

# FINAL EXAMINATION

## GROUP III

(SYLLABUS 2008)

### SUGGESTED ANSWERS TO QUESTIONS

JUNE 2012

#### Paper- 14 : INDIRECT AND DIRECT TAX MANAGEMENT

Time Allowed : 3 Hours

Full Marks : 100

*The figures in the margin on the right side indicate full marks.*

*Wherever required, the candidates may make suitable assumptions and state them clearly in the answer.*

*Working notes should form part of the answer.*

*All sub-divisions of a question should be answered continuously.*

*Answer Question No. 1 which is compulsory and any five questions from the rest.*

**Q. 1.(a) Fill in the blanks in the following sentences by using appropriate words/phrases given in the brackets :** [1×15=15]

- (i) EOU can obtain indigenous goods without payment of excise duty by submitting \_\_\_\_\_ (B-17 Bond/CT-3 Certificate).
- (ii) Vaibhav Cargo Ltd. raised a bill for cargo handling services on 2.2.2012. The payment was received on 2.3.2012. The due date for payment of service tax is \_\_\_\_\_ (5th March, 2012, 31st March, 2012).
- (iii) Service tax paid on mobile phone bills \_\_\_\_\_ (is/is not) eligible for CENVAT credit.
- (iv) For units paying duty of more than ₹ 3 crore EA2000 excise audit is applicable \_\_\_\_\_ (every year, once in 2 years, once in 5 years).
- (v) Bonafide baggage including \_\_\_\_\_ personal effects are exempt from customs duty. (used, unused, damaged).
- (vi) Assessee who is paying 1 % excise duty and not manufacturing any other goods is required to file quarterly return within 10 days after close of the quarter in form of return \_\_\_\_\_ (ER-8/ER-1).
- (vii) Any person providing taxable service of commercial or industrial construction of residential complex can opt to pay service tax @ \_\_\_\_\_ (25%/33%) of gross amount charged if gross amount includes value of land.

2 ♦ *Suggested Answers to Question — TXM*

- (viii) Cost of Designing & Engineering incurred for the purpose of manufacture of excisable goods has \_\_\_\_\_ (to be included/not to be included) in assessable value under Central Excise Act.
- (ix) While determining the assessable value under central excise laws, equalized freight is allowable as deduction if there is \_\_\_\_\_ (sale/removal) of excisable goods at factory gate.
- (x) Under Rule 4(5) of the CENVAT Credit Rules, Jigs, fixture, modules & dies can be sent to a vendor for production of goods according to specification of the Principal manufacturer \_\_\_\_\_ (with/without) reversal of credit.
- (xi) Under Rule 12(1) of Central Excise Rules, SSI Unit eligible for SSI concession (even if it does not avail such concession), has to file a quarterly return in Form \_\_\_\_\_ (ER-3/ER-2) by 10th of the following month of the quarter.
- (xii) Every exporter should obtain BIN (Business Identification Number) from \_\_\_\_\_ (DGFT/CBEC).
- (xiii) Packing or repacking and labelling is \_\_\_\_\_ (not manufacture/deemed manufacture) in case of goods are covered under section 4A of the Central Excise Act.
- (xiv) E-payment of excise duty/service tax is mandatory in case of assessee who had paid either in cash or by utilizing cenvat credit or both for an amount of rupees \_\_\_\_\_ (ten/fifty) lakhs or more in the preceding financial year.
- (xv) As per section 3(1) of Central Excise Act, value of excisable goods cleared by EOU to DTA shall be determined in accordance with provisions of \_\_\_\_\_ (central excise/customs) valuation.

**(b)** State whether the following statements are true or false. If false give the correct statement. If true give the reason in brief : [2×5=10]

- (i) Wealth-tax payable by company is treated as a charge on book profits.
- (ii) In computing the net wealth of an individual, the value of assets held by a minor child will be included.
- (iii) The sale of assets by bank for realization of loans is liable to tax under CST Act.
- (iv) Service sector SEZs should have an area of 1000 hectares or more in order to be eligible for exemption.
- (v) Different systems of accounting e.g. Mixed or Hybrid cannot be adopted for receipts and payments.

**Answer 1. (a)**

- (i) CT-3 Certificate
- (ii) 5<sup>th</sup> March, 2012  
(Note: service is deemed to be provided in February, 2012 as per Point of Taxation Rules, 2011).
- (iii) is
- (iv) Every year
- (v) Used
- (vi) ER-8

- (vii) 25%
- (viii) to be included
- (ix) sale
- (x) without
- (xi) ER-3
- (xii) DGFT
- (xiii) deemed manufacture
- (xiv) ten
- (xv) customs

**Answer 1. (b)**

**(i) True.**

Section 115J (1A) disallowed only the amount paid or payable by way of Income-tax under Explanation to that section so that there could be no disallowance of Wealth - tax. It was so found in CIT v Echjay Forgings Pvt. Ltd., since such amount would ordinarily be charged to the P&L A/c and where it is so charged the Assessing Officer has no option except to accept the same for purposes of MAT. Amendment by way of Finance Act, 2008 extending the meaning of income tax does not include Wealth Tax.

**(ii) True.**

Under section 4(1) (a) (ii) of the Wealth Tax Act, same is includible in the wealth of the individual parent whose net wealth is greater. The only exception is that of minor child who is married daughter.

