

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

1. (a) Computation of CENVAT credit admissible to Saurashtra office of PIC-

Particulars	₹
CENVAT credit of inputs (Note – 1)	1,80,000
CENVAT credit of capital goods (50% of ₹ 2,50,000) (Note – 1 & 2)	1,25,000
CENVAT credit of input services (Note – 3)	<u>4,20,000</u>
Total CENVAT credit admissible	<u>7,25,000</u>

Note -

1. A provider of output services can avail the CENVAT credit of the inputs and capital goods received on the basis of an invoice, challan or bill issued by an office or any other premises (head office) of the said provider of output service, which receives invoices, issued in terms of the provisions of the Central Excise Rules, 2002, towards the purchase of inputs and capital goods [Rule 7A of CENVAT Credit Rules, 2004].
2. The CENVAT credit in respect of capital goods received in the premises of the provider of output service at any point of time in a given financial year shall be taken only for an amount not exceeding fifty per cent of the duty paid on such capital goods in the same financial year [Rule 4(2)(a) of CENVAT Credit Rules, 2004]
3. The 'input service distributor' (Gorakhpur office) can distribute CENVAT credit in respect of the service tax among its units providing output service (Saurashtra office) provided the credit distributed does not exceed the service tax paid [Rule 7 of CENVAT Credit Rules, 2004].

(b) Computation of assessable value:-

1. In the given case, since goods are sold from depot, transaction value (viz. ₹ 110 per meter) cannot be accepted for ascertaining the assessable value of the goods. The value of the said goods shall be determined as per rule 7 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.
2. Rule 7 of the said rules stipulates that if excisable goods are sold from a depot

after their clearance from the place of removal, the value shall be the normal transaction value of such goods sold from such other place (depot) at the time of removal from factory/warehouse. Hence, the normal transaction value of 1,000 meters of cloth sold from the Ahmedabad depot on 05.01.2012 shall be taken as assessable value.

3. (a) *Circular no. 354/81/2000 dated 30.06.2000* clarifies that "normal transaction value" under rule 2 of the aforementioned rules is the transaction value at which the greatest aggregate quantity of goods from depots etc., are sold at or about the time of removal of the goods from the factory/warehouse.
- (b) Further, with regard to greatest aggregate quantity, *Circular no. 643/34/2002-CX dated 01.07.2002* clarifies that
 - (i) the time period should be taken as the whole day and,
 - (ii) the transaction value of the "greatest aggregate quantity" would refer to the price at which the largest quantity of identical goods are sold on a particular day, irrespective of the number of buyers.
4. Accordingly, the price at which the largest quantity of identical variety of cloth is sold on 05.01.2012 shall be taken as greatest aggregate quantity. The largest quantity sold during the day is 850 meters of cloth. The price at which it is sold i.e. ₹ 125 shall be considered for computing the normal transaction value.

Therefore, assessable value of the goods = 1,000 mtrs. × ₹125 = ₹ 1,25,000

(c) Calculation of value of taxable services of Mess Bank Ltd.

Particulars	₹	₹
Amount received for merchant banking services		8,00,000
Amount received for asset management (including portfolio management) services		3,00,000
Service charges for services provided to Government of India (Note – 1)		Nil
Interest received on overdraft and cash credits (Note – 2)		Nil
Amount received for acting as banker to an issue		5,00,000
Amount received as locker rent		2,00,000
Installment amount received towards repayment of financial lease	80,00,000	
Less: Principal amount included in the above installments	<u>50,00,000</u>	

Interest on financial lease	30,00,000	
10% of the interest amount [₹ 30,00,000 × 10%] (Note – 3)		<u>3,00,000</u>
Total value of taxable services		<u>21,00,000</u>
Service tax payable thereon @ 10%		2,10,000
Education Cess @ 2%		4,200
Secondary and Higher Education Cess @ 1%		<u>2,100</u>
Total service tax payable including Cess		<u>2,16,300</u>

Notes:

1. Service charges for banking and other financial services provided to Government of India are exempt from service tax (Notification No. 13/2004 ST dated 10-09-04).
2. Interest received on cash credit and overdraft is exempt from service tax (Notification No. 29/2004 ST dated 22-09-2004).
3. Service tax is payable only on 10% of the interest on financial lease. The interest is the difference between the installment paid towards repayment of the lease amount and the principal amount contained in such installment (Notification No. 4/2006 ST dated 01-03-2006).

