

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

1. (a) Cost of production is required to be computed as per CAS-4. Material cost is required to be exclusive of CENVAT credit available.

Particulars	Total Cost (₹)
Material Consumed (Net of Excise duty) (800 – 73)	727
Direct Wages and Salaries	100
Direct Expenses	100
Works Overheads	100
Administrative Overheads (Relating to production capacity)	<u>50</u>
Cost of Production	1,077
Add - 10% as per rule 8	<u>108</u>
Assessable Value	1,185
Excise duty @ 12% of ₹ 1,185	142.2
Education Cess @ 2% of ₹ 142.2	2.844
SHEC @ 1% on ₹ 142.2	<u>1.422</u>
Total Duty Liability= ₹ (142.2 + 2.844 + 1.422) =	₹ 146.466

Note –

- (1) Indirect labour and indirect expenses have been included in Works Overhead
 - (2) In absence of any information, it is presumed that administrative overheads pertain to production activity.
 - (3) Actual profit margin earned is not relevant for excise valuation.
- (b) (i) The price prevailing at the time of removal from factory (i.e. ₹ 6 lacs on 15th July, 2012 is the assessable value. As per Section 4 of Central Excise Act, 1944, transaction value shall be accepted as assessable value as Price is final at the time of removal. Fluctuations subsequent to the removal in the prices of the commodity is of no relevance.
- (ii) The applicable rate of duty is @12.36% and duty amount is ₹ 74,160 (i.e. ₹ 6

lacs x 12.36/100). As per Rule 5 of Central Excise Rules, 2002 , the rate of duty and tariff valuation shall be of the date on which goods are removed from the factory.

- (iii) The Central Excise Officer is not right in his approach.
- (iv) Cost of production has no bearing with assessable value in present case. Central Excise valuation can be below manufacturing cost. If price is the sole consideration and dealing between seller and buyer are arm's length, assessable value will be decided on the basis of selling price, even if it is below manufacturing cost. So cost of manufacturing will not change the assessable value.
- (c) As per Rule 2A of Service Tax (Determination of Value) Rules, 2006, value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract.

Computation of Service Tax liability

S.No.	Particulars	Amount
(i)	Gross Amount charged	₹ 1,00,000
(ii)	Actual Value of goods transferred	₹ 80,000
(iii)	Value of service portion in the execution of works contract i.e. (ii)- (i)	₹ 20,000
	Service Tax on ₹ 20,000 @12.36% = 2,472	
	Less: CENVAT credit on inputs = NIL	
	On Input Services = 1,000	
	On Capital Goods (50%) = <u>500</u>	
	Service Tax Payable	₹ 972

- (d) (a) Statement showing VAT payable on sales

Description Value (₹)	VAT (₹)
4% VAT Sales 3,00,000	12,000
12.5% VAT Sales 3,00,000	<u>37,500</u>
Total	49,500
Input tax credit is	<u>49,500</u>
Net VAT payable	Nil
Balance of input tax credit to be carried forward (₹66,500 – ₹ 49,500)	<u>17,000</u>

(b) Statement showing input tax credit:

Description Value (₹)	Input Tax Credit (₹)
4% VAT Purchases 1,00,000	4,000
12.5% VAT Purchases 5,00,000	62,500
Total eligible input tax credit	66,500

(e)

The personal effects like clothes, etc., valued at ₹ 45,000	Exempt
A personal computer bought for ₹ 36,000	36,000
A laptop computer bought for ₹ 85,000	Exempt
Two liters of liquor bought for ₹ 1,600	1,600
A new camera bought for ₹ 37,400.	37,400
Total	75,000
Less: General Free Allowance ₹ 35,000 + ₹ 35,000	70,000
Baggage taxable	5,000
Customs Duty is (5,000 x 36.05%) payable by Mrs. & Mr. Aryan.	₹ 1,803