**(iii) False.**

The sale of assets by bank (being ancillary activity) for realization of loans is not liable to tax under CST as the main activity of bank is not business (trade, commerce, manufacture, etc.). Refer (Canara Bank Case).

**(iv) False.**

Service Sector SEZs should have an area of 100 hectares or more (as per first proviso to rule 5(2)(a) of SEZ Rules) in order to be eligible for exemption.

**(v) True.**

Hybrid system is not permitted now, since section 145 as substituted with effect from A. Y. 1997-98 would rule out hybrid system for all assesseees. Companies are required under company law to follow only accrual system. Hence both receipts and payments have to be accounted using the same accounting system.

**Q. 2. (a)** Please specify the relevant date with reference to Customs Act 1962 in following cases of goods warehoused under bond. [1+1+1=3]

- (i) Rate of exchange when goods are removed for home consumption.
- (ii) Rate of duty where goods are removed for home consumption.
- (iii) Rate of duty if the goods are not moved from warehouse within the permissible period.

4 ♦ *Suggested Answers to Question — TXM*

**(b)** Discuss whether remission of duty will be granted under the Central Excise Rules in the following cases : [1+1=2]

- (i) Loss of molasses due to auto combustion in sugar factory.
- (ii) There was natural calamity in the factory, but the department was not intimated in time.

**(c)** M/s. Shneha & Co. has imported goods weighing 1200 Kg with CIF value US \$ 48,000. The bill of entry was presented on 12th Jan., 2012. The exchange rate on the said date was 1\$ = ₹ 45. Basic Custom Duty is chargeable @ 10% plus education cess as applicable. No Excise duty is payable on above goods if manufactured in India. As per notification issued by Govt. of India antidumping duty has been imposed on above goods. The antidumping duty will be equal to difference between amount calculated @ US \$ 60 per Kg. and landed value of goods. You are required to compute—

- (i) Assessable value [1]
- (ii) Customs duty payable [3]
- (iii) Anti-dumping duty payable. [1]

**(d)** Explain in brief :

- (i) What are the purposes for which Advance Authorization can be issued? [2]
- (ii) What is the maximum limit of duty free import of mandatory spares under Advance Authorization? [1]
- (iii) What is the basis of determination of Annual Advance Authorization for annual requirements of any exporter?

What is the maximum value of Annual Advance Authorization can be issued? [1+1]

**Answer 2. (a)**

- (i) For rate of exchange the relevant date is the date on which the bill of entry is presented for warehousing U/S 46 of Customs Act 1962 & not when bill of entry is presented *u/s* 68 for clearance from warehouse for home consumption.
- (ii) As per Sec 15(1)(b) of Customs Act 1962, rate of duty as prevalent on date of presentation of bill entry for home consumption for clearance from warehouse is applicable and not the rate of duty prevalent when goods were removed from customs port.
- (iii) Goods which are not removed within the permissible period are deemed to be improperly removed on the date it should have been removed. Thus duty applicable on such date that is the last date on which the goods should have been removed is relevant and not the date when goods are actually removed.

**Answer 2. (b)**

- (i) Yes. Loss of molasses due to auto combustion in sugar factory is an unavoidable accident and hence, remission is admissible (*Shankar Sugar Mills v. CCE 1994 (71) ELT 753 (Tri.)*).
- (ii) Yes. Remission cannot be denied simply because there was delay in giving intimation to the Department. If there is a natural calamity in the factory, procedural lapse cannot come in the way of benefit (*Bengal Chem. & Pharmaceuticals Ltd. v. CCE 2003 (158) ELT 327.*)

**Answer 2. (c)**

(i) Computation of Assessable value :

|                           |                    |
|---------------------------|--------------------|
| CIF value (48,000 × ₹ 45) | ₹ 21,60,000        |
| Loading charges @ 1%      | ₹ 21,600           |
| <b>Total</b>              | <b>₹ 21,81,600</b> |

(ii) Computation of Customs Duty payable

| Particulars                                   | Rate of Duty (%) | Amount (₹) | Total Duty (₹)  |
|-----------------------------------------------|------------------|------------|-----------------|
| (a) Assessable value                          |                  | 21,81,600  |                 |
| (b) Basic Customs Duty                        | 10               | 2,18,160   | 2,18,160        |
| (c) Education Cess of Customs @ 2% of (b)     | 2                | 4,363      | 4,363           |
| (d) SAH Education Cess of Customs @ 1% of (b) | 1                | 2,182      | 2,182           |
| (e) Sub Total for special CVD                 |                  | 24,06,305  |                 |
| (f) Special CVD U/S 3 (5) @ 4% of (e)         |                  | 96,252     | 96,252          |
| <b>Total Duty</b>                             |                  |            | <b>3,20,957</b> |

(iii) Anti dumping duty

|                                                      |             |
|------------------------------------------------------|-------------|
| Landed cost (₹ 21,81,600 + ₹ 3,20,957)               | ₹ 25,02,557 |
| Value Calculated @ US \$ 60 per kg. (60 × 1200 × 45) | ₹ 32,40,000 |
| Antidumping duty                                     | ₹ 7,37,443  |

**Answer 2. (d)**

- (i) Advance Authorization can be issued to a manufacturer exporter or merchant exporter tied to a supporting manufacturer for
- (1) Physical export,
  - (2) Intermediate supplies
  - (3) Main contractor for supply of goods under deemed export (except for export under advance authorization and marine freight containers)
  - (4) Supply of stores on board of foreign going vessel/aircraft.
  - (5) Supply to UNO or under an aid programme of UN.
- (ii) Duty free import of mandatory spares up to 10% of CIF Value which are required to be exported with resultant products is allowed.
- (iii) Annual Advance Authorization would be issued to exporters having past export performance to enable them to import their requirement of input on annual basis. It will be granted up to 300% of FOB value of exports in preceding financial year.