(d) Computation of Sale Price and VAT payable thereon;

Particulars	₹
Raw material purchased from foreign market (Note – 1)	12,000
Raw material purchased from local market (₹ 20,800 – ₹ 800) (Note – 2)	20,000
Raw material purchased from neighbouring state (Note – 3)	7,140
Storage, transportation cost and interest	2,500
Other manufacturing expenses incurred	<u>600</u>
Cost of production	42,240
Add: Profit earned @10% on ₹ 42,240	<u>4,224</u>
Sale Price	46,464
VAT @ 12.5% on sales	5,808

Net VAT liability of Rudra:-

VAT on sale price	5,808
Less: Set-off of VAT on purchases	
On imports	Nil

On local purchases	<u>800</u>
Net VAT payable by Rudra	<u>5,008</u>

Notes:-

1. Since, the duty paid on imports is not a State VAT; it will form part of cost of input.
2. VAT charged by the local suppliers is ₹ 800. Since, the credit of this would be available; it shall not be included in the cost of input.
3. Credit/set-off for tax paid on inter-State purchases (inputs) is not allowed.

(e) Computation of assessable value for Laminates International Group:-

	\$
CIF Value of the machine imported	13,000
Less: Air freight paid	2,800
Less: Insurance paid	<u>200</u>
FOB (Free on Board) Value	10,000
Add: Air freight (Note – 1)	2,000
Add: Insurance (actually paid)	<u>200</u>
CIF Value of the machine	12,200
Add: Landing charges (Note – 2)	<u>122</u>
Assessable value (in dollars)	<u>12,322</u>

Assessable Value (in rupees) = \$ 12,322 × ₹ 46 = ₹ 5,66,812

Notes - For the purpose of ascertaining the assessable value of imported goods:-

1. air freight shall not exceed twenty per cent of the FOB (Free on Board) value of the goods [Second proviso to rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
Since, in given case, actual air freight paid is 28% of the FOB value, air freight is restricted to 20% of FOB value (20% of \$10,000) i.e. \$ 2,000.
2. landing charges at the rate of 1% of the CIF value of the imported goods, shall be included, whether ascertainable or not [First proviso to rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
3. the rate of exchange shall be the rate of exchange as in force on the date on which a bill of entry is presented under section 46 [Third proviso to section 14(1) of Customs Act, 1962].

Explanation to section 14(1) further clarifies that rate of exchange shall be the rate as notified by CBEC.

2. (a) (i) The said statement is not valid. *Notification No. 25/2010 CE (NT) dated 22.06.2010* provides that Dumpers or tippers used for providing site preparation and clearance, excavation, earth moving and demolition services and mining services would be treated as capital goods if they are registered in the name of such output service provider Hence Dumpers and Tippers are eligible capital goods for availing cenvat credit.
- (ii) The said statement is valid in law. Rule 3(4) of the CENVAT Credit Rules, 2004 has been amended *vide Notification No. 26/2010 CE (NT) dated 29.06.2010* to provide that the CENVAT credit of any duty specified in sub-rule (1) of rule 3 cannot be utilized for payment of the Clean Energy Cess.
- (b) (i) *Notification No. 28/2010 ST dated 22.06.2010*, with effect from 01.07.2010, provides that the construction of complex service in relation to Jawaharlal Nehru National Urban Renewal Mission and Rajiv Awaas Yojana has been exempted from service tax. Hence, service tax is not payable on construction of complex service in relation to Jawaharlal Nehru National Urban Renewal Mission and Rajiv Awaas Yojana.
- (ii) Taxable services provided by a distribution licensee, a distribution franchisee, or any other person authorized to distribute power under the Electricity Act, 2003 for distribution of electricity have been exempted from service tax *vide Notification No. 32/2010 ST dated 22.06.2010* under Business auxiliary services.
- (c) *Circular No. 33/2011 Cus. dated 29.07.2011* clarifies that in order to reduce the transaction cost of the importers and expedite the time taken for customs clearance, the CBEC has made e-payment of duty mandatory for the importers paying an amount of ₹ 1,00,000 or more per transaction.

