thus, the Court held that no commercial movable property came into existence until the assembling was completed by embedding different parts in the civil works. Accordingly, since waste water treatment plant was not a separate movable marketable good and came into existence only on assembly of parts in the civil work, there was no question of levying excise duty on it.

(b) No, the action of the Department is not sustainable in law. The facts of the case are similar to the case of *CCE v. Nahar Industrial Enterprises Ltd. 2010 (19) STR 166 (P & H).* While dismissing the contention of Revenue, the High Court, after perusing the relevant sections viz. section 65(105)(zza) and 65(102) of Finance Act, 1994, said that it is apparent that service tax can be levied only if service of 'storage and warehousing' is provided. Nobody can provide service to himself.

In the present case, it is undisputed that the assessee stored the goods owned by himself. After the expiry of the storage period, the assessee was free to sell to the buyers of its own choice. The assessee had stored goods in compliance to directions of Government of India issued under Sugar Development Fund Act, 1982. The assessee had received subsidy not on account of services rendered to Government of India but had received compensation on account of loss of interest, cost of insurance etc., incurred on account of maintenance of stock. The act of assessee cannot be called as rendering of services.

The High Court concurred with the Tribunal's decision that just because the storage period of free sale sugar had to be extended at the behest of Government of India, neither the assessee becomes 'storage and warehouse keeper' nor the Government of India becomes their 'client' in this regard. Therefore, the storage of specific quantity of free sale sugar could not be treated as providing 'storage and warehousing' services to Government of India.

(c) No, the action taken by the custom authorities is not valid in law. The facts are similar to the case decided by the Bombay High Court in the matter of *Shabir Ahmed Abdul Rehman v. UOI 2009 (235) E.L.T. 402 (Bom.).* The High Court noticed that the assessee had informed the Customs authorities that he is filing an appeal against the original order of confiscation. Handing over the confiscated gold immediately after serving the order of confiscation was held to be improper. The Customs authorities ought to have stopped the auction sale of the confiscated gold after receipt of letter from the assessee.

The High Court observed that the claim of the assessee in seeking market value of the gold could not be accepted. It held that the assessee cannot escape payment of fine and penalty. Duty would be required to be paid only if the gold was actually allowed to be redeemed. Since what is being given is the sale proceeds, the question of paying duty will not arise.

It further ruled that the Customs authorities were liable to return the entire sale proceeds without deducting therefrom the duty but subject to deduction of fine and penalty with interest.

Note: A stay has been granted by the Supreme Court in the aforementioned case vide *Union of India v. Shabir Ahmed Abdul Rehman 2010 (253) E.L.T. A142 (S.C.).*

Question 4

(a) C & C Co. Ltd. manufactured non-alcoholic beverage bases known as concentrates. These were sold to bottling companies who in turn sold the aerated beverages manufactured from the concentrates to distributors. These were then sold to retailers and thereafter to the ultimate consumers. The advertisement and market research activities were undertaken by M/s. C & C Co. Ltd. Input credit of service tax paid on the advertising service used for marketing of soft drinks removed by bottlers was claimed by M/s. C & C Co. Ltd. This credit was denied on the ground that advertisements did not relate to the concentrates manufactured by M/s. C & C Co Ltd. Discuss briefly with reference to decided case law whether M/s. C & C Co. Ltd. is eligible to avail CENVAT credit paid on advertising services which was utilised towards payment of excise duty on concentrates. (5 Marks)

(b) 'Smartphone' is in the business of providing mobile telephone service. The assessee sells 'SIMCARDS' to its mobile telephone subscribers for a price. 'Smartphone' pays service tax on the activation and other charges. On the 'SIMCARDS' sold to the customers, VAT under the applicable State law is paid. The Department's view is that the 'SIMCARDS' is used for provision of mobile services and is a part of the service and therefore the value of the 'SIMCARDS" has to be included in the category of 'telecommunication services' for purpose of service tax. Explain with a brief note and reference to decided case law whether the view taken by the department is correct in law. (5 Marks)

(c) ABC Company Ltd. has imported brine shrimp eggs. This was classified as "prawn feed' for customs duty purposes under chapter heading No. 2309 of the Customs Tariff schedule which includes use as animal feed. The department's view was that this should be classified under chapter heading No. 051199 as non-edible animal products unfit for human consumption. M/s. ABC Co. provided literature to support their contention that the imported material contained little organisms/embryos which later became larva that were fed to the prawns. Therefore, according to the importers, the nature and character of the product was not changed or altered by nurturing or incubation. Hence, the classification should be as prawn feed under chapter heading No. 2309.