**Q. 3. (a)** Discuss whether assembly of machinery at customer's site will amount to manufacture under excise law, if such machinery is bolted and can be shifted? Will your answer be different if such machinery cannot be sold without dis-assembling? [4]

- (b) Briefly explain the manner in which a Cost Accountant can help a client in the handling of VAT audit called for by the Department and in conducting external audit of VAT records. [3]
- (c) As per the Foreign Trade Policy, can warranty spares of plant, machinery etc. be exported without authorization? [4]
- (d) M/s. XYZ Ltd. shifted its factory from Sitapur to Rampur and transferred all the available inputs and capital goods to the new site. The inputs, capital goods and the balance of unutilised CENVAT credit were duly received and accounted for in the registers of the new unit. The said balance of unutilised CENVAT credit transferred was ₹ 8,00,000. However, the quantum of CENVAT credit attributable to the inputs and capital goods so transferred to the new site was ₹ 6,00,000 only. The Department raised the plea that the assessee was entitled to transfer only ₹ 6,00,000 of CENVAT credit and not the entire balance of unutilised credit of ₹ 8,00,000.  
Explain, with the help of a decided case law, if any, whether department's plea is justified in law. [4]

**Answer 3. (a)**

If machine (generating set in this case) is only bolted on a frame and is capable of being shifted from that place, it is capable of being sold. It is goods and not immovable property - *Mallur Siddeswara Spinning Mills v. CCE 2004 (166) ELT 154 (SC)*. This will amount to manufacture.

In *Triveni Engineering v. CCE AIR 2000 SC 2896 = 2000 AIR SCW 3144 = 40 RLT 1 = 120 ELT 273 (SC)*, it was observed, 'The marketability test requires that the goods as such should be in a position to be taken to market and sold. If they have to be separated, the test is not satisfied'. (Thus, if machine has to be disassembled for removal, it is not 'goods' and duty cannot be levied).

**Following aspects are also clear :**

- (a) Duty cannot be levied on immovable property
- (b) If plant is so embedded to earth that it is not possible to move it without dismantling, no duty can be levied
- (c) If machinery is superficially attached to earth for operational efficiency, and can be easily removed without dismantling, duty is leviable
- (d) Turnkey projects are not dutiable, but individual component/machinery will be dutiable, if marketable.

**Answer 3. (b)**

**Handling audit by departmental auditors :**

There will be audit wing in VAT Department and certain percentage of dealers will be taken up for audit every year on scientific basis. Cost Accountant can ensure proper record keeping so as to satisfy the departmental auditors. The professional expertise of a Cost Accountant will help them in effectively replying audit queries and sorting out audit objections.

**External audit of VAT records :**

Under VAT system, trust has been reposed on tax payers as there will be no regular assessment of all VAT return but only few returns will be scrutinized. In other cases, return filed by dealer will be accepted. Thus, a check on compliance becomes necessary.

Cost Accountants can play a very vital role in ensuring tax compliance by audit of VAT accounts.

VAT laws of some States provide for audit by outside agencies. In Karnataka, audit report is required if turnover exceeds ₹ 25 lakhs. Andhra Pradesh VAT Act provides for audit by Cost Accountant, if audit is ordered by Commissioner. Maharashtra VAT laws provide for audit, inter alia, by Cost Accountant if turnover exceeds ₹ 40 lakhs. Other States may also prescribe external audit, once they see the utility of audit reports furnished by Cost Accountant in ensuring tax compliance.

**Answer 3. (c)**

Exports of warranty spares and replacement —

Warranty spares of plant, machinery etc. can be exported without authorization

- (i) Along with the main equipment or
- (ii) Subsequently within warranty period, subject to approval of RBI (para 2.33 of FTP).

If goods exported were found to be defective /damaged or otherwise unfit can be replaced free of charge by exporter. Such replacement is allowed provided the replaced goods are not under restricted category — para 2.37 of FTP.

For export of gifts/spares/ replacement goods in excess of ceiling/period, application can be made to DGFT — para 2.53 of HBP Vol 1.

**Answer 3. (d)**

As per rule 10 of the CENVAT Credit Rules, 2004, if a manufacturer of the final product shifts his factory to another site with the specific provision for transfer of liabilities of such factory, he shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to the new site if the stock of input as such or in process, or the capital goods is also transferred along with the factory or business premises and the inputs, or capital goods, on which credit has been availed of, are duly accounted for to the satisfaction of Assistant/Deputy Commissioner of Central Excise.

The Madras High Court in the case of CCE vs. CESTAT 2008 (230) ELT 209 (MAD.) has also affirmed this position. In this case, the High Court has held that erstwhile Rule 8 of the CENVAT Credit Rules, 2002 (new rule 10 of the CENVAT Credit Rules, 2004) does not provide that the assessee could transfer the CENVAT credit corresponding only to the quantum of input or capital goods transferred to the new factory.

Thus, the plea of Department is not justified presuming that M/s. XYZ Ltd. shifted its factory from Sitapura to Rampur with the specific provision for transfer of liabilities of such factory and the inputs or capital goods on which credit has been availed of are duly accounted for to the satisfaction of Assistant/Deputy Commissioner of the Central Excise.

