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PAPER – 8: INDIRECT TAX LAWS

Question No. 1 is compulsory

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

Question 1

- (a) KSP Ltd. purchased a pollution control equipment for ₹ 15,14,240 which is inclusive of excise duty at 16% plus education cess 2% plus secondary and higher education cess 1%. The equipment was purchased on 1-9-2010 and was disposed of as second hand equipment on 10-10-2012 for a price of ₹ 12,00,000. The excise duty rate on the date of disposal was 12% plus education cess @ 2% plus secondary and higher education cess 1%.
- (i) You are required to calculate the amount of CENVAT credit allowable for the financial year 2010-11 and 2011-12.
- (ii) What is the amount payable towards CENVAT credit already availed at the time of disposal of the equipment in the financial year 2012-13?
- (Make suitable assumptions where required and show the working and explanation wherever required) (5 Marks)
- (b) MNO & Co. is the small scale unit located in a rural area and is availing the benefit of small scale exemption under Notification No. 8/2003-CE during the year 2011-12. You are required to determine the value of the first clearance of the unit and duty liability on the basis of particulars given below:

		₹
(i)	Total value of clearances of goods with own brand name	50,00,000
(ii)	Total value of clearances of goods with brand name of other parties	100,00,000
(iii)	Clearances of goods which are totally exempt under another notification (other than an exemption based on quantity or value of clearances)	45,00,000
(iv)	Rate of excise duty – 12% plus education cesses as applicable	
(v)	Assume that the unit is eligible for exemption under Notification No. 8/2003.	

(Make suitable assumptions where required and show the calculations with appropriate notes) (5 Marks)

The suggested answers for Indirect Tax Laws (Paper: 8) are based on the provisions as amended by the Finance Act, 2012 and notifications/circulars issued up to 31.10.2012 which are relevant for May, 2013 examinations.

- (c) Robinson Bank Ltd. furnishes the following information relating to services provided and the gross amount received during the month of December, 2012. Compute the value of taxable service and service tax payable:

		₹ (Lakhs)
(i)	Amount of commission received for debt collection service	10
(ii)	Discount earned on bills discounted	4.5
(iii)	Dealing in sale and purchase of forward contract	5.7
(iv)	Charges received on credit card and debit card facilities extended	3.8
(v)	Penal interest recovered from the customers for the delay in repayment of loan	2.6
(vi)	Commission received for service rendered to Government for tax collection	6.0
(vii)	Interest earned on reverse repo transaction	25.0

(Show the workings with explanation wherever required)

(5 Marks)

- (d) The following information relates to purchases and sales of K.K. Ltd. for the month of September 2012:

	₹
Purchases for resale within the State	8,00,000
Purchases from registered dealers who opted for composition scheme	4,00,000
Purchases to be used as consumable stores for manufacture of taxable goods	6,00,000
Purchases of goods where invoices do not show the amount of taxes separately	5,00,000
Purchases of goods for personal consumption	2,00,000
Purchases of capital goods (not eligible for input credit)	5,50,000
Purchases of capital goods (eligible for input credit)	5,76,000

Sales made within the State during the month of September 2012 was ₹ 50,00,000 on which VAT @ 4% was payable.

Assuming that all purchases given above are exclusive of VAT @ 12.5%, calculate:

- The amount of input tax credit available for the month of September 2012.
- VAT payable for the month of September 2012
- Input tax credit carried forward

Note: The input VAT credit on eligible capital goods is available in 24 equal monthly installments.

(Make suitable assumptions where required and show the workings)

(5 Marks)

- (e) BSA & Company Ltd. has imported a machine from U.K. From the following particulars furnished by it, arrive at the assessable value for the purpose of customs duty payable:

(i)	F.O.B cost of the machine	10,000 U.K. Pounds
(ii)	Freight (air)	3,000 U.K. Pounds
(iii)	Engineering and design charges paid to a firm in U.K.	500 U.K. Pounds
(iv)	License fee relating to imported goods payable by the buyer as a condition of sale	20% of F.O.B. cost
(v)	Materials and components supplied by the buyer free of cost valued	₹ 20,000
(vi)	Insurance paid to the insurer in India	₹ 6,000
(vii)	Buying commission paid by the buyer to his agent in U.K.	100 U.K. Pounds

Other particulars:

- (i) Inter-bank exchange rate as arrived by the authorized dealer : ₹ 72.50 per U.K. Pound.
- (ii) CBEC had notified for purpose of section 14 of the Customs Act, 1944, exchange rate of ₹ 70.25 per U.K. Pound.
- (iii) Importer paid ₹ 5,000 towards demurrage charges for delay in clearing the machine from the Airport.

(Make suitable assumptions wherever required and show workings with explanations)

(5 Marks)

Answer

- (a) Computation of amount of CENVAT credit allowable for financial years 2010-11 and 2011-12**

		Amount (₹)
Cum duty price of Pollution Control Equipment	₹15,14,240	
Rate of excise duty including education cess and secondary and higher education cess	16.48%	
Excise duty paid on equipment = ₹ 15,14,240 × $\frac{16.48}{116.48}$		2,14,240
CENVAT credit allowable on pollution control equipment for the		
Financial Year 2010-11 @ 50% [Note-1]		1,07,120
Financial Year 2011-12 @ 50% [Note 1]		1,07,120

Computation of amount payable towards CENVAT credit on disposal of equipment in the financial year 2012-13

