Gurukripa's Guideline Answers to May 2012 Final Exam Questions

Question 1(a) 5 Marks

Dharma Manufacturers, engaged in the manufacture of Machines (and not availing Small–Scale Concession) sold a Machine to Asha Ltd. The Cum–Duty Sale Price of the Machine excluding VAT is ₹ 5,80,000. Rate of Excise Duty is 12%, Education Cess is 2% and Secondary Higher Education Cess is 1%.

Sale Price includes the following Charges:

Particulars	₹
(i) Warranty Charges	28,000
(ii) Secondary Packing	6,000
(iii) Trade Discount actually allowed	24,000
(iv) Design and Development Charges of Machine	20,000
(v) Primary Packing	10,000
(vi) Cost of return fare of Vehicles	4,500
(vii) Advertisement and Publicity Charges borne by Asha Ltd	16,000
(viii) Pre–delivery Inspection Charges	22,000
(ix) After Sales Service Charges	18,000

- Determine the Assessable Value of the Machine for purpose of Central Excise Duty.
- Provide notes in respect of the treatment for each of the items listed at (i) to (ix) above.

Solution:

Calculation of Assessable Value of the Machine u/s 4 of Central Excise Act, 1944

	Particulars	**Amount**	**Reasons**
	Cum Duty Price	5,80,000	
Less:	Cost of Return fare of Vehicles	4,500	All expenses after the place of removal shall be excluded from AV. When cost of onward journey is excluded as per Rule 5, cost of return journey shall not be included in AV.
	Cum–Duty	**5,75,500**	
Less:	Excise Duty at 12%	61,463	(5,75,500 × 12 ÷ 112.36)
Less:	Education Cess at 2%	1,229	(5,75,500 × 0.24 ÷ 112.36)
Less:	Secondary Higher Education Cess at 1%	615	(5,75,500 × 0.12 ÷ 112.36)
	Assessable Value	**5,12,193**	

Working Notes: Adjustments are not made for the following heads based on the reasoning given therein –

1. Warranty Charges, Secondary Packing and Primary Packing are specifically included in AV u/s 4.
2. The price quoted is assumed to be exclusive of trade discount. It is deductible on the assumption that it is part of the manufacturer's policy to allow trade discount in ordinary course of his business.
3. Design and Development expenses are incurred in relation to manufacture and hence includible in AV.
4. Advertisement, Publicity and After–Sales Service charges are specifically included u/s 4.
5. Pre–Delivery inspection charges are assumed to be incurred as per the contract before removal from factory and hence includible in Assessable Value.

Question 1(b) 5 Marks

Choti Ltd., engaged in the manufacture of excisable goods started its business in May 2011. It availed Small Scale Exemption as per Notfn. No. 8/2003–C.E. dt. 01.03.2003 as amended for the Financial Year 2011–2012. The following details are provided:

Particulars	₹
15,000 kgs of inputs purchased @ ₹ 992.70 per kg (inclusive of central excise duty @ 12.36%)	1,48,90,500
Capital Goods purchased on 28.6.2011 (inclusive of excise duty at 12.36%)	44,12,000
Finished Goods sold (at uniform transaction value throughout the year)	2,50,00,000

Calculate the amount of Excise Duty payable by M/s.Choti Ltd. in cash, if any, during the Financial Year 2011–12. Rate of duty on Finished Goods sold may be taken at 12.36% for the year and you may assume that the selling price is exclusive of Central Excise Duty. There is neither any processing loss nor any inventory of input and output. Show your workings and notes with suitable assumptions as required.

Solution:

1. As Choti Ltd is availing exemption as a Small Scale Industry, clearances till 150 Lakhs will not be liable for Excise Duty.
2. CENVAT Credit on inputs would be allowed only for those which are used in manufacture of dutiable goods. i.e. only after crossing the Rs.150 Lakhs limit.
3. CENVAT Credit on Capital Goods can be availed even if purchased during the period of exemption but can be utilized only when the exemption limit is crossed. An SSI can avail the CENVAT on Capital Goods **in full** in the year of purchase.
4. Calculation of Duty Liability is as under –

