

PAPER – 8: INDIRECT TAX LAWS

PART – I : STATUTORY UPDATES

Significant amendments made between 1.7.2011 and 31.10.2011

A. EXCISE

1. CBEC notifies new Form ER 1 and ER-3

The Central Board of Excise and Customs has notified new Form ER-1 and Form ER-3. Form ER-1 is the monthly return for production and removal of goods and other relevant particulars and CENVAT credit. Form ER-3 is the quarterly return for production and removal of goods and other relevant particulars and CENVAT credit, by an assessee eligible to avail of the exemption under a notification based on the value of clearances in a financial year.

The new forms would be effective from 1st October, 2011.

[Notification No. 16/2011- CE (NT) 18.07.2011]

2. Application for registering a new factory after opting as large taxpayer to be made to Assistant Commissioner /Deputy Commissioner in place of Chief Commissioner

Notification No. 20/2006 - CE (N.T.) dated 30.09.2006 specifies the conditions to be satisfied and procedures to be followed by a person to be eligible to opt as large taxpayer. One of the conditions laid down by the said notification provided that where a new factory or service provider, input credit distributor or first or second stage dealer becomes liable to be registered, after opting as large taxpayer, the application for such new registration ought to be made before the Chief Commissioner of Central Excise, Large Taxpayer Unit.

The said condition has been amended so as to enable the submission of applications of such new registrations before the Assistant Commissioner /Deputy Commissioner of Central Excise, Large Taxpayer Unit, in case of registration under the Central Excise Act, 1944 and the Superintendent, Large Taxpayer Unit, in case of registration under the service tax, as the case may be.

[Notification No. 17/2011- CE (NT) 18.07.2011]

3. Option to authorize job-worker to pay duty in case of readymade garments and made-up articles of textiles withdrawn

In the garment and made up industry, goods are being manufactured from several job-workers. The person getting the goods manufactured on his behalf may or may not, himself, possess any manufacturing facility.

Central Excise Rules were amended to incorporate sub-rule (1A) in rule 4 vide *Notification No. 4/2011 CE (NT) dated 01.03.2011* to prescribe that in case of readymade

garments and made-up articles of textiles falling under Chapter 61 or 62 or 63 of the First Schedule to the Tariff Act, the liability to pay duty and comply with central excise procedures would be on the person on whose behalf the goods are manufactured by job-workers. Alternatively, an option was given to merchant manufacturer to authorize the job-worker to obtain registration and comply with all formalities of Central Excise including payment of duty.

Sub-rule (1A) has been further amended to withdraw the option available to merchant manufacturer to authorize the job-worker to pay duty and comply with all the procedures. Therefore, now only the merchant manufacturer can pay duty in such cases.

In a case where any merchant manufacturer has already authorized its job-worker to pay the duty under the provisions of sub-rule (1A) as it stood prior to the publication of this notification, he will have to obtain registration and comply with other related provisions within a period of 30 days from 28.07.2011.

[Notification No. 19/2011 CE (NT) dated 28.07.2011]

4. Monetary limits for filing appeals by the Department before CESTAT/High Courts and Supreme Court revised by CBEC

With effect from 01.09.2011, the Central Board of Excise & Customs has revised monetary limits below which appeal should not be filed in the Tribunal, High Court and the Supreme Court as under:

Sl.No.	Appellate Forum	Monetary limit
1.	CESTAT	₹ 5,00,000/-
2.	High Courts	₹ 10,00,000/-
3.	Supreme Court	₹ 25,00,000/-

The Board has clarified that for ascertaining whether a matter would be covered within or without the aforementioned limits, the determinative element would be duty/tax under dispute e.g, in a case involving duty of ₹ 5 lakhs or below with equal penalty and interest, as the case may be, no appeal can be filed in the Tribunal. Similarly, no appeal would be filed in the High Courts if the duty involved does not exceed ₹ 10 lakhs with or without penalty and interest.

Also, the Commissionerates have been instructed not to send proposal to the Board for filing Civil Appeal or Special Leave Petition in the Supreme Court in a case involving duty up to ₹ 25 lakhs, whether with penalty and interest or otherwise. However, where the imposition of penalty is the subject matter of dispute and the said penalty exceeds the limit prescribed, then the matter could be litigated further. Similarly, where the subject matter of dispute is the demand of interest and the amount of interest exceeds the prescribed limit, then the matter may require further litigation.

Adverse judgments relating to the following would have to be contested irrespective of the amount involved:

- (a) Where the constitutional validity of the provisions of an Act or Rule is under challenge.
- (b) Where Notification/ Instruction/ Order or Circular has been held illegal or ultra vires.

Following queries related with application of monetary limits have been clarified by the Board as under:

Issue: Whether duty involved mentioned in the Instruction dated 20.10.2010 refers to duty outstanding to be collected or the total duty demanded for deciding the threshold limit prescribed therein?

Clarification: In a case where a part of the duty demanded is not disputed and is paid and the outstanding duty under dispute is less than the monetary limit prescribed by the Board, no appeal shall be filed. In other words, monetary limit shall apply on the disputed duty and not on the total duty demanded in a case.

Issue: Whether monetary limits would apply to cases of refund?

Clarification: It is clarified that the monetary limits being prescribed by the Board would apply to cases of refund as well.

Issue: Whether applications being filed by the Department before office of Joint Secretary (Revision Application) would also be covered under the stipulation of monetary limits?

Clarification: The limit specified herein will not be applicable to application filed before the Joint Secretary (Revision Application).

Issue: Whether exclusion of audit objections mentioned in para 6(c) of Instruction dated 20.10.2010 would cover internal audit objection cases also or whether they would be limited to cases of revenue audit alone?

Clarification: The intention was to apply the exclusion clause mentioned at para 6(c) only to disputes arising out of revenue audit objections accepted by the Department. It has now been decided to delete the said exclusion clause. Therefore, in all cases of audit objections accepted by the Department, while protective demands may continue to be issued but the same would be subjected to the monetary limits for filing appeal in the Tribunal, High Courts and the Supreme Court.

[F.No.390/Misc./163/2010-JC dated 17.08.2011]

5. E-Filing of Excise Returns and Statements mandatory for all assessees

Central Excise Rules, 2002 have been amended to provide that the returns and statements prescribed under rule 12 will have to be filed electronically by all the assessees irrespective of the duty paid in the preceding year. Monthly Return for production and removal of goods (ER-1), Quarterly Return (ER-3), Annual Financial

Information Statement (ER-4) are some of the returns and statements prescribed under Rule 12.

Assessees availing exemption under *Notification No. 49/2003 CE dated the 10.06.2003* or *Notification No. 50/2003 CE dated 10.06.2003* have been exempted from the requirement of e-filing of the returns prescribed under rule 12. *Notification No. 49/2003 CE dated the 10.06.2003* exempts certain goods when cleared from a unit in the State of Uttaranchal or Himachal Pradesh. *Notification No. 50/2003 CE dated 10.06.2003* exempts certain goods when cleared from a unit located in the Industrial Growth Centre or Industrial Infrastructure Development Centre or Export Promotion Industrial Park or Industrial Estate or Industrial Area or Commercial Estate or Scheme Area

Hundred per cent Export Oriented Undertakings will also be required to submit the monthly excise return (ER-2) electronically irrespective of the duty paid in the preceding year.

Similar amendment has been made in CENVAT Credit Rules, 2004 to the effect that the assesseees will now have to file the annual declaration in respect of principal inputs (ER-5) and the monthly return of information relating to principal inputs (ER-6) electronically irrespective of the duty paid in the preceding year.

The amendments will become effective from 01.10.2011.

[Notification No. 21 & 22/2011 CE (NT) dated 14.09.2011]

6. Amendments in Central Excise Returns

CBEC had notified new Form ER-1 & Form ER-3 of Excise Returns vide *Notification No. 16/2011 CE (NT) dated 18.07.2011* which were to be effective from 01.10.2011. The forms have been further amended by the CBEC. The new Forms along with the amendments would be effective from 01.01.2011.

Form ER-1 is the form for filing Monthly Return for Production and removal of Goods and Form ER-3 is the form for Quarterly Return for Clearance of Goods & CENVAT credit.

[Notification No. 20/2011 CE (NT) dated 13.09.2011]

7. Power of Adjudication Revised for Additional Commissioners

CBEC has revised the monetary limit for adjudication for Additional Commissioners under section 11A and section 33 of the Central Excise Act, 1944. They can now adjudicate the cases with a monetary limit from above ₹ 5 Lac and upto ₹ 50 Lac. Earlier the limit was above ₹ 20 Lac and upto ₹ 50 Lac. As a result of this amendment a uniform monetary limit i.e., above ₹ 5 Lac & upto ₹ 50 Lac has been fixed for both Additional Commissioners and the Joint Commissioners.

[Circular No. 957/18/2011-CX-3 dated 25.10.2011]

B. SERVICE TAX**1. Service to be treated as “completed” on completion of all the auxiliary activities enabling the service provider to issue the invoice**

CBEC has clarified that the test for the determination whether a service has been completed would be the completion of all the related activities that place the service provider in a situation to be able to issue an invoice. The Service Tax Rules, 1994 require that invoice should be issued within a period of 14 days from the completion of the taxable service. The invoice needs to indicate *inter alia* the value of service so completed. Thus it is important to identify the service so completed. This would include not only the physical part of providing the service but also the completion of all other auxiliary activities that enable the service provider to be in a position to issue the invoice. Such auxiliary activities could include activities like measurement, quality testing etc. which may be essential pre-requisites for identification of completion of service. However, it has been clarified that such activities do not include flimsy or irrelevant grounds for delay in issuance of invoice.

The Board has elucidated that the above interpretation also applies to determination of the date of completion of provision of service in case of “continuous supply of service”.

