

PAPER – 8 : INDIRECT TAX LAWS

Question No. 1 is compulsory

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

Question 1

(a) Determine the assessable value for purpose of excise duty under the Central Excise Act, 1944 in the following cases:

- (i) An assessee sells his excisable goods for ` 120 per piece and does not charge any duty of excise in his invoice. Subsequently, it was found that the goods were not exempted from excise duty, but were liable at 20% advalorem. (1 Mark)
- (ii) Certain excisable goods were sold for ` 120 per piece and 20% advalorem is the rate of excise duty. Subsequently, it was found that the price cum duty was in fact ` 140 per piece as the assessee had collected ` 20 per piece separately. (2 Marks)
- (iii) The cum duty price per piece was ` 120 and the assessee had paid duty at 20% advalorem. Subsequently, it was found that the rate of duty was 30% advalorem and the assessee had not collected anything over and above ` 120 per piece. (2 Marks)

(b) T Ltd. imported some goods from LMP Inc. of United States by air freight. You are required to compute the value for purposes of customs duty under the Customs Act, 1962 from the following particulars:



CIF value	US \$ 6,000
Freight paid	US \$ 2,000
Insurance cost	US \$ 700

The bank had received payment from the importer at the exchange rate of US \$ 1 = ` 46 while the CBEC notified exchange rate on the relevant date was US \$ 1 = ` 45.5

(Make suitable assumptions where required and provide brief explanations to your answer) (5 Marks)

(c) From the following particulars, arrive at the VAT liability for the month of January 2010 and also determine the amount of input tax credit to be carried forward for the next month:

- (i) Input tax rate 5% and output tax rate is 15% in the State.
- (ii) Inputs purchased in the month from within the State – ` 48,00,000.
- (iii) Output sold to buyers within the State during the month – ` 15,00,000.
- (iv) Output sold during the month to buyers as interstate sales – ` 3,00,000.
(CST rate 2% against C Form).

FINAL (NEW) EXAMINATION : NOVEMBER, 2010

The suggested answers for Indirect Tax Laws (Paper 8) are based on the provisions as amended by the Finance (No.2) Act, 2009 and notifications/circulars issued up to 30.04.2010 which are relevant for November 2010 examination.

- (v) Inputs purchased from other States as interstate purchases against C Form @ 2% - ` 2,00,000.

(Provide suitable explanations where required with appropriate assumptions, if necessary). (5 Marks)

- (d) X Bank Ltd., furnishes the following information relating to services provided and the gross amount received:

	` (lakhs)
Merchant banking services	8
Asset Management (including portfolio management)	3
Service charges for services to the Government of India	1.5
Interest on overdraft and cash credits	2
Banker to the issue	5
Locker rent	2
Repayment of financial lease made by the customer to the bank ` 80 lakhs which includes a principal amount of ` 50 lakhs.	

Compute the value of taxable service under "banking and other financial services" under the Finance Act, 1994 and the service tax liability of X Bank Ltd., considering the rate of service tax at 10.3%. (5 Marks)

Answer

- (a) Assessable Value

$$(i) \frac{\text{Price cum duty}}{1 + \frac{\text{Rate of Excise duty}}{100}} = \frac{120}{1.2} = \text{Rs. } 100$$

Assessable Value

$$(ii) \frac{\text{Price cum duty}}{1 + \frac{\text{Rate of Excise duty}}{100}} = \frac{120 + 20}{1.2} = \text{Rs. } 116.67$$

(Note: Additional consideration has to be added to price)

Assessable Value

PAPER – 8 : INDIRECT TAX LAWS

$$(iii) \frac{\text{Price cum duty}}{1 + \frac{\text{Rate of Excise duty}}{100}} = \frac{120}{1.3} = \text{Rs. } 92.30$$

(b) Computation of assessable value of the goods imported by T Ltd.:-

CIF value	6,000 US \$
Less: Freight	2,000 US \$
Less: Insurance	<u>700 US \$</u>
Therefore, FOB value	<u>3,300 US \$</u>
FOB value	3,300 US \$
Add : Freight (20% of FOB value)	660 US \$

(See Note - 1)

Add: Insurance (actual)	<u>700 US \$</u>
CIF for customs purpose	4,660 US \$
Add: Landing charges (1% of CIF value)	

(See Note - 2)

Value for customs purpose	<u>4,706.60 US\$</u>
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Exchange rate as per CBEC = Rs. 45.50 per US \$

(See Note - 3)

Assessable Value = Rs. 45.50 × 4,706.60 US \$ = Rs. 2,14,150.30

Notes :

1. As the material has been imported by air, the freight has been restricted to 20% of FOB value i.e. 660 US \$.

[Second proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007]

2. Landing charges at the rate of 1% of the CIF value of the imported goods shall be added, whether ascertainable or not. **(First proviso of aforementioned rule)**
3. As per the **explanation to section 14(1)**, the exchange rate shall be the rate as notified by CBEC. Therefore, applicable exchange rate would be Rs. 45.50 per US \$ as notified by CBEC.

