

MOCK TEST PAPER – 1
FINAL COURSE: GROUP – II
PAPER – 8: INDIRECT TAX LAWS
SUGGESTED ANSWERS / HINTS

1. (a) As the product is under MRP scheme, the duty shall be payable only as per the provisions of section 4A of the Central Excise Act i.e. on the basis of MRP less abatement and not on the basis of material cost plus job charges etc. Section 4A overrides section 4 of the Central Excise Act.

Hence, assessable value in this case shall be determined as under:-

Particulars	₹
Retail sale price of 5000 packets = 5000 x 20 =	1,00,000
Less: Abatement @ 40%	<u>40,000</u>
Assessable Value	<u>60,000</u>

- (b) Calculation of value of clearances of Malhotra and Company during financial year 2011-12

Particulars	₹ (in lakhs)
Export to Bhutan (Note-1)	50
Clearances of excisable goods bearing brand name of National Small Industries Corporation (Note-4)	100
Clearances of corrugated boxes bearing the brand name of Sugar and Spice Confectioners used for packing the bakery products by them (Note-4)	<u>200</u>
Value of clearances during the financial year 2011-12	<u>350</u>

Notes:

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

- export turnover has been excluded. However, export to Bhutan cannot be excluded as these are treated as “clearances for home consumption”.
- clearances under specified job work notifications are excluded and *Notification No. 214/86 CE* and *84/94-CE* are the specified notifications.
- clearances of excisable goods without payment of duty to a 100% EOU are excluded.

4. clearances bearing the brand name or trade name of another person are excluded. However, following clearances of excisable goods bearing brand name are included:-

- (a) Goods bearing brand name/trade name of National Small Industries Corporation.
- (b) Goods in the nature of packing materials and meant for use as packing material by or on behalf of the person whose brand name they bear.

In order to claim the benefit of exemption under Notification No. 8/2003 – C.E. in a financial year, the total turnover of a unit should not exceed ₹ 400 lakh in the preceding year. Since the value of clearances in the previous financial year 2011-12 does not exceed ₹ 400 lakh, the Malhotra & Company is eligible to claim the benefit of *Notification No. 8/2003 dated 1st March, 2003* in the financial year 2012-13.

(c) Computation of the value of taxable service of Cargo Ltd.:

Particulars	₹
Total receipts from services rendered	40,00,000
Less : Exemptions:-	
1. Receipts in relation to export cargo & handling of passenger baggage (Note-1)	13,00,000
2. Charges received in relation to handling of agricultural produce (Note-3)	2,00,000
3. Charges received only for transportation of cargo (Note-4)	<u>5,00,000</u>
Taxable services under cargo handling	<u>20,00,000</u>

Notes:-

1. The definition of 'cargo handling service' under section 65(23) of Finance Act 1994 specifically excludes handling of export cargo or passenger baggage. Hence, they do not form part of taxable services.
2. **Notification No. 10/2002 dated 01.08.2002** exempts the taxable service provided to any person by a cargo handling agency in relation to agricultural produce or goods intended to be stored in a cold storage from payment of service tax.
3. The definition of 'cargo handling service' under section 65(23) specifically excludes mere transportation of goods. Hence, they do not form part of taxable services.
4. As per section 65(23), charges received for packing together with transportation of cargo, ₹ 3,00,000, is taxable .

(d)

CIF value	5000 US \$
Less: Freight	1500 US \$
Less: Insurance	<u>500 US \$</u>
Therefore, FOB value	<u>3000 US \$</u>
Assessable value for Customs purpose:	
FOB value	3000 US \$
Add: Freight (20% of FOB value)	600 US \$
Add: Insurance (actual)	<u>500 US \$</u>
CIF for Customs purpose	4100 US \$
Add: 1% for landing charges	<u>41 US \$</u>
Value for Customs purpose	4141 US \$
Exchange rate as per CBEC	₹ 50 per US \$
Assessable value	50 x 4141 US \$
	₹ 2,07,050

