CA FINAL MAY 2015 EXAM – INDIRECT TAX LAWS – GUIDELINE ANSWERS

Question No.1 is compulsory (4 × 5 = 20 Marks)

Answer any five questions from the remaining six questions (16 × 5 = 80 Marks)

1. (a) Arvin Ltd., (not availing small scale exemption benefits) so as machine to Isha Ltd. for 4,00,000 (excluding taxes and duties). A cash discount of 3% was allowed since Isha Ltd. had made full payment in advance. The following additional details are given below

Particulars	Amount
1. Expenses pertaining to installation and erection of the machine at Isha Ltd premises (Machine was permanently fixed to earth)	20,000
2. Cost of durable and returnable packing (such cost has been a. mortised and included in the cost of the machine)	5,000
3. Actual freight and insurance from factory to buyer's premises	25,000

Determine the total amount of excise duty payable on the machine. Assume transaction is on principal to principal basis. Assume excise duty at 12.36% and show working notes.

Solution:

Computation of Assessable Value of the Machine

Particulars	Amount
Price actually paid or payable	4,00,000
Less: Cash discount (4,00,000 * 3%) – Note 1	12, 000
Expenses pertaining to installation – Note 2	NIL
Cost of durable and returnable packing – Note 3	NIL
Actual Freight and Insurance from Factory to Buyer's Premises – Note 4	NIL
Assessable Value	**3,88,000**

Excise Duty @ 12% of 3,88,000	46,560
Add: Education Cess @ 2% of 48,000	931
SHEC @ 1% of 48,000	466
Total Excise Duty Payable	47,957

Notes:

1. Cash discount is allowed as deduction from price actually paid or payable
2. Expenses pertaining to installation is excluded from transaction value as the machine was permanently fixed to earth on such installation. Assuming that the installation expenses do not form part of price actually paid or payable, no treatment is required.
3. No treatment as the cost is already amortised in the price quoted
4. Freight from factory to buyer's premises is excluded from T.V provided factory is the place of removal. Assuming that freight does not form part of price actually paid or payable, no treatment is required.

(b) From the following information compute the value of taxable service provided by Ganga Limited assuming that it is not eligible for small service providers exemption under Notification No. 33/2012-ST dated

Particulars	Amount
Construction services provided to lnternational Labour Organization	7,00,000
Construction of Private Clinic for Dr. Ramesh Garg	15,00,000
Renovation service provided to Government relating to plant for sewerage treatment	30,00,000
Construction of roads in a factory	25,00,000
Construction of residential complex for use of Members of Parliament	1,20,00,000
Renting of residential dwelling for use as residence	22,00,000
Repair and maintenance of Railway Station	13,00,000

Provide brief notes and explanations for your answer.

Solution:

Computation of Taxable Services

Particulars	Amount
Construction Service provided to International Labour Organization – Exempt u/n 25/2012	---
Construction of Private Clinic for Dr. Ramesh Garg – Taxable	15,00,000

Renovation Service provided to Government relating to Plant for Sewerage treatment - Exempt u/n 25/2012	Nil
Construction of Roads in a Factory - Taxable	25,00,000
Construction of Residential complex meant for use of Member of Parliament - Exempt u/n 25/2012	Nil
Renting of Resi. dwelling for Residence – Not Taxable	Nil
Repair and Maintenance of Railway Station - Taxable	13,00,000

Value of Taxable Services – 53,00,000

(c) Compute independently in each of the following cases the taxable value of services provided by an authorized dealer in foreign exchange to its customers. Show working notes as may be required.

(i) 2500 US $ are sold by Mr. Adani to the 'Sewak Cook', an authorized dealer @ Rs. 62.50 per US$. The RBI reference rate is Rs. 63 .00 for that day.

(ii) Rs. 80,00,000 is changed into Canadian $ and the exchange rate offered is Rs. 50 per Canadian $. RBI reference rate for conversion of INR into Canadian $ is not available.

