CA FINAL, INDIRECT TAX LAWS

Suggested Answers for May, 2016 Exam

Q1.(a) Divine Ltd. manufactures product K which is a notified product under Section 4A of the Central Excise Act, 1944. The output for the month of October, 2015 was 8,000 units out of which 6,000 units were consumed captively. Abatement permissible under Section 4A of Central Excise Act is 20%.
From the following information provided by Divine Ltd. for the month of October 2015. Calculate the excise duty payable. (5 marks)

Cost of direct materials (includes Central Excise 18,800 duty ₹1,800*)

Direct wages and salaries	11,000
Administrative Cost	
Production related	5,000
Corporate office expenses	1,500
Sale of By-products	1,000
Research and development cost	8,000
Abnormal and non-recurring cost	10,000
Retail sale price printed on the package of the product per unit	₹10

***Note:**CENVAT credit of the excise duty so paid is available.

Divine Ltd. is not eligible for SSI exemption under Notification No.8/2003 CE dated 01-03-2003. There were no opening or closing inventory for the month.

Central Excise duty payable is 12.5%. Advalorem. Education cess need not be calculated.

Ans.1(a) Computation of cost of product K

Cost of Direct Material	18,800
(-) Duty paid	1,800
	17,000
Direct Wages….	11,000

Administrative Cost production related Research & Development Cost	5,000 8,000
 Less: Sale of By product	41,000 1,000
Cost of 8000 units	40,000

Cost of 6,000 units	=	$40{,}000 \times \frac{6{,}000}{8{,}000}$
	=	₹30,000
Assessable Value 110% of cost	=	₹33,000
Duty @12.5%	=	₹4,125
Less: cenvat credit	=	1,800
Net duty payable	=	2,325

Working notes:

(1) Since the goods are captively consumed value has been computed as per CAS-4
(2) As per CAS-4, abnormal & non-recurring costs are not part of the cost.
(3) Corporate office expenses, being not related to production, have been ignored.

Comment: This type of question appeared in the exam for the first time. Alternative solution is to ignore the cost data and find out value at 80% of the MRP. Then assessable value would be Rs.48,000 which would be very harsh on the assessee. I have found no precedent to that effect.

(b) Mr. Navab, a performing artist, provides the following information relating to August, 2015 Receipts from: (5 marks)

	₹
Performing classical dance	98,000
Performing in television serial	2,80,000
Services as brand ambassador	12,00,000
Coaching in recreational activities relating to arts	2,10,000
Activities in sculpture making	3,10,000
Performing western dance	90,000

Determine the value of taxable services and service tax payable by Mr. Navab for August. 2015. Service Tax @ 14% has been charged separately, wherever applicable. Mr. Navab has paid service tax of 4,00,000 during the preceding financial year.

Ans.1(b) Computation of Value and Service Tax of Mr. Navab, for August, 2015.

Activity	Amount received	Taxable value	Remarks
Performing classical dance	98,000	....	Exempt under entry No.16
Performing in television serial	2,80,000	2,80,000	taxable
Services as brand ambassador	12,00,000	12,00,000	taxable
Coaching in recreational activities relating to arts	2,10,000	....	Exempt under entry No.8
Activities in sculpture making	3,10,000	3,10,000	Taxable, only coaching / training is exempt.
Performing western dance	90,000	90,000	taxable
Total taxable value	....	18,80,000	

Tax @ 14% on 1880,000= Rs.263,200

Working Notes:

(1) Activities in sculpture making are taxable, only coaching / training in sculpture is exempt u/ Entry No. 8

(2) Mr. Navab is not eligible for SSP exemption.

Comment: This is an easy question

(c) Monogram Ltd. is engaged in providing several services to the customers/clients. It has started its business (except construction of mall completed earlier but consideration received in August. 2015) for the first time, in a taxable territory, on 1st August 2015 and transactions undertaken until 31st August. 2015 are as follows: (5 marks)

Particulars	**Amount ₹**
Services provided in its own brand name of 'Monogram'	2,85,000
Services provided in the brand name of 'Tonogram' belonging to one of its suppliers	6,40,000
Consideration on transfer of Mall for which completion certificate has been obtained in June 2015	63,00,000
Full advance received towards construction of residential unit of carpet area of 1200 sq. ft. in a complex	30,00,000
Gross amount charged for transportation of goods in a single goods carriage	1,280
Freight charges paid to goods transport agency	46,000

Monogram Ltd. intends to make use of all exemptions and abatements. Compute its service tax liability @ 14% with appropriate notes where required.

Ans.1(c) Computation of Value and Service Tax of Monogram Ltd. for August, 2015.