(c) Calculation of VAT liability for the month of January' 10 and amount of input tax credit to be carried forward to next month:

- (i) Input tax credit available on the purchase of inputs from within the State will be 5% of Rs. 48 lakh, i.e. Rs. 2,40,000.
- (ii) No input tax credit will be available on inputs purchased from other States.

FINAL (NEW) EXAMINATION : NOVEMBER, 2010

- (iii) VAT payable on sales within the State – 15% of Rs. 15 lakh, i.e. Rs. 2,25,000.
- (iv) State VAT liability will be nil as the input tax credit (Rs. 2,40,000) is more than the output VAT of the State (Rs. 2,25,000).
- (v) CST to be paid is Rs. 6000, i.e. 2% of inter-State sales of Rs. 3 lakh. This amount can be paid from the balance credit of Rs. 15,000 (i.e. Rs. 2.40 lakh-2.25 lakh)
- (vi) The amount available for carry forward to next month will be Rs. 9,000, i.e. Rs. (15000-6000).

(d) Calculation of value of taxable services of X Bank Ltd.

Particulars	Rs.	Rs.
Amount received for merchant banking services		8,00,000
Amount received for asset management (including portfolio management) services		3,00,000
Service charges for services provided to Government of India		Nil
(Note – 1)		
Interest received on overdraft and cash credits (Note – 2)		Nil
Amount received for acting as banker to an issue		5,00,000
Amount received as locker rent		2,00,000
Installment amount received towards repayment of financial lease	80,00,000	
Less: Principal amount included in the above installments	<u>50,00,000</u>	
Interest on financial lease	30,00,000	
10% of the interest amount [Rs. 30,00,000 × 10%] (Note – 3)		<u>3,00,000</u>
Total value of taxable services		<u>21,00,000</u>
Service tax payable thereon @ 10%		2,10,000
Education Cess @ 2%		4,200
Secondary and Higher Education Cess @ 1%		<u>2,100</u>
Total service tax payable including Cess		<u>2,16,300</u>

Notes:

- Service charges for banking and other financial services provided to Government of India are exempt from service tax (**Notification No. 13/2004 ST dated 10-09-04**).
- Interest received on cash credit and overdraft is exempt from service tax (**Notification No. 29/2004 ST dated 22-09-2004**).
- Service tax is payable only on 10% of the interest on financial lease. The interest is the difference between the installment paid towards repayment of the lease amount and the principal amount contained in such installment (**Notification No. 4/2006 ST dated 01-03-2006**).

PAPER – 8 : INDIRECT TAX LAWS

Question 2

- (a) XYZ Co. engaged in the service of over burden removal in mines had acquired some tipper trucks and taken CENVAT credit to the extent of the excise duty paid on the said trucks acquired by them. Subsequently, on becoming aware that the said trucks do not qualify as capital goods or inputs under the CENVAT Credit Rules, 2004, the said XYZ Co. reversed the credit taken, all of which had remained unutilized. The Department has issued a show cause notice that interest under section 11AB on the amount of credit taken, but not utilised should be paid. Write a note whether the action of the Department is correct in law. (2 Marks)
- (b) "Pure & Lovely" are manufacturers of 'hair oil' falling under Chapter 33 of the Central Excise Tariff (CET). Disputes arose in respect of two other categories 'edible oil' or 'coconut oil'. The Department contends that the coconut oil falling under these two categories are meant for sale as hair oil and should be classified under Chapter 33 of the CET. The manufacturers contend that they are not printing the specific use of such oil as 'hair oil' and this should be classified as vegetable oil under Chapter 15 of the CET irrespective of its use by the consumer. Chapter Note 2 of Chapter 33 prescribes a condition that Heading No. 3305 (which covers hair oil) applies to products put up in packing of a kind sold by retail for such use. Section Note 2 to Section VI provides that goods falling in Heading 3305 by reason of being put up for retail sales are to be classified in the said Heading. Briefly discuss whether coconut oil packed in larger packs generally used by consumers for edible purposes would merit classification under Chapter 15. (4 Marks)
- (c) Sona Ltd., purchased a lathe machine at a cum-duty price of ` 18,63,680. The excise duty rate charged on the said machine was 16% plus education cess 2% plus secondary and higher education cess 1%. The machine was purchased on 1-7-2007 and was disposed of on 30-09-2009 for a price of ` 10,00,000 in working condition as second hand machine. Calculate the amount of CENVAT credit allowable for the financial years 2007-08 and 2008-09 and also specify the amount payable towards CENVAT credit already taken at the time of disposal of the machinery in the year 2009-10. (5 Marks)
- (d) Y Ltd. (raw material supplier) supplies raw material to a job worker (manufacturer) Z Ltd. The job worker after completion of the job delivers 5000 packets of finished goods to Y Ltd. In all these packets retail sale price (maximum) of ` 30 per packet is marked. The product in packaged form is subject to excise duty on the basis of MRP under section 4A of the Central Excise Act, 1944 and in respect of the same, 30% abatement has been prescribed. Determine the assessable value for purpose of excise duty after considering the following particulars:
- | | |
|--|----------|
| Cost of raw material supplied | ` 45,000 |
| Job charges including profit | ` 15,000 |
| Transport charges for dispatch to job worker | ` 4,000 |

FINAL (NEW) EXAMINATION : NOVEMBER, 2010

Transport charges for return of finished product ` 4,000

(Provide brief explanation and make assumptions where required.) (5 Marks)

Answer

- (a) Yes, the action of the Department is correct in law. Rule 14 of the CENVAT Credit Rules, 2004 provides for recovery of CENVAT credit wrongly taken or utilized wrongly or erroneously refunded. Earlier, there was a view that if an assessee had taken the credit but not utilised the same for payment of taxes or duty, then no interest payment is required. The Central Board of Excise and Customs has clarified that where credit is taken or wrongly utilised or erroneously refunded, the same along with interest should be recovered from the manufacturer or provider of output service. Hence, in this case, XYZ Co. having taken the credit wrongly will have to pay interest under section 11AB even if the credit has not been utilised.