**Q. 4. (a)** Briefly outline the procedure for fixing anti-dumping duty. [3]

**(b)** Is it correct to say that the cenvat credit of input services used for repair or renovation of factory is available? [2]

**(c)** Rithika & Co., a partnership firm, has its registered office in Jammu & Kashmir. The firm has been rendering taxable services and paying service tax, for the past three years. The following details are furnished to you relating to services rendered and bills raised during the quarter ended 30.06.2011:

8 ♦ *Suggested Answers to Question — TXM*

|                                                                             | Amount (₹) |
|-----------------------------------------------------------------------------|------------|
| (i) Taxable services rendered in Srinagar, Kashmir                          | 9,00,000   |
| (ii) Services rendered in Mumbai :                                          |            |
| To RBI                                                                      | 4,00,000   |
| To United Nations Organization                                              | 3,00,000   |
| To Customer L                                                               | 8,00,000   |
| To Customer M                                                               | 4,00,000   |
| To Customer N, as a sub-contractor (Services rendered by N are not taxable) | 9,00,000   |

Assume that all services rendered in Mumbai are taxable, excepting where any service is outside the service tax net. The assessee has raised bills for above amounts plus service tax at applicable rates wherever required. All amounts billed have been received in the same quarter, excepting from Customer M, who refused to pay the service tax component of the bill raised to him.

You are required to compute the value of taxable services rendered by the assessee during the above quarter. [6]

(d) From the data given below relating to import of a machinery, you are required to compute the assessable value for customs duty purpose :

|                                                                                   | (in US Dollars) |
|-----------------------------------------------------------------------------------|-----------------|
| FOB value of machinery                                                            | 1,10,000        |
| AirFreight                                                                        | 24,000          |
| Expenses incurred by seller for improving the design, at buyer-importer's request | 5,000           |
| Transit insurance                                                                 | 1,500           |
| Exchange rate 1 USD = ₹ 51                                                        |                 |

[4]

**Answer 4. (a)**

**Procedure for fixing anti dumping duty :**

After the 'designated authority' is satisfied about prima facie case, he will give notice to Governments of exporting countries. Opportunity to inspection of documents and making representations will be given to interested parties who are likely to be affected. Designated Authority will first give preliminary finding and then final finding within one year.

Provisional duty can be imposed on basis of preliminary finding which can continue upto 6 months, extendable to 9 months. Additional duty may be imposed on basis of the final finding.

As per rule 18 of Anti-Dumping Duty Rules, Central Government has to issue a notification fixing anti-dumping duty within three months from date of notification issued by designated authority.

**Answer 4. (b)**

The statement is absolutely correct.

Circular No. 943/04/2011 clarifies that such services are eligible for cenvat credit, since they have specifically been included in the definition of 'input services'.



**Answer 4. (c)****VALUE OF TAXABLE SERVICES RENDERED DURING FIRST QUARTER, 2011****Assessee : M/s Rithika & Co.**

Any services provided in Jammu & Kashmir is not eligible to service tax. However, even where the service provider is situated in Jammu & Kashmir, any taxable service rendered outside the State will be chargeable to service tax.

The problem states that the assessee has been rendering taxable services during the past few years and hence is not a small service provider.

|                                                                                                                                                                                                                                                  |                  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| (i) Taxable services rendered in Srinagar, Kashmir                                                                                                                                                                                               | ₹ 9,00,000       |
| Not eligible to service tax levy.                                                                                                                                                                                                                | Nil              |
| (ii) Services rendered at Mumbai :                                                                                                                                                                                                               |                  |
| To RBI are not liable for service tax, as per Notification No. 22/2006 dated 31.05.2006.                                                                                                                                                         | Nil              |
| To United Nations Organization, an international Organization, is not liable for service tax.                                                                                                                                                    | Nil              |
| To Customer L                                                                                                                                                                                                                                    | 8,00,000         |
| To Customer M ₹ 4,00,000. The total amount received is deemed to include service tax also. Hence taxable services will be $4,00,000 \times 100/110.3$                                                                                            | 3,62,647         |
| To Customer N, as sub-contractor                                                                                                                                                                                                                 |                  |
| Services rendered by sub-contractor are liable for Service tax. The sub-contractor is to be regarded as an assessee by himself. It is immaterial that such services are used by the main contractor who may not be exigible to service tax levy. | <u>9,00,000</u>  |
| Total value of taxable services                                                                                                                                                                                                                  | <u>20,62,647</u> |

**Answer 4. (d)****COMPUTATION OF ASSESSABLE VALUE FOR CUSTOMS DUTY PURPOSES**

|                                                                         |                    |
|-------------------------------------------------------------------------|--------------------|
|                                                                         | (USD)              |
| FOB value of machine                                                    | 1,10,000.00        |
| Add : Expenditure for improvement of design incurred at buyer's request | 5,000.00           |
| Air freight [To be restricted to 20% of FOB value as per Rule 9(2)]     | 22,000.00          |
| Insurance @ 1.125% of FOB value as per [Rule 9(2) (i) (iii)]            | <u>1,237.50</u>    |
| Total CIF value                                                         | 1,38,237.50        |
| Add : Landing charges @ 1% of CIF value                                 | <u>1,382.38</u>    |
| Assessable value in USD                                                 | <u>1,39,619.88</u> |
|                                                                         | (Rupees)           |
| Assessable value in INR @ ₹ 51                                          | 71,20,613.88       |

**Q. 5. (a)** What is Works Contract Tax? Can a works contractor opt for composition in respect of selected works contract? Is it essential to opt for composition scheme in respect of all the works contracts? [3]

**(b)** M/s. Alfa Construction Co. Ltd. expects a gross turnover of ₹ 2,500 crores during the coming year 2012-13 from various commercial/industrial constructions (inclusive of charges towards various material and services).