Activity	Amount received	Taxable value	Remarks
Services provided in its own brand name of 'Monogram'	2,85,000	2,85,000	Taxable
Services provided in the brand name of 'Tonogram' belonging to one of its suppliers	6,40,000	....	Taxable separately
Consideration on transfer of Mall for which completion certificate has been obtained in June 2015	63,00,000	....	Non taxable activity
Full advance received towards construction of residential unit of carpet area of 1200 sq. ft. in a complex	30,00,000	7,50,000	Taxable, at 75% abatement. Only 25% taxable
Gross amount charged for transportation of goods in a single goods carriage	1,280	....	Exempt upto Rs. 1500
Freight charges paid to goods transport agency	46,000	....	Taxable separately @ 30%
Total value of services upto August 2015		10,35,000	
Less exemption limit		10,00,000	

Taxable value:	Rs. 35,000
GTA Service value under reverse charge (46,000x 30%)	Rs. 13,800
Services under others brand:	Rs.6,40,000
Total value	6,88,800

Service tax @ 14% = Rs.96,432

Working Notes:

(1) Construction of mall is not a taxable service as the amount was received after the work certified.

(2) Construction of residential unit attracts 75% abatement as the carpet area is below 2000 Sft and the value is below 1 crore.

(3) Gross amount charged for transport in a single carriage below 1500 is exempt.

(4) Freight charges paid to GTA are subject to reverse charge not eligible for small service providers exemption.
(5) Services in others brand name are taxable separately.
(6) Monogram Ltd is eligible for SSP exemption in the first year of operation.

Comment: This question is based on SSP Exemption requiring a little understanding of declared services and abatement scheme.

(d) Mr. Backpack imported goods from a UK supplier by air, which was contracted on CIF basis. However, there were changes in prices in the international market between the date of contract and actual importation. As a result of several negotiations, the parties agreed for a negotiated price payable as follows:
(5 marks)

Particulars	Contract Price (£)	Changed Price (£)	Negotiated Price (£)
CIF Value	5,000	5,800	5,500
Air Freight	300	600	500
Insurance	500	650	600

Other details for computing assessable value and duty payable are as tabled below:

Particulars	Amount
Vendor inspection charges (not required for making the goods ready for shipment)	£600
Commission payable to local agent 1% of FOB in local currency	

Date of Bill of Entry	Basic Customs Duty	Exchange rate in ₹ (notified by CBEC)
18-02-2016	10%	102
Date of arrival of aircraft	**Basic Customs Duty**	**Exchange rate in ₹ (notified by CBEC)**
15.02.2016	15%	98

Inter-bank rate 1 UK Pound = ₹ 106

Compute the assessable value and calculate basic customs duty payable by Mr. Backpack.

Ans.1(d)

Calculation of Assessable Value of Back Pack

CIF Value	5,500	Negotiated price
Less: Freight (-)	600	Actual
Less: Insurance (-)	650	Actual
FOB	4,250.0	
Add: 1% Commission on FOB	42.5	
	4292.5	
Add: Insurance & Air Freight	1250.0	
CIF	5542.5	
INR @ 102	565,335.00	
Add: Landing charges @ 1%	5653.35	
Assessable value:	570,988.35	
Add: BCD @10%	57,098.80	
	628,087.15	

BCD = ₹ 57,099 (Rounded off)

Working Notes:

(1) Negotiated price has been taken for assessment.

(2) Actual freight & insurance charges have been taken for valuation, as the air freight charges are not above 20% of FOB.

(3) Vendor inspection charges are not considered for value as they are not required / compulsory for shipment. See. Bombay Dyeing & Mfg. Co. (S.C.).

(4) Commission payable to local Agent was presumed to be that of payment to the agent of the exporter.(not buying commission)

(5) Rate of Exchange and Rate of duty have been ascertained as per S14 & 15 of Customs Act, respectively.

Comment: Like Q. 1(a), this is also unique, never appeared in any exam. It can be solved by alternative assumptions like taking actual price or original price,....air freight is less than 20% requiring no adjustment is another trap. The problem could be solved more easily if the commission is assumed to be a buying commission. There are No. of traps in this question. Liberal marking can be expected in this.

Q.2.(a) Urs & Co. a small-scale industry, furnishes the following details of clearances for the previous financial year: (4 marks)

Particulars	**Amount (₹ in lakhs)**
Value of clearances in the preceding financial year	665
Included in the above is clearances of non-excisable goods	25
Exports to Nepal & Bhutan	120
Clearances to a unit in the STP without payment of duty and	60

VAT	
Job work not fulfilling conditions under Notification No.84/94 CE dated 11-04-1994 and 214/86 CE dated 25-03-1986	25
Clearances of goods subject to valuation under section 4A of the Central Excise Act, 1944 (eligible for abatement of 30%)	200
Clearances of excisable goods manufactured in rural area bearing brand name of another company	75

Determine whether it is eligible for SSI exemption during the current year with suitable explanations.