(iii) On 01-05-2015 Mr. Exchange gets1,00,000 euro converted into 5,00,000 Dirham. As on 01-05-2015 RBI reference rate is 1 Euro= Rs. 70, 1 Dirham = Rs. 16

Solution:

Based on RBI Reference rate method

Value = No. of units Exchanged × (RBI Reference Rate – Brokerage Rate)	2,500 USD × (63.00 – 62.50)	1,250
Since RBI Reference Rate is not available, Value shall be 1% of the Gross Rupee Exchanged.	1% * 80,00,000	80,000
When both the currencies are not Indian Rs, then Value = Amount 1 – Foreign currency sold x RBI Reference rate of that currency to Indian Rs at that time Amount 2 – Foreign currency bought x RBI Reference rate of that currency to Indian Rs at that time Gross Indian Rs = Amount 1 or Amount 2, whichever is less Value = 1% of Gross Indian Rupees	(a) Euros = 1,00,000 × 70 = 70 Lakhs (b) Dirham = 5,00,000 × 16 = 80 Lakhs 1% of 70 Lakhs [Lower of (a) or (b)]	70,000

(d) (1) Vishal Industries imported goods from U.S.A., C.I.F. value bearing US $ 2600. Air freight 500 US $, insurance cost 100 US $, landing charges are not ascertainable.

(2) Date of bill of entry is 25-09-2014 and basic custom duty on this date is 10% and exchange rate notified by Central Board of Excise and Customs in US $ 1 = Rs. 62.

(3) Date of entry inward is 21-10-2014. Basic customs duty on this date is 20% and exchange rate notified by Central Board of Excise and Customs is US $ 1 = Rs. 60.

(4) Additional duty payable u/s 3(1) of the Customs Tariff Act is 12%, education cess is 3% on duty. Additional duty payable u/s 3(5) of the Customs Tariff Act is exempt. Compute the assessable value and amount of total customs duty payable under the Customs Act, 1962.

Make suitable assumptions, where required. Working notes should form part of your answer.

Solution:

CIF Value		$2600
Less: Air freight		($500)
Insurance		($100)
FOB Value		$2000
Add: 20% of FOB or actual Freight whichever is less Insurance	20% * 2000 = 400 or $500 W.E.L	$400 $100
Revised CIF		$2500
CIF (Rs.) Exchange Rate shall be based on the rate notified by CBEC on the date on which the Bill of Entry is filed.	$2500 x 62	Rs. 155000
Add: 1% landing		Rs. 1550
A.V		Rs. 156550
BCD @ 20% Date of filing of BOE or Entry Inwards w.e.l	156550 * 20%	Rs. 31310
Sub - Total		Rs. 187860
ACD u/s 3(1)	12% * 187860	Rs. 22543
Education cess @ 2% 2% * (31310 + 22543)		Rs. 1077
SHE @ 1% 1% * (31310 + 22543)		Rs. 539
Total customs duty payable		**Rs. 55469**

2. (a) Dev Ltd .. a manufacturer, has furnished the following information regarding inputs received in the factory and input service used for manufacture :-

Particulars	**Excise / Service Tax**
Raw material Invoice dated 14-09-2014	31,500
Grease and Oil Invoice dated I 0-04-2015	5,000

Input Service Invoice dated 22-10-2014 19,500

Office Equipment invoice dated 25-11-2014 7,250

Light Diesel Oil Invoice dated 02-04-2015 22,000

Paints Invoice is missing 3,000

*Including education cess and secondary higher education cess.

Determine the total CENVAT Credit that can be availed during the month of April 2015. Show working notes with suitable assumptions as may be required.

The company is not entitled to SSl exemption under Notification No. 8/2003 CE dated 01-03-2003.

Solution:

Cenvat credit available for the month of April 2015

Particulars	**Amount**	**Remarks**
Raw material	NIL	Credit not available, as period of 6 months elapsed from date of invoice
Grease and Oil	5000	eligible as input
Input Service	19500	Credit available, as period of 6 months not elapsed from date of invoice
Office Equipment	NIL	Not eligible as capital goods
Light Diesel Oil	NIL	Ineligible inputs
Paints	NIL	Credit not eligible as invoice is not available. However, credit is eligible if duplicate invoice is available
Total Credit eligible	**24500**	

(b) (i) Bombay Media Agency provided the following services during the quarter ended 31-03-2015

Services Rendered	**Amount**
Advertising through mobile SMS and e-mails	10,00,000
Sale of space for advertisement in newspaper	6,50,000
Sale of space for advertisement in Doon Yellow Pages (including 40,000 for advertisement in business directories)	90,000
Advertisement by means of banner at public places	75,000
Advertisement on cover and back pages of 'Books'	20,000

Compute the service tax liability for the quarter ended on 31-03-2015 assuming that the agency is not eligible for small services providers' exemption and service tax at 12.36%.

