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PAPER – 8: INDIRECT TAX LAWS

Question No. **1** is compulsory

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

(Wherever appropriate, suitable assumption/s should be made and indicated in the answer by the candidate)

Question 1

- (a) Machine India Ltd. is engaged in the manufacture of machines. It has supplied one machine to M/s. Z & Co. with the following details. Determine the total amount of central excise duty and cess payable thereon.

	Particulars	₹ (in lakhs)
(i)	Price of machines excluding taxes and duties	8,50,000
(ii)	Installation and erection expenses	30,000
(iii)	Packing charges	12,5000
(iv)	Design and engineering charges	4,000

(5 Marks)

Other necessary information is as under:

- (i) Cash discount @ 2% on price of machinery is allowed as per terms of contract because buyer made full payment in advance.
 - (ii) Bought out accessories worth ₹ 8,000 supplied with machine.
 - (iii) The rate of central excise duty is 10%, Education Cess 2% and Secondary and Higher Education Cess is 1%.
- (b) Robust Engineers Ltd. removed goods from their factory at Delhi on 20-02-2010 for sale from depot at Mumbai. On that date, the normal transaction value of goods at Delhi factory was ₹ 20,000 and the rate of duty was 8% ad-valorem. The said goods were sold from Mumbai depot on 15-3-2010. On that date the normal transaction value at Mumbai depot was ₹ 22,000 and rate of duty was 10%. (5 Marks)

The normal transaction value at Mumbai depot on 20-02-2010 was ₹ 19,000 and the rate of duty was 8%.

M/s. Robust Engineers Ltd. paid the duty on ₹ 20,000 at the rate of 8%. The Central Excise Department claimed central excise duty @ 10% on the value of ₹ 22,000.

Examine whether Department is correct.

The Suggested answers for Indirect Tax Laws (Paper 8) are based on the provisions as amended by the Finance Act, 2011 and notifications/circulars issued up to 30.04.2012 which are relevant for November, 2012 examinations.

- (c) (i) Mr. Singleton, an output service provider, deposited the service tax amounting to ₹ 20 lakh on 09-06-2011 for the quarter ending December, 2010.

Compute the amount of interest payable by Mr. Singleton assuming he deposits service tax electronically and his value of taxable service in 2009-10 was ₹ 80 lakh.

(3 Marks)

- (ii) Explain whether there would be any difference in the rate of interest if his value of taxable services was as follows:

2009-10	₹ 59 lakhs
2010-11	₹ 48 Lakhs
2011-12	₹ 54 lakhs

(2 Marks)

- (d) M/s. Evergreen Distributors have submitted the following particulars:

- (i) Inputs worth ₹ 1,00,000 were purchased within the State.
(ii) Finished goods worth ₹ 2,00,000 were sold within the State and finished goods worth ₹ 1,00,000 were sold in the course of inter-State trade.
(iii) VAT @ 12.5% was paid on procurement of capital goods during the month.

The input and output tax rate in the State is 12.5% and 4% respectively. The Central sales tax rate is 2%.

Calculate the VAT liability for the month.

(5 Marks)

- (c) M/s. Foreign Trade International Ltd. have imported one machine from England. They have given the following particulars:

(5 Marks)

	Particulars	Amount
(i)	F.O.B value of machine	£ 8000
(ii)	Air freight paid	£ 25000
(iii)	Design and development charges paid in England	£ 500
(iv)	Commission @ 2% of F.O.B. value paid to local agent in Indian currency	
(v)	Date of Bill of Entry is 24-10-2011 [rate of basic customs duty is 20%. Exchange rate as notified by C.B.E.C. is ₹ 68 per Sterling Pound]	
(vi)	Date of arrival of aircraft is 20-10-2011 when rate of basic customs duty was 18%, exchange rate as notified by C.B.E.C was ₹ 70 per Sterling Pound	
(vii)	CVD rate is 10% plus Education Cess 2% and Secondary and Higher Education Cess is 1%.	

(viii)	Rate of special additional duty is 4%	
(ix)	Insurance charges, though actually paid, details are not available.	

Compute the assessable value and determine the customs duty payable by M/s. Foreign Trade International Ltd. Give brief notes also wherever necessary.