(e) Computation of VAT payable by Mr. Manmohan for the month of January, 2012:-

	Particulars	₹
(A)	Output tax payable	
	(i) On sale of finished goods produced from Goods 'A' within the State (₹ 5,00,000 × 12.5%)	62,500
	(ii) On taxable sale of finished goods produced from Goods 'C' within the State (₹ 35,00,000 × 4 %)	<u>1,40,000</u>
	Total (A)	<u>2,02,500</u>
(B)	Input tax credit available	
	(i) Goods 'A' (Exempt)	Nil
	(ii) Goods 'B' (Note-1)	Nil
	(iii) Goods 'C' (₹ 30,00,000 × 12.5%)	<u>3,75,000</u>
	Total (B)	<u>3,75,000</u>
	Net VAT payable = (A)-(B)	(1,72,500)
	CST payable on inter-state sale of goods produced from Goods 'A' (₹ 7,00,000 × 1%) shall be paid from the balance of credit of Rs. 1,72,500.	<u>7,000</u>
	Balance of input credit carried forward to next month	<u>1,65,500</u>

Notes:

1. Since, there is no opening and closing inventory, it implies that entire purchase

of the Goods 'B' is used to manufacture the finished goods (which are exempt from tax). Further, purchases of goods, which are being utilized in the manufacture of exempted goods, are not eligible for input tax credit. Hence, no input tax credit is available in respect of VAT paid on purchase of Goods 'B'.

2. If finished goods are sold in the course of inter-state trade and commerce, credit is allowed.

2. (a) (i) The said statement is not valid. According to sixth proviso [inserted vide Notification No. 26/2010-C.E.(N.T.) dated 29.06.2010] to Rule 3(4) of CENVAT Credit Rules, 2004 the CENVAT Credit of any duty specified under Rule 3(1) of CCR, 2004 shall not be utilised for *payment of the Clean Energy Cess leviable under section 83 of the Finance Act, 2010.*

(ii) The said statement is absolutely valid. *Circular No. 943/04/2011-CX dated 29.04.2011* clarifies that credit of input services used for repair or renovation of factory or office is allowed because services used in relation to renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, are specifically provided for in the inclusive part of the definition of input services.

(b) (i) *No, service tax is not payable on construction of complex service in relation to Jawaharlal Nehru National Urban Renewal Mission and Rajiv Awaas Yojana. Notification No. 28/2010 ST dated 22.06.2010, with effect from 01.07.2010, has exempted the construction of complex service in relation to Jawaharlal Nehru National Urban Renewal Mission and Rajiv Awaas Yojana from service tax.*

(ii) *No, service tax is not payable on air transport of crew members on board the aircraft because Notification No. 25/2010 ST dated 22.06.2010 has specifically exempted the air transport of crew members on board the aircraft.*

(c) As per Baggage Rules 1998, a passenger is entitled to bring certain goods in India on duty free basis.

The basic allowance to Mr. Abhishek consists of:

(a) Used personal effects, excluding jewellery required for satisfying daily necessities of life.

(b) Other articles which are carried on the person or in his accompanying baggage.

There is no value limit for used personal daily necessities of life. However, there is a value limit in respect of other articles of baggage as categorized according to age of the passenger, country from which they returning and the number of days of stay abroad. For the passengers coming from Countries other than Nepal, Bhutan,

Myanmar or China, where the age of passenger is 10 years or more and duration of stay is more than 3 days, the articles upto the value limit of Rs. 35,000 are allowed to be cleared duty-free.

In the light of aforesaid discussion, apparels and other articles brought by Mr. Abhishek are allowed to be cleared duty- free.

3. (a) No, the Department's plea is not justified in law. The facts of the given case are similar to the case of *CCE v. Tarpaulin International* 2010 (256) E.L.T. 481 (S.C.). The Apex Court opined that stitching of tarpaulin sheets and making eyelets did not change basic characteristic of the raw material and end product. The process did not bring into existence a new and distinct product with total transformation in the original commodity. The original material used i.e., the tarpaulin, was still called tarpaulin made-ups even after undergoing the said process. Hence, it could not be said that the process was a manufacturing process. Therefore, there could be no levy of Central excise duty on the tarpaulin made-ups.

Hence, the Supreme Court, upholding the decision of the Tribunal, held that conversion of tarpaulin into tarpaulin made-ups would not amount to manufacture.

- (b) *The Larger Bench of the Tribunal, in case of CCE v. BSBK Pvt. Ltd. 2010 (18) S.T.R. 555 (Tri. – LB), decided the issue as to whether the service provided by way of "advice, consultancy or technical assistance" in the case of turnkey contracts would attract service tax and could these turnkey contracts be vivisected.*

It noted that Article 366(29-A)(b) to the Constitution has allowed the vivisection of indivisible contracts in order to find out goods component and value thereof. Therefore, the remnant part of the contract may be attributable to the scope of service tax under the provisions of the Finance Act, 1994.