Assume:

(1) Point of taxation for all the aforesaid cases falls during the quarter ended on 31-03-2015.

(2) All the charges stated above are exclusive of service tax

Provide suitable notes to your answer.

Solution:

Advertising through mobile SMS and e-mails	Taxable	10,00,000
Sale of space for advertisement in newspaper	Print Media - NT	NIL
Sale of space for advertisement in Doon Yellow Pages (including 40,000 for advertisement in business directories)	Taxable as Yellow pages are not covered in print media	90,000
Advertisement by means of banner at public places	Taxable	75,000
Advertisement on cover and back pages of 'Books'	NT	NIL
Total Taxable Value		11,65,000
Service tax @ 12.36%	11,65,000 * 12.36%	1,43,994

(ii) Mark Agro Products Ltd. furnishes the following details of various services provided by it in the month of August, 2014:

Sr. No.	Particulars	Amount
I.	Rearing of silkworm and horticulture	2,00,000
2.	Plantation of tea and coffee	2,00,000
3.	Renting of vacant land for performing marriage ceremony	4,50,000
4.	Sale of wheat on commission basis	50,000
5.	Sale of rice on commission basis	2,00,000

Compute the value of taxable services and the service tax liability of Mark Agro Products Ltd. for the month of August, 2014. Assume that point of taxation in respect of all activities mentioned above falls in the month of August 2014 itself. Company has paid 4,00,000 as service tax during the financial year 2013-14.

Service tax has been charged separately where applicable. Rate of service tax 12.36%.

Give reasons by way of short notes to your answer.

Solution:

Computation of value of taxable services and the service tax liability

Particulars	**Remarks**	**Amount**
Rearing of Silkworm and Horticulture	Not taxable	Nil
Plantation of Tea and Coffee	Agricultural Activities not taxable	Nil
Renting of Vacant Land for performing Marriage Ceremony	Taxable	4,50,000
Sale of wheat on commission basis	Not Taxable	Nil
Sale of rice on commission basis	Taxable (rice is not agricultural produce)	2,00,000
Total Taxable Value		**6,50,000**
Service tax payable	6,50,000 × 12.36%	**80,340**

(c) Answer the following with reference to the provisions of the Customs Act. 1962 and rules made thereunder:

(1) Mr. A filed a claim for payment of duty drawback amounting to Rs. 50,000 on 30-07-2014. But the amount was received on 28-10-2014. You are required to calculate the amount of interest payable to Mr. A on the amount of duty drawback claimed.

(2) Mr. X was erroneously refunded a sum of 20,000 in excess of 2 actual drawback on 20-06-2014. The same was returned to the department on 20-10-2014. You are required to calculate the amount of interest chargeable from Mr. X.

Provide brief reasons for your answer.

Solution:

Refer section 75A of Customs Act – Duty Drawback

(1) Interest @ 6% from the date after the expiry of the period of 1 month till the date of payment of such drawback.

30.08.2014 to 28.10.2014 = 60 Days	50,000 * 6% * 60/365	Rs. 493

(2) Interest shall be calculated for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback

20.06.2014 to 20.10.2014 = 60 Days	20,000 * 18% * 123/365	Rs. 1,213

3. (a) Skincure Ltd., manufactured a cream which was prescribed by doctors for treating dry skin conditions. The said product was also available in pharmacies without prescription of a medical doctor. The composition of the cream included urea (10%), lactic acid (10%) and propylene glycol (10%). The assessee Skincure Ltd. claimed classification as a medicament under Central Excise Tariff Heading (CETH) 30.03 while the excise department was of the view that the same should fall under CETH 33.04 as cosmetic or toilet preparations (preparations for care of skin other than medicaments). Briefly explain four key tests laid down by the Apex Court in this regard to decide whether a given product should be classified as a medicament or a cosmetic or toilet preparation (preparations for care of skin other than medicaments).