- (b)** Yes, the coconut oil packed in larger packs generally used by consumers for edible purposes would merit classification under Chapter 15. The dispute in this case with the Department is restricted to 'edible oil' or 'coconut oil'. The assessee 'Pure & Lovely' pays excise duty under Chapter 33 in respect of all packages that are marked for use as 'hair oil'.

The Section Note 2 to Section VI supports the interpretation that although a product is capable of being classified under more than one heading, owing to the nature of its retail packing which is indicative of its use as hair oil, the classification under heading 3305 would get priority.

What follows is that if the same coconut oil is packed in larger packs of say 1 litre or 2 litre generally used by consumers for edible purposes (even though some customers may use it as hair oil), it would be classified under Chapter 15. Hence, the classification of coconut oil would depend upon the fact as to how the majority of the customers use the product. Equally, if the oil is put in packages generally meant for sale as 'hair oil', then it would be classified under Chapter 3305 even though some consumers may use it as edible oil.

- (c) Amount of CENVAT credit allowable for financial years 2007-08 and 2008-09:-**

Cum duty price of the machinery	Rs. 18.63.680
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Rate of duty including education cess and secondary and higher education cess	16.48%
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$$\text{Duty paid on machinery} = \text{Rs. } 18,63,680 \times \frac{16.48}{116.48} \quad \text{Rs. } 2,63,680$$

CENVAT credit allowable during the

Financial Year	2007-08 @ 50%	Rs. 1,31,840
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Financial Year	2008-09 @ 50%	Rs. 1,31,840
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PAPER – 8 : INDIRECT TAX LAWS

Amount payable towards CENVAT credit on disposal of machinery during the year 2009-10

Total CENVAT credit availed on the machinery	Rs. 2,63,680
Less: Amount of reduction from the said credit on	
(i) First 50% = $[1,31,840 \times 2.5\%] \times 9$ quarters	Rs. 29,664
(ii) Next 50% = $[1,31,840 \times 2.5\%] \times 6$ quarters	<u>Rs. 19,776</u>
Amount payable on disposal of machinery	<u>Rs. 2,14,240</u>

Notes:

1. In respect of capital goods, CENVAT credit shall be taken only for an amount not exceeding 50% of duty in the same financial year and balance may be taken in any subsequent year **[Rule 4(2)(a) of the CENVAT Credit Rules, 2004]**.
 2. If capital goods are removed after being used, the manufacturer shall pay an amount equal to CENVAT credit taken on the said capital goods reduced by 2.5% of each quarter of a year or part thereof from the date of taking the CENVAT credit **[Second proviso to rule 3(5) of the CENVAT Credit Rules, 2004]**.
 3. It is assumed that first 50% of the CENVAT credit has been taken on 01.07.2007 and the balance 50% of the credit has been taken on 01.04.2008.
- (d) Section 4A of the Central Excise Act, 1944 provides for valuation of excisable goods with reference to retail sale price.

Sub section (2) of this section provides that where the goods specified under sub-section (1) are excisable goods and are chargeable to duty with reference to value, then, notwithstanding anything contained in section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette.

Thus, the provisions of section 4A of the Central Excise Act, 1944 are overriding provisions, i.e., if a product is covered under provisions of section 4A, valuation will be done on the basis of section 4A and not on the basis of material cost plus job charges.

Hence, in this case, the assessable value of the product will be computed as follows:-

Particulars	Rupees
Retails sale price per packet	30
Less: Abatement of 30% = Rs. $\frac{30}{100} \times 30$	<u>9</u>
Assessable value of each packet	<u>21</u>
Assessable value for the purpose of excise duty = Rs. 21 × 5,000 packets	1,05,000

FINAL (NEW) EXAMINATION : NOVEMBER, 2010

The information pertaining to raw material cost, job charges, profit, transport charges etc. need not to be considered.