	Amount (₹)	
Total CENVAT credit availed on the equipment		2,14,240
Less:		
(i) First 50% credit = [₹ 1,07,120 × 2.5%] × 10 quarters (credit availed on 01.09.2010)	26,780	
(ii) Next 50% credit = [₹1,07,120 × 2.5%] × 7 quarters (credit availed on 01.04.2011)	<u>18,746</u>	<u>45,526</u>
Amount payable on disposal of machinery		1,68,714
Duty leviable on transaction value (₹12,00,000 × 12.36%)		1,48,320
Amount payable towards CENVAT credit on disposal of equipment [Note 2]		1,68,714

Notes:

- Pollution control equipment falls under eligible capital goods and credit upto 50% can only be taken in the financial year in which the capital goods is received. Balance credit can be taken in any subsequent financial year. [Clause (a) and (b) of rule 4(2) of the CENVAT Credit Rules, 2004].
- As per rule 3(5A) of the CENVAT Credit Rules, 2004, if the capital goods, on which CENVAT credit has been taken, are removed after being used, higher of the following two amounts has to be paid
 - an amount equal to the CENVAT credit taken on the said capital goods reduced by 2.5% calculated by straight line method for each quarter of a year or part thereof from the date of taking the CENVAT credit

OR

 - duty leviable on transaction value.
- It has been assumed that KSP Ltd. is a manufacturer not eligible for SSI exemption and that the pollution control equipment has been received in the factory on 1.9.2010.
- Disposal price of the equipment is assumed to be the transaction value (exclusive of excise duty).

(b) Computation of the value of first clearances and duty liability of MNO & Co.

Sl. No.	Particulars	Amount (₹)
(i)	Clearances of goods with own brand name	50,00,000
(ii)	Clearances of goods with brand name of other parties [Note 1]	1,00,00,000

(iii)	Clearances of goods which are exempt under a notification other than exemption based on quantity or value of clearances [Note 2]	–
	Total value of clearances eligible for SSI exemption available under <i>Notification No. 8/2003 CE dated 01.03.2003</i>	1,50,00,000
	Less: SSI exemption [Note 3]	<u>1,50,00,000</u>
	Dutiable clearances	<u>Nil</u>
	Excise duty payable	<u>Nil</u>

Notes:

As per *Notification No. 8/2003 CE dated 01.03.2003* -

1. Since, MNO & Co. is situated in rural area, clearances of goods with brand name of other parties would also be eligible for SSI exemption.
2. Clearances of goods which are exempt (other than an exemption based on quantity or value of clearances) under a notification are not included in the first clearances of ₹150 lakh.
3. First clearances of ₹150 lakh are exempt from payment of excise duty under SSI exemption.

(c) Computation of value of taxable service and service tax payable by Robinson Bank Ltd.

Sl. No.	Particulars	Amount (₹ in lakh)
(i)	Commission received for debt collection service [Note 1]	10,00,000
(ii)	Discount earned on bills discounted [Note 2]	-
(iii)	Dealing in sale and purchase of forward contract [Note 3]	-
(iv)	Charges received on credit and debit card facilities extended [Note 4]	3,80,000
(v)	Penal interest recovered from the customers for the delay in repayment of loan [Note 5]	-
(vi)	Commission received for service rendered to Government for tax collection [Note 1]	6,00,000
(vii)	Interest earned on reverse repo transaction [Note 6]	-
	Total	<u>19,80,000</u>
	Value of taxable service $\left[19,80,000 \times \frac{100}{112.36} \right]$ rounded off	17,62,193
	[since all the amounts are total amounts received]	

Service tax payable [₹ 17,62,193 × 12%]	2,11,463
Education cess [₹ 2,11,463 × 2%]	4229
Secondary and higher education cess [₹ 2,11,463 × 1%]	<u>2115</u>
Total service tax payable	<u>2,17,807</u>

Notes:

1. Commission received for debt collection service and commission received for service rendered to Government for tax collection are neither transactions in money which are excluded from the definition of service nor covered in negative list or under any exemption notification and are thus liable to service tax.
2. Services of bills discounting, to the extent the consideration is represented by way of discount, is covered in the negative list of services as such discounting is also a manner of extending credit facility or a loan.
3. Sale or purchase of forward contracts, being transaction in money, is outside the scope of the definition of service. It has been assumed that the dealings in sale and purchase of forward contract represent the value of the forward contracts and not the service charges earned by the bank for providing such services.
4. Credit extended through credit and debit cards is not in the nature of loan or advance for interest and thus, the charges received on account of such extended credit is in fact, the consideration for the services rendered by way of credit card.
5. Penal interest recovered from the customers for the delay in repayment of loan is not a consideration for an activity. Further, since services of extending loans in so far as the consideration is represented by way of interest is covered in the negative list, penal interest charged for delay in repayment of loan will also not be liable to service tax.
6. Reverse repo being a security, which is goods is excluded from the definition of service.
7. It has been assumed that Robinson Bank Ltd. is not eligible for small service providers' exemption.

(d) Computation of input tax credit available to K.K. Ltd.

Particulars	Amount (₹)	
<u>Purchases eligible for input tax credit</u>		
Purchases for resale within the State	8,00,000	
Purchases from registered dealers who opted for composition scheme (input tax credit not available)	-	
Purchases to be used as consumable stores for manufacture of taxable goods	6,00,000	
Purchases of goods where invoices do not show the amount	-	

of taxes separately (input tax credit not available)		
Purchases of goods for personal consumption (input tax credit not available)	-	
Total	14,00,000	
<u>Input tax credit</u>		
VAT credit on eligible purchases [₹ 14,00,000 × 12.5%]	-	1,75,000
VAT credit on eligible capital goods [(₹ 5,76,000 × 12.5%)/24]		<u>3,000</u>
Total input tax credit available for the month of September, 2012		<u>1,78,000</u>

Computation of VAT payable and input tax credit carried forward

Particulars	Amount (₹)
Output VAT payable during September, 2012 [₹ 50,00,000 × 4%]	2,00,000
Less: Input credit available for the month of September, 2012	<u>1,78,000</u>
Net VAT payable	22,000
Input tax credit carried forward	Nil

(e) Computation of assessable value of machine imported by BSA & Co.