Solution:

Refer CCEx. v. Ciens Laboratories, Mumbai [2013] 295 ELT 3 (SC)

Decision: Having regard to the pharmaceutical constituents present in the cream 'Moisturex' and its use for the cure of certain skin diseases, the same was a medicament liable to be classified under the Heading 30.03 (medicament).

(b) (i) Fifty persons each contributing Rs. 2,000 per month, have come together to organize a chit for a period of 50 months. At the end of each month an amount of Rs. 1,00,000 (2,000 x 50) is available in the kitty of the Chit Fund. 1,00,000 is put to auction and subscribers who are interested in drawing the money early because of their needs may participate in the auction. The auction is organized by a 'Key Member' who manages and conducts the proceedings. The successful bidder who is normally the person who offers the highest discount is given the chit amount. From this discount amount after deducting a fixed amount representing the commission payable to the 'Key Member', balance becomes the dividend which is distributed among all the subscribers. The auction is repeated in the subsequent months and the same procedure is followed. The subscriber who delays the bidding or does not bid at all stands to gain the maximum discount. The department vide Notification No. 26/2012-ST dated 20-06-2012, grants an abatement of 30% to such services. Explain briefly based on decided case law if service tax could be levied on the services rendered in connection with the Chit Fund Business.

Solution:

Business Chit Funds are liable to service tax with an abatement of 30%

However, a contrary stand was taken by Delhi High Court in the case of Union of India vs. Delhi Chit Fund Association 32 Taxmann 332 (Del.)

The Delhi High Court held that –

(a) Services of Chit Fund were transaction in money, and hence not liable to Service Tax.

(b) There was no question of exempting whole or any part thereof.

(c) Exclusion of “activity which constitutes transaction merely in money” implies exclusion of “service rendered in connection with activity which constitutes merely a transaction in money” and, therefore, Chit Funds (including Business Chit Funds), which are "transactions in money" are not liable to Service Tax.

(d) Providing partial exemption/abatement in relation to Chit Fund Business is not valid, as the entire activity itself is not a service

Hence, there is no service tax on chit fund as per the case law (supra)

(ii) Whether expenditure like travel, hotel stay, transportation and the like incurred by the service provider in the course of providing taxable service may be treated consideration for taxable service and included in value for charging Service Tax ? Explain briefly with reference to decided case law.

Solution:

Refer Intercontinental Consultants & Technocrats Pvt. Ltd. v. UOI [2013] (Del.)

Held: Rule 5(1) of the Service Tax (determination of Value) Rules, 2006 runs counter and is repugnant to section 67 of the Act and to that extent it is ultra vires the Finance Act, 1994.

Hence, reimbursements such as air travel, hotel stay, etc., incurred are not includible in gross taxable value of service.

(c) The assessee was dealing in smuggled goods though no smuggled goods were seized from the assessee. Duty was demanded from the assessee u/s 28 and 125(2) of the Customs Act. The tribunal in this case held that duty can be demanded u/s 28 only from the person who is the importer u/ 2(26) of the Act. Further duty u/s 125(2) of the Act can be demanded only if the smuggled goods are seized, confiscated and an option to pay fine is given to the person from whose possession the goods were seized or to the owner of the goods. Based on case law, if any, explain whether department's contention to demand duty u/s 28 and 125(2) of the Customs Act is justifiable.

Solution:

CCus Vs Dinesh Chhajer 2014 (300) ELT 498 (Kar.)

Facts: The material on record disclosed that the assessee did not import the goods. He was not the owner of the goods but only a dealer of the smuggled goods and therefore, there was no obligation cast on him under the Act to pay duty. Thus, the notice issued under section 28 of the Act to the assessee is unsustainable as he is not the person who is chargeable to duty under the Act.

(ii) Since no goods were seized, there could not be any confiscation and in the absence of a confiscation, question of payment of duty by the person who is the owner of the goods or from whose possession the goods are seized, does not arise.

Conclusion: High Court held that no duty is leviable against the assessee as he is neither the importer of the goods nor was in possession of any goods

4 (a) AK & Co. deposits the required amount of Rs. 1,00,000 as pre-deposit on 30-09-2014 and files an appeal before the CESTAT. The said appeal is decided in favour of AK & Co. on 30-11-2014. AK & Co. forwards a letter seeking refund of pre-deposit on 7-12-2014 and the same was refunded on 15-12-2014. Based on the amendments made by the Finance (No. 2) Act, 2014 explain whether AK & Co. is entitled to payment of interest and compute the amount of interest payable on refund of such pre deposit.