Answer

(a) Computation of Central excise duty and cess payable thereon

Particulars	₹
Price of machine excluding taxes and duties	8,50,000
Installation and erection expenses [Note 1]	-
Packing charges [Note 2]	12,500
Design and engineering charges [Note 3]	4,000
Cost of material supplied free of charge by buyer [Note 4]	10,000
Pre-delivery inspection charges [Note 5]	1,000
Bought out accessories [Note 6]	-
Total	8,77,500
Less : 2% cash discount on price of machinery= ₹ 8,50,000 × 2 % [Note 7]	<u>17,000</u>
Assessable value	<u>8,60,500</u>
Excise duty @ 10.30%	88631.50
Excise duty[rounded off] payable	88632

Notes

While computing the assessable value:-

1. installation and erection expenses will not be included [Circular No. 643/34/2002 CX dated 01.07.2002].
2. amount charged from the buyer in relation to packing, whether primary or secondary, will be included [Instruction No. 354/81/2000 TRU dated 30.06.2000].
3. design and engineering charges will be included as such payment is 'in connection with sale'.
4. cost of material supplied free of charge by buyer will form part of assessable value as it is an additional consideration flowing from buyer to seller [Explanation 1 to Rule 6 of Valuation Rules].
5. pre-delivery inspection charges are includible [Circular No. 936/26/2010-CX dated 27.10.2010].

6. bought out accessories, supplied along with the machinery, will not be included [*Shriram Bearing Ltd. v. CCE 1997 (91) ELT 255*].
7. cash discount will be allowed as deduction if actually passed on to the buyer and if transaction is on principal to principal basis [*Circular No. 643/34/2002 CX dated 01.07.2002*].

(b) The Department is not correct in the instant case.

Value of excisable goods

As per rule 7 of the Central Excise (Determination of Price of Excisable Goods) Rules, 2000, where excisable goods are not sold at the factory gate or at the warehouse but are transferred to depots or consignment agents or any other place for sale, the assessable value for the goods cleared from factory/warehouse is the normal transaction value of such goods at the depot, etc. at or about the same time at which the goods as being valued are removed from the factory or warehouse.

In the given case, ₹ 20,000 represents value on 20.02.2010 (time of removal) but it is not the value prevalent at the depot. Similarly, ₹ 22,000 represents depot price, but then it is not the price prevalent on 20.02.2010 (time of removal).

The correct value to be adopted in this case is the depot price of such goods (normal transaction value) on 20.02.2010 i.e., ₹ 19,000.

Rate of excise duty

The applicable rate of duty shall be the rate in force on the date when such goods are removed from the factory/warehouse. Hence, the correct rate of duty will be 8%.

(c) (i) Computation of interest payable by Mr. Singleton

Due date for e-payment of service tax for the quarter ending December 2010	06.01.2011
Date when service tax was actually paid	09.06.2011

Period	Rate of interest	Delay in no. of days	Interest
07.01.2011 to 31.03.2011	13%	25 + 28 + 31 = 84	$\left[20,00,000 \times \frac{84}{365} \times 13\% \right]$ $= ₹59,835.62$
01.04.2011 to 09.06.2011	18%	30 + 31 + 9 = 70	$\left[20,00,000 \times \frac{70}{365} \times 18\% \right]$ $= ₹69,041.10$
			Total Interest = ₹1,28,876.72
			Rounded off = ₹1,28,877

With effect from 01.04.2011, the rate of interest on delayed payment of service tax has been increased from 13% to 18%. However, with effect from 08.04.2011, a concessional rate of interest @ 15% has been made available to the tax payers whose turnover does not exceed ₹60 lakh during any of the years covered by the notice or during the preceding financial year. In the given case, the concessional rate will not be available to Mr. Singleton as his turnover was ₹ 80 lakh in the preceding financial year 2009-10.

- (ii) Since, in the given case, the turnover of Mr. Singleton does not exceed ₹ 60 lakh in the preceding financial year, 15% interest will be leviable from 08.04.2011 to 09.06.2011.