Decide with the help of case law, if any, whether the contention of the assessee, M/s. ABC Co. is correct in law. *(5 Marks)*

Answer

(a) The fact of the case are similar to the case of *Coca Cola India Pvt. Ltd. v. CCE (2009) 15 STR 657 (Bom)*. The Bombay High Court held that though the contents of advertisements made by the appellants (the manufacturer of 'concentrates') essentially featured the 'bottle of aerated waters' (the bottles being the final products manufactured by bottlers and not by the appellants), the credit on advertising services received by the appellant could not be denied on the ground that the advertisement was not of the final product of the appellants (viz. 'concentrates'), but of the final product of the bottlers (viz. 'aerated waters') (Rule 2(l) of CENVAT Credit Rules, 2004).

The High Court observed that any input service that forms a part of value of final product should be eligible for the benefit of CENVAT credit. In the said case, since the advertising cost formed part of the assessable value, the assessee was eligible to take credit of tax paid on advertising services. So long as the manufacturer can demonstrate that the advertisement services availed have an effect or impact on the manufacture of the final product and establish the relationship between the input service and the manufacture of final product, credit must be allowed. In the present case, the Court held that the advertisement of soft-drink enhanced the marketability of the concentrate.

In view of the above-mentioned judgment, C & C Co Ltd. is eligible to avail CENVAT credit paid on advertising services.

(b) Yes, the view taken by the Department is correct in law. The facts of the above case are similar to the 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.

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 of taxable service on which service tax was payable by the assessee.

(c) Yes, the contention of the assessee is justified in law. The facts of the given case are similar to the case of *Atherton Engineering Co. Pvt. Ltd. v. UOI 2010 (256) ELT 358*

(Cal.). In the instant case, the Court noted that it was the use of the product that had to be considered in the instant case. If a product undergoes some change after importation till the time it is actually used, it is immaterial, provided it remains the same product and it is used for the purpose specified in the classification. Therefore, in the instant case, it examined whether the nature and character of the product remained the same.

The Court opined that if the embryo within the egg was incubated in controlled temperature and under hydration, a larva was born. The larva did not assume the character of any different product. Its nature and characteristics were same as the product or organism which was within the egg.

Hence, the Court held that the said product should be classified as feeding materials for prawns under the heading 2309. These embryos might not be proper prawn feed at the time of importation but could become so, after incubation.

Question 5

(a) (i) Write a short note with reference to the Central Excise Act, 1944 and CENVAT Credit Rules 2004 on "goods" and "exempted goods".

(ii) Explain briefly the significance of "trade parlance test" with respect to classification of excisable goods under the Central Excise Act, 1944. (2 x 3 = 6 Marks)

(b) (i) Explain with a brief note with reference to the Finance Act, 1994 whether the business auxiliary service provided by a sub-broker to a stock-broker in relation to sale or purchase of securities listed on a registered stock exchange is liable to service tax.

(ii) Briefly explain the policy contained in the 'white paper' on introduction of VAT with regard to availment of input credit on capital goods. (2 x 3 = 6 Marks)

(c) Explain briefly with reference to the Customs Act, 1962 the significance of "Indian Customs Waters". (3 Marks)

Answer

(a) (i) Section 2(d) of the Central Excise Act, 1944 carries an explanation which states that the expression "goods", for purpose of the said clause, includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.

Rule 2(d) of the CENVAT Credit Rules, 2004 defines exempted goods as excisable goods which are exempt from the whole of the duty of excise leviable thereon and includes goods which are chargeable to nil rate of duty.

(ii) Under normal circumstances, it is the responsibility of the Department to establish the correct tariff heading under which the product falls. Once this is discharged, the burden shifts to the assessee to prove a particular classification.

According to the trade parlance test, if a product is not defined in the Schedule and

Section Notes and Chapter Notes of the Central Excise Tariff Act, 1985, then it should be classified according to its popular meaning or meaning attached to it by those dealing with it, i.e., its commercial sense. However, where the tariff heading itself uses highly scientific or technical terms, goods should be classified in scientific or technical sense.

(b) (i) *Notification No.31/2009-ST dated 1.9.2009* has exempted the business auxiliary service provided by a sub-broker to a stock broker in relation to sale or purchase of securities listed on a registered stock exchange from the whole of the service tax leviable thereon. Thus, the business auxiliary service is not liable to service tax if it is provided by a sub-broker to a stock broker listed on a registered stock exchange.

Finance (No.2) Act 2009 amended the definition of stock broker under section 65(101) to exclude sub-broker from the ambit of stock broker service. Consequently, the services provided by a sub-broker under stock broker service are outside the purview of service tax. The above notification exempts the service provided by the sub-broker under business auxiliary service also.

(ii) The policy contained in the 'White Paper' lays down that in relation to capital goods, set-off will be available to traders and manufacturers.