Particulars	Amount (£)
FOB cost of the machine	10,000
Add: Freight [Note 1(i)]	2,000
Engineering and design charges paid in UK [Note 1(ii)]	500
Licence fee relating to imported goods payable by the buyer as a condition of sale (20% of FOB) [Note 1(ii)]	<u>2,000</u>
	<u>14,500</u>
	Amount (₹)
Value in Indian currency [£14,500 x ₹70.25] [Note 2]	10,18,625
Add: Materials and components supplied by the buyer free of cost [Note 1(ii)]	20,000
Insurance paid to the insurer in India [Note 1(ii)]	<u>6,000</u>
CIF value	10,44,625
Add: Landing charges @ 1% [Note 1(v)]	<u>10,446.25</u>
Assessable value (rounded off)	<u>10,55,071</u>

Notes:

- As per rule 10 of the Customs (Determination of Value of Imported Goods) Rules, 2007 -

- (i) Air freight is restricted to 20% of FOB value.
 - (ii) Engineering and design charges paid in UK, licence fee relating to imported goods payable by the buyer as a condition of sale, materials and components supplied by the buyer free of cost and actual insurance charges paid are all includible in the assessable value.
 - (iii) Buying commission is not included in the assessable value.
 - (iv) Only **ship** demurrage charges on chartered vessels are included in the cost of transport of the imported goods. Thus, demurrage charges for delay in clearing the machine from the Airport will not be includible in the assessable value.
 - (v) Landing charges @ 1% of the CIF value are includible in the assessable value, whether actually incurred or not.
2. As per section 14 of the Customs Act, 1962, assessable value should be calculated with reference to the rate of exchange notified by the CBEC.

Question 2

- (a) Discuss the validity of the following statements with reference to Central Excise Rules, 2002, as amended:
- (i) The procedures prescribed for export under claim for rebate and export without payment of duty under bond do not apply to Nepal.
 - (ii) In respect of goods received at concessional rate of duty, return is required to be filed on a monthly basis.
 - (iii) Submission of Annual Financial Information Statement in Form ER-4 is compulsory for all assessees. (2 × 3 = 6 Marks)
- (b) (i) Apte & Apte Ltd. is located in India and holding 51% of shares of Wilson Ltd, a USA based company. Wilson Ltd. provides business auxiliary services to Apte & Apte Ltd.

From the following details, determine the point of taxation for Apte & Apte Ltd:

Agreed consideration	US \$1,00,000
Date on which services are provided by Wilson Ltd.	16-9-2012
Date on which invoice is sent by Wilson Ltd.	19-9-2012
Date of debit in the books of account of Apte & Apte Ltd.	30-9-2012
Date on which payment is made by Apte & Apte Ltd.	23-12-2012

- (ii) What is the objective of bringing certain services under "Declared Services"? Mention any three services which fall within the scope of "Declared Services". (2 × 3 = 6 Marks)
- (c) Examine the validity of the following statements with reference to the Customs Act, 1962:

- (i) Service charges paid to analyzing agent are not includible in the assessable value of imports.
- (ii) Inspection charges are not includible in the assessable value of the imported goods if contract does not specify for certification by an independent agency. (3 Marks)

Answer**(a) (i) Invalid.**

The procedures prescribed for export under claim for rebate and export without payment of duty under bond now apply to Nepal.

Prior to 01.03.2012, separate procedures were prescribed for export under claim for rebate to Nepal and export without payment of duty under bond for Nepal and Bhutan.

However, with effect from 01.03.2012, the general procedures for export under claim for rebate and export without payment of duty under bond which were earlier applicable to all countries (except Nepal and Bhutan) have been made applicable in case of Nepal as well.

(ii) Invalid.

With effect from 17.03.2012, rule 5 of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 has been amended to provide *inter alia* that the manufacturer, receiving goods at concessional rate of duty will submit a quarterly return instead of a monthly return.

(iii) Invalid.

The following assesseees are exempted from submission of Annual Financial Information Statement in Form ER-4 :

- (i) Assesseees who pay less than ₹1 crore of excise duty during the financial year to which ER-4 relates.
- (ii) Indian Ordnance Factories, Department of Defence Production and Ministry of Defence.

- (b) (i)** Since, Apte & Apte Ltd. holds 51% shares of Wilson Ltd., Apte & Apte Ltd. and Wilson Ltd. will be 'associated enterprises' as per section 92A of the Income-tax Act, 1961. As per rule 7 of the Point of Taxation Rules, 2011, in case of associated enterprises, where the person providing the service is located outside India, the point of taxation is the earlier of the following two dates:

Date of debit in the books of account of person receiving the service [which is Apte & Apte Ltd. in the present case]	30.09.2012
OR	
Date of making the payment [by Apte & Apte Ltd. in the present case]	23.12.2012

Thus, point of taxation will be 30.09.2012.

- (ii) The objective of bringing certain services within the purview of 'declared service' is to remove any ambiguity for the purpose of uniform application of law all over the country.