Solution:

Interest Rate	6% p.a.
Date of Pre deposit	30.09.2014
Date of Refund	15.12.2014
No of days	76

Interest on refund = 1,00,000 × 6% × 76 ÷ 365 = Rs. 1,249

(b) With reference to recent amendments made by the Finance (No. 2) Act, 2014 and budget notifications briefly explain the following :

(i) "Intermediary Services" under the Place of Provision of Service Rules, 2012

(ii) Manner of determination of rate of exchange for purpose of payment of service tax.

Solution:

(i) "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account

(Rule 9 of POP Rules)

(ii) Determination of rate of exchange – Rule 11 of Service Tax Rules

The rate of exchange for determination of value of taxable service shall be the applicable rate of exchange as per the generally accepted accounting principles on the date when point of taxation arises in terms of the Point of Taxation Rules, 2011

(c) With reference to the changes-made in the Finance (No. 2) Act, 2014 and budget notifications briefly explain:

(i) Point of taxation under reverse charge with respect to payment date.

(ii) Place of provision of service of hiring of all means of transport.

Solution:

(i) Rule 7 - Determination of point of taxation in case of specified services or persons

Notwithstanding anything contained in rules 3, 4 or 8, the point of taxation in respect of the persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under section 68(2) of the Act, shall be the date on which payment is made:

Provided that, where the payment is not made within a period of 3 months (w.e.f 01-10-2014) of the date of invoice, the point of taxation shall be the date immediately following the said period of 3 months

(ii) Place of provision of service of hiring of all means of transport

Nature of Service	**POP**
Service consisting of hiring of all means of transport other than,- (i) aircrafts, and (ii) vessels except yachts, upto a period of one month. (w.e.f. 01-10-2014)	Location of Service provided (Rule 9)
Any other case of hiring of means of transport, other than above	Location of service receiver (Rule 3)

(d) (i) Briefly explain with reference to the provisions of the Customs Act the relevant date for determination of rate of duty and tariff valuation for imports through a vehicle where bill of entry is filed prior to the arrival of the vehicle.

(ii) Write a short note on the applicability of safeguard duty under the Customs Tariff Act, 1975 on articles imported by EOU/SEZ unit and cleared as such into domestic tariff area (DTA).

Solution:

(i) Relevant Date **–** section 15 of customs act

Particulars	**Relevant Date**
For goods imported by vehicle at land customs station	Date of filing the B/E under section 46 or arrival of the vehicle, whichever is later.

(ii) Safeguard Duty shall not be levied on the goods imported by 100% EOU and SEZ

Imports by 100% EOU and SEZ shall be subject to safeguard duty in the following cases:

(a) If the notification / order specifically made it applicable or
(b) If such articles are cleared as such into DTA or
(c) If such articles are used in manufacture of articles which are cleared in DTA
(Safeguard Duty shall be levied on the extent of articles cleared into DTA as was leviable when it was imported into India)

Hence, safeguard duty shall be levied on goods imported by 100% EOU and SEZ and cleared as such into domestic tariff area (DTA)

5. (a) KPG Ltd., are manufacturers of machinery for paper plant and parts thereof which are liable to excise duty under Central Excise Act, 1944. KPG Ltd., entered into a contract for setting-up of a paper mill in Cambodia. KPG Ltd. manufactured certain machines in its own factory and also purchased certain other machinery from other dealers. Both the machineries (manufactured and bought-out) were then put into a container and transported to Cambodia for setting-up the paper plant. The assessee availed CENV AT credit on bought-out machinery describing them as eligible capital goods. The Department, however, contends that the bought-out machinery is not eligible Capital Goods as the same had not been used by the assessee in its factory premises. Write a brief note on whether the stand taken by the department is correct in law.

Solution:

KCP Ltd. v. CCEx. 2013 (295) ELT 353 (SC)

Held: The Supreme Court held that CENVAT credit could not be allowed to the assessee as no duty was paid on sugar plant set up in a foreign country. Further, since the bought-out machinery was not used in the assessee’s factory premises, the necessary condition for availing CENVAT credit on capital goods could not be fulfilled.