The most important factor is that the White Paper recognizes the fact that set-off is to be given to both traders and manufacturers. It is well known that under traditional sales-tax system, in some States, partial credit was allowed on capital goods to the manufacturers but no credit was allowed to traders. In the White Paper, taking into account the very basis of VAT system, laid down a policy statement that set-off will be allowed to both manufacturers and traders.

However, as per the White Paper, the State Governments can provide to give set-off on a staggering basis, at the most in 36 instalments. This is subject to the policy of individual States.

(c) Significance of Indian Customs Waters

(i) If an officer of customs has reason to believe that any person in India or within the Indian customs waters has committed an offence punishable under section 132 or section 133 or section 135 or section 135A or section 136, he may arrest such person informing him of the grounds for such arrest. [Section 104 of Customs Act]

(ii) Where the proper officer has reasons to believe that any vessel in India or within Indian customs waters has been used in the smuggling of any goods or in the carriage of any smuggled goods, he may stop any such vehicles, animal or vessel or in case of an aircraft, compel it to land. [Section 106 of Customs Act].

(iii) Any vessel which is or has been within the Indian customs waters is constructed, adapted, altered or fitted in any manner for the purpose of concealing goods shall be liable to confiscation. [Section 115(1)(a) of Customs Act].

(iv) Customs Officer has the power to search any person who has landed from/about to board/is on board any vessel within Indian customs waters and who has secreted about his person, any goods liable to confiscation or any documents relating thereto. [Section 100(2)(a) of Customs Act].

(v) Any goods which are brought within the Indian Customs Waters for the purpose of being imported from a place outside India, contrary to any prohibition imposed by or under this Act or any other law for the time being in force, shall be liable to confiscation. [Section 111(d) of Customs Act].

Note: Any three points may be mentioned.

Question 6

(a) Write a brief note on the warehousing procedure for goods removed from the factory under the Central Excise Act, 1944 and Rules made thereunder. (6 Marks)

or

(i) Explain briefly "Annual Financial Information Statement" under the Central Excise Rules, 2002. (3 Marks)

(ii) State briefly the procedure for adducing additional evidence in appeal proceedings before the Commissioner (Appeals) under Section 35 of the Central Excise Act, 1944.

(3 Marks)

(b) (i) Explain briefly the three variants of VAT. (2 Marks)

(ii) Briefly write a short note on the due dates for monthly and quarterly payment of service tax in respect of various classes of assessees. (4 Marks)

(c) State briefly the provisions under the Customs Act, 1962 relating to duty drawback on re-export of goods. (3 Marks)

Answer

(a) The procedure for warehousing of goods removed from a factory is detailed below:

(i) The consignor shall prepare an application for removal of goods from a factory to a warehouse in quadruplicate and also prepare an invoice for goods to be warehoused.

(ii) He has to send original, duplicate and triplicate application and duplicate invoice along with goods to the warehouse of destination. The quadruplicate copy of application has to be sent to the Superintendent of Central Excise in-charge of his factory within 24 hours.

(iii) Within 24 hours of receipt of the goods the consignee shall verify the goods with all the copies of application.

(iv) The consignee has to send:

(a) Original copy to Superintendent-in-charge of his warehouse.

(b) Duplicate copy of consignor and retain the triplicate for record.

(v) The Superintendent-in-charge of the warehouse shall countersign the application received by him and send the same to Superintendent-in-charge of the consignor.

(vi) The consignor shall retain the duplicate application duly endorsed by the consignee for his record.

(a) (i) Annual Financial Information Statement is a return to be submitted in Form-ER-4. It is to be submitted by every assessee to the Superintendent of Central Excise for the preceding financial year by 30th November of the succeeding year [Rule 12(2)(a) of the Central Excise Rules, 2002].

The following assessees have been exempted from such submission of ER-4 :

(i) An assessee who pays less than Rs.1 crore of excise duty during the financial year to which ER-4 relates.

(ii) Indian Ordinance Factories, Department of Defence Production and Ministry of Defence.

(ii) The Commissioner (Appeals) shall not admit any additional evidence unless the adjudicating authority or his authorized person in this behalf has been allowed a reasonable opportunity:-

(a) to examine the evidence or documents or to cross-examine any witness produced by the appellant, or

(b) to produce any evidence or any witness in rebuttal of the additional evidence produced by the appellant.

However, the Commissioner (Appeal) must record in writing the reason for admission of additional evidence.

(b) (i) The three variants of VAT are (a) Gross Product Variant, (b) Income Variant and (c) Consumption Variant.

1. Gross Product Variant: Tax is levied on all sales and deduction for tax paid on inputs excluding capital inputs is allowed.

2. Income Variant: Tax is levied on all sales with set-off for tax paid on inputs and only depreciation on capital goods.

3. Consumption Variant: Tax is levied on all sales with deduction for tax paid on all business inputs (including capital goods).