Following services have been brought within the ambit of 'declared service' under section 66E of the Finance Act, 1994:

- (i) Renting of immovable property
- (ii) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion certificate by the competent authority
- (iii) Temporary transfer or permitting the use or enjoyment of any intellectual property right
- (iv) Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software
- (v) Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act
- (vi) Transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods
- (vii) Activities in relation to delivery of goods on hire purchase or any system of payment by installments
- (viii) Service portion in the execution of a works contract
- (ix) Service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity.

Note: Any three declared services can be mentioned in the answer.

- (c) (i) **The statement is not valid.**

Since the canalizing agent is not the agent of the importer nor does he represent the importer abroad, purchases by canalizing agency from foreign seller and subsequent sale by it to Indian importer are independent of each other. Hence, the service charges paid to canalizing agent cannot be termed as buying commission. Therefore, the commission or service charges paid to the canalizing agent are includible in the assessable value [*Hyderabad Industries Ltd. v. UOI 2000 (115) ELT 593 (SC)*].

- (ii) **The statement is valid.**

As per rule 10(1)(e) of the Customs (Determination of Value of Imported Goods) Rules, 2007, only the payments actually made as a condition of sale of the imported goods by the buyer to the seller are includible in the assessable value.

Thus, if there is no requirement in the contract for independent inspection and the inspection is carried out by foreign supplier on its own and is not required for the purpose of fulfilling the condition of the contract, then charges incurred on such inspection are not includible in assessable value [*Bombay Dyeing & Mfg. v. CC* 1997 (90) ELT 276 (SC)].

Question 3

- (a) Assesseees are the manufacturers of motor cars. They were selling the cars much below the cost price continuously for five years and the reason attributed was for the purpose of 'penetration of market' and to compete with other manufacturers of similar cars, actually incurring loss.

The Department after due verification as per Section 14A of Central Excise Act, 1944, refused to accept the assessable value declared by the assesseees and contended that the 'wholesale' price declared by the assesseees cannot be considered as 'normal price' under Section 4(1)(a) of the Act for the purpose of quantification of assessable value. Further, the Department opined that the 'penetration price' is to be considered as an extra consideration and therefore the concept of 'price is the sole consideration' as argued by the assesseees, cannot be accepted. In that view, assessing authority found justice in invoking Section 4(1)(b) of the Act and resorted to best judgment assessment.

You are required to answer the following questions relevant to the above problem by analyzing the provisions of law and also referring to decided case law, if any:

- (i) Whether the selling price which is below the cost price can be accepted or rejected?
- (ii) Does the 'penetration price' be considered as an extra commercial consideration?

(6 Marks)

- (b) (i) Naveen Construction was a construction company rendering services under category of "construction of residential complex service" and were paying the service tax in accordance with Finance Act, 1994. They undertook certain construction work on behalf of a trust and paid service tax accordingly. However, later they filed refund claim for the service tax so paid contending that they were not actually liable to pay service tax as it was exempt.

The Department rejected the refund claim on the ground that the refund application filed by Naveen Construction was beyond the limitation period as stated in Section 11B of the Central Excise Act. Department did not dispute the fact that service tax was exempted in the instant case.

Is the Department correct in rejecting the refund claim? Substantiate your answer with the help of a decided case law, if any.

(3 Marks)

- (ii) Appellant was engaged in the manufacture of steel products and pig-iron for sale in the domestic and export markets. The appellant appointed X & Co., a partnership firm as the "handling contractor" for clearance of iron and steel materials from their stockyard. A formal contract was entered into and accordingly, the contractor shall

bear all the taxes, duties and other liabilities in connection with discharge of his obligations. In the year 2000, liability to pay service tax in case of "clearing and forwarding agents' service" was shifted from service provider to service receiver and therefore, the appellant deducted tax on the bills of the contractor. The contractor refused to accept the deductions saying that the contractual clause cannot alter the liability placed on the recipient (appellant) by Law.

Discuss whether the contention of the contractor stands to reason, with the help of case law, if any. (3 Marks)

- (c) *Sun Synthetic Fibres was an importer. It had imported one unit of the equipment which was declared as "High Speed Draw Warping Machine with 1536 ends along with essential spares". The importer claimed that these goods were covered under an exemption notification.*

Under the said notification, exemption was available in respect of the High Speed Warping Machine with yarn tensioning, pneumatic suction devices and accessories. Undisputedly, the assessee had imported High Speed Warping Machine, but it had drawing unit and not the pneumatic suction device. The Textile Commissioner, who was well conversant with these machines, had stated that the goods imported by the assessee were covered under the exemption notification. He further stated that drawing unit was just an essential accessory to the machines imported by assessee and, therefore, was covered under the said notification. The opinion so furnished is taken note of by the Tribunal while granting relief to the assessee. Revenue contended that the machine imported by the assessee was not in consonance with the exemption notification and, therefore, the benefit of exemption should not be available to the assessee.

Discuss whether the contention of the Revenue is sustainable in law, with the help of decided case law, if any. (3 Marks)

Answer

- (a) As per section 4(1)(a) of the Central Excise Act, 1944, the assessable value of the excisable goods is the transaction value where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale. If any of these ingredients is missing, the price cannot be considered as transaction value.

The facts of the given case are similar to the case of *CCEx., Mumbai v. Fiat India Pvt. Ltd.* 2012 (283) E.L.T. 161 (SC). In the instant case, the Supreme Court observed that full commercial cost of manufacturing and selling was not reflected in the price as it was deliberately kept below the cost of production.

Therefore, selling price which is below the cost price cannot be accepted since such a price cannot be considered as the sole consideration for sale.

The value for purpose of excise duty under such circumstances will have to be determined in accordance with Section 4(1)(b) read with the Central Excise (Determination of Price of Excisable Goods) Rules, 2000.