The rate of interest would be as under:-

Period	Rate of interest
07.01.2011 to 31.03.2011	13%
01.04.2011 to 07.04.2011	18%
08.04.2011 to 09.06.2011	15%

(d) Computation of the VAT liability for the month

Particulars	₹
Output tax (₹2,00,000 x 4%)	8,000
CST for inter-State sale @ 2% (₹1,00,000 x 2%)	2,000
Input tax credit (₹1,00,000 x 12.5%)	12,500
State VAT liability (₹8,000 – ₹12,500)	Nil
Excess credit available	4,500
Central sales tax to be paid (₹2,000 – ₹4,500)	Nil
Excess credit carried forward to subsequent period	2,500

(e) Computation of assessable value and duty payable thereon:

Particulars	£
FOB value	8,000
Add: Design and development charges	500
Air freight [£ 8,000 x 20%] [Note 1(i)]	1,600
Insurance @ 1.125% of FOB [Note 1(ii)]	90
Total	10,190
Particulars	₹
Total in Rupees @ ₹68 per pound [Note 2]	6,92,920.00
Add: Local agency commission [2% of (₹8000 x ₹68)] [Note 1(iii)]	10,880.00
C.I.F value	7,03,800.00

Add: Landing charges @ 1% of CIF value [Note 1(iv)]	<u>7,038.00</u>
Assessable value	7,10,838.00
Add: Basic custom duty @ 20% [A] [Note 3]	<u>1,42,167.60</u>
Total	8,53,005.60
Add: CVD @ 10.30% [B]	87,859.58
Add: Education cess [3% of (₹1,42,167.60+ ₹87,859.58)] [C]	<u>6,900.82</u>
Total for Special CVD	9,47,766
Special CVD @ 4% [D]	37,910.64
Total duty payable [A] + [B] + [C] + [D]	<u>2,74,838.64</u>
Rounded off	2,74,839.00

Notes:

- As per rule 10 of the Customs (Determination of Value of Imported Goods) Rules, 2007:
 - if the goods are imported by air, the freight cannot exceed 20% of FOB price.
 - insurance charges are to be taken at 1.125% of FOB price if actual charges are not known.
 - the commission paid to local agent is includible as it is not a buying commission.
 - landing charges have to be considered @ 1% of CIF value.
- The rate of exchange notified by the CBEC on the date of presentation of bill of entry has been considered [Section 14 of the Customs Act, 1962].
- Rate of duty prevalent on the date of presentation of bill of entry, which is later than the date of arrival of the aircraft, has been considered [Section 15 of the Customs Act, 1962].

Question 2

- With reference to amendments effected recently in CENVAT Credit Rules, 2004, explain the following:
 - Manner of distribution of CENVAT credit by input service distributor. (4 Marks)
 - The amount payable in respect of capital goods, on which Cenvat credit has been availed and is removed as scrap or waste. (2 Marks)
- Explain the following in relation to service tax : (2 × 3=6 Marks)
 - Date of payment under Rule 2A of the Point of Taxation Rules, 2011.
 - Maximum time limit specified in Rule 4A(1) of the Service Tax Rules, 1994 for issuing an invoice by the person providing taxable service.

- (iii) Conditions specified under Sub-Rule (4B) of Rule 6 of the Service Tax Rules, 1994 for adjustment of excess amount paid, under Sub-Rule (4A) of Rule 6.
- (c) Mention whether Education Cess and Secondary and Higher Education Cess is leviable on the goods imported into India under sub-section (1) of Section 3 of the Customs Tariff Act, 1975. (3 Marks)

Answer**(a) (i) Manner of distribution of CENVAT credit by input service distributor:-**

As per rule 7 of the CENVAT Credit Rules, 2004, an input service distributor may distribute the CENVAT credit in respect of the service tax to its manufacturing units or service providing units, subject to the following conditions:—

- (a) the credit distributed does not exceed the amount of service tax paid thereon;
- (b) credit of service tax attributable to service used in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed;
- (c) credit of service tax attributable to service used wholly in a unit shall be distributed only to that unit; and
- (d) credit of service tax attributable to service used in more than one unit shall be distributed pro rata on the basis of the turnover during the relevant period of the concerned unit to the sum total of the turnover of all the units to which the service relates during the same period.