Question 3

- (a) Write a brief note on whether input tax credit of the VAT paid on purchases of goods that are stock transferred is available. (2 Marks)
- (b) X Ltd. is having a manufacturing unit at Faridabad. In the financial year 2008-09, the value of total clearances from the unit was ` 850 lakhs as per the following details:
- (i) Exports to USA : Rs. 100 lakhs; to Nepal : ` 50 Lakhs
 - (ii) Clearances to a 100% export oriented unit : ` 75 lakhs
 - (iii) Clearances as loan licensee of goods carrying the brand name of another upon full payment of duty: ` 200 lakhs
 - (iv) Clearance exempted vide Notification No. 214/86-C.E. dated 25.3.86: ` 125 lakhs.
 - (v) Balance clearances of goods in the normal course : ` 300 lakhs.
- You are required to state with reasons whether the unit is entitled to the benefit of exemption under Notification No. 8/2003-C.E. dated 1.3.2003 as amended for the financial year 2009-10. (4 Marks)
- (c) Briefly explain the documents required for filing claim of rebate of duty on export of goods under rule 18 of the Central Excise Rules, 2002. (5 Marks)
- (d) An assessee had cleared goods without payment of excise duty. However, on coming to know from his sources that a show cause notice demanding duty on such clearances is likely to be issued but before actual issue of such notice the assessee made full payment of excise duty with interest. A show cause notice was issued subsequently as to why the assessee should not be subject to mandatory penalty equal to the excise duty sought to be evaded under section 11 AC of the Central Excise Act, 1944. Briefly examine, with a note, the conditions for levy of penalty under section 11AC and state whether there is any discretion to reduce such penalty. (5 Marks)

Answer

- (a) Inter State transfers do not involve sale and are therefore are not subjected to sales tax. The same position continues under VAT. However, tax paid on the purchases of goods which are stock transferred will be available as input credit after retention of 2% of such tax by the State Government.
- (b) As per **Notification No. 8/2003 dated 01.03.2003**, in order to claim exemption as small scale industry in the financial year 2009-10, the total eligible clearances of the manufacturing unit should not exceed Rs. 400 lakh in the previous financial year 2008-09.

For the purpose of computing the eligible clearances:-

PAPER – 8 : INDIRECT TAX LAWS

- (i) Export turnover of Rs. 100 lakh to USA would be excluded, while the export to Nepal of Rs. 50 lakh would be included.
- (ii) Clearances of Rs. 75 lakh without payment of duty to a 100% EOU would be excluded.
- (iii) Clearances of Rs. 200 lakh as a loan licensee of goods carrying the brand name of another on payment of duty would not be included.
- (iv) Clearances of Rs. 125 lakh exempt under *Notification No. 214/86* would be excluded.
- (v) Normal clearances of excisable goods of Rs. 300 lakh would be considered.

Thus, the eligible turnover for exemption is as follows:-

=Rs. 850 lakh – Rs. 500 lakh (100 + 75 + 200 + 125)

=Rs. 350 lakh

Since the eligible clearances do not exceed Rs. 400 lakh in the financial year 2008-09, the manufacturing unit will be entitled for SSI exemption in financial year 2009-10.

- (c) The following documents are required for filing claim of rebate:-

- (i) A request on the letterhead of the exporter containing claim of rebate, A.R.E.1 numbers and dates, corresponding invoice numbers and dates on each A.R.E.1 and its calculations.
- (ii) Invoice issued under rule 11.
- (iii) Self attested copy of shipping bill
- (iv) Self attested copy of Bill of Lading
- (v) Disclaimer Certificate (in case where the claimant is not the exporter).
- (vi) Original copy of the A.R.E.1

After satisfying himself that goods were actually exported based on original and duplicate copies of A.R.E.1 duly certified by Customs and that goods are of duty paid character as certified in the triplicate copy of A.R.E.1 received from the jurisdictional Superintendent of Central Excise, rebate sanctioning authority would sanction the rebate in part or full.

- (d) The conditions and the circumstances that would attract the imposition of penalty under section 11AC of the Central Excise Act, 1944 have been laid down by the Apex Court in case of **UOI v. Rajasthan Spinning and Weaving Mills 2009 (238) ELT 3 (SC)**.

In the instant case, the Apex Court, overruling the decision of the Tribunal, held that mandatory penalty under section 11AC of the Central Excise Act, 1944 is not applicable to every case of non-payment or short-payment of duty.

In order to levy the penalty under section 11AC, conditions mentioned in the said section should exist. Supreme Court ruled that the Tribunal was not justified in striking down the levy of penalty against the assessee on the ground that the assessee had deposited the

FINAL (NEW) EXAMINATION : NOVEMBER, 2010

balance amount of excise duty (that was short paid at the first instance) before the show cause notice was issued.

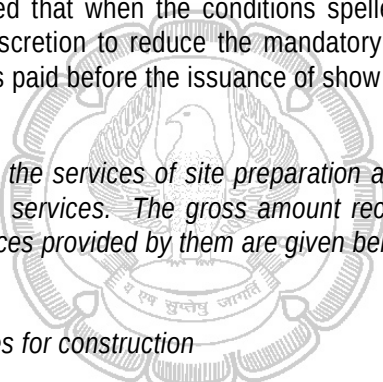
The Apex Court elaborated that the payment of the differential duty, whether before/ after the show cause notice is issued, cannot alter the liability for penalty. The conditions for penalty to be imposed are clearly spelt out in section 11AC of the Act.

Supreme Court clarified that both section 11AC as well as proviso to sub-section (1) of section 11A use the same expressions : ".....by reasons of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty.....". Hence, it drew the inference that the penalty provision of section 11AC would come into play only if the notice under section 11A(1) states that the escaped duty was the result of any conscious and deliberate wrong doing and in the order passed under section 11A(2), there is a legally tenable finding to that effect.