(Refer Page 22 – Recent case law booklet ICAI)

(b) (i) Discuss, in brief, whether the following payments constitute a consideration for provision of service.

(1) lmposition of fine or penalty for breaking of law.

(2) Advance forfeited for cancellation of an agreement to provide a service.

(3) Security deposits forfeited for damages caused by service receiver in the course of receiving a service.

(4) Demurrages payable for use of service beyond the period initially agreed upon: e.g. retention of containers beyond the normal period.

Solution:

(1) No. To be a service an activity has to be carried out for a consideration. Therefore fines and penalties which are legal consequences of a person's actions are not in the nature of consideration for an activity.

(2) Yes. Since service becomes taxable on an agreement to provide a service such forfeited deposits would represent consideration for the agreement that was entered into for provision of service.

(3) Yes. Accidental damages are excluded from the value of taxable services provided such damages are due to unforeseen actions and are not related to provision of services.

However, if damages are due to negligence of the service receiver in the course of receiving the service, forfeited security deposits relating to such damages shall be treated as consideration for provision of service.

(4) Yes. Amount realized as demurrage or by any other name whatever called for the provision of service beyond the period originally contracted or in any other manner relatable to the provision of service.

(ii) Surbhi Limited entered into a contract with Meena Limited for construction of a new building to be used primarily for the purpose of commerce or industry for a total consideration of Rs. 500 lakh on October 01, 2014. The said services fall within the purview of 'works contract services'. The initial booking amount of Rs. 100 lakh was billed and received on the date of contract itself. It was further agreed that 170 lakh, 140 lakh, 90 lakh respectively would be received on completion of 50%, 75% and 100% of the construction work of the building. Determine the point of taxation in respect of each of following stages of completion with the help of relevant details furnished as under:

% of completion of the building	**Date of completion**	**Date of Issuance of Invoice**	**Date of Payment of Stipulated amount**
50%	November 20, 2014	November 30, 2014	January 25, 2015
75%	December 30, 2014	February 25, 2015	January 30, 2015
100%	February 25,2015	March 03, 2015	March 01, 2015

A certificate from Chartered Engineer registered with Institution or Engineers has been obtained for each stage of completion of the building.

Give brief reasons for your answer

Solution:

Rule 3 of Point of Taxation Rules 2011

In case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service **(Deemed S)**

Event	**Deemed S**	**Invoice (I)**	**Receipt (R)**	**POT**	**Remarks**
50% completion	November 20, 2014	November 30, 2014	January 25, 2015	November 30, 2014	I ≤ Deemed S +30 days POT = I or R, W.E.E
75% completion	December 30, 2014	February 25, 2015	January 30, 2015	December 30, 2014	I > Deemed S +30 days POT = Deemed S or R, W.E.E
100% completion	February 25, 2015	March 03, 2015	March 01, 2015	March 01, 2015	I ≤ Deemed S +30 days POT = I or R, W.E.E

Note: In case of receipt of advance of Rs. 100 lakhs, POT shall be the date of receipt of advance i.e. October 01, 2014

(c) Explain briefly with respect to the provisions of the Customs Valuation (Determination of Value or imported Goods) Rules, 2007 the chief reasons for which the proper officer could raise doubts on the truth or accuracy of the declared value.

Solution: (Refer page 222 – Volume 2)

Reasons for which doubt may be raised (Explanation to Rule 12 of Customs Valuation (Determination of Value or imported Goods) Rules, 2007

The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include –

(a) The significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) The sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) The sale involves special discounts limited to exclusive agents;

(d) The misdeclaration of goods in parameters such as description, quantity, country of origin, year of manufacture or production;

(e) The non declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) The fraudulent or manipulated documents.

6. (a) State briefly the amounts that are credited to the Consumer Welfare Fund set up under Section 12C of the Central Excise Act. 1944.

Solution: (Refer page 169– Volume 2)

There shall be credited to the Fund set up under Section 12C of the Central Excise Act 1944, in such manner as may be prescribed:

(a) the amount of duty of excise/service tax

(b) the amount of duty of customs

(c) any income from investment of the amount credited to the Fund and any other monies received by the Central Government for the purposes of this Fund.