Ans. 2(a) Computation of Value of Clearances of Previous Year. (Rs. In lacs)

Particulars	Value of clearances	Value of clearances	Remarks
Value of clearances in the preceding financial year		665	
Included in the above is clearances of non-excisable goods	25	25	deductible
Exports to Nepal & Bhutan	120	....	Non deductible
Clearances to a unit in the STP without payment of duty and VAT	60	60	deductible
Job work not fulfilling conditions under Notification No.84/94 CE dated 11-04-1994 and 214/86 CE dated 25-03-1986	25	......	Non deductible
Clearances of goods subject to valuation under section 4A of the Central Excise Act, 1944 (eligible for abatement of 30%)	200	60	Abatement deductible @ 30% on 200
Total value of local clearances		520	
Note: Clearances of excisable goods manufactured in rural area bearing brand name of another company are not eligible for deduction			

Eligibility: Since the value of clearances exceeded 400 lacs, the assessee is not eligible for SSI exemption in current year

Working Notes:

(1) Export to Nepal & Bhutan, goods of others brand manufactured in rural area are local clearances.

(2) Job work not eligible for exemption is a part of assessee's turnover.
(3) Abatement part of assesses goods under S.4A is deductible for turnover calculation.

Comment: The question has small drafting errors; it starts with' Urs & Co. a small-scale industry'

Next, Included in the above is clearances of non-excisable goods, ...does it mean only this item is included and other items given are not?. However, question is not difficult.

2(b) Mega Star Hotels pvt. Ltd. provides the following information relating to their services for the month of September, 2015: (4 marks)

The hotel has 45 rooms in all, out of which 30 rooms were Delux Rooms with a declared tariff of ₹ 1,200 per day. The other 15 rooms were Semi Delux Rooms with a declared tariff of ₹ 800 per day. The hotel has the practice of offering 25% discount on Delux Rooms. The occupancy ratio of the rooms on an average was 80%.

Receipts for serving food from Air-conditioned restaurant ₹ 6,00,000.

The above amount includes ₹ 2,00,000 for goods sold on MRP basis across the counter as a part of the bill.

Gross receipts for serving food from non-Air-conditioned restaurant clearly demarcated and separately named ₹ 4,00,000.

Compute the value of taxable services and tax liability for the month of September 2015 and provide explanations wherever required. Service tax has been charged separately wherever applicable. Mega Star Hotels Pvt. Ltd. is not eligible for small service provider's exemption.

Ans.2(b) **Computation of Tax liability for Mega Star Hotels (P) Ltd.**

1.

	Delux Rooms	**Semi Delux Rooms**
No. of Rooms	30	15
No. of days	30	30
Total	900	450
No. of hirings at 80%	720	360
Tariff rate	1,200	800 Exempt
Rate after discount	900	600

Amount charged = 720 X 900

= 648,000
388,800

(Taxable Value 60%)

2. Amount received for serving food at A/c restaurant

	600,000
Less goods sold at MRP	200,000
	400,000
Taxable value at 40% =	160,000

Total taxable value

(1) + (2)

	388,800
+	160,000
	548,800

ST @ 14% = 76,832

Working Notes:

(1) Tariff rate below ₹ 1000/- per day in a hotel etc. is exempt – vide Entry No. 18 of Mega Exemption Notification.

(2) Value is computed as per the actual amount collected from the customer.

(3) Serving of food in non Ac restaurant is exempt under Entry no. 19.

(4) Abatements of 40% and 60% are available to Accommodation renting and food stuff supply respectively.

(5) Goods sold at MRP have no service portion. Hence service tax is chargeable.

2(c) Fortune Ltd. provides the following information relating to their services for the month of August, 2015: (4 marks)

	₹
Gross receipts from Running a Boarding School (including receipts for providing residential dwelling services 12,00,000)	28,00,000
Conducting private tuitions	16,00,000
Education services for obtaining a qualification recognised by law of a foreign country	8,00,000
Conducting modular employable skill course, approved by National Council of vocational training	10,00,000
Fees from prospective employers for campus interview	6.00.000
Renting of furnished flats for temporary stay to different persons	6,80,000

Compute the value of taxable service and the amount of service tax payable @ 14%

Note: Fortune Ltd. has not taken CENVAT credit on inputs, capital goods and input services used for providing any of the above services.

It is sufficient if the taxability is determined and computation made. No need for explanations.