(ii) As per rule 3(5A) of the CENVAT Credit Rules, 2004, if the capital goods are removed as scrap or waste, the manufacturer/provider of output services shall pay an amount equal to:-

- (I) CENVAT Credit taken on the said capital goods reduced by certain specified percentage points calculated by straight line method for each quarter of a year or part thereof from the date of taking the CENVAT Credit.

or

- (II) Duty leviable on transaction value.

whichever is higher.

(b) (i) "Date of payment" under rule 2A of the Point of Taxation Rules, 2011 shall be:-

- (a) date on which the payment is entered in the books of accounts

or

- (b) date on which payment is credited to the bank account of the person liable to pay tax

whichever is earlier.

(ii) Time-limit specified in rule 4A(1) of the Service Tax Rules, 1994 for issue of an invoice:

An invoice has to be issued within 30 days* from the date of:-

(i) completion of taxable service

or

(ii) receipt of payment towards the value of such taxable service

whichever is earlier.

*45 days in case where the service provider is a banking company, a financial institution including a NBFC, or any other body corporate or any other person providing service in relation to banking and other financial services.

- (iii) As per rule 6(4B), the adjustment of excess amount paid, under sub-rule (4A) of rule 6, shall be subject to the condition that the excess amount paid is on account of reasons not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification.
- (c) Central Government, vide *Notification Nos.13/14-Cus both dated 17.03.2012*, has exempted education cess and secondary and higher education cess leviable on the goods imported under sub-section (1) of section 3 of the Customs Tariff Act, 1975. Hence, no education cess and secondary and higher education cess is leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975.

Question 3

- (a) (i) *M/s. Future Ltd. classified the goods manufactured by them under a particular tariff heading of Central Excise Tariff which attracts 'Nil' rate of duty. The said heading of the Central Excise Tariff is not aligned with H.S.N. The Department, relying upon the H.S.N for classification of the goods, has demanded Central Excise Duty.*
Is the demand of duty by the Department justified? Discuss with the help of decided case? (3 Marks)
- (ii) *Discuss with the help of decided case, whether the re-appreciation of evidence on a debatable point by the Customs, Excise and Service Tax Appellate Tribunal can be considered as rectification of mistake apparent on record under section 35C(2) of the Central Excise Act.* (3 Marks)
- (b) (i) *Discuss briefly whether a person who is not liable to pay service tax and has collected an amount representing service tax, is liable to pay the amount to department.* (3 Marks)
- (ii) *Mention the questions on which the advance ruling may be sought in relation to service tax from Authority for Advance Ruling.* (3 Marks)
- (c) *₹ 50 lakh drawback was paid to M/s. Sun Export Ltd. Subsequently the Commissioner of Customs issued a show cause notice for recovery of the erroneously paid drawback. M/s. Sun Export Ltd. filed an application for settlement of case before the Settlement Commission. The Commissioner disputed the jurisdiction of the Settlement Commission by contending that recovery of drawback did not involve levy, assessment and collection*

of customs duty as envisaged under section 127A(b) of the Customs Act. Discuss with the help of decided case whether the stand taken by the Commissioner is correct.

Answer

- (a) (i) No, the demand of duty by the Department is not justified. In case of *Camlin Ltd. v. CCEx. Mumbai (2008) 230 ELT 193 (SC)*, the Supreme Court observed that Central Excise Tariff is based upon HSN, but it is not a copy of HSN. It held that when the entries in HSN and the Excise Tariff are not aligned, reliance cannot be placed upon HSN for the purposes of classification of goods. Central Excise Tariff of India should be followed in such cases. Since the entries under the HSN and the entries under the said Tariff were completely different, the Department could not demand duty on the basis of the entries in the HSN.

- (ii) No, re-appreciation of evidence by CESTAT on a debatable point cannot be considered to be rectification of mistake apparent on record under section 35C(2) of the Central Excise Act, 1944.

Supreme Court, in case of *CCE v. RDC Concrete (India) Pvt. Ltd. 2011 (270) E.L.T. 625 (S.C.)* observed that a mistake apparent on record must be an obvious and patent mistake. It need not be established by a long drawn process of reasoning. Arguments not accepted earlier during disposal of appeal cannot be accepted while hearing rectification of mistake application.