It furnishes following additional information :

- (i) Total value of materials and input services to be used ₹ 1000 crores & ₹ 300 crores respectively (Excise Duty @ 10.30%, and Service Tax @ 12.36%); Capital Goods received last year ₹ 200 crores (Duty @ 12.36%), but no credit was availed on them.
- (ii) Gross turnover includes completion and finishing services of ₹ 100 crores.

The company is in a dilemma whether to opt for abatement or go for full value and avail CENVAT credit. It engages you as a consultant to advice on minimization of its service tax liability. It is given that the above charges do not include the cost of land, as the said cost runs into thousands of crores on which the company does not want to pay service tax in any form. Service tax rate should be taken as 12.36% as the proposal is related to 2012-13. [7]

**(c)** A bill of entry was presented on 4th August, 2011. The vessel carrying goods arrived on 11th August, 2011.

Entry inwards was granted on 13th August, 2011, and the bill of entry was assessed on that date and was also returned to the importer for payment of duty on that date. The duty amounting to ₹ 5,00,000 was paid by the importer on 22nd August, 2011. Calculate the amount of interest payable under section 47(2) of the Customs Act, 1962, given that there were four holidays during the period from 14th August to 22nd August, 2011. [3]

**(d)** Can an application made under Customs Act, 1962 be withdrawn in the following cases? If yes, state the time limit for withdrawal of such applications.

- (i) Application for advance ruling;
- (ii) Application for settlement. [2]

**Answer 5. (a)**

Works Contract Tax is a tax on a deemed sale, namely, transfer of property in goods involved in execution of a Works Contract. In case of works contract, the property in goods is transferred by way of accretion or accession. Accordingly, as soon as the goods are used, there is a transfer and accordingly that is the point of levy. Subject to notifications and conditions, a dealer may opt to pay lump sum tax in respect of:

- The entire turnover of sales effected by way of works contract;
- Any portion of the turnover corresponding to individual works contract

**Answer 5. (b)**

Before taking any decision, the service tax liability under both options are to be calculated which are as follows.

| Particulars                                                                                                                                                 | ₹ In crores   |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| Gross turnover of the company                                                                                                                               | 2,500.00      |
| Service tax there on @ 12.36%                                                                                                                               | 309.00        |
| Less : CENVAT credit on materials [1000 crores × 10.30%]                                                                                                    | 103.00        |
| CENVAT credit on input services [300 crores × 12.36%]                                                                                                       | 37.08         |
| CENVAT credit on capital goods [200 crores × 12.36%, since no credit was availed in the year of receipt, the same may be availed of in the Next year fully] | 24.72         |
| <b>Net Service Tax Liability</b>                                                                                                                            | <b>144.20</b> |

**Service tax payable when abatement @ 67% availed under Notification. No.1/2006 & credit under CENVAT credit Rules, 2004 :**

| Particulars                                                                                                                                            | ₹ In crores   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| Gross turnover of the company                                                                                                                          | 2,500.00      |
| Less: Completion and finishing services to various clients – taxable under this service, however, not eligible for abatement under Not. No. 1/2006-ST. | 100.00        |
| Hence, excluded and considered / included separately in value.                                                                                         |               |
| Gross amount charged (inclusive of materials, etc.)                                                                                                    | 2,400.00      |
| Less : Abatement @ 67% under Not. No. 1/2006-st (Since the gross amount charged doesn't include cost of land, hence, abatement is 67%)                 | 1,608.00      |
| Taxable turnover (after abatement)                                                                                                                     | 792.00        |
| Add : Completion and finishing services to various clients (not eligible for abatement)                                                                | 100.00        |
| <b>Total value of taxable service</b>                                                                                                                  | <b>892.00</b> |
| <b>Service tax thereon @ 12.36%</b>                                                                                                                    | <b>110.25</b> |

**Advice :** Since the service tax liability is less in case when abatement is opted for, hence, the company is hereby advised to opt for abatement in the coming year. Further, opting for abatement will save it from maintaining CENVAT credit records and disputes pertaining to eligibility of CENVAT credit.

**Answer 5. (c)**

As per section 47(2), importer is liable to pay interest @ 15% p.a. if he fails to make payment within 5 days (excluding holidays) from the date of return of assessed bill of entry to him. The assessed bill of entry was returned to him, on 13<sup>th</sup> August and the duty was paid on 22<sup>nd</sup> August 2011. After excluding holidays, the number of days from 14<sup>th</sup> August to 22<sup>nd</sup> August 2011 is 5 days (9days - 4 holidays). Since duty has been paid within time period of 5 days, no interest is payable U/S 47(2).

**Answer 5. (d)**

- (i) Yes, Application for advance ruling can be withdrawn within 30 days from the date of application (Sec 28 H(4) of Customs Act 1962).
- (ii) No, Application once made cannot be withdrawn in case of settlement (Sec 127 B(4) of Customs Act 1962)

**Q. 6.** Dr. Basu is running a Nursing Home with his wife Dr. (Mrs.) Basu as a partnership firm Dr. Basu Nursing Home. On the basis of the following particulars, compute the total income of the firm (Dr. Basu Nursing Home), Dr. Basu and Dr. (Mrs.) Basu for the assessment year 2011-12.