Ans.2(c) Computation of Value and Service Tax for August, 2015

Activity	Amount received	Taxable value	Remarks
Running a Boarding School (including receipts for providing residential dwelling services 12,00,000)	28,00,000	....	Non taxable. Entire bundle is non chargeable as per Section 66F(3)
Conducting private tuitions	16,00,000	16,00,000	Taxable
Education services for obtaining a qualification recognised by law of a foreign country	8,00,000	8,00,000	Taxable, as of a foreign law
Conducting modular employable skill course, approved by National Council of vocational training	10,00,000	....	Non taxable. S.66D (l) (iii)
Fees from prospective employers for campus interview	6.00.000	6.00.000	Taxable
Renting of furnished flats for temporary stay to different persons	6,80,000	408,000	Taxable at abated rates of 60%

Total gross value is Rs.34,08,000

Service tax @14%= 34,08,000 x14/114= Rs.418,526

Comment: This question requires no explanations. It is an easy question

(d) Determine the customs duty payable under Customs Tariff Act, 1975 including the safeguard duty of 30% under section 8B of the said Act with the following details available on hand: (4 marks)

Import of Sodium Nitrite from a developing country from 26th February, 2014 to 25 February, 2015 (both days inclusive)	30,00,000
Share of imports of Sodium Nitrite from the developing country against total imports of Sodium Nitrite to India	4%
Basic Customs Duty	10%
Additional Customs Duty u/s 3(1) of Customs Tariff Act, 1975	15%
Additional Customs Duty u/s 3(5) of Customs Tariff Act, 1975	Nil
Education cess	2%
Secondary & Higher Education cess	1%

Ans.2(d) **Computation of Customs Duties of Sodium Nitrate**

Particulars	Value ₹	Duties ₹
Value of Sodium Nitrate	30,00,000	
Add: BCD @ 10%	3,00,000	3,00,000
	33,00,000	
Add: CVD @ 15%	4,95,000	4,95,000
Total	37,95,000	7,95,000
Add: Cess @3% on 7,95,000	23,850	23,850
	38,18,850	8,18,850
Add: Safeguard duty @30% on 30,00,000	9,00,000	9,00,000
Total	**74,18,850**	**17,18,850**

Working Notes:

1. Since the share of the developing country is more than 3% of total imports into India, Safe guard duty is leviable under section 8B of Customs Tariff Act, 1975.
2. Safeguard duty @30% has been added on the assessable value of Rs.30,00,000

Comment: This is also unique and unprecedented. The paper setter appears to expect practical knowledge from the student

Q3.(a) Ganga Ltd. was engaged in manufacture of aerated water. Revenue alleged that Ganga Ltd. was draining out manufactured aerated water on account of contaminated, under-filled, over-filled, badly crowned bottles, without entering them in R.G.1 register [daily stock account] and without payment of excise duty on the same. Proper officer issued a demand-cum show cause notice on Ganga Ltd. for the recovery of said duty. Revenue was of the view that contaminated, under-filled, over-filled, badly crowned bottles were excisable goods. Further, if such goods were defective/non-marketable, Ganga Ltd. should have sought remission of duty paid on such goods.

Examine with the help of a decided case law, if any, whether the Department is justified in issuing show cause notice for recovery of Duty? (4 marks)

Ans.3(a) The facts of the case are similar to the facts in **Amrit Bottless (P) Ltd. 2014 All (H.C.).** The issue in the case was whether the water bottles dumped due to contamination, under filling, over filling, etc. are exigible to duty.

The Revenue's contention was that the bottles are excisable goods manufactured and they should be entered in daily stock A/c and the assesse should obtain remission from the department to avoid duty. The assesse on the other hand claim that the goods being dumped are not marketable and hence not chargeable to duty.

The Allahabad High Court held that to be chargeable – the taxable event of manufacture should be complete. It is complete only when the excisable goods manufactured are marketable. In the instant case the bottles being dumped are not marketable. So they need not be entered in D.S.A.
When the goods are not subject to levy, the question of seeking remission does not arise.

Hence, the Revenue is not justified in issuing show cause notice for recovery of duty.

(b) 'P' has entered into an agreement with NT Ltd. for running a canteen in the premises of NT Ltd. for its employees. NT Ltd. has provided the place on rent and reimburses certain expenses for maintenance and running the canteen.

'P' charges cash from individual customers for food, eatables and beverages supplied according to rates stipulated in the menu card. 'P' is of the view that since it is not providing any service to NT Ltd. but only selling goods in its canteen to individual customers, it is not liable to pay any service tax. Furthermore, since it is paying VAT on the sale of food and beverages, there should not be any service tax liability on the activity undertaken by him.

The Department demanded service tax from 'P' by treating the activity as outdoor catering services since he was engaged in providing service in connection with catering at a place other than his own.

Discuss whether the department is justified in charging service tax.

You may refer decided case law, if any. in support of your answer. (4 marks)

Ans.3(b) The facts are similar to the facts of the case decided by Allahabad High Court in **Indian Coffee Workers Cooperative Society Ltd. All (H.C.) 2014,** The honourable High Court Confirmed the decision given by Tribunal that the activity undertaken by the cooperative society is a service, which fits into an outdoor caterers service and hence, taxable. The contention of the appellant that he is paying VAT on the sale of food and beverages is not acceptable as the service portion on the sale of such food stuffs is subject to service tax.

(c) Mr. Rohit has to organize the marriage ceremony of his daughter. For this purpose he entered into a contract with MIs. Anila Caterers to provide him with erection/laying of Pandal and Shamiana for organizing marriage function along with the facilities like supply of crockery, furniture, sound system, lighting arrangements etc.