Further, the Board has clarified that Accredited Importers under the Customs Accredited Client Programme will have to pay duty through E- payment mode only irrespective of the amount of duty to be paid.

Any importer wanting to make use of the e-payment facility first needs to have an Internet account with a designated bank. The Board has set up a dedicated payment gateway called, 'ICEGATE'.

If the importer is registered on this Web site, it can easily use the e-payment facility with the current log-in facility. Those that are un-registered can also use the Web site as an 'unregistered user'.

The importer need not produce any proof of payment for the clearance of goods in case of e-payment.

3. (a) Yes, the show cause notice is sustainable in law. The facts of the given case are similar to case of ***Usha Rectifier Corpn. (I) Ltd. v. CCEx., New Delhi 2011 (263) E.L.T. 655 (S.C.)*** The Apex Court observed that once the appellant had themselves made admission regarding the development of testing equipments in their own Balance Sheet, which was further substantiated in the Director's report, it could not make contrary submissions later on. Moreover, assessee's stand that testing equipments were developed in the factory to avoid importing of such equipments with a view to save foreign exchange, confirmed that such equipments were saleable and marketable. Hence, the Apex Court held that duty was payable on such testing equipments.
- (b) The Larger Bench of the Tribunal, in the 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 plea is justified in law. The facts of the given case are similar to the case of ***CCus., Chennai v. BPL Ltd. 2010 (259) E.L.T. 526 (Mad.)*** The High Court noted that section 27 of the Customs Act mandates on the importer to produce such documents or other evidence, while seeking refund, to establish that the amount of duty in relation to which such refund is claimed, has not been passed on by him to any other person.
- However, in the given case, the assessee had not produced any document other than the certificate issued by the Chartered Accountant to substantiate its refund claim. The certificate issued by the Chartered Accountant was merely a piece of evidence acknowledging certain facts. It would not automatically entitle a person to refund in the absence of any other evidence. Hence, the assessee could not be granted refund merely on the basis of the said certificate. Hence Chartered Accountant's certificate alone is not sufficient evidence to rule out the unjust enrichment under customs. Hence Murlidhar Ltd. is not entitled for refund claim.
4. (a) No, Department's contention is not valid in law. The facts of the given case are similar to the case of ***CCE v. Tata Advanced Materials Ltd. 2011 (271) E.L.T. 62***

(Kar.). The High Court noted that as per CENVAT Credit Rules, 2004, CENVAT credit taken irregularly stands cancelled and CENVAT credit utilised irregularly has to be paid for. In the instant case, the Insurance Company, in terms of the policy, had compensated the assessee. The High Court observed that merely because the Insurance Company had paid the assessee the value of goods including the excise duty paid, it would not render the availment of the CENVAT credit wrong or irregular. It was not a case of double benefit as contended by the Department. Hence, in the instant case, M/S Desire Co. Ltd. is not required to reverse the cenvat credit.