The Supreme Court further elucidated that no prudent business person would continuously suffer huge loss only to penetrate market. They are expected to act with discretion to seek reasonable income, preserve capital and, in general, avoid speculative investments.

The Supreme Court held that selling cars at a price lower than the manufacturing cost and profit to penetrate the market will constitute extra commercial consideration. The assessment in such a case will have to be done on the basis of best judgement as prescribed under the Rules.

- (b) (i) No, the Department is not justified in rejecting the refund claim.

The facts of the given case are similar to the case of *CCE (A) v. KVR Construction 2012 (26) STR 195 (Kar.)* wherein the High Court noted that service tax paid mistakenly under construction service although actually exempt, was payment made without authority of law. Mere payment of amount would not make it 'service tax payable by the assessee'. The High Court opined that once there was lack of authority to collect such service tax from the assessee, it would not give authority to the Department to retain such amount and validate it.

Further, provisions of section 11B of the Central Excise Act, 1944 apply only to a claim of refund of excise duty/service tax, and could not be extended to any other amounts collected without authority of law.

In view of the above, the High Court held that refund of an amount mistakenly paid as service tax could not be rejected on ground of limitation under section 11B of the Central Excise Act, 1944.

- (ii) No, the contention of the contractor is not valid in law.

The facts of the given case are similar to the case of *Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran 2012 (26) S.T.R. 289 (S.C.)*. The Supreme Court, in this case, observed that on reading the agreement between the parties, it could be inferred that service provider (contractor) had accepted the liability to pay service tax, since it arose out of discharge of its obligations under the contract.

With regard to the submission of shifting of tax liability, the Supreme Court held that service tax is an indirect tax which may be passed on. Thus, assessee can contract to shift its liability.

The Finance Act, 1994 is relevant only between assessee and the tax authorities and is irrelevant in determining rights and liabilities between service provider and service recipient as agreed in a contract between them. There is nothing in law to prevent them from entering into agreement regarding burden of tax arising under the contract between them.

Hence, the appellant was right in deducting service tax from the bills of the contractor.

- (c) No, the contention of the Revenue is not sustainable.

The facts of the given case are similar to the case of *CCus. (Import), Mumbai v. Konkan Synthetic Fibres 2012 (278) E.L.T. 37 (S.C.)* wherein the Supreme Court stated that it is a settled proposition in a fiscal or taxation law that while ascertaining the scope or expressions used in a particular entry, the opinion of the expert in the field of trade, who deals in those goods, should not be ignored, rather it should be given due importance.

The Supreme Court further elaborated that when no statutory definition is provided in respect of an item in the Customs Act or the Central Excise Act, the trade understanding, i.e. the understanding in the opinion of those who deal with the goods in question would be the safest guide. Hence, the Supreme Court, relying on the opinion of the Textile Commissioner, concluded that the imported goods were covered under the exemption notification.

Question 4

- (a) *The assessee is engaged in the manufacture of various types of packaging machines known as F & S machine. The machines are made to order according to the specification of individual customers and such machines, before dispatch, are to be tested at the customer's premises* for their satisfaction. On being satisfied by the customer, assessee makes entry in the RG-1 register (DSA) declaring the machine as manufactured and ready for clearance. For the proper testing, assessee procures flexible laminated plastic film in roll form and poly paper (termed as inputs) which are excisable, and are used for testing, turning and adjusting various parts of F & S machine. Assessee filed a declaration and availed the benefit of CENVAT credit for the duty paid on the said inputs.*

Department contented that the said materials were used only for testing and as such, they cannot be treated as inputs for manufacturing final product. Further, the Department opined that testing takes place only after manufacturing of final product and any goods used in the process subsequent to manufacture cannot be termed as inputs under Rule 2(k) of CENVAT Credit Rules, 2004. Assessee's contention is that the manufacturing process would be completed only after testing and such inputs are used in or in relation to manufacturing and that the inputs need not be present in the final product and therefore, they have the right to claim CENVAT credit.

Discuss whether the contention of the Department in denying the CENVAT credit is justified. You may refer to decided case law, if any, in support of your decision. (6 Marks)

Note: Customer's premises may be read as manufacturer's premises.

- (b) (i) *ABC Ltd. had paid, both the service tax and interest for delayed payment before issue of show cause notice under the Finance Act, 1994. Section 73(3) of the Finance Act, 1994 categorically stated that if the payment of service tax and interest has been intimated to the authorities in writing, the authorities should not serve any notice for the amount so paid. But to the above, the authorities issued SCN to the appellant for delay in payment of service tax.*

Discuss with the help of decided case whether the issue of show cause notice is justified. (3 Marks)

- (ii) *Dwarakanath Devasthanams, Dwaraka was running guest houses for the pilgrims. The Department issued S.C.N. stating that the assesseees were liable to get service tax registration under "short term accommodation service" and thus liable to pay service tax. The assesseees, on the other hand submitted that they were not club or any other association and thus, were not liable to get registered under service tax. The assesseees contested that since they were running guest houses without any profit motive, they were not liable to pay service tax.*

You are required to examine whether the show cause notice issued by the department is valid or not, referring to case law, if any. (3 Marks)

- (c) *An importer entered into a contract for supply of crude sunflower seed oil @ U.S. \$ 435 C.I.F. /Metric ton. Under the contract, the consignment was to be shipped in the month of July, 2011. The period was extended by mutual agreement and goods were shipped on 5th August, 2011 at old prices.*

In the meanwhile, the international prices had gone up due to volatility in market and other imports during August, 2011 were at higher prices. Department sought to increase the assessable value on the basis of the higher prices of contemporaneous imports.