[Circular No. 144/13/2011- Service Tax 18.07.2011]

2. Service tax is not chargeable on delayed payment charges collected by Stock Brokers

CBEC has clarified that service tax would not be payable on the additional amount that is collected towards the delay in making payment to the stock brokers by their customers (delayed payment charges) in respect of Stock Broker's services.

The Board has referred to two of its earlier circulars on the issue. The circulars are:

- (i) *Circular No. 96/7/2007 - ST dated 23.08.2007* which clarifies that an amount collected for delayed payment of a telephone bill is not to be treated as consideration charged for provision of telecom service and therefore, does not form a part of the value of taxable service.
- (ii) *Circular No. 121/02/2010 - ST dated 26.4.2010* which clarifies that detention charges in respect of detained containers are not in respect of service provided on behalf of client (under BAS) nor is it on account of infrastructure support services (under BSS). Such charges can at best be called as 'penal rent' for retaining the containers beyond the predetermined period. Therefore, the amount collected as 'detention charges' is not chargeable to service tax.

Applying the same analogy, CBEC has clarified that delayed payment charges received by the stock brokers are also therefore, not includible in taxable value as the same are not the charges for providing taxable services. Such charges are on account of delay in

making payments by the service recipient to the service provider and are in the nature of a penal charge for not making the payment within stipulated time.

It may be noted that the Board has stated that this principle will also apply to other service providers.

However, section 67 of the Finance Act 1994 provides that service tax is chargeable on taxable value which shall be the 'gross amount charged' by the service provider. Therefore, if in the account statement / invoice / bill etc issued by the service provider, only the gross amount is shown without indicating the delayed payment charges separately, the service tax would be payable on the entire amount. Delayed payment charges would not be includible in 'gross value charged' only if these charges are shown separately in the account statement/invoice/bill etc.

[CBEC Letter No. F.No.137/25/2011-ST dated 03.08.2011]

3. All assesseees to file Service Tax Returns electronically

Service Tax Rules, 1994 have been amended to provide that every assessee will have to submit half-yearly service tax return electronically, irrespective of the amount of service tax paid by him in the preceding financial year. The amendment would be effective from October 1, 2011.

At present, electronic filing of service tax returns is mandatory for the assesseees who have paid service tax of ₹ 10 lakh or more including the amount of service tax paid by utilization of CENVAT credit in the preceding financial year.

[Notification No. 43/2011 ST dated 25.08.2011]

4. Business Auxiliary Service provided to Stock-Brokers by Authorised Persons exempt from service tax

Business Auxiliary Services provided by Sub Brokers to Stock-Brokers in relation to sale or purchase of securities listed on a registered stock exchange are exempt from payment of service tax vide *Notification No. 31/2009 ST dated 01.09.2009*. Such exemption has now been extended to the authorized person also.

[Notification No. 44/2011 ST dated 09.09.2011]

5. Arbitration exempted from service tax

Taxable services provided to any business entity, by an arbitral tribunal, in respect of arbitration have been exempted from payment of service tax.

[Notification No. 45/2011 ST dated 12.09.2011]

6. Procedure for electronic filing of Central Excise and Service Tax returns and for electronic payment of excise duty and service tax

Pursuant to issuance of Notifications No. 21/2011-Central Excise (NT) & 22/2011-Central Excise (NT) both dated 14.09.2011 and Notification No. 43/2011 ST dated 25.08.2011

prescribing mandatory electronic filing of Central Excise and Service Tax returns, the DG (Systems) has issued comprehensive instructions outlining the procedure for electronic filing of Central Excise duty and Service Tax returns and electronic payment of taxes under ACES. The said instructions outline the registration process for new assesseees, existing assesseees, non-assesseees and for Large Taxpayers Units, steps for preparing and filing of return, use of XML Schema for filing dealer's return, procedure for obtaining acknowledgement of e-filed return, procedure for e-payment etc.

[Circular No. 956/17/2011 CX dated 28.09.2011]

C. CUSTOMS

1. E-payment of customs duty made mandatory for importers paying duty of Rs 1 lakh or more

In order to reduce the transaction cost of the importers and expedite the time taken for customs clearance, the CBEC has made e-payment of duty mandatory for the importers paying an amount of ₹ 1,00,000 or more per transaction. *The date from which the E-payment will be made mandatory will be notified separately.* In 2007, e-payment facility was introduced on a voluntary basis.

Further, the Board has clarified that Accredited Importers under the Customs Accredited Client Programme will have to duty through E- payment mode only irrespective of the amount of duty to be paid.

Any importer wanting to make use of the e-payment facility first needs to have an Internet account with a designated bank. The Board has set up a dedicated payment gateway called, 'ICEGATE'.

If the importer is registered on this Web site, it can easily use the e-payment facility with the current log-in facility. Those that are un-registered can also use the Web site as an 'unregistered user'.

The importer need not produce any proof of payment for the clearance of goods in case of e-payment.

[Circular No. 33/2011 Cus. dated 29.07.2011]

2. Time Period for claiming drawback on Goods exported other than by post prescribed under Drawback Rules aligned with the period prescribed under section 75A

Section 75A of the Customs Act, 1962 provides for payment of interest if the drawback is not paid to the claimant within one month from the date of filing a claim for drawback at the rate prescribed from the date of expiry of one month till the date of payment of such drawback. This period of 'one month' was amended w.e.f 14.05.2003 from 'two months' prior to 14.05.2003.

However, corresponding amendment was not made in rule 13(4) of the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995, which provides for manner and time limit for claiming drawback. The rule continued to mention that 'two

months' period prescribed under section 75A shall exclude the time taken in testing of the export goods subject to maximum of one month. CBEC has therefore, now amended this period under Rule 13(4) from 'two months' to 'one month' to bring it in line with time limit prescribed under section 75A.

[Notification No. 69 /2011- Cus (NT) dated 22.09.2011]

3. Section 28 of Customs Act amended retrospectively to validate Show Cause Notices

The Supreme Court in the case of CCus. v. Sayed Ali 2011 (265) ELT 17 has held that Collector of Customs (Preventive) is not 'proper officer' and hence not competent to issue Show Cause Notice. The Apex Court held that only the customs officer assigned with specific functions of assessment and re-assessment in jurisdictional area where goods are imported are competent to issue show cause notice under Section 28 of Customs Act, 1962 as 'proper officer'. The Court further ruled that Notifications appointing Collector of Customs (Preventive) to be Collector of Customs for Bombay, Thane and Kolaba Districts do not ipso facto confer jurisdiction on him to exercise power entrusted to 'proper officers' under Section 28. The Court explained that the governing test to determine whether an 'officer of customs' is 'proper officer' is the specific entrustment of function by either CBEC or Commissioner of Customs under section 2(34) of Customs Act, 1962.

Pursuant to the above judgement, an *Instruction F.No.437/143/2009- Cus. IV(pt) dated 15.04.2011* was issued by the Board directing the field formations to examine pending Show Cause Notices and wherever these are not hit by time limitation to get these issued afresh by the jurisdictional Commissionerates. Further, as a prospective remedial measure, the officers of Directorate General of Revenue Intelligence (DRI), Commissionerates of Customs (Preventive), Directorate General of Central Excise Intelligence (DGCEI) and Central Excise Commissionerates were assigned the functions of the 'proper officer' for the purposes of Sections 17 and 28 of the Customs Act by the Board vide *Notification No.44/2011-Customs (N.T.), dated 06.07.2011*.

With a view to validate the Show Cause Notices issued prior to 06.07.2011, the Board had proposed to retrospectively amend section 28 of the Act by the Customs (Amendment and Validation) Bill, 2011. The President has given assent to the said Bill and the amendment to Section 28 has come into force w.e.f. 16.09.2011. The said Act amends Section 28 of the Customs Act, 1962 by inserting clause (11), which reads as follows:

"(11) Notwithstanding anything to the contrary contained in any judgement, decree or order of any court of law, tribunal or other authority, all persons appointed as officers of Customs under sub-section (1) of section 4 before the sixth day of July, 2011 shall be deemed to have and always had the power of assessment under section 17 and shall be deemed to have been and always had been the proper officers for the purposes of this section."

Accordingly, as per the amended Section 28 of the Customs Act, 1962 Show Cause Notices issued prior to 06.07.2011 by officers of Customs, which would include officers of

Commissionerates of Customs (Preventive), Directorate General of Revenue Intelligence (DRI), Directorate General of Central Excise Intelligence and similarly placed officers stand validated since these officers are retrospectively recognized as 'proper officers' for the purpose of Sections 17 and 28 of the said Act.

The Board has therefore, withdrawn *Instruction F.No.437/143/2009-Cus. IV (pt) dated 15.04.2011* as the matter pertaining to validity of Show Cause Notice has now been settled in terms of *Notification No.44/2011-Customs (N.T.) dated 06.07.2011* and amended Section 28 of the Customs Act, 1962.

It may be noted that though in terms of Notification No.44/2011-Customs (N.T.) dated 06.07.2011 the officers of DRI and DGCEI are 'proper officers' for the purposes of Section 28, the Board has directed that these officers shall not exercise authority in terms of clause (8) of Section 28 of the said Act. In other words, there would be no change in the present practice and officers of DRI and DGCEI shall NOT adjudicate the Show Cause Notices issued under Section 28 of the Act.

[Circular No. 44/2011 Cus dated 23.09.2011]

4. Advance Ruling facility available to resident public limited companies

By virtue of *Notification No. 67/2011 dated 22.09.2011*, the Resident Public Limited Companies have been brought under the ambit of Section 28E of Customs Act. Such companies can now avail the facility of advance ruling on the issues like classification, applicability of any exemption notification, principles of valuation, applicability of notifications issued in respect of duties under the Customs Act, 1962, Customs Tariff Act, 1975, and any duty chargeable under any other law for the time being in force in the same manner as duty of Customs under the Customs Act, 1962 etc.