Discuss in the light of case law, if any, the following questions that arise:

(1) Whether the transaction is liable to service tax?

(2) If yes, under what category of service? (4 marks)

Ans. 3(c)(1) Erection/laying of Pandal & Shamiana for organising a function alongwith the facilities like supply of crockery, furniture, sound system, lighting arrangements is a taxable service. It is a service which does not involve transfer of right to use goods. The customer does not have effective control over these goods. He has access only to the use of facilities available through the goods. In BSNL case, The Supreme Court reiterated the above points.

Also, Dept. vide is Circular no.168/3/2013 dated 15th April, 2013, elaborated that the activity of above description is a service, subject to service tax.

(2) The above said service falls under the category of declared services under Section 66E(f) of Finance Act, 1994. (Hiring, leasing etc. without transfer of right to use such goods.)

(d) Kaveri Enterprises imported some goods from Italy. On the basis of certain information obtained through computer printouts from the Customs House, Department alleged that during the period in question, large number of consignments of such goods were imported at a much higher price than the price declared by Kaveri Enterprises. Therefore, Department valued such goods on the basis of transaction value of identical goods as per rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and demanded the differential duty along with penalty and interest from the Kaveri Enterprises. However, Department did not provide these printouts to Kaveri Enterprises.

Kaveri Enterprises contended that Department's demand was without any basis in law, without any legally admissible evidence and opposed to the principles of natural justice as the computer printouts which formed the basis of such demand had not been supplied to them.

Resultantly, they had no means of knowing as to whether any imports of comparable nature were made at the relevant point of time.

You are required to examine the contention of Kaveri Enterprises, with the help of a decided case law, if any. (4 marks)

Ans.3(d) There is a decision by Supreme Court on similar facts in M/s. Gira Enterprises & Another (S.C.) 2014.

The honourable Supreme Court in the above case observed that the action of the Revenue claiming further duty, interest and penalty are not sustainable under law for two reasons:

1. There is no plausible proof from the Department; mere existence of an alleged computer printout is not proof of the existence of comparable imports.
2. Assuming such a printout exists and the contents thereof are true, the question still remains whether the transaction evidenced by the said computer printout are comparable to the transactions of the appellant. The appellant will have to be given reasonable opportunity to establish that the transactions are not comparable.

Q.4.(a)(i) Write a brief note on Physical Verification of Premises with regard to registration process under Central Excise Law.

(ii) Martin Dorairaj wants to know whether he is eligible to claim rebate of duty under rule 18 of the Central Excise Rules, 2002 and provides the following information: (4 marks)

Particulars	Amount (₹)
Duty payable on excisable goods used in the manufacture of other goods for being supplied to SEZ	18,000
Duty payable on raw materials used in processing and supplying them as provision of stores to an aircraft flying to Australia. Processed goods are to be supplied at Mumbai Airport.	16,000
Duty payable on excisable goods and raw materials used in manufacturing of such goods to be supplied to 100% EOU	6,000

Ans.4(a)(i) In the year 2015, online registration has been mandatory under Central Excise – Rule 9 of the Central Excise Rules, 2002.

The CBEC in its notification specified the procedure. Accordingly, the authorised officer shall verify the premises physically within 7 days of receiving application through online. If anything contrary is found, the registration stands cancelled.

Ans.4(a)(ii)

- Goods supplied to SEZ from DTA is an export as per the provisions of SEZ Act, 2005, which have overriding effect. Hence, Martin Dorai Raj is eligible to get rebate of ₹ 18,000.
- Goods used in supply of stores to an air craft is an export & hence eligible for rebate.
- Goods supplied to an EOU is <u>not</u> an export as per the definition given under Rule 18 of C.E. Rules, 2002.

Hence, rebate is not available to the supplier.

(b) Ragini has self-assessed service tax on services rendered by her and has declared it in the return. She has paid 50% of the self-assessed tax and for want of liquidity the balance 50% has remained unpaid for more than a year. The Central Excise Officer has proceeded to recover the unpaid portion of the self-assessed tax by invoking the provisions of Section 87 of the Finance Act, 1994. Ragini argues that she should have been issued a SCN under section 73(1) of the said Act. Invoking Section 87 to recover the unpaid portion of the service tax is an action beyond his jurisdiction, as the fundamental requirement of providing the opportunity of being heard has not been provided. Also, she argues that in the absence of fraud, collusion, wilful mis-statement, suppression of facts and contravention of any of the provisions of the service tax law, normal period of limitation of one year should apply. Even if service tax is to be paid, she has argued that interest is not payable by her. Discuss whether her arguments are valid under the amended provisions of the Finance Act, 1994.