Further, Central Board of Excise and Customs vide **Circular No. 889/09/2009 CX dated 21.05.2009** has clarified that when the conditions spelled out under section 11AC are fulfilled, there is no discretion to reduce the mandatory penalty which is equal to duty even though the duty is paid before the issuance of show cause notice.

Question 4

- (a) *D & Co. is engaged in the services of site preparation and clearance, excavation, earth moving and demolition services. The gross amount received during the quarter ended 30.6.2009 for the services provided by them are given below:*



Core extraction services for construction	1,80,000
Land reclamation work	80,000
Services in relation to agriculture	2,00,000
Renovating or restoring water sources	3,50,000
Horizontal drilling of passage of cables or drain pipes	1,00,000
Soil stabilization	90,000
Construction of transport terminals	55,000

Calculate the value of taxable services under 'Site preparation and clearance, excavation, earth moving and demolition services' under the Finance Act, 1994 and the service tax payable at 10.3%. (Provide brief explanations where required.) (4 Marks)

- (b) *State with reference to the provisions of the Finance Act, 1994 whether service tax is leviable in the following cases:*
- (i) *Taxable services rendered in the Special Economic Zone and consumed therein.*
 - (ii) *Services provided in the Continental Shelf of India and Exclusive Economic Zone of India.* (2 x 2 =4 Marks)

PAPER – 8 : INDIRECT TAX LAWS

- (c) Write a brief note with reference to the Service Tax Rules, 1994 in the following cases:
- (i) Advance payment of service tax.
 - (ii) Time limit for preservation of records. (4 Marks)
- (d) S Ltd. provides management consultancy services that are subject to service tax under the Finance Act, 1994. In respect of the services rendered during the month of December, 2009, the service tax of `15 lakh was remitted to Government treasury on January 20, 2010. Arrive at the penalty under section 76 of the Finance Act, 1994 which is leviable in this case. (4 Marks)



FINAL (NEW) EXAMINATION : NOVEMBER, 2010

Answer

(a) Computation of value of taxable services provided of D & CO.:-

Gross amount received	Rs.
for core extraction services for construction	1,80,000
for land reclamation work	80,000
for horizontal drilling for passage of cables or drain pipes	1,00,000
for soil stabilization	<u>90,000</u>
Total value of taxable services	<u>4,50,000</u>
Service tax payable on above @ 10%	45,000
Education cess @ 2%	900
Secondary and higher education cess @ 1%	<u>450</u>
Total service tax payable	<u>46,350</u>

Notes:

1. Amount received for site formation and clearance, excavation and earth moving and demolition services provided in relation to agriculture and for renovating or restoring water sources are specifically excluded from the definition of "site formation and clearance, excavation and earth moving and demolition" under section 65(97a) of the Finance Act, 1994.
 2. Amount received for such services provided in the course of construction of transport terminals is exempt from whole of service tax vide **Notification No. 17/2005 ST dated 07.06.2005**.
- (b) (i) **Notification No. 15/2009-ST dated 20-05-2009** has amended **Notification No. 9/2009-ST dated 3-3-2009** to provide for unconditional exemption from service tax to services consumed wholly within the SEZ. Developer or unit of SEZ has to maintain proper accounts of receipt and utilisation of taxable services for which exemption is claimed.
- It further provides that exemption can be claimed by way of refund of service tax paid on services consumed partially or wholly outside the SEZ.
- (ii) **Notification No. 14/2010-ST dated 27-2-2010** provides that construction and operation of installations, structures and vessels for purpose of prospecting or extraction/production of minerals oils and natural gas in the whole of exclusive economic zone and continental shelf of India, any service provided or to be provided by or to such installations, structures and vessels and for supply of any goods connected with these activities would be within the purview of service tax under the Finance Act, 1994.
- (c) (i) As per the provisions of rule 6(1A) of the Service Tax Rules, 1994, a facility has been provided to the assesses to make advance payment of service tax on his own and adjust the amount so paid against the service tax which he is liable to pay for the subsequent period. Such facility shall be available when the assessee:

PAPER – 8 : INDIRECT TAX LAWS

- (i) intimates the details of the amount of service tax paid in advance, to the Superintendent of Central Excise having jurisdiction within a period of 15 days from the date of such payment, and
 - (ii) indicates the details of the advance payment made, and its adjustment, if any, in the subsequent return to be filed under section 70.
- (ii) As per the provisions of rule 5(3) of the Service Tax Rules, 1994, all records maintained by the assessee shall be preserved **at least for a period of five years** immediately after the financial year to which such records pertain.

For the purposes of this rule, “**registered premises**” includes all premises or offices from where an assessee is providing taxable services.

- (d) **Section 76** of the Finance Act, 1994 provides for penalty for failure to pay service tax, as under:

- (i) Rs. 200 per day during which such failure continues
 - or
 - (ii) Amount computed at the rate of 2% of such tax, per month
- whichever is higher.**

It is computed from the first day after the due date till the date of actual payment. Total amount of penalty under this section shall not exceed the service tax payable.