Public limited company shall have the same meaning as is assigned to a "public company" in clause (iv) of sub-section (1) of section 3 of the Companies Act, 1956 and shall include a private company that becomes a public company by virtue of section 43A of the said Act. A 'resident' shall have the same meaning as is assigned to it in clause (42) of section 2 of the Income tax Act, 1961 in so far as it applies to a company. The facility provides an option to wholly Indian-owned companies to seek binding rulings so as to avoid risk litigation at a later stage.

Hitherto, the advance ruling facility was restricted to any person who is a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident, any person who is a resident setting up a joint venture in India in collaboration with a non-resident, a wholly-owned subsidiary Indian company of which the holding company is a foreign company, a joint venture in India or a resident who proposes to import any goods under specified preferential or free trade agreements. In 2009, public sector companies were also allowed to seek advance ruling and now the facility has been extended to resident public limited companies.

[Notification No.67/2011 Cus. (NT) dated 22.09.2011]

PART – II : JUDICIAL UPDATES
Significant Recent Judicial Decisions

A. CENTRAL EXCISE

1. Does a product with short shelf-life satisfy the test of marketability?

Nicholas Piramal India Ltd. v. CCEx., Mumbai 2010 (260) E.L.T. 338 (S.C.)

Facts of the case: In the instant case, the product had a shelf-life of 2 to 3 days. The appellant contended that since the product did not have shelf-life, it did not satisfy the test of marketability.

Decision of the case: The Supreme Court ruled that short shelf-life could not be equated with no shelf-life and would not *ipso facto* mean that it could not be marketed. A shelf-life of 2 to 3 days was sufficiently long enough for a product to be commercially marketed. Shelf-life of a product would not be a relevant factor to test the marketability of a product unless it was shown that the product had absolutely no shelf-life or the shelf-life of the product was such that it was not capable of being brought or sold during that shelf-life.

Hence, product with the shelf life of 2 to 3 days was marketable and hence, excisable.

2. Are the physician samples excisable goods in view of the fact that they are statutorily prohibited from being sold?

Medley Pharmaceuticals Ltd. v. CCE & C., Daman 2011 (263) E.L.T. 641 (S.C.)

The question which arose for consideration was whether physician samples of patent and proprietary medicines intended for distribution to medical practitioner as free samples, satisfied the test of marketability. The appellant contended that since the sale of the physician samples was prohibited under the Drugs and Cosmetics Act, 1940 and the rules made thereunder, the same could not be considered to be marketable.

Supreme Court observed that merely because a product was statutorily prohibited from being sold, would not mean that the product was not capable of being sold. Physician sample was capable of being sold in open market.

Moreover, the Drugs and Cosmetics Act, 1940 (Drugs Act) and the Central Excise Act, 1944 operated in different fields. The restrictions imposed under Drugs Act could not lead to non-levy of excise duty under the Central Excise Act thereby causing revenue loss. Prohibition on sale of physician samples under the Drugs Act did not have any bearing or effect on levy of excise duty.

Therefore, the Court inferred that the physician samples were excisable goods and were liable to excise duty.

Note: This case was affirmed in case of *Medley Pharmaceuticals Ltd. v. Commissioner - 2011 (269) E.L.T. A20 (S.C.)*.

3. **Whether assembling of the testing equipments for testing the final product in the factory amounts to manufacture?**

Usha Rectifier Corpn. (I) Ltd. v. CCEx., New Delhi 2011 (263) E.L.T. 655 (S.C.)

Facts of the case: The appellant was a manufacturer of electronic transformers, semi-conductor devices and other electrical and electronics equipments. During the course of such manufacture, the appellant also manufactured machinery in the nature of testing equipments to test their final products.

The appellant had stated in their balance sheet that the addition to the plant and machinery included testing equipments. The said position was further substantiated in the Director's report wherein it was mentioned that during the year, the company developed a large number of testing equipments on its own.

However, the assessee contended that such items were assembled in the factory for purely research and development purposes, but research being unsuccessful, same were dismantled. Hence, it would not amount to manufacture.

The appellant further submitted that the said project was undertaken only to avoid importing of such equipment from the developed countries with a view to save foreign exchange.

Decision of the case: The Supreme Court observed that once the appellant had themselves made admission regarding the development of testing equipments in their own Balance Sheet, which was further substantiated in the Director's report, it could not make contrary submissions later on. Moreover, assessee's stand that testing equipments were developed in the factory to avoid importing of such equipments with a view to save foreign exchange, confirmed that such equipments were saleable and marketable. Hence, the Apex Court held that duty was payable on such testing equipments.

4. **Whether the interest on irregular credit under rule 14 of the CENVAT Credit Rules, 2004 arises from date of availing such credit or date of utilization of the credit?**

UOI v. Ind-Swift Laboratories Ltd. 2011 (265) E.L.T. 3 (S.C.)

The Supreme Court elucidated that rule 14 is clear and unambiguous. It specifically provides for levying interest when CENVAT credit is taken or utilized wrongly or erroneously refunded. Thus, credit is recoverable with interest on happening of any of the three specified circumstances.

It held that rule 14 cannot be interpreted to mean that interest is payable from date of utilization of irregular credit and not from the date of availing such credit.

5. **Does the process of cutting and embossing aluminum foil for packing the cigarettes amount to manufacture?**

CCE v. GTC Industries Ltd. 2011 (266) E.L.T. 160 (Bom.)

Facts of the case: A roll of aluminum foil was cut horizontally to make separate pieces of the foil and word 'PULL' was embossed on it. Thereafter fixed number cigarettes were

wrapped in it. Aluminum foil, being a resistant to moisture, was used as a protector for the cigarettes and to keep them dry.

Revenue submitted that the process of cutting and embossing aluminum foil amounted to manufacture. Since the aluminum foil was used as a shell for cigarettes to protect them from moisture; the nature, form and purpose of foil were changed.

Decision of the case: The High Court pronounced that cutting and embossing did not transform aluminum foil into distinct and identifiable commodity. It did not change the nature and substance of foil. The said process did not render any marketable value, only made it usable for packing. There were no records to suggest that cut to shape/embossed aluminum foils used for packing cigarettes were distinct marketable commodity. Hence, process did not amount to manufacture as per section 2(f) of Central Excise Act, 1944. Only the process which produces distinct and identifiable commodity with marketable value can be called manufacture.

6. Whether time-limit under section 11A of the Central Excise Act, 1944 is applicable to recovery of dues under compounded levy scheme?

Hans Steel Rolling Mill v. CCEx., Chandigarh 2011 (265) E.L.T. 321 (S.C.)

The Apex Court elucidated that compounded levy scheme is a separate scheme from the normal scheme for collection of excise duty on goods manufactured. Rules under compounded levy scheme stipulate method, time and manner of payment of duty, interest and penalty. Since the compounded levy scheme is comprehensive scheme in itself, general provisions of the Central Excise Act and rules are excluded from this scheme.

The Supreme Court affirmed that importing one scheme of tax administration to a different scheme is inappropriate and would disturb smooth functioning of such unique scheme. Hence, it held that the time-limit under section 11A of the Central Excise Act, 1944 is not applicable to recovery of dues under compounded levy scheme.

7. Can re-appreciation of evidence by CESTAT be considered to be rectification of mistake apparent on record under section 35C(2) of the Central Excise Act, 1944?

CCE v. RDC Concrete (India) Pvt. Ltd. 2011 (270) E.L.T. 625 (S.C.)

Decision of the case: In the instant case, the arguments not accepted at an earlier point of time were accepted by the CESTAT while hearing the application for rectification of mistake and it arrived at a conclusion different from earlier one.

The Apex Court elucidated that re-appreciation of evidence on a debatable point cannot be said to be rectification of mistake apparent on record. It is a well settled law that a mistake apparent on record must be an obvious and patent mistake and the mistake should not be such which can be established by a long drawn process of reasoning.

The Supreme Court observed that arguments not accepted earlier during disposal of appeal cannot be accepted while hearing rectification of mistake application.

Submissions made before Tribunal while arguing rectification of mistake application had also been advanced before Tribunal when appeal heard at earlier stage. The Apex Court held that CESTAT had reconsidered its legal view as it concluded differently by accepting the arguments which it had rejected earlier.

Hence, the Court opined that CESTAT exceeded its powers under section 35C(2) of the Act. In pursuance of a rectification application, it cannot re-appreciate the evidence and reconsider its legal view taken earlier.

Note: Section 35C(2) reads as under:-

The Appellate Tribunal may, at any time within six months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1) and shall make such amendments if the mistake is brought to its notice by the Commissioner of Central Excise or the other party to the appeal.

8. Is the CESTAT order disposing appeal on a totally new ground sustainable?

CCE v. Gujchem Distillers 2011 (270) E.L.T. 338 (Bom.)

The High Court elucidated that in the instant case, the CESTAT had disposed of the appeal on a ground which was not urged by the respondents before the adjudicating authority. Thereby the CESTAT had disposed of the appeal on a totally new ground which was not laid before the adjudicating authority and which would entail a finding on facts.

The High Court explained that had the CESTAT not been satisfied with the approach of the adjudicating authority, it should have remanded the matter back to the adjudicating authority. However, it could not have assumed to itself the jurisdiction to decide the appeal on a ground which had not been urged before the lower authorities.

9. The assessee claimed the CENVAT credit on the duty paid on capital goods which were later destroyed by fire. The Insurance Company reimbursed the amount inclusive of excise duty. Is the CENVAT credit availed by the assessee required to be reversed?