(4 marks)

Ans.4(b) Ragini is grossly mistaken as she is not aware of the recent amendments in Service Tax laws: Sub section (1B) to Section 73 of Finance Act inserted in Finance Act, 2015 clearly states as follows: Notwithstanding anything contained in sub-section (1), in a case where the amount of service tax payable has been self assessed in the return furnished under sub-section (1) of Section 70, but not paid either in full or in part, the same shall be recovered along with interest thereon in any of the modes specified in Section 87, without service of notice under subsection (1).

With the advent of the above sub-section, recovery proceedings can be initiated against Ragini forthwith without any SCN.

(c) With reference to recent changes in the Mega Exemption Notification No. 25/2012-ST dated 20-06-2012briefly state whether the following will be taxable or not. (4 marks)

(i) Transportation of a patient in an ambulance by an entity which is not a clinical establishment or an authorized medical practitioner or paramedics.

(ii) Goods Transport Agency (GTA) service provided for transport of exports goods by road from place of removal I CFS (Container Freight Station), Inland Container Depot (ICD) to land customs station.

Ans.4(c)(i) Exempt under Entry No.2(ii) of Mega Exemption Notification as amended. Ambulance services by any person are exempt.

(ii) Exempted but not under Mega Exemption Notification No. 25/2012 but under Notification No. 4/2015. as amended with **effect from 01-04-2015**

(d) Mr. X. an importer imported certain goods on 20-04-15 and paid custom duty by understating the value of goods imported. A show cause notice was issued to Mr. X by the proper officer on 19/8/2015 demanding duty along with interest and penalty on the value of the goods understated. The said notice was received by Mr. X on 24-8-2015. Mr. X deposited the amount of duty and interest along with penalty that should be payable as per provisions of law on 20/9/2015.

With reference to recent amendments made in section 28 of the Customs Act, 1962 of the Finance Act, 2015. Compute the penalty imposable, if any.

Provide reasons for your answer. (4 marks)

Ans.4(d) Section 28 of Customs Act, 1962 deals with cases of penalty. In this question details of duty were not given. Hence, computation is not possible.

However – Section 28(2) specifies that in non-fraud cases no penalty is payable if the party makes the payment with interest if any in full within 30 days of receiving the notice.

In fraud cases, the penalty will be only 15% of duty.

5. (a) All disputed cases relating to Excise duty liability can be settled as per section 32 E of the Central Excise Act, 1944.
Is this statement true? If not, what are the circumstances in which assesse is barred from making an application for settlement of cases under section 32E of the Central Excise Act, 1944? (4 marks)

Ans.5(a) The statement is not correct. An assessee is barred from making an application under Section 32E of Central Excise Act, 1944 if the following conditions are not met.

(1) It should be a case pending before adjudication authority. A case remanded by an appellate authority to adjudicating authority is not a case.
(2) The applicant should have filed appropriate returns in prescribed manner. This condition may be waived by the commission in specific cases.
(3) A show cause notice should have been received by the applicant already.
(4) Duty liability admitted in the application should be more than 3 lacs rupees.
(5) The same with interest if ay should be deposited with the Commission.
(6) The case should not be pending before Tribunal or a Court..

(b) (i) M/s. Zeena Packers are engaged in providing the services of retail packing and labelling of fruits and vegetables.
Discuss in brief whether they are liable to pay any service tax. (4 marks)

(ii) What is the time limit for filing appeal to the Commissioner of Central Excise (Appeals) by a person aggrieved by any decision or order passed by an adjudicating authority lower than the rank of Commissioner/Commissioner of Central Excise?
Explain with reference to service tax provisions.
Whether this time limit can be extended?

Ans.5(b) (i) this activity is covered under Entry No. 44 of Mega Exemption Notification No. 25/2012. Hence no service tax is payable.

(ii) Time limit for filing an appeal to communication of Central Excise under service Tax under section 85(3A) is two months from the date of receipt of order or decision of adjudicating authority.

On sufficient cause, the commissioner(Appeals) may extend the period by one month.

(c) Airways Ltd. started business of providing services as an air travel agent in September, 2015. He approached you for seeking advice on applicability of service tax rates for services to be provided by him. What alternative option will you suggest other than to pay service tax on basic applicability rate of 14? (4 marks)

Ans.5(c) There is a composition scheme available to service provider of Air Travel agency, under Rule 6(7) of Service Tax Rules, 1994.

Accordingly he may choose to pay service tax as given below:

Domestic travel – pay 0.7 % of the basic fare
International Travel pay 1.4% of the basic fare

‘Basic fare’ has been explained as ‘that part of the air fare on which commission is normally paid to the air travel agent the airline’

Swachh Bharat Cess may be paid as follows:
Amount of service tax is ₹ x.
Then SBC = $X\ x\frac{0.5}{14}$

(d) Define Export Obligation under Export Promotion Capital Goods Scheme (EPCGS) of Foreign Trade Policy 2015 – 2020. What will be the specific export obligation if the Capital Goods are indigenously sourced under EPCG Scheme? (4 marks)

Ans.5(d) Export Obligation (EO) means the obligation to be fulfilled by the authorisation holder of EPCG scheme in a given period. EO under the scheme is 6 times the duty saved in 6 years from the date of issue of authorisation.