Particulars		Calculation	Amount
	Finished Goods sold		2,50,00,000
Less:	Basic Exemption		1,50,00,000
	Clearances liable for Excise Duty		100,00,000
	Excise Duty	1,00,00,000 x 12.36% (inclusive of EC and SHEC)	12,36,000
Less:	Credit on Inputs	$(1,48,90,500 \times \frac{12.36}{112.36} \times \frac{100,00,000}{250,00,000})$	(6,55,203)
Less:	Credit on Capital Goods **(Note 3)**	$(44,12,000 \times \frac{12.36}{112.36})$	(4,85,336)
Net ED payable (incl. EC and SHEC)			**95,461**

Question 1(c) 5 Marks

Justice & Co. (Partnership) is a Law Firm engaged in providing Legal Consultancy Services under Sec.65(105)(zzzm) of the Finance Act, 1994. Compute the Service Tax payable by Justice & Co. in respect of the amounts received in March, 2012.

	Nature	Receipt (₹)
(i)	Consultancy in relation to incorporation of XYZ Co. Ltd.	10,00,000
(ii)	Advance towards assistance in filing Service Tax Return of PQR Ltd. for half year ending March, 2012.	2,00,000
(iii)	Advice to MNO & Co. in July, 2011 with regard to compliance under Point of Taxation Rules, 2011.	3,75,000
(iv)	Appearance before labour court on behalf of Mr.Worker (an individual) in the month of October, 2011.	25,000

Note: All receipts are exclusive of service tax. Justice & Co. is not eligible for Small Scale Service Provider's exemption under Notification No. 6/2005–S.T. dated 1.3.2005 in the Financial Year 2011–12. Show working notes with assumptions required.

Solution:

Calculation of Service Tax Payable by Justice & Co (Partnership Firm)

Particulars	₹
(a) Consultancy in relation to Incorporation of XYZ Ltd	10,00,000
(b) Advances towards assistance in filing Service Tax Return	2,00,000
(c) Advice to MNO and Co. regarding POT, 2011	3,75,000
Total Value of Taxable Services	**15,75,000**
Service Tax Payable at 12%	1,89,000
Education Cess at 2%	3,780
Secondary & Higher Education Cess at 1%	1,890
Total Service Tax Payable	**1,94,670**

Note: Fees received from an individual in relation to appearance before any Court / Tribunal / Authority is exempt.

Question 1(d) M 12 (5 Marks)

PQR Industries Ltd, has imported certain Equipment from Japan at an FOB cost of 2,00,000 Yen (Japanese). The other expenses incurred by M/s. PQR Industries Ltd in this connection are as follows:

(i)	Freight from Japan to Indian Port	20,000 Yen
(ii)	Insurance paid to Insurer in India (for the importation of the Machine)	₹ 10,000
(iii)	Designing Charges paid to Consultancy in Japan	30,000 Yen
(iv)	M/s. PQR Industries Ltd. expended in India for certain developmental activities on Imported Machine.	₹ 1,00,000
(v)	PQR Industries Ltd., had incurred Road Transport Cost from Mumbai Port to their Factory in Karnataka	₹ 30,000
(vi)	The commission payable to the agent in India – 5% of the FOB cost of the Equipment in Indian Rupees	
(vii)	CBEC had notified for purposes of Sec.14 of the Customs Act, 1962 – Exchange Rate of 1 Yen = ₹ 0.3948.	
(viii)	The Interbank Exchange Rate as announced by the Authorized Dealer was 1 Yen = ₹ 40 M/s. PQR Industries Ltd. had effected payment based on Exchange Rate 1 Yen = ₹ 0,4150	

Arrive at the Assessable Value for purposes of Valuation under the Customs Act, 1962 with brief notes wherever necessary for each of the adjustments at (i) to (viii) above.

Solution: **Same as Question No.29, Page No.8.17**

Question 1(e) 5 Marks

Strong Constructions undertakes Works Contracts and maintains sufficient records to quantify the Labour and other Service Charges. From the details given below, calculate the Taxable Turnover, Input Tax Credit and net VAT payable under the State VAT Law.