Decide whether the contention of the Department is correct. You may refer to decided case law, if any, for your decision. (3 Marks)

Answer

- (a) No, the contention of the Department to deny the CENVAT credit is not justified.

The facts of the given case are similar to the case of *Flex Engineering Ltd. v. Commissioner of Central Excise, U.P.* 2012 (276) E.L.T. 153 (S.C.). In this case, the Supreme Court held that the process of manufacture would not be complete if a product is not saleable, as a non-saleable product is not marketable.

The Apex Court held that the process of testing the customized F&S machines was inextricably connected with the manufacturing process. Until this process was carried out as per customer's satisfaction, in terms of the covenant in the purchase order, the manufacturing process was not complete and the machines were not fit for sale. Therefore, manufacturing process was completed only after testing of the said machines.

Thus, in the given case, the flexible laminated plastic films in roll form and poly paper used for testing the F&S machines are inputs used in relation to the manufacture of the final product and the assessee is eligible for CENVAT credit under rule 2(k) of the CENVAT Credit Rules, 2004.

- (b) (i) No, the issue of the show cause notice is not justified.

The High Court, in case of *CCE & ST v. Adecco Flexione Workforce Solutions Ltd.* 2012 (26) S.T.R 3 (Kar) has held that the Department has no authority to issue a show cause notice when the tax payer has paid service tax along with interest for delayed payments promptly.

The High Court noted that as per section 73(3) of the Finance Act, 1994, no notice should be served against persons who have paid tax with interest. The authorities can initiate penal proceedings only against the defaulters who have not paid tax and not against the persons who have paid tax with interest on their own. The High Court observed that if the notices are issued contrary to this section, the person who has issued notice should be punishable and not the person to whom it has been issued.

- (ii) Yes, the show cause notice issued by the Department is valid in law.

The facts of the given case are similar to the case of *Tirumala Tirupati Devasthanams, Tirupati V. Superintendent of Customs, Central Excise, Service Tax 2013 (30) S.T.R. 27 (A.P.)* wherein the High Court stated that there is no absolute exemption granted to the petitioner.

The contention in the present case by Dwarkanath Devasthanams that they are not a club or any other association for purpose of liability under short term accommodation service is irrelevant.

Running guest houses by whatever name they are called - whether as a shelter for pilgrims or any other name with or without profit is no answer and the Devasthanams is thus, liable to get itself registered under 'short term accommodation service' and pay service tax on the service provided by it.

- (c) No, the contention of the Department is not correct.

The facts of the given case are similar to the case of *CCus., Vishakhapatnam v. Aggarwal Industries Ltd. 2011 (272) E.L.T. 641 (S.C.)*. The Supreme Court, in the instant case, observed that since the contract entered into for supply of crude sunflower seed oil @ US \$ 435 CIF/ metric ton could not be performed on time, the extension of time for shipment was agreed upon by the contracting parties.

The Supreme Court pointed out that the commodity involved had volatile fluctuations in its price in the international market, but having delayed the shipment; the supplier did not increase the price of the commodity even after the increase in its price in the international market.

Further, there was no allegation regarding the supplier and importer being in collusion. Thus, the appeal was allowed in the favour of the assessee and the contract price was accepted as the 'transaction value'.

Question 5

- (a) (i) Bring out the conditions under which MRP valuation shall apply under Central Excise Act, 1944.
- (ii) In relation to export of excisable goods under Rule 18 of the Central Excise Rules, 2002, what are the duties of excise eligible for rebate? (3 × 2 = 6 Marks)
- (b) (i) Discuss the following terms under Section 65B of the Finance Act, 1994 as amended with effect from 1-7-2012:

- (a) *Works contract*
- (b) *Bundled service.* (3 Marks)
- (ii) *Explain briefly whether VAT is leviable on each of the following lease transaction:*
 - (a) *Inter-state leasing*
 - (b) *Maintenance of leased asset.* (3 Marks)
- (c) *Enumerate the penalties in respect of improper exportation of goods under Section 114 of the Customs Act.* (3 Marks)

Answer

- (a) (i) MRP valuation shall apply under the Central Excise Act, 1944 if the following two conditions are satisfied cumulatively:
 - (a) The excisable goods to be valued are covered under the Legal Metrology Act, 2009 or related rules or under any other law and such law requires declaration of the retail sale price on the package of such goods and
 - (b) The Central Government has notified the said goods as goods in relation to which the payment of excise duty will be on the basis of the MRP less such deductions/abatements as it may allow in the notification.
- (ii) As per *Notification Nos. 19 & 21/2004 dated 06.09.2004*, the following duties of excise are eligible for rebate in relation to export of excisable goods under Rule 18 of the Central Excise Rules, 2002:-
 - (a) Excise duty under the Central Excise Act 1944;
 - (b) Additional Excise Duty under the Additional Duty of Excise (Goods of Special Importance) Act;
 - (c) Additional Excise Duty under the Additional Duty of Excise (Textile and Textile Articles) Act;
 - (d) National Calamity Contingent duty;
 - (e) Education cess;
 - (f) Secondary and Higher Education Cess;
 - (g) Additional excise duty leviable under section 157 of the Finance Act 2003 or Additional excise duty leviable on Pan Masala and specified tobacco products under clause 85 of the Finance Bill 2005;
 - (h) Special excise duty under a Finance Act;
 - (i) Additional duty leviable under section 3 of the Customs Tariff Act, 1975.