The EO is to be fulfilled in two ways:

(i) It should be over and above the last 3 years average of same or similar products exported
(ii) Specific EO

The EO for the goods indigenously sourced will be 75% of specific EO

Eg. Import duty of Capital goods imported is ₹ 10,00,000.
EO will be times, i.e. 60,00,000 worth of goods to be exported in 6 years time. If the capital goods are sourced indigenously the EO will be 75% of 60 lac = i.e. ₹45 lac

Q 6(a) (i) (1) What is the amount of penalty which can be levied for failure to furnish information returns? (4 marks)

(2) What is the time period allowed to rectify the defect in information return filed under section 15A of the Central Excise Act, 1944?

(ii) An assessee sold certain goods to AB Ltd. for ₹50,000 (excluding excise duty and other taxes) on 02-10-2014. AB Ltd. is a related person as defined under section 4(3)(b) of the Central Excise Act, 1944. It did not sell the goods but used for consumption in manufacture of other articles. The cost of goods as per CAS-4 was ₹ 60,000/-. Determine the assessable value in the given case.
What will be the assessable value if in the aforesaid case AB Ltd. is not related to the assessee?

Ans.6(a)(i)
(1) Information Return is to be filed under section 15A of Central Excise Act Section 15B prescribes the penalty for failure to submit is ₹ 100/- per day.

(2) Time period allowed to rectify the defect in information Return filed U/S 15A is 30 days or the period allowed by the prescribed authority form the date of information of rectification.

Ans.6(a)(ii)
The assessable value as per CAS – 4 under Rule 8 of C. E. Valuation Rules, 2000 is 110% of 60,000 = ₹66,000

If AB Ltd. is not a related person, the assessable value will be ₹50,000

(b) Calculate the amount of refund of service tax paid on input services in the following case:

Particulars	Amount in (₹)
Turnover of output service exported	15,000
Total turnover of output services	45,000
Service tax paid on input services	12,000

Note: Rate of Service Tax is 14% (4 marks)

Ans.6(b) Refund of Cenvat credit = $\frac{15,000}{45,000} x\ 12,000$

= ₹4,000

Rule 5 of Cenvat Credit Rules, 2004
(Rate of Service Tax is irrelevant here)

(c) An association has been temporarily constituted by several members, without being registered. The object of the unregistered association was to render taxable services to its members for a consideration. The association, through its members, argued that the association was not registered and any service rendered to its members constituted service rendered to oneself and therefore the activity of rendering service by the association to its members was not a service at all and hence not liable to service tax. Comment on the stand taken by the unregistered association with suitable explanations, if any

On the same analogy, the Central Excise Officer intends to tax capital contributions made by members to the Association. Whether, the action of the officer is tenable in law?

(4 marks)

Ans.6(c) The contention of the association is untenable s per the definition given under section 65B(44) of Finance Act, 1994. Explanation 3 to definition of service clarifies that service provided by a body of persons to its members is a service as both are considered separate entities for the purpose of service tax.

Capital contributions made by members to the association are transactions only in money and hence non taxable.

(d) Mr. Mukul, a Chartered Accountant received US $ 12,000(net) during the financial year 2014-15 from M/s. Carter & Company of USA for providing auditing services. Out of this, ₹ 1,20,000 equivalent to US ₹ 2,000 was received in Indian Rupees and US $ was received through the credit card of Mr. Romeo, who is the partner of M/s. Carter & Company.

Explain with reference to provisions of new Service Export from India Scheme (SEIS) as provided in new Foreign Trade Policy 2015-2020 whether Mr. Mukul is entitled to avail benefit under SEIS?
If yes, what will be the rate of entitlement of reward? (4 marks)

Ans.6(d) As per FTP – 2015-20, to be eligible to get export incentives under SEIS Scheme, the net forex receipts shall be at least 10,000 USD in a financial year. Receipts in Credit card are also counted. In this case net forex is 10,000 USD. Hence Mr. Mukul is eligible to get export incentive –

The rate of reward for professionals is 5% of N.F.E. issued in transferable scrip.