It inferred that turnkey contracts can be vivisected and discernible service elements involved therein can be segregated and classifiable as well as valued for levy of service tax under the Finance Act, 1994 provided such services are taxable services as defined by that Act and depending on the facts and circumstance of each case, services by way of advice, consultancy or technical assistance in the case of turnkey contract shall attract service tax liability.

- (c) Yes, the Department's action is valid in law. The facts of the given case are similar to the case of *CCus. (Prev.), Mumbai v. M. Ambalal & Co. 2010 (260) E.L.T. 487 (SC)*. In the instant case, the question as to whether goods that were smuggled into the country could be considered as 'imported goods' for the purpose of granting the benefit of the exemption notification was decided by the Apex Court.

The Apex Court held that the smuggled goods could not be considered as 'imported goods' for the purpose of benefit of the exemption notification. It opined that if the smuggled goods and imported goods were to be treated as the same, then there

would have been no need for two different definitions under the Customs Act, 1962.

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

4. (a) No, the show cause notice is not sustainable in law. The facts of the given case are similar to case of *CCE v. GTC Industries Ltd. 2011 (266) E.L.T. 160 (Bom.)*. The High Court pronounced that cutting and embossing did not transform aluminum foil into distinct and identifiable commodity. It did not change the nature and substance of foil. The said process did not render any marketable value, only made it usable for packing. There were no records to suggest that cut to shape/embossed aluminum foils used for packing cigarettes were distinct marketable commodity. Hence, process did not amount to manufacture as per section 2(f) of the Central Excise Act, 1944. Only the process which produces distinct and identifiable commodity and renders marketable value can be called manufacture.
- (b) No, the show cause notice issued by Department is not valid in law. *CBEC Letter No. F.No.137/25/2011-ST dated 03.08.2011* has clarified that delayed payment charges received by the stock brokers are not includible in taxable value provided these charges are shown separately in the account statement/invoice/bill etc because the same are not the charges for providing taxable services. Such charges are on account of delay in making payments by the service recipient to the service provider and are in the nature of a penal charge for not making the payment within stipulated time.
- (c) No, the stand taken by the Department is not correct in law. Rule 2(a) of the Interpretative Rules applies when all the components are imported at the same time and when a simple process is required for assembly. This view was also confirmed by the Supreme Court in *CC v. Sony India (2008) 231 ELT 385 (SC)*, wherein it has been held that rule 2(a) applies only if all the components are presented at the same time for custom clearance.

In the given case, since the various components are imported in different consignments separately at different points of time, rule 2(a) will not apply. Therefore, import of components will be treated as import of components and not of finished goods for the purpose of benefit of exemption notification.

5. (a) (i) 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 maxim "Latter the Better" applies in determining the classification of

the excisable goods.

- (ii) As per Rule 2(ea) of the Central Excise Rules, 2002 'large taxpayer' means a person who
 - (a) has one or more registered premises under the Central Excise Act, 1944; or
 - (b) has one or more registered premises under Chapter V of the Finance Act, 1994; and is an assessee under the Income-tax Act, 1961, who holds a Permanent Account Number issued under section 139A of the said Act, and satisfies the conditions and observes the procedures as notified by the Central Government in this regard.
- (b) (i) According to provisions of Section 72 of Finance Act 1994 if any person, liable to pay service tax,—
 - (a) fails to furnish the return under section 70; or
 - (b) having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder, the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.
- (ii) The different variants of VAT are briefly discussed below:

Gross Product Variant: Tax is levied on all sales and deduction for tax paid on inputs excluding capital inputs is allowed.

Income Variant: Tax is levied on all sales with set-off for tax paid on inputs and only depreciation on capital goods. This variant provides incentives to classify purchases as current expenditure to claim set-off.

Consumption Variant: Tax is levied on all sales with deduction for tax paid on all business inputs [including capital goods]. Thus, gross investment is deductible in calculating value added. It neither distinguishes between capital and current expenditures nor specifies the life of assets or depreciations allowances for different assets. This variant is neutral between the methods of production [i.e. substitution capital for labour or vice versa]. The tax is also neutral between the decision to save or consume.

- (c) Section 23(1) of the Customs Act, 1962 provides for remission of duty on imported goods lost (otherwise than as a result of pilferage) or destroyed, if such loss or destruction is at any time before clearance for home consumption. Such loss or destruction covers loss by leakage. Duty is payable under this section but it is remitted by Assistant/Deputy Commissioner of Customs if the importer is able to prove the loss or destruction. Thus, unless remitted, duty has to be paid and burden of proof is on the importer. Remission is at the discretion of Customs authorities. The provisions of this section are applicable for warehoused goods also.