Note: Any three duties can be mentioned in the answer
- (b) (i) (a) As per section 65B(54) of the Finance Act, 1994, works contract means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose

of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property.

- (b) As per Explanation to section 66F(3) of the Finance Act, 1994, bundled service means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services.

- (ii) (a) *Inter-State Leasing*: Lease of an asset in the course of inter-State or import trade cannot be taxed under a State VAT law.

It can be taxed under the Central Sales Tax Act, 1956 as deemed sales. Hence, VAT is not leviable in case of inter-State leasing.

- (b) *Maintenance of Leased Asset*: Maintenance of the leased asset involving supply of materials for maintenance/repair which are in the nature of consumables by the lessor does not amount to works contract, as there is no transfer of property in such materials to the lessee. Thus, there would be no VAT on the value of the materials supplied during maintenance/repair of the asset.

- (c) Improper exportation of goods, which would render such goods liable to confiscation under section 113 of the Customs Act, 1962 is liable to penalty under section 114 of the Act as under:

S.No	Goods	Maximum Penalty
1.	In the case of prohibited goods	Three times the value of the goods declared by the exporter or value as determined under the Customs Act, whichever is greater
2.	In the case of dutiable goods, other than prohibited goods	Duty sought to be evaded on such goods or ₹ 5,000, whichever is greater
3.	In the case of any other goods	Value of the goods declared by the exporter or value as determined under the Customs Act, whichever is greater

Question 6

- (a) (i) Differentiate between compounded levy scheme and duty based on annual production capacity under central excise. (4 Marks)
- (ii) Bring out the difference between short levy and short payment. (2 Marks)

OR

- (a) Enumerate the safeguards, conditions and limitations subject to which the refund of CENVAT credit shall be allowed under Rule 5 of CENVAT Credit Rules, 2004. (6 Marks)

- (b) (i) *Mention the place of provision of services in respect of the following services under the Place of Provision of Services Rules, 2012:*
- (a) *Services relating to immovable property.*
 - (b) *Services provided at more than one location.*
 - (c) *Services in respect of passenger transportation.* (3 Marks)
- (ii) *Discuss any three merits of VAT.* (3 Marks)
- (c) *Briefly explain the provisions of Section 28BA of the Customs Act, 1962 regarding property that may be attached provisionally to protect the interest of revenue in certain cases.* (3 Marks)

Answer**(a) (i)**

S.No	Compounded levy scheme	Duty based on annual production capacity
1.	Rule 15 of the Central Excise Rules, 2002 provides for the compounded levy scheme.	Section 3A of the Central Excise Act, 1944 provides for the duty based on production capacity.
2.	Under compounded levy scheme, prescribed duty is paid for a specified period on the basis of certain factors relevant to production, like size of equipment employed, production capacity or some other criteria.	Under this scheme, prescribed duty is paid on the basis of annual production capacity of the factory.
3.	It is presently applicable to stainless steel pattas/patties and aluminum circles.	It is presently applicable to pan masala, unmanufactured tobacco, jarda scented tobacco and chewing tobacco.
4.	It is an optional scheme i.e., in respect of the goods covered under this scheme, the manufacturer can also opt to pay duty as per normal rules.	This scheme is compulsory i.e., in respect of the goods covered under this scheme, the manufacturer cannot pay duty in any other manner.

- (ii) Short levy arises when the charge itself is done at a lower rate. It may arise out of wrong classification whereas short payment arises out of a short levy or short payment of a correct levy. It is a case of less payment of excise duty than what is due.

OR

(a) Refund of CENVAT credit is allowed under Rule 5 of the CENVAT Credit Rules, 2004 subject to the procedure, safeguards, conditions and limitations set out vide *Notification No. 27/2012 CE (NT) dated 18.06.2012* as under:-

- (i) Only one refund claim will be submitted for every quarter. However, a person exporting goods and service simultaneously, may submit two refund claims – one in respect of goods exported and other in respect of the export of services - every quarter.
- (ii) Quarter means a period of 3 consecutive months with the first quarter beginning from 1st April of every year.
- (iii) The value of the export goods cleared during the quarter will be the sum total of all the export goods cleared during the quarter as per the monthly/ quarterly return filed by the claimant.
- (iv) The total value of goods cleared during the quarter will be the sum total of value of all goods cleared by the claimant during the quarter as per the monthly/quarterly return filed by the claimant.
- (v) The value of export services will be determined in accordance with rule 5 of the CENVAT Credit Rules, 2004.
- (vi) The time of provision of non-export services will be determined as per the provisions of the Point of Taxation Rules, 2011.
- (vii) The amount of refund claimed should not be more than the amount lying in balance at the end of quarter or at the time of filing of the refund claim, whichever is less.
- (viii) The amount claimed as refund should be debited by the claimant from his CENVAT credit account at the time of making the claim.
- (ix) If refund sanctioned is less than the amount of refund claimed, the claimant may take back the credit of the differential amount.