Computation of amount of penalty payable

Amount of penalty will be **higher** of the following:

- (i) 15 days ´ Rs.200 = Rs. 3,000 (Since the period of delay is 15 days)
- (ii) 2% of Rs. 15 lakh for 15 days

$$= \text{Rs. } \frac{2}{100} \times 15,00,000 \times \frac{15}{31}$$

$$= \text{Rs. } 14,516.13$$

Thus, X & Co. will have to pay the penalty of Rs. 14,516.13.

Question 5

- (a) Write a brief note on the deficiencies of the VAT system. (4 Marks)
- (b) A private agency has built a canal system on build-own-operate-transfer basis under a contract with the State Government. User charges at commercial rates are levied by the private agency and the revenue so generated is utilized for servicing and repayment of the capital investment.

Briefly write a note with reference to ‘commercial or industrial construction service’ under the Finance Act, 1994 whether the user charges collected by the private agency is liable to service tax. (4 Marks)

FINAL (NEW) EXAMINATION : NOVEMBER, 2010

- (c) Briefly explain the provisions under the Service Tax Rules, 1994 regarding late fee for delayed filing of returns. (4 Marks)
- (d) State briefly with reference to section 66A of the Finance Act, 1994 who is liable to pay service tax for services provided from outside India. (4 Marks)

Answer

- (a) 1. One of the key deficiencies in the current system is that there is lack of uniformity in rates of VAT across the states. Distortions also arise on account of differences in classification of the product and concessions or exemptions like composition schemes, exempted category of goods in certain States.
2. The other feature is that central sales tax (which is an origin based tax) has been allowed to coexist with VAT (which is essentially destination based tax) in a system where central sales tax payments are not eligible for set off in the receiving State.
3. There is a burden of record keeping for small traders even though they could switch over to a simplified composition scheme without the benefit of input credit. This could add to the supply chain cost because of the non availability of input credit when the goods pass through a small trader under the composition scheme.
4. The administration cost to the State owing to increase in the number of dealers could go up and at the same time, the States are also concerned about any possible avenues that may be adopted by the traders in the availment of input credit that could need to revenue leakages.
5. Another possible weak point in the introduction of VAT, which will have an adverse impact is that, since the tax is to be imposed or paid at various stages and not on last stage, it would increase the working capital requirements and the interest burden on the same. In this way, it is considered to be non-beneficial as compared to the single stage-last point taxation system.
6. It is claimed that the tax is regressive, i.e. its burden falls disproportionately on the poor since the poor are likely to spend more of their income than the relatively rich person. There is merit in this argument, particularly if it attempts to replace direct or indirect taxes with steep, progressive rates.

Note: Any four points may be given.

- (b) **Circular No. 116/09/2009 ST dated 15.09.2009** clarifies that as per section 65(25b) of the Finance Act, 1994, "commercial or industrial construction service" is chargeable to service tax if it is used, occupied or engaged either wholly or primarily for the furtherance of commerce or industry.

As the canal system built by the Government or under Government projects, is not falling under commercial activity, the canal system built by the Government will not be chargeable to service tax. However, if the canal system is built by private agencies and is developed as a revenue generating measure, then such construction should be charged to service tax.

PAPER – 8 : INDIRECT TAX LAWS

In this case, the canal system is built by a private agency and user charges are collected at commercial rates. Hence, the user charges collected by the private agency, in the given case, will be subject to service tax.

(c) Late fee for delayed return [Rule 7C of the Service Tax Rules, 1994]

The prescribed late fee for furnishing a delayed return is given in the following table:

S. No.	Period of delay	Late fee
(a)	15 days from the date prescribed for submission of the return	Rs.500
(b)	Beyond 15 days but not later than 30 days from the date prescribed for submission of the return	Rs.1,000
(c)	Beyond 30 days from the date prescribed for submission of the return	An amount of Rs.1,000 plus Rs.100 for every day from the 31 st day till the date of furnishing the said return

Maximum late fees

Total late fee for delayed submission of return shall not exceed Rs.2,000.

Further, where the assessee has paid the prescribed late fee for delayed submission of return, the proceedings, if any, in respect of such delayed submission of return shall be deemed to be concluded.

Late fee may be reduced/waived where service tax payable is nil

Where the gross amount of service tax payable is nil, the Central Excise Officer may, on being satisfied that there is sufficient reason for not filling the return, reduce or waive the penalty (late fee) [Proviso to rule 7C].

(d) Section 66A of the Finance Act, 1994 provides a separate mechanism for levy of service tax on services received from outside India. It has to be read with the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006.

Section 66A provides that where any services specified under section 65(105) are rendered by a person who has established a business or has a fixed establishment from which the service is provided or has a permanent address or usual place of residence in a country other than India and such services are received by a person (recipient) who has his place of business, fixed establishment, permanent address or usual place of residence in India, then such service shall be a taxable service.

Such service shall be treated as if the recipient had himself provided the service in India. However, the provisions of this section would not apply to a service received by an individual for a purpose other than for use in business or commerce. A person carrying on a business through a branch or agency in a country shall be treated as having a business establishment in that country.