OR

(i) Who is required to submit quarterly return under Rule 9(8) of CENVAT Credit Rules. 2004? Explain briefly.

(ii) M/s. Enterprises Pvt. Ltd. paid excise duty of Rs. 90,000 in the financial year 2013-14. Its excise duty liability for the month or October 2014 is Rs. 25.000. M/s. Enterprises has availed SSI exemption under Notification No. 8/2003-CE dated 1-3-2003 in the financial year 2013-14 and 2014-15. What is the due date tor payment of excise duty. Briefly state with reasons

Solution: (Refer page 331 – Volume 2)

(i) Rule 9(8) of CENVAT Credit Rules

A first stage dealer or a second stage dealer or a registered importer, as the case may be, shall submit within 15 days from the close of each quarter of a year to the Superintendent of Central Excise, a return in the form specified, by notification, by the Board. The return shall be submitted electronically

(ii) Due date for payment of duty in case of SSI **(Refer page 93 – Volume 2)**

In case of assessee availing exemption based on value of clearance during financial year i.e. SSI (Duty is payable **quarterly**)	(a) If duty is paid electronically: 6th day of month following that quarter; (b) in any other case: 5th day of month following that quarter;	**Due date:** 6th of January in case of e-payment 5th of January in any other case

(b) (i) Harman Enterprises fails to pay service tax of Rs. 5,000 payable on 6th October, 2013. It actually deposited the same on 6th October. 2014. Compute the amount of penalty under section 76 of the Finance Act, 1994 that can be imposed on Harman Enterprises in this case.

(ii) What is the maximum penalty leviable under the Finance Act 1994 and Rules in the following cases?

(a) Failure to make e-payment.

(b) Issue of invoice with incorrect or incomplete details,

(c) Failure to account for an invoice in the books of accounts.

(d) Failure to keep maintain or retain books of accounts and other documents as required as per tile provisions of law.

Briefly explain with reference to the provisions of law.

Solution:

(i) **(Refer page 133 – Volume 1)**

Penalty = Higher of (a) and (b) (a) 100 for every day of failure to pay Service Tax – 07.10.2013 to 06.10.2014 (b) 1% of Service Tax per month	(a) 365 days x 100 = 36500 (25 + 30 +31+31+28+31+30+31+30+31+31 +30+6) (b) 1% x 5000 x 12 m = 600	Rs. 36, 500
Penalty restricted to 50% of Service Tax not paid		Rs. 2,500
Penalty u/s 76		**Rs. 2,500**

(ii) (Refer page 133 – Volume 1)

Penalty extending to Rs. 10,000 in all the cases

(c) An assessee collected Rs. 1 crore as service tax during the period between financial year 2011-12 to 2013-14 but deposited only Rs. 20 lakhs with the government till 10-05-2013. He was arrested on 22-02-2014 on the ground that he had not deposited service tax exceeding 50 lakhs within a period of 6 months from the date on which payment became due.

The assessee did not dispute the liability to pay the service tax to the Govt. but he submitted that only the amount collected between 10-05-2013 and 21-08-2013 i.e. (6 months prior to his arrest) should be considered while calculating the amount of 50 lakhs for applying the penal provisions u/s 89(1)(ii). But revenue contended that since failure to deposit service tax with Central Govt. after collecting it from the customers was a continuing offence, entire amount of arrears of service tax was required to be taken as liable to be deposited.

Discuss with the help of a decided case law (if any) whether the contention of assessee is maintainable.

Solution:

Kandra Rameshbabu Naidu v. Superintendent (A.E.), S.T., Mumbai-II 2014 (34) S.T.R. 16 (Bom.)

Decision: The High Court held that since the said offence is a continuing offence, entire amount of service tax outstanding which is required to be deposited with the Central Government as on 10.05.2013, would be taken into consideration while calculating the amount of Rs. 50 lakh as contemplated by Sec.89(1)(ii). Hence, Assessee's contention is not maintainable

(d) Briefly explain the salient features of the duty free import authorization scheme under Foreign Trade Policy.

Refer Page 16.15 of FTP Material

7. (a) State briefly with reasons whether registration under the Central Excise Act, 1944 and Rules made thereunder is required in the following cases :

(i) Importer who issues an invoice.

(ii) Godown or Duty free outlet of Duty free shop.