- 2 (a) (i) The said statement is not valid. Earlier, Rule 6(3C) of CENVAT Credit Rules, 2004 provided that in case of services relating to life insurance, provider of output service was obligated to pay every month an amount equal to 20% of the credit availed on inputs and input services in that month. However, now Rule 6(3C) of CENVAT Credit Rules, 2004 has been omitted vide *Notification No. 18/2012-(CE) NT dated 17.03.2012* and such obligation has been dispensed with.
- (ii) The said statement is not valid. Prior to 01.03.2013, only public sector companies were notified as the class or category of residents who can apply for advance ruling in case of specified matters relating to central excise.
- However, the scope of advance ruling has been expanded by additionally notifying resident public limited companies as class or category of residents who can apply for advance ruling in case of specified matters relating to central excise vide *Notification No. 04/2013 (CE) NT dated 01.03.2013*. Thus, resident public limited companies can also now obtain advance ruling in case of central excise matters.
- (b) (i) Subject to provisions of Section 67 of Finance Act, 1994, the value of taxable service, where such value is not ascertainable, 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) **Best judgment assessment:** 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.
- (c) (i) As per the section 14(1) of the Customs Act, 1962 the value of imported or export goods shall be their **transaction value**. Accordingly, the value of the goods shall be the price of contract (i.e., the transaction value), even if there is price rise subsequently.
- (ii) On account of insertion of explanation to **Rule 10(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007**, the payment for post-importation process is **includible** in the value of the imported goods if the same is related to such imported goods and is a condition of the sale thereof.
- (iii) The **third proviso to section 14(1)** of the Customs Act, 1962 inter alia provides that for imported goods, value under section 14(1) shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46. The rate of exchange applicable for a month is **generally notified by the Board in the preceding month**. Hence, the rate notified on 25.09.2012 will apply for the bill of entry filed on 27.10.2012.

However, it may be noted that the rate of exchange is **not notified during the preceding month as a rule** as the power to determine the rate of exchange given to the Board vide clause (a) of the explanation to section 14 of the Customs Act, 1962 is **open ended**.

3. (a) (i) The said statement is not valid. The aforementioned question was examined by the High Court in the case of **CCEx v. Cadila Healthcare Ltd. 2013 (30) S.T.R. 3 (Guj.)**. In the instant case, the High Court observed that the activity of testing and analysis of the trial batches was in relation to the manufacture of final product and hence, were input services eligible for CENVAT credit as unless such trial batches were tested and approval from the regulatory authority was obtained, the final product could not be manufactured.
- (ii) The said statement is not valid. The aforementioned question was examined by the High Court in the case of **CCEx v. Cadila Healthcare Ltd. 2013 (30) S.T.R. 3 (Guj.)**. In the instant case, the High Court observed that with respect to the services provided by foreign commission agents, the High Court held that since the agents were directly concerned with sales rather than sales promotion, the services provided by them were not covered in main or inclusive part of definition of input service as provided in rule 2(l) of the CENVAT Credit Rules, 2004.
- (b) The aforementioned question was examined by the High Court in the case of **DBOI Global Service Pvt. Ltd. v. UOI 2013 (29) S.T.R. 117 (Bom.)**.
- In the instant case, the adjudicating authority had disallowed the refund claim filed by the assessee and called for certain additional documents, although similar refund claims filed by the assessee for the earlier periods had been allowed by the adjudicating authority without these additional documents. The assessee failed to furnish the additional documents despite being given several opportunities to produce the same. The adjudicating authority passed an order rejecting the refund claim but failed to record any reason as to why it differed with the earlier decisions.
- The assessee pleaded that since the adjudicating authority had failed to state any reason for differing with the earlier decisions, its order must be quashed. Revenue contended that the adjudicating authority was justified in passing the non-speaking order because inspite of several opportunities given to produce additional documents, the assessee had failed to produce those documents.
- The High Court held that if the assessee had failed to furnish additional information, it had been obligatory on the part of the adjudicating authority to record a finding as to why the documents furnished by the assessee were not sufficient to allow his claim and why additional documents were necessary, especially when on the basis of similar documents furnished by the assessee in the past, the claims had been allowed. Thus, deciding the petition in favour of the assessee, the High Court set aside the order of the adjudicating authority.
- (c) No, Revenue's contention is not valid. The facts of the given case are similar to the case of **Anita Goel v. CCEx. 2013 (288) E.L.T. 63 (Del.)**. In the instant case, considering the provisions of section 142 of the Customs Act, 1962 and the relevant

rules, the High Court elucidated that it was only the defaulter against whom steps might be taken under Rules. The defaulter was the person from whom dues were recoverable under the Act. In the present case, it was the company who was the defaulter. There was no averment that the company had been or was being wound up.

Thus, juristic personality of an existing company and its former director were certainly separate; the dues recoverable from the former could not, in the absence of a statutory provision, be recovered from the latter. There was no provision in the Customs Act, 1962 corresponding to section 179 of the Income Tax Act, 1961 or section 18 of the Central Sales Tax, 1956 which might enable the Revenue authorities to proceed against directors of companies who were not defaulters.