FINAL (NEW) EXAMINATION : NOVEMBER, 2010

Question 6

Answer any **four** of the following:

- (a) Discuss with a brief note the provisions of section 129E of the Customs Act, 1962 regarding deposit of duty and interest or penalty levied pending appeal. (4 Marks)
- (b) Write a brief note on sanctioning of refund of customs duty under section 27(2) of the Customs Act, 1962 under which refunds will not be credited to the consumer welfare fund. (4 Marks)
- (c) Write a brief note with specific reference to rule 1 of the Rules of Interpretation of the First Schedule to Customs Tariff Act, 1975. (4 Marks)
- (d) Certain goods were brought to the export shed on 5.10.2009. The goods were examined and 'let export order' was issued on the same day by noting of the shipping bill. Computer processed shipping bill was issued on 6.10.2009. DEPB rate was lowered on 6.10.09 and the Department allowed DEPB at the rate prevailing on 6.10.2009. The goods were permitted for clearance and loading on 5.10.2009. It is the assessee's case that under the Customs Act, 1962, they are entitled for the higher rate of DEPB prevailing on 5.10.2009. Write a brief note whether the assessee's stand is correct in law. (4 Marks)
- (e) Briefly explain the provisions relating to transshipment of goods without payment of duty under Section 54 of the Customs Act, 1962. (4 Marks)

Answer

- (a) As per section 129E where, in any appeal, the decision or order appealed against relates to any duty and interest demanded in respect of goods which are not under the control of customs authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, first deposit the duty and interest demanded or penalty levied with the proper officer.

However, such deposit may be waived by the Commissioner (Appeals) or the Appellate Tribunal if he or it is of the opinion that deposit of duty and interest demanded or penalty levied would cause undue hardship to such person. Such waiver may be allowed subject to conditions as he or it may deem fit to impose so as to safeguard the interest of revenue.

- (b) In view of the provisions of unjust enrichment in the Customs Act, 1962, the amount found refundable has to be transferred to the Consumer Welfare Fund.

However, the amount of duty and interest found refundable, instead of being credited to the Fund, is to be paid to the applicant if the amount is relatable to:-

- (a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;

PAPER – 8 : INDIRECT TAX LAWS

- (c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (d) the export duty as specified in section 26;
- (e) drawback of duty payable under sections 74 and 75;
- (f) the duty and interest, if any, paid on such duty borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify

Note: Any four points may be given.

- (c) Rule 1 of the general rules for interpretation states that the titles of sections, chapters and sub-chapters in the First Schedule to the Customs Tariff Act, 1975 are provided for ease of reference only. For legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and provided such headings or chapter notes do not otherwise require, according to the subsequent rules.
- (d) In this case, the goods were brought to export shed on 5.10.09 and were examined on the same day when the noting of the shipping bill was also completed. The goods were permitted for clearance and loading on the same day.

Section 16(1)(a) of the Customs Act, 1962 deals with date for determination of rate of duty and tariff valuation of export goods. It states that in the case of goods entered for export under section 50, the rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51.

Section 50 deals with entry of goods for exportation by presenting a shipping bill and section 51 deals with the permission to clear and load the goods.

Since, in the given case, both the events have taken place on 5.10.09, the rate of duty for DEPB purposes shall be the rate prevailing on 5.10.09 which is the higher rate. The assessee's stand in this case is correct.

- (e) Provisions relating to transshipment of goods without payment of duty under section 54 of the Customs Act, 1962 are as follows:-
 - (1) Where any goods imported into a customs station are intended for transshipment, a bill of transshipment shall be presented to the proper officer in the prescribed form. Where the goods are being transhipped under an international treaty or bilateral agreement between the Government of India and Government of a foreign country, a declaration for transshipment instead of a bill of transshipment shall be presented to the proper officer in prescribed form.
 - (2) Subject to the provisions of section 11, where any goods imported into a customs station are mentioned in the import manifest or the import report, as the case may

FINAL (NEW) EXAMINATION : NOVEMBER, 2010

be, as for transhipment to any place outside India, such goods may be allowed to be so transhipped without payment of duty.

- (3) Where any goods imported into a customs station are mentioned in the import manifest or import report, as the case may be, as for transhipment:
- (a) to any major port as defined in the Indian Ports Act, 1908 (15 of 1908), or the customs airport at Mumbai, Calcutta, Delhi or Chennai or any other customs port or customs airport which the Board may, by notification in the Official Gazette, specify in this behalf, or
 - (b) to any other customs station and the proper officer is satisfied that the goods are bona fide intended for transhipment to such customs station.

the proper officer may allow the goods to be transhipped, without payment of duty, subject to such conditions as may be prescribed for the due arrival of such goods at the customs station to which transhipment is allowed.