CCE v. Tata Advanced Materials Ltd. 2011 (271) E.L.T. 62 (Kar.)

Facts of the case: The assessee purchased some capital goods and paid the excise duty on it. Since, said capital goods were used in the manufacture of excisable goods, he claimed the CENVAT credit of the excise duty paid on it. However, after three years the said capital goods (which were insured) were destroyed by fire. The Insurance Company reimbursed the amount to the assessee, which included the excise duty, which the assessee had paid on the capital goods. Excise Department demanded the reversal of the CENVAT credit by the assessee on the ground that the assessee had availed a double benefit.

Decision of the case: The High Court noted that the as per CENVAT Credit Rules, 2004, CENVAT credit taken irregularly stands cancelled and CENVAT credit utilised irregularly has to be paid for.

In the instant case, the Insurance Company, in terms of the policy, had compensated the assessee. The High Court observed that merely because the Insurance Company had paid the assessee the value of goods including the excise duty paid, it would not render the availment of the CENVAT credit wrong or irregular. It was not a case of double benefit as contended by the Department.

The High Court therefore answered the substantial question of law in favour of the assessee and against the Revenue.

10. **Head office distributed the CENVAT credit of the service tax paid on the services received to its various units. Can the CENVAT credit be denied to a particular unit on the ground that input services were obtained by another unit belonging to the same manufacturer?**

CCE v. Ecof Industries Pvt. Ltd. 2011 (271) E.L.T. 58 (Kar.)

Facts of the case: The assessee was engaged in manufacturer of excisable goods in Malur. Its head office, located in Chennai, was registered as 'Input Service Distributor'. The head office had paid service tax for services received by the head office and its units from various service providers. Thereafter, it had distributed the credit of service tax to its various units including the unit at Malur. The assessee availed and utilized the said credit for payment of central excise duty on their final products.

Revenue contended that since the service tax was paid in respect of services obtained by Cuttack unit, the credit of the said service tax paid could not be utilized by Malur unit.

Decision of the case: Considering rules 2(k), 2(l), 2(m), 3(1) and 7 of the CENVAT Credit Rules, 2004, the High Court elucidated that availment of credit of the service tax paid on the input service at a particular unit by another unit is not prohibited under law. However, the head office is expected to register itself as an input service distributor and thereafter, is entitled to distribute the credit of such input services in the manner prescribed under law. The High Court therefore held that Malur unit had rightly availed the CENVAT credit of the service tax paid by its head office.

11. **In case of combo-pack of bought out tooth brush sold alongwith tooth paste manufactured by assessee; is tooth brush eligible as input under the CENVAT Credit Rules, 2004?**

CCus. v. Prime Health Care Products 2011 (272) E.L.T. 54 (Guj.)

Facts of the case: The assessee was engaged in the manufacture of tooth paste. It was sold as a combo pack of tooth paste and a bought out tooth brush. The assessee availed CENVAT credit of central excise duty paid on the tooth brush. Revenue contended that the tooth brush was not an input for the manufacture of the tooth paste

and the cost of tooth brush was not added in the M.R.P. of the combo pack and hence, the assessee had availed CENVAT credit of duty paid on tooth brush in contravention of the provisions of the CENVAT Credit Rules, 2004.

Decision of the case: The High Court noted that the process of packing and re-packing the input, that was, toothbrush and tooth paste in a unit container would fall within the ambit of "manufacture" [as per section 2(f)(iii) of the Central Excise Act, 1944].

Further, the word "input" was defined in rule 2(k) of the CENVAT Credit Rules, 2004 which also included accessories of the final products cleared along with final product. There was no dispute about the fact that on toothbrush, excise duty had been paid. The toothbrush was put in the packet along with the tooth paste and *no extra amount was recovered from the consumer on the toothbrush**.

Considering the definition given in the rules of "input" and the provisions contained in rule 3, the High Court upheld the Tribunal's decision that the credit was admissible in the case of the assessee.

Note: *The definition of inputs under rule 2(k) has been substituted vide Notification No. 3/2011-C.E. (N.T.) dated 1-3-2011.*

The erstwhile definition, inter alia, stipulated that input includes accessories of the final products cleared along with the final product. As per the new definition, input still includes accessories of the final products cleared along with the final product. However, it has also added the condition that the value of such accessory should be included in the value of the final product.

In the aforesaid judgment, since no extra amount was recovered from the customer on the toothbrush, it implies that the value of the toothbrush was included in the value of the final product i.e. toothpaste. Hence, the judgment holds good as per the provisions of the new definition.

12. Can the excess duty paid by the seller be refunded on the basis of the debit note issued by the buyer?

CCE v. Techno Rubber Industries Pvt Ltd. 2011 (272) E.L.T. 191 (Kar.)

Facts of the case: The assessee cleared the goods paying higher rate of excise duty in the month of March, although the rate of duty on the said goods had been reduced in the budget of the same financial year. However, the buyer refused to pay the higher duty which the assessee had paid by mistake. The customer raised a debit note in his name in the month of June of the same year. The assessee applied for the refund of excess excise duty paid. Revenue rejected his claim on the ground that incidence of the duty had been passed by him to the buyer.

While claiming refund, the assessee relied on the debit note raised by the buyer in his name in the month of June to demonstrate that his customer had not paid the excess

duty to him. The adjudicating authority argued that since the debit note was issued in the month of June and not March, it could not be the basis for refund.

Decision of the case: The High Court elucidated that once it is admitted that the Department has received excess duty, they are bound to refund it to the person who has paid the excess duty. If the buyer of the goods has paid that excess duty, he would have been entitled to the said refund.

In the instant case, when the buyer had refused to pay excess duty claimed and had raised a debit note, the only inference to be drawn was that the assessee had not received that excess duty which he had paid to the Department. Consequently, Department was bound to refund to the assessee the excess duty calculated. Hence, the substantial question of law raised was answered in favour of the assessee and against the revenue.

B. SERVICE TAX

13. *Supreme Court, in case of Idea Mobile Communications Ltd. v. CCE 2011 (23) S.T.R. 433, has affirmed the decision taken by Kerela High Court in CCE v. Idea Mobile Communications (reported in Select Cases-2010) wherein it was held that SIM cards were not goods sold or intended to be sold to the customer, but supplied as part of service and hence, the value of SIM card supplied by the assessee would form part of the value taxable service on which service tax was payable by the assessee.*

14. **Is the service tax and excise liability mutually exclusive?**

Commissioner of Service Tax v. Lincoln Helios (India) Ltd. 2011 (23) S.T.R. 112 (Kar.)

Facts of the case: The assessee undertook not only manufacture and sale of its products, but also erected and commissioned the finished products. The customer was charged for the services rendered as well as the value of the manufactured products. The assessee had paid the excise duty on whole value including that for services, but did not pay the service tax on the value of services on the ground that there could not be levy of tax under two parliamentary legislations.

Decision of the case: The High Court held that the excise duty is levied on the aspect of manufacture and service tax is levied on the aspect of services rendered. Hence, it would not amount to payment of tax twice and the assessee would be liable to pay service tax on the value of services.

15. **Can appeal be filed to High Court for deciding the question relating to the taxability of service tax?**

CCEx. & ST v. Volvo India Ltd. 2011 (24) S.T.R. 25 (Kar.)

Decision of the case : The High Court held that the question as to whether the assessee is liable to pay service tax falls squarely within the exception carved cut in section 35G of the Central Excise Act, 1944, 'an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the

value of goods for purposes of assessment', and the High Court has no jurisdiction to adjudicate the said issue. The appeal lies to the Apex Court under section 35L of the Central Excise Act, 1944, which alone has exclusive jurisdiction to decide the said question.

C. CUSTOMS

16. Are the clearance of goods from DTA to Special Economic Zone chargeable to export duty under the SEZ Act, 2005 or the Customs Act, 1962?

Tirupati Udyog Ltd. v. UOI 2011 (272) E.L.T. 209 (A.P.)

Decision of the case: The High Court, while deciding the aforesaid question of law, made the following observations:-

- A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words he cannot be taxed at all.
- SEZ Act does not contain any provision for levy and collection of export duty for goods supplied by a DTA unit to a Unit in a Special Economic Zone for its authorised operations. In the absence of a charging provision in the SEZ Act providing for the levy of customs duty on such goods, export duty cannot be levied on the DTA supplier by implication.
- With regard to the Customs Act, 1962, a conjoint reading of section 12(1) with sections 2(18), 2(23) and 2(27) of the Customs Act, 1962 makes it clear that customs duty can be levied only on goods imported into or exported beyond the territorial waters of India. Since both the SEZ unit and the DTA unit are located within the territorial waters of India, Section 12(1) of the Customs Act 1962 (which is the charging section for levy of customs duty) is not attracted for supplies made by a DTA unit to a unit located within the Special Economic Zone.

The High Court thus inferred that the clearance of goods from DTA to Special Economic Zone is not liable to export duty either under the SEZ Act, 2005 or under the Customs Act, 1962.

Notes:

1. Chapter X-A of the Customs Act, 1962, inserted by Finance Act 2002, contained special provisions relating to Special Economic Zones. However, with effect from 11-5-2007, Chapter X-A, in its entirety, was repealed by Finance Act, 2007. Consequently, Chapter X-A of the Customs Act is considered as a law which never existed for the purposes of actions initiated after its repeal.
2. Karnataka High Court in case of *CCE v. Biocon Ltd.* 2011 (267) E.L.T. 28 has also taken a similar view as elucidated in the aforesaid judgment.

17. Can separate penalty under section 112 of the Customs Act be imposed on the partners when the same has already been imposed on partnership firm?

Textoplast Industries v. Additional Commissioner of Customs 2011 (272) E.L.T. 513 (Bom.)