4. (a) The facts of the given case are similar to the case of **CCEx. v. Balaji Trading Co. 2013 (290) E.L.T. 200 (Del.)**. In the instant case, in an appeal filed by the respondents to CESTAT, CESTAT noted that penalty under rule 25 could be imposed only on four categories of persons:-

- (a) producer;
- (b) manufacturer;
- (c) registered person of a warehouse; or
- (d) a registered dealer.

Since, the respondents were neither producers nor manufacturers of the said zarda, neither were they the registered persons of a warehouse in which the said zarda had been stored nor were the registered dealers, penalty under rule 25 (higher of duty payable on excisable goods in respect of which contravention has been committed or ₹ 2,000), could not be imposed on the respondents.

The Department aggrieved by the said order filed an appeal with High Court wherein it contended that rule 25(1)(c) of the Central Excise Rules, 2002 would be applicable in the instant case. However, High Court concurred with the view of the Tribunal and concluded that rule 25(1)(c) would have no application in the present case.

- (b) Yes, the service tax is leviable in the present case. The aforementioned question was examined by the High Court in the case of **Mayo College General Council v. CCEx. (Appeals) 2012 (28) STR 225 (Raj)**. In the instant case, the High Court held that when the petitioner permitted other schools to use their name, logo as also motto, it clearly tantamounted to providing 'franchise service' to the said schools and if the petitioner realized the 'franchise' or 'collaboration fees' from the franchise schools, the petitioner was duty bound to pay service tax to the department.
- (c) The question whether the time-limit prescribed under section 48 of the Customs Act, 1962 for clearance of the goods within 30 days be read as time-limit for filing of bill of entry under section 46 of the Act was examined by the High Court in case of

CCus v. Shreeji Overseas (India) Pvt. Ltd. 2013 (289) E.L.T. 401 (Guj.). The High Court noted that though section 46 does not provide for any time-limit for filing a bill of entry by an importer upon arrival of goods, section 48 permits the authorities to sell the goods after following the specified procedure, provided the same are not cleared for home consumption/ warehoused/transshipped within 30 days of unloading the same at the customs station. The High Court however held that the time-limit prescribed under section 48 for clearance of the goods within 30 days cannot be read into section 46 and it cannot be inferred that section 46 prescribes any time-limit prescribed for filing of bill of entry.

5. (a) (i) Central Excise Tariff Act, 1985 is based on the Harmonised System of Nomenclature (popularly known as HSN). It is worth specifying that Central Excise Tariff Act, 1985 generally follows HSN pattern but it is not a copy of HSN. HSN is an internationally accepted product coding system formulated under the auspices of the General Agreement on Tariffs and Trade (GATT). Excise Tariff Act is modeled along with international practices. The international practice of adopting a uniform classification has been adopted to facilitate a common understanding of products across countries. In different words, the classification under HSN would be the same across the countries.
- (ii) As per section 4(3)(c) of the Central Excise Act, 1944, 'place of removal' means:
 - (i) a factory or any other place or premises of production or manufacture of the excisable goods;
 - (ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;
 - (iii) a depot, premises of a consignment agent or any other place or premises from where excisable goods are to be sold after their clearance from the factory from where such goods are removed.
- (b) (i) (a) In this case, place of Provision of Services will be Chandigarh as the concerned property is intended to be located in Chandigarh which also falls within the ambit of 'Taxable Territory' and resultantly these services will be taxable.
- (b) (b) In this case, since specific sites in respect of which mineral exploration is to be carried out are located in Canada, the Place of Provision of Services will be Canada which does not fall within the ambit of 'Taxable Territory' and resultantly these services will not be taxable. The fact that service providing company is located in U.S.A. and service recipient is located in Mumbai (India) is wholly insignificant.
- (ii) According to Constitution of India tax on inter-state sale or purchase can be levied only by Union Government. Central Sales Tax Act, 1956 has been enacted for this purpose. According to Section 6(1) of Central Sales Tax

subject to other provisions of the Act, every dealer shall be liable to pay tax under this Act on all sale of goods effected by him in the course of inter-state trade or commerce.

According to section 3 of Central Sales Tax a sale or purchase of goods shall be deemed to take place in the course of inter-state trade or commerce if the sale or purchase:-

- (a) occasions the movement of goods from one state to another or
- (b) is effected by a transfer of documents of title to the goods during their movement from one state to another.

The above-mentioned first mode is 'direct inter-state sale' whereas second mode is 'by transfer of documents'.