- (b)** Yes, the show cause notice is sustainable in law. The facts of the given case are similar to the case of **Commissioner of Service Tax v. Lincoln Helios (India) Ltd. 2011 (23) S.T.R. 112 (Kar.)** The High Court held that the excise duty is levied on the aspect of manufacture and service tax is levied on the aspect of services rendered. Hence, it would not amount to payment of tax twice and the assessee would be liable to pay service tax on the value of services. The High Court pronounced that service tax and excise liability is not mutually exclusive. Hence, in the instant case, M/S OMN Ltd. is required to pay service tax on the value of services.
 - (c)** No, the stand taken by the Department is not tenable in law. The facts of the given case are similar to the case of **Manish Lalit Kumar Bavishi v. Addl. DIR. General, DRI 2011 (272) E.L.T. 42 (Bom.)** The High Court held that from the language of section 110(4), it was apparent that the Customs officers were mandatorily required to make available the copies asked for. It was the party concerned who had the choice of either asking for the document/seeking extract and not the officer. If any document was seized during the course of any action by an officer and relatable to the provisions of the Customs Act, that officer was bound to make available copies of those documents. The denial by the Revenue to make the documents available was clearly an act without jurisdiction. Hence, in the instant case it is mandatory for the Revenue officers to make available the copies of the seized documents to M/S Manmohan from whose custody such documents were seized.
- 5. (a)**
- (i)** Yes, excise duty is attracted on the excisable goods manufactured in the State of Jammu and Kashmir. Though originally the Central Excise Act, 1944 did not apply to Jammu and Kashmir, its application was extended to the same with the enactment of Taxation Laws (Extension to Jammu and Kashmir) Act, 1954.
 - (ii)** Section 3(1A) of the Central Excise Act, 1944 provides that the excise duty shall be levied and collected on all excisable goods other than salt which are produced or manufactured in India by, or on behalf of, Government, as they apply in respect of goods which are not produced or manufactured by Government. Thus, excise duty is payable on goods manufactured by, or on behalf of, the Government (both Central & State) also.
- (b)**
- (i)** Subject to provisions of Section 67 of Finance Act, 1994, the value of taxable

service, the consideration for which is not wholly or partly consisting of money, shall be determined by the service provider in the following manner as per Rule 3 of the Service Tax (Determination of Value) Rules, 2006:

- (a) The value of such taxable service shall be equivalent to the gross amount charged by the service provider to provide similar service to any other person in the ordinary course of trade. However, the aforementioned gross amount charged must be the sole consideration.
 - (b) Where the value cannot be determined in accordance with above clause, the service provider is required to determine the equivalent money value of such consideration. However, such value shall in no case be less than the cost of provision of such taxable service.
- (ii) The different variants of VAT are briefly discussed below:
- 1. Gross Product Variant: Tax is levied on all sales and deduction for tax paid on inputs excluding capital inputs is allowed.
 - 2. 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.
 - 3. 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) The Customs Tariff has a set of six rules for interpretation of the tariff schedule and three general explanatory notes. The six rules of interpretation and three general explanatory notes are integral part of the schedule. The purpose of their inclusion is:
- (i) to give clear direction as to how the nomenclature in the schedule is to be interpreted and
 - (ii) to give statutory force to the interpretation rules and the general explanatory notes.

Rule 4 of the rules of interpretation is called as akin rule. This rule lays down that goods which cannot be classified in accordance with rules 1, 2 and 3 of the rules of interpretation shall be classified under the heading appropriate to the goods to which they are most akin.

6. (a) (i) No, because manufacturers of goods which are chargeable to 'NIL' rate of duty are exempt from registration provided a declaration is filed.
- (ii) Yes, as the provisions of section 6 of the Central Excise Act, 1944 read with rule 9 of Central Excise Rules, 2002 apply in respect of every person who manufactures or produces excisable goods (including Central/State Government Undertakings or undertakings owned or controlled by autonomous corporations) in India.
- (iii) No, as 100% EOU is deemed to be registered under Rule 9. However, such unit shall be required to get itself registered if it removes excisable goods to domestic tariff area (DTA) or procure excisable goods from DTA.

OR

6. (a) (i) 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.
- (ii) The bond may be accepted by any of the following officers:
- (i) The Deputy/Assistant Commissioner of Central Excise having jurisdiction over the factory or warehouse or any other premises approved by the Commissioner for storing non-duty paid goods;
- (ii) Maritime Commissioner under whose jurisdiction one or more of the port, airport, land customs stations or post office of exportation is located.
- (iii) The Deputy/Assistant Commissioner of Central Excise(Export) as officers authorised by the Board for this purpose.
- (b) (i) The audit norms prescribed by Service Tax Audit Manual, 2010 are given in the following table

S.No.	Quantum of annual total service tax payment in (cash + CENVAT Credit) in preceding financial year	Frequency of Audit
1	Tax payers paying more than ₹3 Crores	Every year
2	Tax payers paying between ₹ 1 crore and ₹ 3	Once in 2 years

	crores	
3	Tax payers paying between ₹ 25 Lacs and ₹ 1 Crore	Once in 5 years
4	Tax payers paying below ₹ 25 Lacs	2% of the total no. every year

It has been further specified in above-mentioned Audit Norms that preferably Audit should be done by using Computer Assisted Audit Program (CAAP) techniques.