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 in pursuance of a rectification application, CESTAT cannot re-appreciate the evidence and reconsider its legal view taken earlier.

- (b) (i) As per section 73A of the Finance Act, 1994,
- (a) Any person who is not liable to pay service tax and has collected an amount representing service tax should forthwith pay the said amount to the credit of the Central Government.
 - (b) If he fails to do so, a notice shall be served on him requiring him to show cause why said amount, as specified in the notice, should not be paid by him to the credit of the Central Government.
 - (c) Such person may make a representation to the Central Excise Officer (CEO) and after considering the said representation, the CEO would determine the amount due (not exceeding the amount specified in the notice) from such person. Thereupon, such person shall pay the amount so determined.
- (ii) As per section 96C(2) of the Finance Act, 1994, the questions on which the advance ruling can be sought in relation to service tax from Authority for Advance Ruling are as follows-
- (a) classification of any service as a taxable service under Chapter V;
 - (b) the valuation of taxable services for charging service tax;

- (c) the principles to be adopted for the purposes of determination of value of the taxable services under the provisions of Chapter V;
 - (d) applicability of notifications issued under Chapter V;
 - (e) admissibility of credit of service tax;
 - (f) determination of the liability to pay service tax on a taxable service under the provisions of Chapter V.
- (c) No, the stand taken by the Commissioner is not correct. The High Court, in case of *Union of India v. Cus. & C. Ex. Settlement Commission 2010 (258) ELT 476 (Bom.)*, has concluded that the duty drawback or claim for duty drawback is nothing but a claim for refund of duty may be as per the statutory scheme framed by the Government of India or in exercise of statutory powers under the provisions of the Act. Hence, the Settlement Commission has jurisdiction to deal with the question relating to the recovery of drawback erroneously paid by the Revenue.

Question 4

- (a) *M/s. Export & Sons filed a claim for rebate of central excise duty between April and May, 2003. The Assistant Commissioner, vide order dated 23-06-2004 rejected the claim. On appeal, the Commissioner (Appeals) allowed the rebate claims vide order dated 30-09-2004. The rebate claims were sanctioned to M/s. Export & Sons within three months of receipt of order of the Commissioner (Appeals). The Assistant Commissioner, relying upon the Explanation to section 11 BB of the Central Excise Act, rejected the claim for interest filed by M/s. Export & Sons.*

Examine, with the help of decided case, whether the rejection of interest for delayed sanction of rebate claims is justified. (6 Marks)

- (b) *M/s. Infrastructure Ltd. has entered into a works contract for a turnkey project. They paid the service tax to the Department at the rate specified in section 66 of the Finance Act, 1994. Subsequently, they approached the Department to allow them to pay the service tax under the Composition Scheme.*

Discuss, with the help of decided case, whether M/s. Infrastructure Ltd. are likely to be given the permission to pay the service tax under the Composition Scheme. (6 Marks)

- (c) *M/s Fast Exporters Ltd. had setup a unit in export processing zone. They imported machines without payment of duty under exemption notification. The company did not run properly and went into liquidation. A show cause notice has been issued to the Managing Director, besides the company, for imposition of penalty under section 112(a)(ii) of the Customs Act.*

Discuss whether the show cause notice for imposition of penalty on Managing Director is sustainable in law, with the help of decided case law. (3 Marks)

Answer

- (a) No, the rejection of interest by the Assistant Commissioner for delayed sanction of rebate claims is not justified. In case of *Ranbaxy Laboratories Ltd. v. UOI 2011 (273) E.L.T. 3*

(SC), the Apex Court held that section 11BB of the Act comes into play only after an order for refund has been made under Section 11B of the Act. Section 11BB of the Act lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of the application for refund, then the applicant shall be paid interest on expiry of a period of three months from the date of receipt of the application.

The Explanation appearing below proviso to Section 11BB does not have any bearing or connection with the date from which interest under section 11BB becomes payable and does not postpone the said date. Manifestly, interest under Section 11BB of the Act becomes payable, if on an expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Hence, in the given case since the rebate claim has been sanctioned to M/s Export & Sons after three months from the date of receipt of the application, it is entitled to the interest for the delayed sanction of rebate claims.