- (c) The Government may by notification under **section 25** of the Customs Act, 1962 prescribe preferential rate of duty in respect of imports from certain preferential areas. The importer will have to fulfill the following conditions to make the imported goods eligible for preferential rate of duty:

- (i) At the time of importation, he should make a **specific claim** for the preferential rate.
- (ii) He should also claim that the **goods are produced or manufactured in such preferential area**.
- (iii) The **area** should be **notified under section 4(3)** of the Customs Tariff Act, 1975 to be a preferential area.
- (iv) The **origin of the goods shall be determined** in accordance with the rules made under section 4(2) of the Customs Tariff Act, 1975.

- 6. (a) (i) According to provisions of section 23F(1) of Central Excise Act, 1944 where on a representation from commissioner or otherwise, it is proved that an advance ruling was obtained by the concerned applicant by **fraud or misrepresentation of facts**, the authority for advance ruling can declare the advance ruling as void ab initio. Consequently, all the provisions of the Central Excise Act shall apply to the applicant as if such ruling had never been made. Copy of such order is sent to the Commissioner of Central Excise.
- (ii) If the assessee does not agree to the classification or assessable value of goods determined by the excise authorities, he can file an appeal and till the time the appeal is decided, can pay the duty under protest if no stay is obtained from Appellate Authorities. However, if the appeal is not decided in his favour and the appellate remedy is exhausted, the assessee will lose the right to pay duty under protest. The time limit of one year for claiming refund of excise duty does not apply if duty is paid under protest.

The assessee will inform the Superintendent/Inspector of Central Excise that he is paying duty under protest in writing. He will mark invoices or monthly/quarterly returns indicating the goods on which duty is paid as 'under protest'. In case of lump-sum duty payment of past demand, he may record the fact of duty payment under protest in the PLA, CENVAT account or Daily Stock Account.

OR

6. (a) Yes. As per Rule 10A of the CENVAT Credit Rules, 2004 such transfer of SAD is permitted between the different premises of a manufacturer or producer of final products provided each of the premises is registered under the Central Excise Rules, 2002 and such registration has been obtained on the basis of a common Permanent Account Number under the Income tax Act, 1961. Such transfer of unutilised CENVAT Credit of Addition Duty of Customs leviable under Section 3(5) of the Customs Tariff Act lying in balance with one of the registered premises at the end of a quarter, to his other registered premises, can be effected by making an entry for such transfer in the records maintained by the respective registered premises. The provisions also require issue of a transfer challan by the premises transferring the credit, containing registration number, name and address of the registered premises transferring the credit and receiving such credit, the amount of credit transferred and the particulars of such entry in the records. The recipient premises can take CENVAT Credit on the basis of the transfer challan.
- (b) (i) Smart International Boarding School provide service of education coupled with other services like providing dwelling units for residence and food for the students. This would be a case of bundled services if the charges recovered from the students for education and lodging and boarding are inseparable. The taxability of such a bundled service will have to be determined in terms of the principles laid down in Section 66F of the Finance Act, 1994. Since such services are bundled in the ordinary course of business, the bundle of services will be treated as consisting rely of such service which determines the dominant nature of such a bundle i.e. the service of education. Education services being in the negative list the entire bundle would be non-taxable. In this case, the service of providing residential dwelling is also covered in a separate entry of the negative list.
- (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) 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.
7. (a) (i) 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.
- (ii) **Desk Review** is the first step in Excise Audit, 2000. Upon assignment of an audit, the auditor is required to be sufficiently prepared before the visit to the unit. For this purpose, the auditor reviews all the information available about the unit, its operations, and reasons for selection for audit and possible issues that can be identified at desk review stage. Perusal of assessee's profile, annual report, trial balance, cost audit report and income-tax audit report is involved in desk review.
- Department has also decided to take help of **practicing chartered/cost accountants in desk review** of Excise Audit 2000
- (b) (i) (a) These are taxable services. Services rendered within India (except in the state of Jammu and Kashmir) come under the service tax net, provided these services are taxable services.
- (b) These services can be considered as export of services, which are exempted from the service tax liability.
- (ii) As per the White Paper, small dealers having gross turnover exceeding ₹ 5 lakhs but less than ₹ 50 lakhs have the option of composition scheme. The following persons are not eligible for the composition scheme:
- (i) a manufacturer or a dealer who sells goods in the course of inter-State trade or commerce; or

- (ii) a dealer who sells goods in the course of import into or export out of territory of India; or
 - (iii) a dealer transferring goods outside the State otherwise than by way of sale or for execution of works contract; or
 - (iv) a manufacturer/dealer who makes inter-State purchases; or
 - (v) a dealer/manufacturer who issues vatable invoices.
- (c) Yes, permission of the proper officer is required. 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.