(ii) According to rule 6(1) of the Service Tax Rules, 1994, service tax wouldbe paid to the credit of Central Government:

(i) by the 6th day of the month, if the duty is deposited electronically through internet banking; and

(ii) by the 5th of the month, in any other case, immediately following the calendar month in which the payments are received towards the value of taxable services.

However, first proviso to rule 6(1) provides that where the assessee is an individual or proprietary firm or partnership firm, service tax would be paid to the credit of Central Government by the 6th day of the month if the duty is deposited electronically through internet banking or in any other case, the 5th day of month as the case may be, immediately following the quarter in which payments are received towards the value of taxable services.

Further, according to third proviso to rule 6(1), service tax on the value of taxable service received during the month of March or quarter ending in March, would be paid by 31st day of March of the calendar year.

(c) When imported goods on which duty has been paid on importation are exported, 98% of the customs duty will be paid back as drawback on satisfaction of the following conditions:

(i) Goods must be easily identified.

(ii) Proper Officer makes an order permitting clearance for loading of the goods for exportation.

(iii) If goods are exported as baggage, the owner of the baggage makes a declaration of its contents to the proper officer which will be considered as entry for export and such officer permits clearance of the goods for exportation.

(iv) If exported through post, the Proper Officer makes an order for clearance for export.

Question 7

(a) (i) State briefly the circumstances under which a refund claim could be admitted under the proviso to section 11B(2) of the Central Excise Act, 1944. (3 Marks)

(ii) Explain briefly the significance of Rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 relating to goods produced or manufactured by a job worker. (3 Marks)

(b) (i) Briefly explain the provisions relating to export of services under the Export of Service Rules, 2005. (3 Marks)

(ii) Explain briefly the mandatory provisions under VAT with respect to the records to be maintained by the assessee. (3 Marks)

(c) Briefly explain "Prohibited goods" under the Customs Act, 1962. *(3 Marks)*

Answer

(a) (i) Under proviso to section 11B(2), a refund claim of excise duty made by a buyer/assessee can be admitted only in the following cases:

(i) Rebate of excise duty on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(ii) Unspent advance deposits lying in applicant's account current;

(iii) Refund of credit of duty paid on inputs, provided it is payable according to any rule or notification;

(iv) Refund of duty to manufacturer, if he has not passed on the incidence of duty to another person;

(v) Refund of duty to buyers, provided he has borne the duty and if he has not passed on the incidence of the duty to any other person;

(vi) To any other class of applicant, if borne by any such class of applicants, as may be specified by the Government of India, if the incidence of duty has not been passed on to any other person.

(ii) Rule 10A of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 provides that where goods are manufactured by a job-worker on behalf of a person (commonly known as principal manufacturer), the value for payment of excise duty would be based on the sale value at which the principal manufacturer sells the goods, as against the past practice where the value was taken as cost of raw material plus the job charges.

Where the goods are sold by the principal manufacturer from the factory of the job worker's factory, the price charged by the principal to his customer would have to be taken as the value on which duty would have to be paid at the applicable rate. If the buyer is related to the principal manufacturer, the valuation would have to be done as in case of clearances to related parties. Where the goods are not removed for sale from the job worker's factory but cleared to some other premises of the principal from where the goods are sold, the valuation at the time of removal from the job worker's premises would be similar to what is followed under rule 7.

(b) (i) Rule 3 of the Export of Service Rules, 2005 classifies the taxable services in three categories:-

(a) When the immovable property in respect of which the service is rendered is situated abroad.

(b) When the service is performed outside India.

(c) When the service is provided to a recipient located outside India.

In the first category, exemption is available in respect of the specified services only when the immovable property is outside India. In the second category, a group of services have been listed. If any such service is partly performed outside India, it shall be considered to have been performed outside India. The services listed in third category when provided in relation to business or commerce shall be eligible for exemption as 'export of services' when the recipient of such services are located outside India.

Any service which is taxable may be exported without payment of service tax provided the export receipts are in convertible foreign exchange. Central Government has granted some rebate notifications for input services or inputs used for export of taxable services.

(ii) The following records should be maintained under VAT system:

(i) Purchase records

(ii) Sales records

(iii) VAT account containing the details of output tax and input tax together with credit and debit notes issued during the period

(iv) Separate record for exempt sale

The following records should also be kept and produced to an officer:-

Copies of invoices, debit and credit notes issued, all purchase invoices, details of tax charged on purchases and sales, total output tax, input tax and net tax for each period, details of goods manufactured and delivered from the factory, details of each supply of goods from the business premises. Failure to keep these records may attract penal provisions under the State VAT law.

(c) The term prohibited goods has been defined under section 2(33) of the Customs Act, 1962 as the goods the import or export of which is subject to any prohibition under the Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.