Question 7

- (a) *UPT Ltd., are manufacturers of electrical transformers, switch gears falling under Chapter Heading 85042200 and Chapter Heading 85352121 of Central Excise Tariff. The manufacturers cleared excisable goods valued at ` 30 lakhs against Served from India Scheme Certificate (SFIS) at nil rate of duty availing the exemption by way of debit to SFIS under Notification No. 34/2006-CE dated 14.6.2006. As separate accounts for purpose of sub-rule (3) of rule 6 of the Cenvat Credit Rules, 2004 were not maintained by the assessee (M/s UPT Ltd.), they were required to pay 5% of the value of the exempted goods of ` 1.5 lakhs ( ` 30 lakhs @ 5%) on the basis that the goods cleared under SFIS scheme are to be treated as exempted goods. Discuss with reference to the definition of exempted goods under rule 2(d) of the Cenvat Credit Rules, whether the stand taken by the Department is correct. (Assume that debit to SFIS is a method of payment of appropriate duty). (4 Marks)*
- (b) *Briefly state the provisions of the Central Excise Rules, 2002 relating to electronic payment of excise duty and electronic filing of returns. (4 Marks)*
- (c) *Hand blender manufactured by the assessee was cleared as gift along with each unit of juicer, mixer and grinder (JMG). The MRP of ` 750 though printed on the 'hand blender box' contains clear indication that it is supplied free of cost. The package of JMG also shows this. The hand blender is not sold separately. The Department has issued a show cause notice that duty should be paid on the hand blender. Write a brief note with reference to section 4A of the Central Excise Act, 1944 whether the notice is sustainable in law. (4 Marks)*
- (d) *State briefly with reference to the provisions of the Finance Act, 1994 whether the following services are liable to tax:*
- (i) *Permanent transfer of intellectual property rights.*

PAPER – 8 : INDIRECT TAX LAWS

- (ii) *Services provided in relation to handling, storage and warehousing of empty containers under storage and warehousing service.* (4 Marks)

Answer

- (a) Sub-rule (3) of rule 6 of the CENVAT Credit Rules, 2004 provides that a manufacturer of goods opting not to maintain separate accounts shall have the option
- (i) to pay an amount equal to five percent of the value of the exempted goods or
 - (ii) pay an amount equivalent to the CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods subject to the procedure in sub-rule 3A.

In this case, the Department has demanded the amount under the first option i.e. 5% of the value of the exempted goods. The demand raised by the Department is questionable. The issue which requires consideration is as to whether the goods cleared in this case against debit entries in the SFIS certificate could be treated as 'exempted goods'.

Rule 2(d) of the said rules 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.

Considering the facts of the case, it may be inferred that both the said goods are not exempted goods. Firstly, the transformers and switchgears are not exempt from the duty leviable because the relevant debit entries made in the SFIS are towards appropriate duty levied on the said goods. Secondly, the goods in question are not eligible for Nil rate of duty and the debit entry in the SFIS certificate is in discharge of the appropriate duty liability on the said goods.

The aforesaid view has also been supported by the Tribunal in case of *Universal Power Transformer Pvt. Ltd. v. CCEx., Bangalore 2010 (256) E.L.T. 244 (Tri. - Bang.)* wherein the Tribunal held that the duty liability debited in SFIS scrip amounts to discharge of liability and not amounts to exemption.

Thus, the stand taken by the Department to classify the said goods as 'exempted goods' and demand 5% of the value of the same is not correct in law.

- (b) With effect from 1.4.2010, CBEC has reduced the quantum of excise duty, for electronic payment of duty from Rs. 50 lakh to Rs. 10 lakh. It has amended the third proviso to rule 8(1) of the Central Excise Rules, 2002 to provide that where an assessee, who has paid duty of ten lakh rupees or more, including the amount of duty paid by utilization of CENVAT credit, in the preceding financial year shall thereafter, deposit the duty electronically through internet banking.

Further, it has inserted a proviso after second proviso to rule 12(1) of the aforesaid rules to provide that where an assessee has paid total duty of rupees ten lakh or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year, he shall file the monthly or quarterly return, as the case may be, electronically.

FINAL (NEW) EXAMINATION : NOVEMBER, 2010

- (c) No, the notice issued by the Department is not sustainable in law. In this case, though the MRP of Rs. 750 is printed on the 'hand blender box', there is a clear indication that it is supplied free of cost. This is merely a sale promotion measure in order to augment the demand.

In *Sony India Ltd. v. CCE 2004 (167) ELT 385 (SC)*, Supreme Court held that the offer of gifts was only incidental benefit and not the part of the consideration to be paid in regard to television sets (main product) as such. Similar view has been expressed by Tribunal in case of *Gujtron Electronics Pvt. Ltd. v. CCEx. & Cus. 2009 (241) E.L.T. 371 (Tri. - Ahmd.)*.

It is also clear that hand blender would be given free with every purchase of JMG and there is no sale of the same.

Hence, it can be concluded that the duty under section 4A will have to be paid on the JMG and the 'hand blender' provided as a gift will not be again subject to duty on the MRP because there is no sale of the hand blender.

- (d) (i) The term '**intellectual property service**', has been defined in section 65(55b) of the Finance Act, 1994 as:-

- (i) transferring, temporarily; or
- (ii) permitting the use or enjoyment of, an intellectual property right.

Hence, permanent transfer of intellectual property right does not attract service tax.

- (ii) **Master Circular No. 96/7/2007 ST dated 23.08.2007** has clarified that empty containers are covered within the meaning of 'goods' as per section 65(50). Thus, services provided in relation to storage and warehousing of empty containers is liable to service tax under 'storage and warehousing service'.