Decision of the case: The High Court noted that Explanation to section 140 of the Customs Act, 1962 brings within purview of “Company”, a firm or an association of individuals, and “Director” in relation to firm, includes its partner. The High Court observed that in case of Apex Court judgment of *Standard Chartered Bank v. Directorate of Enforcement*, there emerged the principle that the deeming fiction is not confined to a criminal prosecution but will also extend to an adjudication proceeding as well. Hence, the High Court, in the instant case, held that the deeming fiction in section 140(2) making Director, Manager, Secretary or other officer of company liable to penalty, would not be confined to criminal prosecution but extends to adjudication proceeding as well.

The High Court explained that had it been otherwise, it would have led to strange situation where, for criminal prosecution, partner as well as person in charge responsible for conduct of business of partnership firm would be liable whereas for adjudication purposes, a narrower construction had to be adopted. There was no reason to exclude penalty on partnership firm, particularly when it was consistent with overall scheme and object of the Act.

In view of the above discussion, the High Court held that for the purpose of imposing penalty, the adjudicating authority under Customs Act, 1962 might, in an appropriate case, impose a penalty both upon a partnership firm as well as on its partners.

Note: *The Gujarat High Court, in case of CCE & C, Surat-II v. Mohammed Farookh Mohammed Ghani 2010 (259) E.L.T. 179, has held that separate penalty under section 112 could not be imposed on the partners in addition to the penalty on the partnership firm. However, the Gujarat High Court, while deciding the said case, has not considered the principle enunciated by the Supreme Court in the Standard Chartered Bank case. In the circumstances, it appears that separate penalty under section 112 can be imposed on the partners in addition to the penalty on the partnership firm.*

18. Whether Chartered Accountant's certificate alone is sufficient evidence to rule out the unjust enrichment under customs?

CCus., Chennai v. BPL Ltd. 2010 (259) E.L.T. 526 (Mad.)

Decision of the case: The High Court noted that section 27 of the Customs Act mandates on the importer to produce such documents or other evidence, while seeking refund, to establish that the amount of duty in relation to which such refund is claimed, has not been passed on by him to any other person.

However, in the given case, the respondent had not produced any document other than the certificate issued by the Chartered Accountant to substantiate its refund claim. The certificate issued by the Chartered Accountant was merely a piece of evidence acknowledging certain

facts. It would not automatically entitle a person to refund in the absence of any other evidence. Hence, the respondent could not be granted refund merely on the basis of the said certificate.

Thus, the High Court, overruling the Tribunal's decision, answered the question of law in favour of revenue.

19. Whether the benefit of exemption meant for imported goods can also be given to the smuggled goods?

CCus. (Prev.), Mumbai v. M. Ambalal & Co. 2010 (260) E.L.T. 487 (SC)

Decision of the case: The question which arose before the Apex Court for consideration was whether goods that were smuggled into the country could be considered as 'imported goods' for the purpose of granting the benefit of the exemption notification.

The Apex Court held that the smuggled goods could not be considered as 'imported goods' for the purpose of benefit of the exemption notification. It opined that if the smuggled goods and imported goods were to be treated as the same, then there would have been no need for two different definitions under the Customs Act, 1962.

The Court observed that one of the principal functions of the Customs Act was to curb the ills of smuggling on the economy. Hence, it held that it would be contrary to the purpose of exemption notifications to give the benefit meant for imported goods to smuggled goods.

20. Can the goods be detained indefinitely without any formal order under section 110 of the Customs Act, 1962?

S.J. Fabrics Pvt. Ltd. v. UOI 2011 (268) E.L.T. 475 (Cal.)

Decision of the case: The High Court held that there is no time limit for issuance of an order under section 110 and/or the proviso thereof. However, such notice should ordinarily be issued immediately upon interception and detention of the goods. The goods cannot indefinitely be detained without any order under section 110.

The High Court observed that section 110(2) provides that when any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession, the goods were seized. The proviso to Section 110(2), however, empowers the Commissioner of Customs to extend the aforesaid period of six months by a further period of not exceeding six months on sufficient cause being shown.

Note: Although, it has already been established in number of cases that detention and seizure are not same under the customs provisions, in the aforesaid judgment, the two terms seem to have been used inter-changeably. The said fact may be borne in mind while going through the aforesaid decision.

21. Is it mandatory for the Revenue officers to make available the copies of the seized documents to the person from whose custody such documents were seized?

Manish Lalit Kumar Bavishi v. Addl. DIR. General, DRI 2011 (272) E.L.T. 42 (Bom.)

Facts of the case: The assessee sought copies of the documents seized from his office premises under panchanama and print outs drawn from the Laptop during his attendance in DRI. However, Revenue officers replied that the documents would be provided to him on completion of the investigation.

Decision of the case: The High Court held that from the language of section 110(4), it was apparent that the Customs officers were mandatorily required to make available the copies asked for. It was the party concerned who had the choice of either asking for the document/seeking extract and not the officer.

If any document was seized during the course of any action by an officer and relatable to the provisions of the Customs Act, that officer was bound to make available copies of those documents. The denial by the Revenue to make the documents available was clearly an act without jurisdiction.

The High Court directed the Revenue to make available the copies of the documents asked for by the assessee which was seized during the course of the seizure action.

22. Under what circumstances can the penalty be imposed in terms of section 112(a)(ii) of the Customs Act, 1962?

O.T. Enasu v. UOI 2011 (272) E.L.T. 51 (Ker.)

The High Court noted that under sub-clause (ii) of clause (a) of section 112, the liability to penalty is determined on the basis of duty sought to be evaded. Therefore, the jurisdictional fact to impose a penalty in terms of section 112(a)(ii) includes the essential ingredient that “**duty was sought to be evaded**”. Being a penal provision, it requires to be strictly construed. “Evade” means, to escape, slip away, to escape or avoid artfully, to shirk, to baffle, elude. The concept of evading involves a conscious exercise by the person who evades. Therefore, the process of “seeking to evade” essentially involves a mental element and the concept of the status “sought to be evaded” is arrived at only by a conscious attempt to evade.

In view of the above discussion, the High Court inferred that unless it is established that a person has, by his omissions or commissions, led to a situation where duty is sought to be evaded, there cannot be an imposition of penalty in terms of section 112(a)(ii) of the Act.

PART – III : QUESTIONS AND ANSWERS

QUESTIONS

CENVAT Credit Rules, 2004

1. Vardhman Ltd., engaged in manufacturer of excisable goods at Delhi, is registered as 'Input Service Distributor'. It has its units situated at Meerut and Moradabad also. It pays the service tax of ₹ 12,50,000 for services received by it and its units from various service providers. Thereafter, it distributes credit of the service tax to its various units. The unit situated at Meerut availed and utilized the said credit for payment of central excise duty on its final products.

Revenue denies the credit availed and utilised by the Meerut unit. It contends that credit utilised by Meerut unit is in respect of the advertising services which were obtained by Moradabad unit.

Examine the veracity of the Department's contention with reference to a decided case law.

[Hint: *CCE v. Ecof Industries Pvt. Ltd. 2011 (271) E.L.T. 58 (Kar.)*]

2. Parsvnath Financials Ltd., a Non-Banking Financial Company, is engaged in providing the 'banking and other financial services'. It furnishes the following information for the month of August, 2011:

Particulars	Amount
CENVAT credit availed on inputs	₹ 2,00,000
CENVAT credit availed on input services	₹ 5,00,000
Service tax liability	₹ 10,20,000

Determine the amount of CENVAT credit available to Parsvnath Financials Ltd. for the month of August, 2011. Also determine the net service tax payable by Parsvnath Financials Ltd. for the said month.

Note: Parsvnath Financials Ltd. is not eligible for small service providers' exemption under *Notification No. 6/2005 dated 01.03.2005* for the financial year 2011-12.

[Hint: Rule 6(3B) of the CENVAT Credit Rules, 2004]

Exemption based on value of clearances (SSI)

3. Aggarwal & Company is a manufacturing company. In the financial year 2011-12, the details of its clearances of excisable goods are as follows:-

	Particulars	₹. (Lakhs)
(i)	Total exports (including for export to Bhutan ₹50 lakhs)	600

(ii)	Clearances of excisable goods without payment of duty to a 100% EOU	10
(iii)	Job work under Notification No. 84/94-CE dated 11.4.94	50
(iv)	Job work under Notification No. 214/86-CE dated 25.3.86	50
(v)	Clearances of goods bearing brand name of National Small Industries Corporation	100
(vi)	Clearances of corrugated boxes bearing the brand name of Sugar & Spice Confectioners. Sugar & Spice Confectioners use these corrugated boxes for packing the bakery products produced by them.	200

On the basis of above information, you are required to ascertain the eligibility of Aggarwal and Company for exemption based on value of clearances in terms of *Notification No. 8/2003-CE dated 1.3.2003* as amended for the financial year 2012-13.

Search and seizure

4. Can a document which is relevant for a proceeding under the Central Excise Act, 1944 be searched by a Central Excise Officer? Explain the relevant provisions.

[Hint: Section 12 F of Central Excise Act, 1944]

Appeals

5. Rishabh Internationals Limited (RIL) cleared the goods to Sambhav Enterprises (SE) paying excise duty @ 14% in the month of March, 2011 although the rate of duty on the said goods had been reduced to 10% in the Union Budget 2011-12. However, SE refused to pay the higher duty paid by RIL by mistake and subsequently raised a debit note. RIL applied for the refund of excess excise duty paid of ₹ 4,90,000 which was rejected by the Department on the ground that a debit note could not form the basis for refund.

An appeal was filed to the Commissioner of Central Excise (Appeals) which passed an order accepting RIL's refund claim. You are required to examine whether, in the instant case, Revenue being aggrieved by the order of the Commissioner of Central Excise (Appeals) can file an appeal to the CESTAT against such order.