**(a)** Particulars of income of the Nursing Home : ₹

|                                                                                  |          |
|----------------------------------------------------------------------------------|----------|
| (i) Income as per Income and Expenditure Account                                 | 3,20,000 |
| (ii) Firm's tax not provided in the account                                      | 48,000   |
| (iii) Donation to Public Charitable Trust<br>exempt u/s. 80G debited in the A/c. | 35,000   |

**(b)** Particulars of Income of Dr. Basu :

- (i) 40% of profit from Nursing Home as per books ₹ 1,28,000
- (ii) Dr. Basu purchase 500 shares of Saha (P) Ltd. at ₹ 110 each in May, 1990. On 14.5.2010 Dr. Basu sold 300 shares at ₹ 400 per share. He invested ₹ 40,000 out of the net sale proceeds in Bonds of RECL in June, 2010. The balance of 200 shares were sold in December, 2010 at ₹ 380 per share.
- (iii) Dr. Basu is a substantial shareholder and Director in Saba (P) Ltd. from which he received director's fees amounting to ₹ 4,000.
- (iv) Dr. Basu has obtained a loan of ₹ 50,000 from the said company for renovating the Nursing Home. The balance sheet of Saha (P) Ltd. for the Accounting year, inter alia, disclosed the following particulars :
 

|                                         |               |
|-----------------------------------------|---------------|
| (a) General Reserve                     | 40,000        |
| (b) Profit & Loss Account (Cr. Balance) | <u>20,000</u> |
|                                         | <u>60,000</u> |
- (v) Share of income from property belonging to HUF of which Dr. Basu is the Karta amounts to ₹ 30,000.

**(c)** Particulars of Income of Dr. (Mrs.) Basu : ₹

|                                                                        |          |
|------------------------------------------------------------------------|----------|
| (i) 60% share of profit from Nursing Home as per books                 | 1,92,000 |
| (ii) Income from dividend from UTI                                     | 18,000   |
| (iii) Income from house property<br>(as computed under Income-tax Act) | 48,000   |

**(d)** Particulars of Income of Master Piyush :

Piyush minor son of Dr. Basu and Dr. (Mrs.) Basu has been admitted to the benefits of partnership in M/s. Basu Chemists which is carrying on business as Chemists and Druggists. The said firm has two other partners Soham (brother of Dr. Basu) and Priya [brother of Dr. (Mrs.) Basu]. Piyush's share of profits is determined at ₹ 20,000.

**(Note :** Capital Gains Index of 1990-91 = 182, and 2010-11 = 711)

[15]

**Answer 6.****Computation of Total Income of the Firm**

|                                                                                                                                                                        | (₹)      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| Income as per Income & Expenditure Account                                                                                                                             | 3,20,000 |
| Add : Donation to public charitable trust (added back)                                                                                                                 | 35,000   |
| Gross Total Income                                                                                                                                                     | 3,55,000 |
| Donation to public charitable trust qualifying amount being restricted to 10% of Gross Total Income (₹ 35,500 or actual whichever is lower) i.e. 50% of ₹ 35,000 ..... | 17,500   |
| Total Income                                                                                                                                                           | 3,37,500 |
| Total tax payable by the firm @ 30%                                                                                                                                    | 1,01,250 |
| Add : Education cess + SHEC (2% + 1%) of Income tax                                                                                                                    | 3,038    |
| Total tax                                                                                                                                                              | 1,04,288 |

| <b>Computation of Total Income of Dr. Basu</b>                                                                                       |            | ₹      |
|--------------------------------------------------------------------------------------------------------------------------------------|------------|--------|
| 1. His income from the Nursing Home is not taxable<br>(as tax is already paid by firm)                                               |            | Nil    |
| 2. Capital Gains                                                                                                                     | ₹          |        |
| Sale Proceeds: 300 shares of ₹ 400 each                                                                                              | 1,20,000   |        |
| 200 shares of ₹ 380 each                                                                                                             | 76,000     |        |
|                                                                                                                                      | 1,96,000   |        |
| Less : Indexed cost : $55,000 \times \frac{711}{182}$                                                                                | 2,14,863   |        |
| Long term capital loss : carried forward                                                                                             | (-) 18,863 |        |
| 3. Income from other sources:                                                                                                        |            |        |
| (a) Director fees                                                                                                                    | 4,000      |        |
| (b) Deemed dividends u/s 2(22)(e) for having taken a loan from the company in which the assessee has substantial holding/is director | 50,000     | 54,000 |
| Gross Total Income                                                                                                                   |            | 54,000 |
| Deduction under chapter VI A                                                                                                         |            | Nil    |
| Total Income                                                                                                                         |            | 54,000 |
| <b>Computation of total income of Dr. (Mrs.) Basu</b>                                                                                |            |        |
| 1. 60% share from Nursing Home is not taxable<br>(as tax is already paid by the firm)                                                |            | Nil    |
| 2. Income from house property (net) as per IT Act, 1961. ....                                                                        |            | 48,000 |
| 3. Income from other sources – dividend from UTI                                                                                     |            | Exempt |
| Gross Total Income                                                                                                                   |            | 48,000 |
| Less : Deduction under Chapter VI A                                                                                                  |            | Nil    |
| Total Income                                                                                                                         |            | 48,000 |

**Note :**

1. Share of profit from the firm accruing to minor son is not included in the total income of parent as share of profit to a partner is exempt.
2. Long - term capital loss cannot be set off against other income and therefore has to be carried forward.
3. Share of income from property belonging to HUF, taxable in hands of HUF, exempt u/s 10 in the hands of Dr. Basu.