- (b) No, in the given case, M/s. Infrastructure Ltd. would not be given permission to pay the service tax under the Composition scheme. The High Court, in case of *Nagarjuna Construction Company Ltd v. GOI 2010 (19) STR 321 (A.P.)*, has held that on a true and fair construction of rule 3(3) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, unambiguously, it was clear that where in respect of a works contract service tax had been paid, no option to pay service tax under the composition scheme could be exercised. The entitlement to avail the benefits of the composition scheme is only after an option is exercised under rule 3(3) of the said rules and this provision specifically enjoins a disqualification for exercise of such option where service tax has been paid in respect of a works contract. In other words, where service tax has been paid in respect of a works contract, the eligibility to exercise an option to avail the benefits of the composition scheme is excluded.
- (c) Yes, a show cause notice for imposition of penalty on Managing Director is sustainable in law even when a separate penalty is imposed on the company. The High Court, in case of *Textoplast Industries v. Additional Commissioner of Customs 2011 (272) E.L.T. 513 (Bom.)*, has enunciated the principle that a separate penalty under section 112 of the Customs Act can be imposed on the partners when the same has already been imposed on partnership firm. 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.

Applying the same principle to the instant case, it can be inferred that a penalty can be imposed on Managing Director also besides the company under section 112(a)(ii).

Question 5

- (a) (i) *Mention briefly the provisions relating to non-reversal of CENVAT credit under section 5B of the Central Excise Act.* (3 Marks)
- (ii) *Does the principle of "Latter and Better" applies in classifying the excisable goods?* (3 Marks)
- (b) (i) *Mention the persons who are excluded from availing the general exemption available to small service provider under Notification No. 6/2005-S.T., dated -1-03-2005, as amended.* (3 Marks)
- (ii) *Explain briefly the addition method for computation of VAT.* (3 Marks)
- (c) *Mention briefly the option available to an importer or exporter or their agent or employee under sub-section (5) of section 28 of the Customs Act.* (3 Marks)

Answer

- (a) (i) As per Section 5B of the Central Excise Act, 1944 where a process undertaken by a manufacturer is held as not chargeable to excise duty by the Courts, though the assessee has been availing credit of excise duty/service tax/cess paid on the inputs/capital goods/input services used in manufacturing the final product and paying excise duty on such final products, the Central Government may order for non-reversal of the credit allowed to the assessee by issuing a notification.
- The notification may specify the conditions subject to which such non-reversal of credit may be ordered. Further, the Central Government may also order for non-reversal of credit, if any, taken by the buyer of the said product in such notification.
- It may be noted that such non-reversal of the credit shall not be ordered if the assessee has preferred a claim for refund of excise duty paid by him.
- (ii) The Central Excise Tariff Act, 1985 incorporates five Rules of Interpretation. Rule 3(c) of the "Rules for the Interpretation" provides that when goods cannot be classified by reference to rule 3(a) or rule 3(b), they shall be classified under the heading which occurs last in the numerical order among those which equally merit consideration. Thus the principle of "Latter the Better" applies in determining the classification of the excisable goods.
- (b) (i) The following persons are excluded from availing the general exemption available to small service provider under *Notification No. 6/2005-ST dated 01.03.2005*, as amended-
- (i) Service provider providing taxable service under a brand name or trade name, whether registered or not, of another person.
- (ii) Service receiver who is liable to pay service tax as per provisions of section 68(2) of the Finance Act, 1994 read with rule 2(1)(d) of the Service Tax Rules, 1994.
- (iii) Service provider who avails CENVAT credit of service tax paid on any input services.

- (ii) Addition Method aggregates all the factor payments including profit to arrive at the total value addition on which the rate is applied to calculate the tax. This type of calculation is mainly used with income variant of VAT.

This method does not easily accommodate exemptions of intermediate dealers. A drawback of this method is that it does not facilitate matching of invoices for detecting evasion.

- (c) Section 28(5) of the Customs Act provides an option to an importer or an exporter or the agent or employee of the importer or exporter to whom a notice has been served by the proper officer for short/non levy or short payment of duty or interest or erroneous refund of duty and interest by reason of collusion or any willful mis-statement or suppression of facts.