	Particulars	₹
(i)	Total Contract Price (excluding VAT)	1,80,00,000
(ii)	Materials purchased and used for the taxable at 12.5% VAT (inclusive of VAT)	33,75,000
(iii)	Labour Charges paid for Execution of the Contract	40,00,000
(iv)	Other Service Charges paid for the Execution of the Contract	20,00,000
(v)	Cost of Consumables used not involving transfer of property in goods	10,00,000

Strong Constructions also purchased a Plant for use in the Contract for ₹ 20,80,000 (inclusive of VAT). In the VAT Invoice relating to the same VAT was charged at 5% separately. Assume 100% Input Tax Credit is available on Capital Goods immediately. Make suitable assumptions where required and show the workings.

Solution:

Calculation of Taxable Turnover, Input Tax Credit and Net VAT payable

	Particulars	**₹**
	Total Contract Price	1,80,00,000
Less:	Labour Charges and other Service Charges paid for execution of the Contract	(60,00,000)
Less:	Cost of Consumables used whose property is not transferred	(10,00,000)
	Total value of Goods supplied – Taxable Turnover	1,10,00,000
	VAT at 5%	5,50,000
Less:	Input Credit:	
	(a) On Material Cost (33,75,000 × 12.5 ÷ 112.5)	3,75,000
	(b) On Capital Goods (20,80,000 × 4 ÷ 104)	80,000
	Net VAT payable	**95,000**

Note: Cost of Consumables will not affect the Calculation of VAT payable.

Question 2(a) 2 × 3 = 6 Marks

With reference to the Amendments effected by the Finance Act, 2011, briefly explain the following:

(i) State the 3 conditions upon fulfillment of which Penalty u/s 11A of the Central Excise Act 1944 may be halved and the extended period of limitation of 5 years may be invoked.	Refer Page No.22.9, Q.No.21
(ii) State the 3 conditions upon fulfillment of which no Interest would become payable under Sec. 11AA of the Cental Excise Act 1944.	Refer Page 20.9, Q.No.17, Pt 3
(iii) Briefly explain the condition when <u>Accessories</u> and goods used for providing <u>Free Warranty</u> are eligible as 'Input' under Rule 2 (k) of the Cenvat Credit Rules 2004.	Refer Page 18.4, Q.No.7 (Note for "Free Warranty")

Question 2(b) 2 × 3 = 6 Marks

Answer the following with reasons and reference to the Finance Act, 1994 relating to applicability of Service Tax.

(i)	Delayed Payment Charges collected by Stock Brokers **– Not Liable for ST** if such charges are shown separately in the Account Statement / Invoice / Bill etc. because the same are not for providing taxable services. They are in of penal nature. **[CBEC Letter No.137/25/2011 dt. 03.08.2011]**
(ii)	Practising Chartered Accountant representing a Client before Income Tax Officer in Assessment Proceedings **– Liable for ST** since services in relation to representation before Statutory Authorities shall also be liable for Service Tax.
(iii)	Personal liability of a Director or other Officer of a Company for offences under Finance Act, 1994 relating to ST – The persons who are deemed to be guilty and liable to be proceeded against, in case the offence is committed by the Company are (i) Person in charge of and responsible for the conduct of business at the time of offence and (ii) Company. **(Refer Page No.22.4, Q.No.9)**

Question 2(c) 3 Marks

Discuss briefly the Provisions relating to manner of computation of limitation period of one year in three situations contemplated under Sec. 27 (1B) of the Customs Act, 1962 for purpose of Refund of Duty.

Solution: **Refer Page No.20.13, Q.No.24**

Question 3(a) 6 Marks

Happy Ltd., cleared certain Goods to P. Ltd, 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, P Ltd, refused to pay the higher Duty which Happy Ltd., had paid by mistake. P Ltd, raised a Debit Note in the month of June of the same year. Happy Ltd, applied for refund of the excess Excise Duty paid in August. The department rejected the claim on the ground that the incidence of Duty has been passed by Happy Ltd to P Ltd.

While claiming refund Happy Ltd, relied on the debit note raised by P Ltd., in the month of June to demonstrate that its customer P Ltd, had not paid the excess Duty to Happy Ltd. The department contended that since the Debit Note was issued in the month of June and not March it could not be the basis for refund.

With a brief note:

(i) Examine with the help of decided Case Law whether the contention of the Department is correct in Law.

(ii) State whether in the above Case assuming that the issue is decided in favour of Happy Ltd, by the Commissioner of Central Excise (Appeals) and the Duty involved is ₹ 4,80,000 the Revenue could file as Appeal before the CESTAT against such an Order.