**Q. 7. (a)** What is a defective return under Income Tax Act, 1961? What are remedies available for the same? [4]

**(b)** In the case of Ms Radha, you are required to compute the interest u/s 234A, 234B & 234C from the following :

Tax on total income for A.Y. 2011-12 ₹ 2,00,000; Due date for filing the return 30.09.2011; Actual date of filing the return 1.10.2011 and tax paid on 30.09.2011 ₹ 2,00,000. [6]

**(c)** Manmohan is aged 35 years. His father settled a property in trust giving whole life interest therein to Manmohan.

The income from the property for the years 2006-07 to 2009-10 was ₹ 70,000, ₹ 84,000, ₹ 90,000, ₹ 1,08,000 respectively. The expenses incurred each year were ₹ 2,000, ₹ 4,000, ₹ 5,000 and ₹ 6,000 respectively. Calculate the value of life interest of Mr. Manmohan in the property so settled on the valuation date 31.03.2011, with the help of the Life Interest factor of 9.267 for the purpose of Wealth Tax Act. [5]

**Answer 7. (a)**

**Defective Return [Section 139(9)] of Income Tax Act, 1961**

1. Under this sub-section, the Assessing Officer has the power to call upon the assessee to rectify a defective return.
2. Where the Assessing Officer considers that the return of income furnished by the assessee is defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of 15 days from the date of such intimation. The Assessing Officer has the discretion to extend the time period beyond 15 days, on an application made by the assessee.
3. If the defect is not rectified within the period of 15 days or such further extended period, then the return would be treated as an invalid return. The consequential effect would be the same as if the assessee had failed to furnish the return.
4. Where, however, the assessee rectifies the defect after the expiry of the period of 15 days or the further extended period, but before assessment is made, the Assessing Officer can condone the delay and treat the return as a valid return.
5. A return can be treated as defective if it is not properly filed in or the necessary enclosures are not accompanying the return.

Specific defects are only illustrative and not exhaustive - CIT v. Rai Bahadur Bissesswarlal Motilal Malwasie Trust 195 ITR 825.

**Answer 7. (b)****Computation of interest u/s 234A :**

| Particulars                                                           | As per assessed income |                |
|-----------------------------------------------------------------------|------------------------|----------------|
| Tax                                                                   |                        | ₹ 2,00,000     |
| Less : Advance tax paid                                               | Nil                    |                |
| TDS                                                                   | Nil                    | Nil            |
| Amount on which interest is payable                                   |                        | ₹ 2,00,000     |
| Period of default (October being part of a month shall be considered) |                        | 1 month        |
| <b>Interest u/s 234A (1% × ₹ 2,00,000 × 1 month)</b>                  |                        | <b>₹ 2,000</b> |

**Computation of interest u/s 234B :**

Since assessee did not pay any amount by way of advance tax, hence she is liable to pay interest u/s 234B,

| Particulars                                 | Assessed income |
|---------------------------------------------|-----------------|
| Shortfall                                   | ₹ 2,00,000      |
| Period of default (From April to September) | 6 months        |
| <b>Interest (1% × 2,00,000 × 6 months)</b>  | <b>₹ 12,000</b> |

**Computation of interest u/s 234C :**

| Due date   | Advance Tax Payment due          | Advance Tax Paid | Cumulative Advance Tax paid before due date | Shortfall in paid Payment | Surplus | Months | Interest @1%   |
|------------|----------------------------------|------------------|---------------------------------------------|---------------------------|---------|--------|----------------|
|            | ₹                                | ₹                | ₹                                           | ₹                         | ₹       | ₹      | ₹              |
| 15.09.2010 | 30% of ₹ 2,00,000<br>= 60,000    | Nil              | Nil                                         | 60,000                    | -       | 3      | 1,800          |
| 15.12.2010 | 60% of ₹ 2,00,000<br>= 1,20,000  | Nil              | Nil                                         | 1,20,000                  | -       | 3      | 3,600          |
| 15.03.2011 | 100% of ₹ 2,00,000<br>= 2,00,000 | Nil              | Nil                                         | 2,00,000                  | -       | 1      | 2,000          |
|            |                                  |                  |                                             |                           |         |        | <b>₹ 7,400</b> |

| Particulars             | Amount        |
|-------------------------|---------------|
| u/s 234A                | 2,000         |
| u/s 234B                | 12,000        |
| u/s 234C                | 7,400         |
| <b>Total Interest ₹</b> | <b>21,400</b> |

**Answer 7. (c)**

| Step | Procedure                                                                                                                                               |
|------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1    | Average Income for last three years = $(₹ 84,000 + 90,000 + ₹ 1,08,000)/3 = ₹ 94,000$ .                                                                 |
| 2    | Average Expenses for the last three years = $(₹ 4,000 + ₹ 5,000 + ₹ 6,000)/3 = ₹ 5,000$                                                                 |
| 3    | Maximum Permissible Expenses = Average Expenses or 5% of Average Income, whichever is less = 5% of ₹ 94,000 = ₹ 4,700, Hence lower of the two = ₹ 4,700 |
| 4    | Average Annual Income = ₹ 94,000 Less ₹ 4,700 = ₹ 89,300.                                                                                               |
| 5    | Life Interest = Average Annual Income x life interest Factor = ₹ 89,300 × 9.267 = ₹ 8,27,543                                                            |

**Q. 8. (a)** During the financial year 2011-12, a dealer purchased 11,000 Kgs. of inputs on which VAT paid @ 4% was ₹ 4,000. He manufactured 10,000 Kgs. of finished products from the inputs. 1000 Kgs. was the process loss. The final product was sold at uniform price of ₹ 10 per Kg as follows :

Sold within the State — 4,000 Kgs.