[Hint: Revised monetary limits for filing appeals by the Department before CESTAT as prescribed by CBEC]

Manufacture

6. Prakhat Manufacturers was a manufacturer of cigarettes. It used duty paid paperback aluminum foil in the roll form for the purpose of packing cigarettes. In the process, the roll of aluminum foil was cut horizontally to make separate pieces of the foil and word 'PULL' was embossed on it. Thereafter, fixed number cigarettes were wrapped in it. An aluminium foil being resistant to moisture was used as a protector for the cigarettes and to keep them dry.

Revenue issued a show cause notice to Prakhat Manufacturers alleging that the process of cutting and embossing aluminum foil amounted to manufacture. Since the aluminum foil was used as a shell for cigarettes to protect from them moisture; the nature, form and purpose of foil were changed.

Briefly discuss, with reference to case law, whether the show cause notice is sustainable in law.

[Hint: *CCE v. GTC Industries Ltd. 2011 (266) E.L.T. 160 (Bom.)*]

Valuation of excisable goods

7. Mahavir Manufacturers, engaged in the manufacture of machines, sold a machine to Highland Enterprises. Cum-duty sales price of the machine excluding sales tax is ₹ 3,50,000. Rate of excise duty is 10%, education cess is 2% and secondary and higher education cess is 1%. Sales price includes the following charges:-

S.No.	Particulars	Amount (₹)
(i)	Secondary packing	5,500
(ii)	Design and development charges of machine	20,000
(iii)	Warranty charges	35,000
(iv)	Cost of return fare of vehicles	2,000
(v)	Trade discount	3,000
(vi)	Advertisement and publicity expenses borne by Highland Enterprises	15,000
(vii)	Pre-delivery inspection charges	20,000

Determine the amount of assessable value of the machine for the purposes of the levy of the excise duty.

Export procedures

8. Answer in brief the following questions relating to export without payment of duty to any country other than Nepal and Bhutan under rule 19 of the Central Excise Rules, 2002:
- What is the type of bond to be executed? Who is exempted from furnishing such bond?
 - What is the export document for export clearance? How many copies are required to be prepared for it?
 - Is it necessary to prepare an invoice also? If yes, how should it be prepared?
 - What will be the duty payable, if goods are not exported within six months after clearance?

Filing of service tax return

9. Answer the following:-

(a) Padma Ltd. is engaged in providing taxable services. For the half year ending on 31.03.2011, it furnished its return on 24.07.2011. On the basis of the information provided, answer the following questions:-

(i) What is the due date for filing return for Padma Ltd.?

(ii) Compute the amount of late fee payable by Padma Ltd.

[Hint: Rule 7(2) and 7C of the Service Tax Rules, 1994]

(b) Bhavani Consultants Ltd. paid service tax of ₹ 9.8 lakh in cash in the financial year 2010-11. For the half year ended September 30, 2011, it did not file its return electronically. You are required to examine whether, in the instant case, Bhavani Consultants Ltd. is required to file its return electronically.

Point of Taxation Rules, 2011

10. Sahil Ltd. entered into a contract with Singla Ltd. for construction of a new building to be used primarily for the purpose of commerce or industry for a total consideration of ₹ 300 lakh on July 01, 2011. The said services fall within the purview of "commercial or industrial construction services". The initial booking amount of ₹ 30 lakh was billed and received on the date of contract itself. It was further agreed that ₹ 120 lakh, ₹ 70 lakh and ₹ 80 lakh would be received on completion of 50%, 75% and 100% of the construction work of the building as certified by the Chartered Engineer. Determine the point of taxation in respect of each of following stages of completion with the help the relevant details furnished thereunder:

Stage	% of completion of the building	Date of completion	Date of issuance of invoice	Date of payment of stipulated amount
I	50%	August 15, 2011	August 22, 2011	August 29, 2011
II	75%	September 20, 2011	October 10, 2011	October 25, 2011
III	100%	November 30, 2011	December 11, 2011	December 07, 2011

[Hint: Rule 6 of the Point of Taxation Rules, 2011]

Legal consultancy services

11. Denis Ltd., a law firm, is engaged in providing the legal consultancy services. Compute the service tax payable by Denis Limited, for the following amounts received in the month of December, 2011:-

Particulars	Receipts (₹)
Technical consultancy in relation to incorporation of company provided to Rockland Private Limited	5,50,000
Assistance in filing the service tax return of Elley Enterprises for the half year ending September 30, 2011	4,00,000
Advice to Modi Group provided in July, 2011 with regard to compliance with the provisions of the Competition Act, 2002	6,75,000
Appearance before Labour Court on behalf of Swapnil in the month of October, 2011	6,10,000

Note: All the receipts are exclusive of service tax. Denis Limited is not eligible for small service provider's exemption under *Notification No. 6/2005 ST dated 01.03.2005* in the financial year 2011-12.

[Hint: Section 65(105)(zzzzm) of the Finance Act, 1994 and rule 7 of the Point of Taxation Rules, 2011]

Applicability of service tax on delayed payment charges

12. Suhani Securities Ltd. (SSL) collected late payment charges of ₹ 3,00,000 in the month of January 2012 from its clients as they did not make the required payments for their share purchases. SSL was ambiguous regarding the levability of service tax on such payments. It referred to the practice being followed in other similar segments and found that an amount collected for delayed payment of a telephone bill did not form part of the value of taxable service. Consequently, SSL also did not deduct service tax on the said amount. The Department issued a show cause notice on SSL raising a demand of service tax on the said late charges collected by it. You are required to examine whether the show cause notice issued by Department is valid in law or not.

Note: The delayed payment charges were indicated separately in the invoices raised by SSL.

[Hint: CBEC Letter No. F.No.137/25/2011-ST dated 03.08.2011]

Input tax credit

13. Briefly explain whether the purchases are eligible for availing input tax credit in each of the following cases:-
- Rohan purchased goods from a registered dealer. He claims that he has paid the amount of VAT on the said goods, but the invoice pertaining to said purchases has been lost on account of negligence of a clerk in his office.
 - Jain & Co. purchased goods from Tide Enterprises. Tide Enterprises is an unregistered dealer.

- (c) Ankit purchased some capital goods. The final product manufactured by Ankit using these capital goods is exported.

VAT under lease transactions

14. Explain briefly whether VAT is leviable on each of the following lease transactions:-

- (a) Inter State Leasing
- (b) Sale of leased asset after lease period
- (c) Maintenance of leased asset

Computation of VAT

15. Determine the taxable turnover, input tax credit and net VAT payable by a works contractor from the details given below on the assumption that the contractor maintains sufficient records to quantify the labour charges. Assume output VAT at 12.5%:-

	Particulars	₹ (in lakh)
(i)	Total contract price (excluding VAT)	100
(ii)	Labour charges paid for execution of the contract	35
(iii)	Cost of consumables used not involving transfer of property in goods	5
(iv)	Material purchased and used for the contract taxable at 12.5% VAT (VAT included)	45

The contractor also purchased a plant for use in the contract for ₹ 10.4 lakhs (inclusive of VAT). In the VAT invoice relating to the same, VAT was charged at 4% separately. Assume 100% input tax credit is available on capital goods immediately.

Make suitable assumption wherever required and show the working notes.

Disadvantages of composition scheme

16. Explain in brief the disadvantages of composition scheme available for small dealers under VAT system.

Smuggled goods

17. Champalal & Co. had smuggled rough diamonds into the country clandestinely without payment of duty. The Department issued a notice to Champalal & Co. proposing confiscation of the diamonds under clause (d) of section 111 of the Customs Act, 1962 and imposing penalties on various persons concerned.

However, the said goods were unconditionally exempted from the payment of the import duty vide an exemption notification. So, Champalal & Co. contended the benefit of the said exemption notification. However, the Department denied to give the benefit of exemption meant for imported goods to be given to the smuggled goods.

Do you think that Department's action is valid in law?

[Hint: CCus. (Prev.), *Mumbai v. M. Ambalal & Co.* 2010 (260) E.L.T. 487 (SC)]

Seizure

18. Examine, with the help of a decided case law, whether it is mandatory for the Revenue officers to make available the copies of the seized documents to the person from whose custody such documents were seized.

[Hint: *Manish Lalit Kumar Bavishi v. Addl. DIR. General, DRI* 2011 (272) E.L.T. 42 (Bom.)]

Valuation under customs

19. Tarapur Industries Ltd., has imported certain equipment from Japan at an FOB cost of 4,00,000 Yen (Japanese). The other expenses incurred by Tarapur Industries in this connection are as follows:-

- | | |
|---|------------|
| (i) Freight from Japan to India Port | 40,000 Yen |
| (ii) Insurance paid to Insurer in India | ₹ 5,000 |
| (iii) Tarapur Industries had expended ₹ 2,00,000 in India for certain development activities with respect to the imported equipment | |
| (v) Tarapur Industries had incurred road transport cost from Mumbai port to their factory in Gujarat | ₹ 30,000 |
| (vi) The Central Board of Excise and Customs had notified for purpose of section 14 of the Customs Act, 1962 exchange rate of 1 Yen = ₹ 0.4. The inter bank rate was 1 Yen = ₹ 0.3948 | |
| (vii) Tarapur Industries Ltd. had effected payment to the Bank based on exchange rate 1 Yen = ₹ 0.4250 | |
| (viii) The commission payable to the agent in India was 10% of FOB cost of the equipment in Indian Rupees | |

Arrive at the assessable value for purposes of customs duty under the Customs Act, 1962 providing brief notes wherever required with appropriate assumptions.