6. (a) The provisions of section 12F of the Central Excise Act, 1944 are as follows:-

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

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

OR

6. (a) Procedures and conditions for export without payment of duty to all countries except Bhutan are specified in *Notification No.42/2001 C.E. (N.T.) dated 26.6.2001*. Part-wise answers to the questions are given below:

- (i) A bond in Form B-1 is required to be executed by a merchant exporter in case of export without payment of duty. The bond should be at least equal to the duty chargeable on the goods, with such surety or security as the excise officer may approve. Manufacturer- exporter is exempted from furnishing such bond. He can furnish an annual Letter of Undertaking (LUT) in Form UT-1.
 - (ii) ARE-1 is the export document for export clearance which shall be prepared in five copies (quintuplicate). The fifth copy is the optional copy which the assessee can use for claiming other export incentives.
 - (iii) Yes, the goods have to be cleared from the factory under an invoice which shall be prepared in terms of rule 11 of the Central Excise Rules, 2002. The invoice should be prominently marked as "FOR EXPORT WITHOUT PAYMENT OF DUTY".
- (b) (i) Yes, in the instant case, Rohini Consultants Ltd. is required to file its return electronically. Service Tax Rules, 1994 have been amended to provide that

with effect from 01.10.2011, every assessee will have to submit half-yearly service tax return electronically, irrespective of the amount of service tax paid by him in the preceding financial year. Hence, now all assesses are required to file service tax returns electronically. Therefore, for the half year ended September 30, 2012, Rohini Consultants Ltd. shall file its return electronically.

(ii) Invoices are crucial documents for administering VAT. In the absence of invoices, VAT paid by the dealer earlier cannot be claimed as set off. The importance of a VAT invoice can be gauged from the following:-

- (i) It helps in determining the input tax credit;
- (ii) It prevents cascading effect of taxes;
- (iii) It facilitates multi-point taxation on the value addition;
- (iv) It promotes assurance of invoices;
- (v) It assists in performing audit and investigation activities effectively;
- (vi) It helps in checking evasion of tax.

(c) Section 62 of the Customs Act, 1962 provides for the control of customs over the warehoused goods. The provisions are discussed as follows:

- (i) All warehoused goods shall be subject to the control of the proper officer.
- (ii) No person shall enter a warehouse or remove any goods therefrom without the permission of the proper officer.
- (iii) The proper officer may cause any warehouse to be locked with the lock of the customs department and no person shall remove or break such lock.
- (iv) The proper officer shall have access to every part of a warehouse and power to examine the goods therein.

7. (a) As per section 9(3) of the Central Excise Act, 1944, for the purposes of section 9(1) or 9(2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than six months, namely:

- (i) the fact that the accused has been convicted for the first time for an offence under this Act;
- (ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods in relation to such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;
- (iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party in the commission of the offence:

- (iv) the age of the accused (too young or too old)
- (b)** (i) As per section 96C of Finance Act, 1994 an advance ruling can be sought in the following matters:
 - (a) classification of any service as a taxable service under Chapter V of Finance Act, 1994;
 - (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 service 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.
- (ii) The VAT Registration may be cancelled under following circumstances:
 - (i) Discontinuance of business; or
 - (ii) Disposal of business; or
 - (iii) Transfer of business to a new location;
 - (iv) Annual turnover of a manufacturer or a trader dealing in designated goods or services falling below the specified amount.
- (c)** “Transshipment of goods “refers to transfer of goods from one conveyance to another. It may be from one port to any other major port or airport in India.
 Section 54 of Customs Act containing provisions relating to “Transshipment of goods “provides that:
 - (1) where any goods imported into a customs station are intended for transshipment, the person-in-charge of conveyance will have to present a bill of transshipment to the proper officer in the prescribed form;
 - (2) where any goods imported into a customs station are mentioned in the import manifest or import report, as for transshipment to any place outside India, such goods will be allowed to be so transhipped without payment of duty. However, the goods should not have been prohibited under section 11 of the Customs Act.
 - (3) where any goods imported into a customs station are mentioned in the import manifest or import report for transshipment to any major port (as defined in the Indian Ports Act, 1908) or to customs airport or customs port (as notified by the Board) or to any other customs station and the proper officer is satisfied about the bona-fide intention for transshipment of the goods to such customs station, the proper officer may allow the goods to be transhipped, without payment of duty.