If such a person pays the duty in full or in part as may be accepted by him including the interest payable thereon under section 28AA and penalty within 30 days of the receipt of the notice, the penalty will be reduced to 25% of the duty specified in the notice or the duty so accepted by that person. The person should also inform the proper officer about such payment in writing.

Question 6

- (a) *Mention the circumstances where the goods are liable for confiscation under the provisions of Central Excise Rules, 2002.* (6 Marks)

OR

- (a) *Briefly answer the following questions relating to export of excisable goods without payment of duty except to Nepal and Bhutan:* (6 Marks)

- (i) *What is the type of bond required to be executed?*
- (ii) *Who is exempted from execution of such Bond?*
- (iii) *What is the document prescribed for clearance of goods for export?*
- (iv) *How many copies are required to be prepared of such document?*
- (v) *Is it necessary to prepare an invoice?*
- (vi) *What will be the duty payable, if excisable goods are not exported within six months from the date of clearance?*

- (b) (i) *Under what circumstances the premises of an assessee may be searched and by whom under the Finance Act, 1994 relating to service tax?* (3 Marks)
- (ii) *Mention briefly the different types of audit prescribed under VAT provisions.* (3 Marks)
- (c) *Mention briefly the provisions relating to remission of duty in case of volatile goods under the Customs Act.* (3 Marks)

Answer

- (a) Under rule 25 of the Central Excise Rules, 2002, the excisable goods are liable for confiscation if any producer, manufacturer, registered person of a warehouse or registered dealer -

- (i) removes any excisable goods in contravention of the Central Excise Rules or the notifications issued thereunder; or
- (ii) does not account for any excisable goods produced or manufactured or stored by him; or
- (iii) contravenes any of the provisions of the said rules/notification issued there under with an intent to evade payment of duty; or
- (iv) engages in the manufacture or production or storage of any excisable goods without registration of the factory.

Rule 27 of Central Excise Rules, 2002 provides for penalty and confiscation of goods in case of breach of provisions of Central Excise Rules, 2002 where no other penalty has been provided.

OR

- (a)
 - (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.
 - (ii) Manufacturer- exporter is exempted from furnishing such bond. He can furnish an annual Letter of Undertaking (LUT) in Form UT-1.
 - (iii) ARE-1 is the document prescribed for clearance of goods for export.
 - (iv) ARE-1 is required to be prepared in five copies (quintuplicate). The fifth copy is the optional copy which the assessee can use for claiming other export incentives.
 - (v) 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.
 - (vi) If goods are not exported within 6 months from the date of clearance for export, the duty payable will be computed as per the rate and tariff value applicable on the date of removal of such goods from the factory.
- (b)
 - (i) According to provisions of section 82 of the Finance Act, 1994, the premises of an assessee may be searched by Joint Commissioner of Central Excise or Superintendent of Central Excise on the authorization of Joint Commissioner of Central Excise under the following circumstances:
 1. Joint Commissioner of Central Excise has reason to believe that any documents/books or things are secreted in any place.
 2. Joint Commissioner of Central Excise is of the opinion that such documents/books are useful for or relevant to any proceeding under the Act.

However, the search shall be subject to the Code of Criminal Procedure, 1973.
 - (ii) The different types of audit prescribed under VAT provisions are given below:

Departmental Audit: In this audit, correctness of information supplied under self-assessment system is checked. A certain percentage of the dealers are taken up for audit every year on a scientific basis. If during the course of such audit tax evasion is detected, the previous records of the concerned dealer may also be called for the purpose of audit. Under this audit, authorized officers of the Department visit the business place of the dealer to conduct the audit. The auditors examine the correctness of the returns vis-à-vis the books of account of the dealer or any other information available with them.

Independent Professional Audit: Since the Departmental Audit has not been able to curb the menace of tax avoidance and tax evasion to the desirable extent, the concept of independent professional audit by Chartered Accountants or Cost Accountants has been prescribed in VAT Acts of some of the States in India.