[Hint: Rule 10(1)(b)(iv), 10(2)(a), 10(2)(c), 10(1)(a)(i) and proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and section 14 of the Customs Act, 1962]

Powers of CBEC

20. Briefly explain the power of CBEC to issue instructions regarding non-filing of appeal in certain cases under the Customs Act, 1962.

[Hint: Section 131 BA of the Customs Act, 1962]

SUGGESTED ANSWERS/HINTS

1. No, Department's contention is not valid in law. The facts of the given case are similar to the case of *CCE v. Ecof Industries Pvt. Ltd.* 2011 (271) E.L.T. 58 (Kar.). Considering rules 2(k), 2(l), 2(m), 3(1) and 7 of the CENVAT Credit Rules, 2004, the High Court elucidated that merely because the service tax on the input service was paid at a particular unit and the benefit was sought to be availed at another unit, the same was not prohibited under law. However, the head office must register himself as an input service distributor and thereafter, he would be entitled to distribute the credit of such input in the manner prescribed under law. Hence, in the instant case, Meerut unit has rightly availed the CENVAT credit of the service tax paid by Vardhman Ltd.
2. According to rule 6(3B) of the CENVAT Credit Rules, 2004, notwithstanding anything contained in sub-rules (1), (2) and (3) of rule 6, a banking company and a financial institution including a non-banking financial company (NBFC), providing 'banking and other financial services', shall pay for every month an amount equal to 50% of the CENVAT credit availed on inputs and input services in that month. In other words, a banking company is entitled to utilise only 50% of the CENVAT credit in respect of the inputs and input services.

Computation of CENVAT credit available to Parsvnath Financials Ltd. for the month of August, 2011:-

Particulars	Amount (₹)
CENVAT credit availed on inputs	2,00,000
CENVAT credit availed on input services	<u>5,00,000</u>
Total amount of credit availed	7,00,000
Less: Payment of 50% of CENVAT credit availed on inputs and input services by virtue of rule 6(3B)	<u>3,50,000</u>
Net CENVAT credit available for August, 2011	<u>3,50,000</u>

Computation of net service tax payable by Parsvnath Financials Ltd. for the month of August, 2011:-

Particulars	Amount (₹)
Service tax liability for August	10,20,000
Less: Eligible CENVAT credit available on inputs and input services	<u>3,50,000</u>
Net service tax payable by Parsvnath Financials Ltd.	<u>6,70,000</u>

3. **Calculation of value of clearances of Aggarwal and Company during financial year 2011-12**

Particulars	₹ (in lakhs)
Export to Bhutan (Note-1)	50

Clearances of excisable goods bearing brand name of National Small Industries Corporation (Note-4)	100
Clearances of corrugated boxes bearing the brand name of Sugar and Spice Confectioners used for packing the bakery products by them (Note-4)	<u>200</u>
Value of clearances during the financial year 2011-12	<u>350</u>

Notes:-As per the *Notification No. 08/2003 dated 01.03.2003*, while computing the turnover of Aggarwal & Company during financial year 2011-12 (as shown above):-

1. export turnover has been excluded. However, export to Bhutan cannot be excluded as these are treated as "clearances for home consumption".
2. clearances under specified job work notifications are excluded and *Notification No. 214/86 CE* and *84/94-CE* are the specified notifications.
3. clearances of excisable goods without payment of duty to a 100% EOU are excluded.
4. clearances bearing the brand name or trade name of another person are excluded. However, following clearances of excisable goods bearing brand name are included:-
 - (a) Goods bearing brand name/trade name of National Small Industries Corporation.
 - (b) Goods in the nature of packing materials and meant for use as packing material by or on behalf of the person whose brand name they bear.

In order to claim the benefit of exemption under *Notification No. 8/2003 – C.E.* in a financial year, the total turnover of a unit should not exceed ₹ 400 lakh in the preceding year. Since the value of clearances in the previous financial year 2011-12 does not exceed ₹ 400 lakh, the Aggarwal & Company is eligible to claim the benefit of *Notification No. 8/2003 dated 1st March, 2003* in the financial year 2011-13.

4. The provisions of section 12F of the Central Excise Act, 1944 (as inserted by the Finance Act, 2011) are as follows:-

Where the Joint Commissioner/Additional Commissioner of Central Excise or such other Central Excise Officer as may be notified by the Board has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any Central Excise Officer to search and seize or may himself search and seize such documents or books or things.

The provisions of the Code of Criminal Procedure, 1973 relating to search and seizure, shall, so far as may be, apply to search and seizure under this section as they apply to search and seizure under that Code.

5. No, Revenue cannot file an appeal to CESTAT against the order passed by the Commissioner of Central Excise (Appeals). As per the National Litigation Policy, in Revenue matters, appeal shall not be filed if the amount involved is less than the monetary limit fixed by the Revenue authorities for the said purpose. CBEC has issued the instructions fixing the monetary limits of duty below which an appeal shall not be filed in CESTAT, High Court and Supreme Court. Consequently, an appeal cannot be filed in Tribunal if the duty involved in a case is ₹ 5,00,000 or below and these monetary limits apply to cases of refund as well. Since the amount of duty involved in the instant case is less than ₹ 5,00,000, the Revenue cannot file an appeal in the Tribunal.
6. No, the show cause notice is not sustainable in law. The facts of the given case are similar to case of *CCE v. GTC Industries Ltd. 2011 (266) E.L.T. 160 (Bom.)*. The High Court pronounced that cutting and embossing did not transform aluminum foil into distinct and identifiable commodity. It did not change the nature and substance of foil. The said process did not render any marketable value, only made it usable for packing. There were no records to suggest that cut to shape/embossed aluminum foils used for packing cigarettes were distinct marketable commodity. Hence, process did not amount to manufacture as per section 2(f) of the Central Excise Act, 1944. Only the process which produces distinct and identifiable commodity and renders marketable value can be called manufacture.
7. **Computation of assessable value of the machine:-**

Particulars	Amount (₹)
Cum-duty sales price of the machine excluding sales tax	3,50,000
Less: Cost of return fare of vehicles	2,000
Less: Trade discount	<u>3,000</u>
Cum-duty price for excise duty purposes	<u>3,45,000</u>
Assessable value = $\frac{3,45,000}{110.30} \times 100$	3,12,783.30

Notes:

While computing the assessable value:-

1. amount charged from the buyer in relation to packing, whether primary or secondary, will be included [Circular No. 643/34/2002 dated 01.07.2002].
2. design and engineering charges will be included as such payment is 'in connection with sale'.
3. advertisement and publicity expenses borne by the buyer shall not be excluded [Circular No. 643/34/2002 dated 01.07.2002]
4. As per the definition of the transaction value under section 4(3)(d) of the Central Excise Act, 1944, warranty charges are includible.

5. cost of return fare of vehicles is not includible [*Circular No. 923/13/2010 – CX dated 19.05.2010*].
6. Trade discount is allowable as deduction.
7. pre-delivery inspection charges are includible [*Circular No. 936/26/2010-CX. dated 27-10-2010*].
8. Procedures and conditions for export without payment of duty to all countries except Nepal and Bhutan are specified in *Notification No.42/2001 C.E. (N.T.) dated 26.6.2001*. Part-wise answers to the questions are given below:
 - (i) A bond in Form B-1 is required to be executed by a merchant exporter in case of export without payment of duty. The bond should be at least equal to the duty chargeable on the goods, with such surety or security as the excise officer may approve. Manufacturer- exporter is exempted from furnishing such bond. He can furnish an annual Letter of Undertaking (LUT) in Form UT-1.
 - (ii) ARE-1 is the export document for export clearance which shall be prepared in five copies (quintuplicate). The fifth copy is the optional copy which the assessee can use for claiming other export incentives.
 - (iii) Yes, the goods have to be cleared from the factory under an invoice which shall be prepared in terms of rule 11 of the Central Excise Rules, 2002. The invoice should be prominently marked as "FOR EXPORT WITHOUT PAYMENT OF DUTY".
 - (iv) Goods must be exported within 6 months from the date of clearance for export, unless extension is granted by Assistant Commissioner/Deputy Commissioner. If goods are not exported within 6 months from the date of clearance for export, the exporter should deposit the applicable excise duty on such goods along with the interest. As per rule 5 of the Central Excise Rules, 2002, the applicable duty shall be computed as per the rate and tariff value applicable on the date of removal of such goods from the factory.
9. (a) (i) As per rule 7(2) of the Service Tax Rules, 1994, due date for filing the service tax return for the half year ending on 31.03.2011 is 25.04.2011.
 - (ii) Padma Ltd. furnished its return on 24.07.2011. Hence, as per rule 7C, it is liable to pay the late fee as follows:-

Delay in submission of return = $5+31+30+24 = 90$ days

As per rule 7C of the Service Tax Rules, 1994, in case the period of delay in filing of return is beyond 30 days from the date prescribed for submission of return, amount of late fees is an amount of one thousand rupees plus one hundred rupees for every day from the thirty first day till the date of furnishing the said return. However, total fees for delayed submission of return shall not exceed ₹ 20,000.