Solution:

1. **Question No.(i) –**
   (a) **Principle:** **Refer Page No.20.11, Q.No.22**
   (b) **Decision:** The ED refund can be claimed by the person who has borne the duty. In the given case, as the buyer raised the debit note on the assessee, the obvious conclusion is that the duty is borne by the assessee and not by the buyer. Hence, the assessee can claim the amount as refund. **[CCE Vs Techno Rubber Industries Pvt Ltd 2011 (272) ELT 191 (Kar.)]**
2. **Question No.(ii) –** The appeal to CESTAT can be preferred, only when the additional duty exceeds is ₹ 5,00,000. Hence, The Revenue cannot appeal before CESTAT against CCE(A)'s order.

Question 3(b) 6 Marks

Briefly explain with reasons whether in the following cases Service Tax would be applicable besides Value Added Tax (VAT) or Excise Duty the same transaction as indicated herein below with reference to decided Case Law:

(i) SIM card supplied as part of Mobile Telecommunication Services could be subjected to Service Tax and VAT.

(ii) Manufacture and Sale of Products where the Sale Price is inclusive of Erection, Installation, and Commissioning Services could be subjected to Excise Duty and Service Tax on the Services involved.

Solution:

(i) Case (i) –

- SIM card is a device through which customer gets connection from the mobile tower. Unless the SIM card is activated, service provider cannot give service connection to the customer. Hence, it can be inferred that it is an integral part required to provide mobile service to the customer.
- Further, SIM card has no intrinsic value or purpose other than use in mobile phone for receiving mobile telephone service from the service provider.
- **SIM cards were not goods sold or intended to be sold to customer, but supplied as part of service**. 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**. **[CCE v. Idea Mobile Communications Ltd. 2010 (SC)]**

(ii) **Case (ii) –** ED is payable on the event of manufacture and Service Tax is payable on the event of services rendered. Hence, it would not amount to double levy. **[Comm. of ST Vs Lincoln Helios (India) Ltd 2011 (23) STR 112 (Kar.)]**

Question 3(c) 3 Marks

Write a brief note on the following with reference to decided Case Law and the provisions of the Customs Act, 1962.

(i) Whether it is mandatory for the Revenue Officer to make available copies of Seized Documents to the person from whom they are seized.

(ii) Whether benefit of Exemption Notification meant for 'Imported Goods' could be extended in case of 'Smuggled".

Solution:

(i) **Case (i) –** As per Section 110 of the Customs Act, the Department should provide the copies of seized documents to the assessee on his specific request. The choice is given to the assessee to ask for copies of such documents or extract of them. **[Manish Lalit Kumar Bavishi Vs Addl. DIR 2011 (272) ELT 42 (Bom.)]**.

(ii) **Case (ii):** The Customs Act treats imported goods and smuggled goods as two different set of goods. Hence, only those goods which are imported into India based on a valid declaration and as per the provisions of the Act shall alone be considered as Imported Goods and eligible for exemption. Smuggled Goods not eligible for exemption. **[CC Vs M.Ambalal & Co. 2010 TIOL 111 (SC)]**

Question 4(a) 2 + 4 = 6 Marks

Gaseous Ltd, purchased Helium Gas in bulk from the Open Market and its Quality Control; Officer had conducted various tests and issued test reports stating the results of the tests. The bulk purchase was packed and filled in Cylinders of various sizes and Certificates were issued along with quantities. The purchases from the Open Market were of generic description and after test and analysis were sold to different customers based on their specific requirements with a Profit Margin of 40% to 60%. The Central Excise Department claimed that Duty had to be paid on the Sale Price as there was "Deemed Manufacture" in terms of Note 9 to chapter 28 of the Central Excise Tariff 1985 which reads as follows:

"In relation to products of this chapter labeling or relabeling of containers or repacking from bulk packs to retail packs or adoption of any other treatment to render the product marketable to the customer shall amount to manufacture." Briefly explain with a note based on Case Law if any whether:

(i) The process of filling the bulk Gas into Cylinders of smaller quantities after tests and quality processes with distinct grades would amount to 'Treatment' as per the said Chapter Note.

(ii) Whether it could be said that the Helium Gas purchased in bulk is already marketable and hence the Chapter Note will not be attracted in this case.