- (c) Section 70 of the Customs Act provides for the remission of duty in case of shortage of the volatile goods, which are warehoused. The Assistant or Deputy Commissioner of Customs is empowered to remit the duty leviable on such deficiency, if following conditions are satisfied:
- (i) The goods should be found deficient in quantity at the time of removal from the warehouse;
 - (ii) The deficiency should be on account of natural loss, i.e. evaporation etc.

These provisions are applicable only to such warehoused goods as the Central Government, having regard to the volatility of the goods and the manner of their storage, may, by notification in the Official Gazette, specify.

Question 7

- (a) (i) Briefly mention the categories of persons who are required to take registration under the Central Excise law. (3 Marks)
- (ii) Mention the power of Settlement Commission to grant immunity from prosecution and penalty. (3 Marks)
- (b) (i) Mention the circumstances under which a Central Excise Officer may resort to "Best Judgement Assessment" under section 72 of the Finance Act, 1994. (3 Marks)
- (ii) Explain briefly the Compulsory Registration and Voluntary Registration under the VAT Act. (3 Marks)
- (c) Mention the relevant date in the following cases of goods warehoused under Bond under the Customs Act: (1 x 3 = 3 Marks)
 - (i) Rate of exchange, when goods are removed for home consumption.
 - (ii) Rate of duty when goods are removed from warehouse for home consumption.
 - (iii) Rate of duty if goods are not removed from warehouse within the permissible limit.

Answer

- (a) (i) The following persons are required to take registration under the Central Excise Law:

- i. Every manufacturer of excisable goods (including Central/State Government undertakings or undertakings owned or controlled by autonomous corporations) on which excise duty is leviable.
 - ii. First stage or second stage dealers (including manufacturer's depot and importers) desiring to issue cenvatable invoices.
 - iii. Persons holding private warehouses for storing non-duty paid goods.
 - iv. Persons who obtain excisable goods for availing end-use based exemption notification.
 - v. Exporters manufacturing or processing export goods by using duty paid inputs and intending to claim rebate of such duty.
 - vi. Exporters manufacturing or processing export goods by using inputs received without payment of duty and exporting the finished export goods.
- (ii) The Settlement Commission can grant immunity under section 32K of Central Excise Act, 1944 from prosecution for any offence under the Act and either wholly or in part from the imposition of penalty if it is satisfied that the applicant has made full and true disclosure and co-operated with the Commission.

If the payment is not made as per the settlement order or any particulars are concealed or any false evidence is given, the immunity can be withdrawn.

If prosecution has already been launched before submission of application for settlement, the immunity against such prosecution cannot be granted.

Note: The aforesaid answer is based on the provisions of Central Excise Law.

- (b) (i) Central Excise Officer may resort to "Best Judgement Assessment" under section 72 of the Finance Act, 1994 in the following circumstances:-
- (a) Failure to furnish the return under section 70 by any person liable to pay service tax or
 - (b) Failure to assess the tax in accordance with the provisions of this Chapter or rules made thereunder after making a return by any person liable to pay service tax.
- (ii) **Compulsory registration:** If an assessee fails to obtain registration under the applicable VAT Act, he may be registered compulsorily by the Commissioner. The Commissioner may assess the tax due from such person on the basis of evidence available with him and thereafter, the concerned assessee is bound to pay such amount of tax. Further, failure to get registered shall result in attracting default penalty and forfeiture of eligibility to set off all input tax credit related to the period prior to the compulsory registration.

Voluntary registration: A dealer who is not eligible for registration under VAT may also obtain registration if the Commissioner is satisfied that the business of the applicant requires registration under VAT. At the time of granting voluntary

registration, the Commissioner may impose certain terms or conditions if he thinks it necessary to do so.

- (c) (i) The relevant date for rate of exchange is the date on which the bill of entry is presented for warehousing under section 46 of the Customs Act, 1962 and not when bill of entry is presented under section 68 for clearance from warehouse.
- (ii) As per section 15(1)(b) of the Customs Act, 1962, rate of duty as prevalent on date of presentation of bill of entry for home consumption for clearance from warehouse is applicable and not the rate 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 day it should have been removed. Thus, duty applicable on such date i.e. last date on which the goods should have been removed is relevant and not the date on which the goods were actually removed.