Amount of late fees payable by Padma Ltd. is ₹ 1,000 + (₹ 100×60 days) = ₹ 7,000

- (b) Yes, in the instant case, Bhavani Consultants Ltd. is required to file its return electronically. Service Tax Rules, 1994 have been amended to provide that with effect from 01.10.2011, every assessee will have to submit half-yearly service tax return electronically, irrespective of the amount of service tax paid by him in the preceding financial year. Hence, now all assesses are required to file service tax returns electronically. Therefore, for the half year ended September 30, 2011, Bhavani Consultants Ltd. shall file its return electronically.
10. Since “commercial or industrial construction services” have been notified as continuous supply of service for the purpose of the Point of Taxation Rules, 2011, rule 6 becomes applicable in the instant case. According to rule 6, in case of continuous supply of services, point of taxation will be determined in the following manner:-

Stage	Point of taxation as per rule 6	Point of taxation in the given case
I	In case invoice is issued within 14 days from the completion of milestone for payment and payment is received after invoice, point of taxation is the date of invoice.	August 22, 2011
II	In case the invoice is NOT issued within 14 days from the completion of milestone for payment and payment is received after completion of such milestone, point of taxation is date of completion of milestone for payment	September 20, 2011
III	In case the invoice is issued within 14 days from the completion of milestone for payment and advance payment is received before invoice, point of taxation is date of receipt to the extent of such advance	December 07, 2011

Further, the point of taxation for the initial booking amount is July 01, 2011 as the date of issuance of invoice as well as date of payment is same.

11. **Computation of service tax payable by Denis Limited for the month of December, 2011:-**

Particulars	Receipts (₹)
Technical consultancy in relation to incorporation of company provided to Rockland Private Limited	5,50,000
Assistance in filing the half-yearly service tax return of Elley Enterprises	4,00,000

Advice to Modi Group with regard to compliance with the provisions of the Competition Act, 2002	<u>6,75,000</u>
Value of taxable services	16,25,000
Service tax @10% = ₹16,25,000 × 10%	1,62,500
Education cess @ 2% = ₹1,62,500 × 2%	3,250
Secondary and higher education cess @1% = ₹1,62,500 × 1%	<u>1,625</u>
Service tax payable	<u>1,67,375</u>

Notes:

1. As per section 65(105)(zzzzm),
 - (a) Service provided to any person, by a business entity, in relation to advice, consultancy or assistance in any branch of law, in any manner is liable to service tax. Hence, receipts from Rockland Private Limited, Elley Enterprises and Modi Group are liable to service tax.
 - (b) Service provided by any person, in relation to representational services before any court, tribunal or authority, to an individual is not liable to service tax. Hence, the amount of ₹ 6,10,000 received from Swapnil for appearance before Labour Court is not liable to service tax.
2. As per rule 7 of the Point of Taxation Rules, 2011, in case of legal consultancy services service tax is payable on receipt basis. Hence, the value of taxable services has been computed accordingly.
12. No, the show cause notice issued by Department is not valid in law. *CBEC Letter No. F.No.137/25/2011-ST dated 03.08.2011* has clarified that delayed payment charges received by the stock brokers are not includible in taxable value provided these charges are shown separately in the account statement/invoice/bill etc because the same are not the charges for providing taxable services. Such charges are on account of delay in making payments by the service recipient to the service provider and are in the nature of a penal charge for not making the payment within stipulated time.
13. (a) The purchases made by Rohan are not eligible for claiming input tax credit because the purchase invoice is not available with the claimant.
- (b) Purchases made by Jain & Co. from Tide Enterprises are not eligible for input tax credit as Tide Enterprises is not a registered dealer.
- (c) Ankit can claim the input tax credit in respect of the purchase of the capital goods as capital goods used for manufacturing/packing goods to be sold in the course of export out of the territory of India are eligible for claiming input tax credit.
14. (a) Lease of an asset in the course of inter-State or import trade cannot be taxed under a State VAT law. It can be taxed under the Central Sales-tax Act, 1956 as deemed

sales.

- (b) Sale of a leased asset after the lease period is over is taxable in the same manner in which normal sale of such asset would have been taxed. Normally, such sale is effected to the same lessee and hence, such sale would be a local one exigible to tax under the VAT laws of the State in which the asset is located.
- (c) The maintenance of the leased asset involving supply of materials for maintenance/repair by the lessor would not amount to works contract, as there would be no transfer of property in such materials to the lessee. Thus, there would be no VAT on the value of the materials supplied during maintenance/repair of the asset. In case of computers, generally the lessor undertakes the maintenance and repair of the leased computers. However, the materials required during such maintenance /repair would be input for sale and input tax credit will be available.
15. Under the works contract, the turnover for imposition of VAT is the sale price of the goods in which there is a transfer of property. The amount representing the labour and other charges incurred for such execution is deductible.

Computation of the taxable turnover, input tax credit and net VAT payable by the works contractor:

Particulars		₹	
Total contract price		1,00,00,000	
Less : Deductions admissible			
1. Labour charges paid for executing the contract	35,00,000		
2. Cost of consumables in which no property is transferred	<u>5,00,000</u>		
Total deductions		<u>40,00,000</u>	
Taxable turnover		<u>60,00,000</u>	
Output VAT payable @ 12.5% (on ₹ 60,00,000)		7,50,000	(A)
Less : Input tax credit admissible			
1. On the material purchased (on ₹ 45,00,000 x 12.5/112.5)	5,00,000		
2. On the plant purchased (on ₹ 10,40,000 x 4/104)	<u>40,000</u>		
Input tax credit		<u>5,40,000</u>	(B)
Net VAT payable		<u>2,10,000</u>	(A-B)

16. As per the White Paper, small dealers with annual gross turnover not exceeding ₹ 50 lakh who are otherwise liable to pay VAT, have the option for a composition scheme with payment

of tax at small percentage of their gross turnover. The dealers opting for this scheme will not be entitled to input tax credit. The VAT chain gets broken under the composition scheme.

Following are the disadvantages of this scheme:

1. The purchaser does not get any tax credit for the purchases made by him from the dealer operating under the composition scheme. Hence, the dealers who desire to avail input tax credit on their purchases may not prefer to buy from composition dealers.
 2. The dealer cannot avail input tax credit in respect of input tax paid by him and will not be able to pass on the benefit of input tax credit, which will add to the cost of goods.
17. Yes, the Department's action is valid in law. The facts of the given case are similar to the case of *CCus. (Prev.), Mumbai v. M. Ambalal & Co. 2010 (260) E.L.T. 487 (SC)*. In the instant case, the question as to whether goods that were smuggled into the country could be considered as 'imported goods' for the purpose of granting the benefit of the exemption notification was decided by the Apex Court.

The Apex Court held that the smuggled goods could not be considered as 'imported goods' for the purpose of benefit of the exemption notification. It opined that if the smuggled goods and imported goods were to be treated as the same, then there would have been no need for two different definitions under the Customs Act, 1962.

The Court observed that one of the principal functions of the Customs Act was to curb the ills of smuggling on the economy. Hence, it held that it would be contrary to the purpose of exemption notifications to give the benefit meant for imported goods to smuggled goods.

18. The question as to whether it is mandatory for the Revenue officers to make available the copies of the seized documents to the person from whose custody such documents were seized, has been decided by the Bombay High Court in case of *Manish Lalit Kumar Bavishi v. Addl. DIR. General, DRI 2011 (272) E.L.T. 42*. The High Court held that from the language of section 110(4), it was apparent that the Customs officers were mandatorily required to make available the copies asked for. It was the party concerned who had the choice of either asking for the document/seeking extract and not the officer.

If any document was seized during the course of any action by an officer and relatable to the provisions of the Customs Act, that officer was bound to make available copies of those documents. The denial by the Revenue to make the documents available was clearly an act without jurisdiction.

The High Court directed the Revenue to make available the copies of the documents asked for by the assessee which was seized during the course of the seizure action.

19. Computation of assessable value of Tarapur Industries:-

FOB value	4,00,000.00
Add: Freight	<u>40,000.00</u>
Total	<u>4,40,000.00</u>

Total value in Indian rupees	
4,40,000 Yen × ₹ 0.40	₹ 1,76,000.00
(Rate of 1 yen = ₹ 0.40)	
Add: Insurance	₹ 5,000.00
Add: Agent's commission at 5% FOB value	<u>₹ 16,000.00</u>
(10% of 4,00,000 Yen × ₹ 0.40)	
Total CIF price	₹ 1,97,000.00
Add: Landing charges @ 1%	
(1% of 1,97,000)	<u>₹ 1,970.00</u>
Assessable value for the purposes of customs duty	<u>₹ 1,98,970</u>

Notes:

- (i) **Rule 10(1)(b)(iv) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007** *inter alia* provides that value of development work undertaken *elsewhere than in India* is includible in the value of the imported goods. Thus, development charges paid for work done *in India* have not been included for the purposes of arriving at the assessable value.
 - (ii) As per **rule 10(2)(a)** of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the cost of transport of the imported goods *up to the place of importation* is includible for the purpose of valuation. Thus, transport cost from Mumbai port (place of importation) to the factory in Gujarat has not been considered for the purpose of customs valuation.
 - (iii) Insurance has been assumed to be in respect of the cost of the equipment till the place of importation and is thus, includible [**Rule 10(2)(c)** of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
 - (iv) As per **rule 10(1)(a)(i)** of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, buying commission is not includible in the value of the imported goods. Since the agent's commission does not represent buying commission, hence, it is includible.
 - (v) Landing charges have been considered as per clause (ii) of the **proviso to rule 10(2)** of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
 - (vi) The rate of exchange notified by the CBEC has been considered [Clause (a) of the explanation to section 14 of the Customs Act, 1962].
- 20.** With effect from 20.10.2010, section 131BA has been inserted after section 131B which provides as follows:-
- The Board may issue instructions fixing such monetary limits for the purposes of regulating the filing of appeal/application/revision/reference by the Commissioner of Customs.

Where the Commissioner of Customs has not filed an appeal/application/revision/reference against any decision or order passed under the provisions of this Act in pursuance of such an instruction, he shall not be precluded from filing any appeal etc. in any other case involving the same or similar issues or questions of law.

Non-filing of appeal, application etc. by Commissioner of Customs cannot be considered to be his acquiescence in the decision on disputed issue. Further, Appellate Tribunal or court must have regard to the circumstances for non-filing of appeal etc.