Finished goods sold in inter-State sale against C form — 2,500 Kgs.

Goods sent on stock transfer to consignments agents outside the State — 2,000 Kgs.

Goods sold to Government department outside the State — 1,500 Kgs.

There was no opening or closing stock of inputs, WIP or Finished product.

The State VAT rate on the finished product of dealer is 12.5%.

(i) Calculate liability of CST and VAT. [3]

(ii) Find VAT credit available to dealer and tax required to be paid in cash. [3]

**(b)** Y & Co. is a small scale Unit, eligible for exemption in terms of Notification No. 8/2003-CE dated 1.3.2003 for the year 2011-12. It provides the following particulars with regard to the clearances of goods effected during the said year.

(i) Determine the Excisable turnover and excise duty payable. [4+2]

(ii) Explain in detail, the reasons in support of exclusion or inclusion in computing the turnover. [3]

| Aggregate                                                                                                                       | ₹ (in lakhs) |
|---------------------------------------------------------------------------------------------------------------------------------|--------------|
| Value of domestic clearance of goods with own brand name                                                                        | 120          |
| Value of clearance of goods with the brand name of others (including ₹ 30 lakhs in respect of goods manufactured in rural area) | 100          |
| Value of clearances for exports                                                                                                 | 50           |
| Value of clearances for captive consumption                                                                                     | 40           |
| Value of clearances of exempted goods                                                                                           | 20           |
| (Assume rate of excise duty as 10%)                                                                                             |              |



**Answer 8. (a)**

CST against C form is 2%. Sales to Government would be treated as sale to unregistered dealer and tax payable is 12.5%. Thus the tax payable would be as follows :

| Description                              | Qty. sold (₹) | Value of goods sold (₹) | CST Payable (₹) | State VAT Payable (₹) |
|------------------------------------------|---------------|-------------------------|-----------------|-----------------------|
| Sale within state @ 12.5%                | 4,000         | 40,000                  |                 | 5,000                 |
| Goods sent on stock transfer             | 2,000         | 20,000                  |                 |                       |
| Goods sold against C form, tax rate 2%   | 2,500         | 25,000                  | 500             |                       |
| Goods sold to Government, tax rate 12.5% | 1,500         | 15,000                  | 1,875           |                       |
| <b>Total</b>                             | <b>10,000</b> | <b>1,00,000</b>         | <b>2,375</b>    | <b>5,000</b>          |

Tax paid on inputs- ₹ 4000. Credit (set off) will not be available in case of goods sent on stock transfer as the input tax not exceeding 4%. Tax attributable to goods sent on stock transfer is 20% i.e. ₹ 800. Out of this Credit will be available of tax paid in excess of 2%. Thus, credit of ₹ 400 will be available in respect of stock transferred goods and credit of ₹ 400 will not be available (since VAT rate is 4%). Thus total credit of ₹ 3600 (tax paid on inputs) is available.

Thus Tax payable is as follows :

|                                            |         |
|--------------------------------------------|---------|
| (a) Total tax payable (State VAT plus CST) | ₹ 7,375 |
| (b) Set off (credit) available             | ₹ 3,600 |
| Tax payable in cash                        | ₹ 3,775 |

**Answer 8. (b)**

**Computation of excisable turnover and excise duty payable during the year 2011-12 :**

| Particulars                                                                                                 | ₹ In lakh  |
|-------------------------------------------------------------------------------------------------------------|------------|
| <b>Turnover to be excluded/considered separately:</b>                                                       |            |
| Value of clearances for export:                                                                             | 50         |
| Value of clearances for captive consumption:                                                                | 40         |
| Value of clearances for exempted goods:                                                                     | 20         |
| Value of domestic clearance of goods with brand name of other (excluding goods manufactured in rural area): | 70         |
| <b>Turnover to be included:</b>                                                                             |            |
| Value of domestic clearances with own brand name:                                                           | 120        |
| Value of clearance of goods with brand name of others manufactured in rural area:                           | 30         |
| <b>Total</b>                                                                                                | <b>150</b> |

|                                                                                                       |                 |
|-------------------------------------------------------------------------------------------------------|-----------------|
| <b>Tax liability</b>                                                                                  |                 |
| On 1 <sup>st</sup> clearance of ₹ 150 lakh duty is                                                    | Nil             |
| On clearance with brand name of others worth ₹ 70 Lakh<br>(excluding rural area clearance) duty @ 10% | 7,00,000        |
| Add : Education cess and secondary and higher education cess @3%                                      | 21,000          |
| <b>Total duty liability</b>                                                                           | <b>7,21,000</b> |

(ii) Reasons along relevant provisions in Excise Law in support of inclusion and exclusion from computing turnover are given below.

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