Solution:

1. **Principle: Definition of Manufacture.** The given facts are similar to those given in Air Liquide North India Pvt Ltd Vs CCE 2011 TIOL 86 SC CX
2. **Decision:** As per the above said case law – The term "marketable to the consumer" means that the marketability of the product to the person who purchases the product for his own consumption. Hence, from the angle of the purchaser who buys for self–consumption, the product becomes suitable only after the certification and labeling by the customer by the assessee. Hence, the helium gas is rendered marketable only after such tests.
3. **Conclusion:** The process amounts to treatment as per the chapter note. Further, the products is rendered marketable due to the process undertaken by the manufacturer.

Question 4(b) 6 Marks

PQR & Co. was involved in the services of unloading of Coal from Wagon Tripping System, stacking / reclaiming of Coal to Stacker Reclaimer System and feeding of Coal to Boiler Bunkers through Conveyor System. The Department had taken a view that the charges received by PQR & Co. for such activity were taxable under the category of 'Cargo Handling Services' in terms of Sec. 65(105)(zr) read with Sec. 65(23) of the Finance Act, 1994. However PQR & Co. claimed that the services rendered by them cannot be brought under 'Cargo Handling Services' as it engaged only in the handling of Coal from railway wagons to the required destination of the thermal power station wherein machines are used with the aid of some man power.
Briefly explain:

(i) With reference to relevant provisions and case law, if any, whether the stand taken by the department is correct in law;

(ii) Whether in the above matter, against an adverse order passed by the Commissioner of Central Excise in adjudication proceedings against PQR & Co and thereafter confirmed by the CESTAT, PQR & Co. could file an appeal against the order of the CESTAT before the High Court under Sec. 35G of the Central Excise Act, 1944.

Solution:

(i) **Same as Q.No.5, Page No.17.5**

(ii) An appeal can be filed before the High Court against the CESTAT's order, provided the appeal involves a substantial question of law. In the given case, as the question relates to taxability or otherwise of the assessee's service, it becomes essential for the court to analyse the meaning of "cargo handling service" and hence, appeal can be preferred to High Court.

Question 4(c) 3 Marks

Explain with reference to decided case law whether clearances from Domestic Tariff Area (DTA) to Special Economic Zone is chargeable to Export Duty under the SEZ Act, 2005 or the Customs Act, 1962.

Solution:

The Clearances from DTA unit to SEZ unit is not liable for Export Duty, both under SEZ Act, 2005 and also under the Customs Act, 1962 due to the following points –

(a) SEZ Act does not have any Charging Section for levy of Export Duty on Goods supplied by DTA unit to SEZ unit.

(b) Under Customs Act, duty can be levied only when the Goods are removed from India to a place beyond the territorial waters of India. Since both SEZ and also the DTA Units are within India, such levy is not attracted. **[Tirupati Udyog Ltd vs UOI 2011 (272) ELT 209 (AP)]**

Question 5(a) 3 × 2 = 6 Marks

(i)	Explain briefly whether "Assembly" would tantamount to 'Manufacture' under the Central Excise Act, 1944.	Refer Page 2.17, Q.No.27, Pt.(4)
(ii)	Briefly explain the situations where transaction value under Sec. 4 of the Central Excise Act, 1944 does not apply.	Refer Page 4.4, Q.No.6, Pt.(4)

Question 5(b) 4 + 2 = 6 Marks

(i) Major Ltd., imports Business Support Services from Wilfred Ltd., of USA on 18.08.2011. The relevant invoice for $ 1,50,000 is raised by Wilfred Ltd, on 20.9.2011. Assuming that Major Ltd makes the above mentioned payment on the dates as indicated in the following table, determine the Point of Taxation under the Point of Taxation Rules, 2011 in each case giving reasons for your answer: (a) CASE 1 – 10.12.2011 (b) CASE 2 – 15.04.2012

(a) **Provision:** In case of import of services, as per Rule 6 of POT Rules 2011, Point of Taxation shall be the date of payment, if the payment is made within 6 months from the date of invoice. Otherwise, POT shall be based on Rule 3 of POT Rules.