(b) (i)

S.No	Services	Place of Provision
(a)	Services relating to immovable property	Place where the immovable property is located or intended to be located [Rule 5 of the Place of Provision of Service Rules, 2012 (POPS Rules)]
(b)	Services provided at more than one location	The location in the taxable territory where greatest proportion of service is provided [Rule 7 of POPS Rules].
(c)	Services in respect of passenger transportation	Place where passenger embarks on the conveyance for a continuous journey [Rule 11 of POPS Rules]

(ii) Value added tax has the following merits:

- (a) *No Tax Evasion*: Credit of tax paid earlier cannot be claimed under VAT unless proper records are kept in respect of various inputs. Consequently, tax evasion by suppression of purchases or production will be difficult because it will lead to loss of input credit.
- (b) *Neutrality*: The greatest advantage of the system is that it does not interfere in the choice of decision for purchases because it has anti-cascading effect.
- (c) *Certainty*: Since, VAT system is based on transactions, there is no need to go through complicated definitions like sales, sales price, turnover of purchases and turnover of sales. The tax is also broad-based and applicable to all sales in business leaving little room for different interpretations.
- (d) *Transparency*: Under a VAT system, tax component is exactly identifiable out of the total consideration paid for purchase of material. It also helps the Government in taking decisions with regard to rate of tax etc.
- (e) *Better revenue collection and stability*: Since under VAT input tax credit is admissible only when invoice reflects the tax paid at an earlier stage, tax evasion is difficult. VAT invoice is self enforcing and induces business to demand invoices from the suppliers. Thus, there will be a minimum possibility of revenue leakage. Another attribute of VAT is that it is an exceptionally stable and flexible source of government revenue.
- (f) *Better accounting systems*: Since the tax paid at earlier stage is received back, the system will promote better accounting systems.
- (g) *Effect on retail price*: VAT does not have any inflationary impact as it merely replaces the existing sales tax. In fact, under VAT the tax impact on the raw material gets totally eliminated. Therefore, it does not lead to increase in prices.
- (h) *Exports become cheaper*: The exports become cheaper as taxes paid at earlier stages could be availed as credit or refunded in cash.

Note: Any three merits can be stated in the answer.

- (c) Section 28BA provides that proper officer may provisionally attach the property belonging to the person on whom notice has been served under section 28(1) or section 28AAA(3) or section 28B(2). However, such attachment can be done only with the prior approval of the Commissioner of Customs for protecting the interest of Revenue in the prescribed manner.

A property can be attached for a period upto 6 months from the date of the order of attachment. However, attachment period can be extended upto 2 years by the Commissioner for reasons to be recorded in writing.

Where an application for the settlement of the case is made, the period commencing from the date of such application and ending with the date of the settlement order will be excluded from the prescribed period of 2 years.

Question 7

- (a) (i) *State the situations in which duty can be remitted under Rule 21 of Central Excise Rules. Also discuss whether remission of duty shall be granted or not in the following cases, with reason:*
- (a) *Finished goods are destroyed in fire due to spontaneous combustion.*
- (b) *Finished goods (fully manufactured) were lost before removal from the factory and the assessee has received a claim from the insurance company.*
- (4 Marks)
- (ii) *Discuss briefly the residual penalty under Rule 27 of the Central Excise Rules, 2002.*
- (2 Marks)
- (b) (i) *Briefly explain the provisions in the Service Tax Rules, 1994 relating to furnishing of list of records at the time of filing of return for the first time.*
- (3 Marks)
- (ii) *What are the objectives with which filing of return procedures under VAT laws are designed?*
- (3 Marks)
- (c) *Briefly state the rights of the owner of warehoused goods under the Customs Act, 1962.*
- (3 Marks)

Answer

- (a) (i) As per Rule 21 of the Central Excise Rules, 2002, the Commissioner may remit the duty payable on goods if it is shown to his satisfaction that:-
- (1) goods have been lost or destroyed by natural causes or,
 - (2) goods have been lost or destroyed by unavoidable accident or
 - (3) the goods have become unfit for consumption or for marketing.
- at any time before removal.
- (a) Remission of duty shall be granted if goods are destroyed in fire due to spontaneous combustion as destruction by spontaneous combustion is a natural cause and question of negligence does not arise [CCEx v. Balrampur Chini Mills 2008 (223) ELT 34 (All. HC)].
- (b) Remission of duty shall be granted even if the assessee has received insurance claim in respect of fire accident [Sarda Plywood Industries Ltd. v CCEx 1987 (32) E.L.T. 116(Tri.).or CCEx v Jai Bhavani SSK (2008) 222 ELT 370 (CESTAT)].
- (ii) Rule 27 of the Central Excise Rules 2002 stipulates that where no other penalty is provided in the rules or in the Central Excise Act, a breach of these rules will be

punishable with a penalty which may extend to ₹5000 and with confiscation of the goods in respect of which the offence is committed.

- (b) (i)** According to Rule 5(2) of the Service Tax Rules, 1994, every assessee, at the time of filing of return for the first time, should furnish to the Superintendent of Central Excise a list in duplicate of

 - (a) all the records prepared or maintained by the assessee for accounting of transactions in regard to,

 - (1) providing of any service;
 - (2) receipt and payment of input services;
 - (3) receipt, purchase, manufacture, storage, sale, or delivery of inputs and capital goods;
 - (4) other activities, such as manufacture and sale of goods, if any.
 - (b) all other financial records maintained by him in the normal course of business.
- (ii)** Return filing procedures under VAT laws are designed with the objectives of:

 - (a) reducing the compliance costs incurred by the businesses in completing and filing their returns including e filing of returns as offered in some States;
 - (b) encouraging businesses to comply with their obligations to file returns and pay VAT through the application of penalties in case of late payment of VAT and late filling of returns; and
 - (c) ensuring the efficient processing of the data included in the returns.
- (c)** As per section 64 of the Customs Act 1962, the owner of any goods, with the required permission and on payment of the prescribed fees, may -

 - (i) inspect the goods;
 - (ii) separate damaged or deteriorated goods from the rest;
 - (iii) sort the goods or change the containers for preservation, sale etc.;
 - (iv) deal with the goods & their containers to prevent loss or deterioration to the goods;
 - (v) show the goods for sale;
 - (vi) take samples of the goods without entry for home consumption.