(ii) There are two types of cross checking under VAT Laws:-

1. **Normal Cross-checking:** In the VAT system more emphasis has been laid on self-assessment. Hence, a system of cross-checking has become essential. Dealers may be asked to submit the list of sales or purchases above a certain monetary value or to give the dealer-wise list from whom or to whom the goods have purchased or sold for values exceeding a prescribed monetary ceiling.
2. **Comprehensive Computerized Cross-checking:** A Cross-checking computerized system is being worked out on the basis of coordination between the tax authorities of the State Governments and the authorities of Central Excise and Income-Tax to compare constantly the tax-returns and set-of documents of VAT system of the States and those of Central Excise and Income-Tax. This comprehensive cross-checking will help in reducing tax evasion and also lead to significant growth of tax revenue. At the same time, by protecting the interests of tax-complying dealers against the unfair practices of tax-evaders, the system will also bring in more equal competition in the sphere of trade and industry.

(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.

7. (a) (i) Provisional attachment of property can be done for a period of 6 months [Section 11DDA (2)].

This period can be extended with written permission of Chief Commissioner of Central Excise. However, total period of extension cannot be more than two years [First proviso to section 11DDA(2)].

However, if the assessee has made an application to the Settlement Commission, that period will be excluded for the purpose of calculating the time limit of two years [Second proviso to section 11DDA(2)].

- (ii) 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:
 - (a) the fact that the accused has been convicted for the first time for an offence under this Act;
 - (b) 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;
 - (c) 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;
 - (d) the age of the accused (too young or too old)
- (b) (i) Sometimes an assessee provides taxable service from more than one premises. Rule 4(2) of the Service Tax Rules, 1994 provides that in such cases, the assessee can obtain centralized registration at his option if:
 - (a) he has centralized billing or centralized accounting in respect of such service, and
 - (b) such centralized billing or centralized accounting systems are located in one or more offices or premises.

The assessee can register such offices or premises where centralized accounting or centralized billing systems are located.

According to Rule 4(3) Centralised Registration is granted by the Commissioner of Central Excise in whose jurisdiction the premises or offices, from where Centralised billing or accounting is done, are located.

- (ii) Different modes of incentives under VAT are briefly described below:
 - 1. Exemption from tax: Under this mode incentives are given by way of exemption from tax. The eligible industry is not required to pay any sales tax on purchases of raw materials as well as on sales of finished product.

The exemption so allowed ceases either with the expiry of exemption period or the exemption amount whichever occurs first.

2. **Deferment of tax liability:** Under this mode eligible industry is at par with any other normal unit. It collects the tax on sale of finished goods and also pays the tax to its vendors on the purchases of raw materials etc. However, such eligible unit or industry is not required to pay the collected tax to the Government immediately. However, payment of tax to the Government is deferred for particular period.
3. **Remission of Tax:** Under this mode, an eligible industry is allowed to collect tax at an appropriate rate but is not required to pay the same. The unit is required to file periodical return and show the tax liability. The tax liability as per return is deemed to have been paid. The input tax paid on purchases by the unit is given as refund immediately after filing of return.

(c) The differences between the functioning of Inland Container Depot (ICD) and Container Freight Station (CFS) are:

- (i) **Meaning:-**An ICD is a place where containers are aggregated for onward movement to or from the ports whereas CFS is a place where containers are stuffed, unstuffed and aggregation/segregation of cargo takes place.
- (ii) **Location:-**ICDs are normally located outside the port towns whereas no site restrictions apply to CFS.
- (iii) **Attachment/Extension:-**An ICD may have a CFS attached to it and CFS is treated as an extension of a port/ICD/air cargo complex.