(b) Determination of POT in the above case:

Case	Date of Service	Date of Invoice	Date of Payment	Point of Taxation	Reason
1	18.08.11	20.09.11	10.12.11	10.12.2011	Since payment is received within 6 months from the date of invoice, POT shall be date of payment.
2	18.08.11	20.09.11	15.04.12	18.08.2011	As the payment is made beyond 6 months, Rule 3 is applicable. As per Rule 3, if the invoice is issued after 14 days from the date of completion of service, then POT shall be earlier of (a) Date of Completion and (b) Date of payment. Hence, POT shall be date of completion.

(ii) Write a brief note on Tax Payer's Identification Number (TIN) for purpose of VAT.

Solution: **Refer Page 11.22, Q.No.34**

Question 5(c) 3 Marks

What is the purpose of the interpretation rules regarding Customs Tariff? Do they form part of the Tariff Schedule? Briefly explain Akin Rule of interpretation.

Solution: **Refer Page 3.6, Q.No.11, Rule 4**

Question 6(a) 3 × 2 = 6 Marks

Briefly explain the procedure to be followed by the Authority for Advance Rulings on receipt of application for Advance Ruling under the Central Excise Act, 1944.

Solution: **Refer Page 19.3, Q.No.7(B)**

(OR)

(i) Briefly specify under what circumstances it may be beneficial to pay duty and claim Rebate under Rule 18 of the Central Excise Rules, 2002.

Solution: Export under refund mechanism is better if the assessee could claim the entire CENVAT Credit as rebate.

(ii) Can the Department file an Appeal in respect of the same assessee if in respect of some years no appeal was filed in matters involving identical dispute. Write a brief note with reference to the Central Excise Act, 1944.

Solution: **Refer Page 23.14, Q.No.25**

Question 6(b) 1 + 2 + 3 = 6 Marks

Dwarka Ltd. is engaged in providing Taxable Services under the Finance Act, 1994.

(i) For the half year ending on 30.09.2011, it furnished the Return on 24.12.2011. Answer the following:

Question	Answer
(i) Specify the due date and form for filing the return.	Form for filing the return: ST 3 Due Date: 25th October and 25th April. For the half year ending 30th Sept 2011, it was extended to 26th Dec 2011. So the Return filed by Dwarka Ltd on 24.12.2011 is valid.
(ii) Compute the amount of late fee payable by Dwarka Ltd., under the Finance Act, 1994 and Rules made there under.	Refer **Page No.16.7, Q.No.12.** In this case, the late fee payable by Dwarka Ltd is Nil as the return is filed before the due date.

(ii) Explain the System of Cross–Checking under VAT Laws.

Solution: **Refer Page 11.24, Q.No.42**

Question 6(c) 3 Marks

Write a brief note on Self Assessment in Customs under the Customs Act, 1962.

Solution: **Refer Page 8.27, Q.No.52, Pt 3**

Question 7(a) 3 × 2 = 6 Marks

(i) Briefly explain the provisions in respect of Waiver of Physical Warehousing in case of Exigency in respect of Export Goods under the Central Excise Act, 1944.	**Refer Page 5.46, Q.No.26**
(ii) Under Excise Audit 2000, the selection of the unit is based on "Risk Factors". Explain in brief the expression 'Risk Factors' giving any two examples.	**Refer Page 5.69, Q.No.1**

Question 7(b) 3 × 2 = 6 Marks

(i) KPL Ltd. did not pay its Service Tax Dues of ₹ 30 Lakhs for the period ending 30.09.2011. Can the Department create First Charge on the Property of KPL Ltd? If the answer is in the affirmative, whether there are any limitations in respect of creation of such First Charge? Briefly explain with reference to the Finance Act, 1994.

Solution: Yes. The Department can create First Charge on the property of KPL Ltd. **Refer Page No.20.10, Q.No.19**

(ii) Who are not eligible for Composition Scheme under the VAT regime. Write a brief note.

Solution: **Refer Page 11.20, Q.No.30, Pt 1(b)**

Question 7(c) 3 Marks

What are the ways that would constitute Circumvention of Antidumping Duty imposed on an Article that may Warrant Action by the Central Government based on inquiry as it may consider necessary for purpose of Sec 9A(1A) of the Customs Tariff Act, 1975.

Solution: **Refer Page 7.12, Q.No.23, Pt 8**