(iii) Mine engaged in production of specified goods.

(iv) Premises used for affixing prices on pharmaceutical products.

Solution:

7(a)

(i) Importer who issues an invoice	Required. Rule 9 of the Central Excise Rules, 2002
(ii) Godown or Duty free outlet of Duty free shop	Not Required. **Notification No. 09/2013 Central Excise (N.T.):** Where a godown or retail outlet of a Duty Free Shop is appointed or licensed under the provisions of sections 57 or 58 of the Customs Act, 1962, as the case may be, such godown or retail outlet shall be deemed to be registered as warehouse under rule 9 of the Central Excise Rules, 2002.

(iii) Mine engaged in production of specified goods.	Every producer of coal, lignite and peat is required to be registered with the jurisdictional central excise authority. This would imply that every coal mine should obtain registration. However, Coal Mines are exempt from registration if centralized registration is opted for (F.No.354/72/2010-TRU)
(iv) Premises used for affixing prices on pharmaceutical products	CBEC has exempted from registration premises used solely for affixing a sticker or re-printing or re-labeling or re-packing of pharmaceutical products falling under Chapter 30 of the CETA, 1985 with lower ceiling price to comply with the notifications issued by the National Pharmaceutical Pricing Authority – Notn 11/2013

7 (b) (i) Determine the place of provision of services as well as their taxability in each of the following cases with brief reasons:

(a) XY Ltd. agrees to provide 'technical inspection and certification service' in respect of a newly developed product of an overseas firm (for a newly launched motorbike which has to meet emission standards in different states or countries). The overseas firm has provided its newly developed product to XY Ltd. for the purpose of testing. The testing is carried out in Delhi (15%), Assam (35%) and Sweden (50%).

(b) A movie on demand is provided as on-board entertainment during the Kolkata-Delhi leg Bangkok-Kolkata-Delhi Flight.

Solution:

(a) Where any service referred to in rules 4, 5, or 6 is provided at more than one location, including a location in the taxable territory	Rule 7 = POP shall be the location in the taxable territory where the greatest proportion of the service is provided	**POP = Assam**
(b) services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board	Rule 12 = POP shall be the first scheduled point of departure of that conveyance for the journey	**POP = Bangkok**

7 (b) (ii) With reference to the Finance Act, 1994 and the Rules made thereunder state whether registration is required in the following cases and if so the date by which registration ought to be obtained under the Rules

(a) Mr. Sureshot was carrying on the business in providing services under an unregistered brand name of another person from 1-7-2014. The services during the period 1-7-2014 to 30-9-2014 were not taxable. However from 1-10-2014 the said services were brought within the tax net. For the year ended 31-03-2015 the taxable value of services has exceeded 9,00,000

(b) An input service distributor with branches located in pan India basis having commenced business from 01-10-2014.

Solution:

(a) Registration is required with in 30 days of the service becoming first taxable i.e. 31-10-2014. SSP exemption does not apply to assessee providing services under brand name of another person, hence limit of Rs. 9,00,000 is irrelevant

(b) ISD is required to get registered within 30 days from the date of commencement of business i.e. 31-10-2014

7 (c) State briefly Which reward scheme provided under foreign trade policy aims at compensating high transport cost and offset other disadvantages in the export of specified agriculture products?

Who are eligible exporters under the scheme and what is the rate of entitlement under this scheme?

How can the duty scrip's issued under this scheme be utilized?

Solution:

Scheme	VKGUY (Vishesh Krishi and Gram Udyog Yojana Scheme)
Eligible exporters & rate of entitlement	Exporters of fruits, vegetables, flowers, minor forest produce, dairy, poultry and their value added products, Gram Udyog products and forest based products are entitled for Duty Credit scrip equivalent to 5% of FOB value of exports realized in free foreign exchange. However, export of some flowers, fruits, vegetables and other listed products are entitled to an additional duty credit scrip equivalent to 2% of FOB value of exports; over and above the 5% VKGUY entitlement available.
Utilisation of scrip	Scrip can be utilized for payment of customs duties of all freely importable items as well as for procurement of domestic items without payment of central excise duty as well as service tax. Further it can also be utilized for payment of application fee to DGFT for obtaining any Authorisation (available only to original Duty Credit Scrip Holders.

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