Q7. (a) Mr. Ganeriwala has raised an invoice as per a contract with his client. Accordingly he has paid service tax on accrual basis as services rendered by him exceeded ₹ 50 lakhs in the previous year. At the time of payment, the client renegotiates the billed amount and pays 75% of invoice along with service tax of 14% on the renegotiated amount. The proper officer refuses to allow credit taken by the assessee (with respect to service tax on 25% of the billed amount) on the ground that he has not intimated the fact of availment of credit in writing. Comment on the action of proper officer and state the circumstances in which the action of Mr. Ganeriwala is permissible. (4 marks)

Ans.7(a) The question is based on the provisions under Rule 6(3) of Service Tax Rules, 1994. As per Rule 6(3), where the amount is renegotiated due to deficient provision of service or (due to) any terms contained in a contract, the assesse may take credit of such excess service tax paid by him if the assessee

(a) has refunded the payment or
(b) has issued a credit note for the value of the service not so provided

From the above, it is clear that the assessee need not intimate to anybody. Instead the C.E.O. should have maintained that the negotiation is neither.
(i) due to deficient provision; nor
(ii) due to any terms of contract

The ground of intimation raised by the officer is not valid under the law. At the same time Mr. Ganeriwala will succeed if he is able to establish the grounds for renegotiation as specified above.

OR

(a) Texto Print (P) Ltd. is the brand owner of Texto Garments, and is supplying fabrics and accessories to job-workers and getting it manufactured from them. He refuses to pay excise duty on the ground that the entire manufacturing facility is with the job worker and that he is merely a trader. Explain the provisions applicable to merchant manufacturer in the ready-made garments sector. (4 marks)

Ans. 7(a) General principle under Central Excise is that the manufacturer is liable to pay duty. In this case job worker should have been made liable to pay duty because he is a manufacturer.

But Rule 4(1A) of Central Excise Rules, 2002 stipulates reverse charge mechanism for textile articles manufactured by job workers for Brand owners.

Since there is a statutory compulsion for the brand owner to pay duty, Texto print (P) Ltd. cannot escape liability.

(b) Moon Ltd., a service provider, has furnished the following information:

S. No.	Particulars		Excise duty/Service tax
1.	Input service 'P'	Invoice dated 14-12-2014	88,000
2.	Input service 'R'	Invoice dated 14-07-2014	57,000
3.	Input service 'K'	Invoice missing	46,000
4.	Security services for guarding the Office (Payment has not been made to the Security agency but service tax has been paid under reverse charge)	Invoice dated 14-08-2015 value of service 1,60,000	22,400

You are required to determine the total CENVAT credit that can be availed by Moon Ltd. during the month of August, 2015.

Note: Moon Ltd. is not entitled to SSI exemption under Notification No. 8/2003 CE dated 01-03-2003. (4 marks)

Ans.7(b) Credit available during the month of August is ₹ 22,400.

Note: As per the first proviso to Rule 4(7), with effect from 1st April, 2015, Cenvat Credit on input services can be availed by service receiver under reverse charge, partial or full, by paying service tax alone.

To avail credit he need not pay any service charges.

Comment: The question is about the credit available **during the month** of August 2015. It should have been like this "upto the month of August, 2015".

If it were to be upto the month of August, the answer would have been.
(88,000 + 57,000+22,400)

Similar question was asked in IPC, May, 2016 with similar drafting anomaly.

(c) Determine the applicability of service tax in each of the following independent cases:

(i) Construction, erection, commissioning or installation of original works pertaining to an airport.

(ii) Services provided by way of admission to a national park

(iii) The ambulance services provided by a Manpower recruitment agency.

(iv) Service by Mutual fund Agent to Mutual Fund or Asset Management Company.

(4 marks)

Ans.7(c)(i) Original works pertaining to ports and airports are now taxable . Earlier they enjoyed exemption under Entry No. 14.

(ii) Admission to a national park is exempt under Entry No. 45 of Mega Exemption list.

(iii) Exempt under Entry 2(ii)

(iv) Taxable now. Earlier exempt U/Entry No. 29(c)

(d) Compute the quantum or pre-deposit required to be made under section 129E of the Customs Act, 1962 in each of the following independent cases:

(i) In an order dated 18-10-2015 issued to M/s. RR Ltd., the Joint Commissioner of customs has confirmed a duty demand of ₹ 16,00,000 and imposed a penalty of ₹ 5,00,000. M/s. RR Ltd. intends to file an appeal with the Commissioner (Appeals) against the duty and penalty imposed.

(ii) M/s. KK Ltd. intends to file an appeal with CESTAT against the order of Commissioner (Appeals) which confirmed a duty demand of ₹24,00,000 and imposed a penalty of ₹6,00,000.

(iii) LKS Ltd. intends to file an appeal with CESTAT against the order of Principal commissioner which confirmed a duty demand of ₹36,00,000 and imposed a penalty of ₹8,00,000.

(iv) MNM Ltd. intends to prefer an appeal before the Joint Secretary (Revision Application) relating to drawback case under section 129DD against the order of Commissioner (Appeals) which confirmed a duty demand of ₹10,00,000. (4 marks)

Ans.7(d) Section 129E of Customs Act: Corresponding section under Excise is Section 35F.

1. On 1^{st} appeals the predeposit is 7.5% of duty only.
2. On 2^{nd} appeals it's 10% of duty only.
3. If only penalty is in dispute in the above cases it is 7.5% or 10% of penalty as the case may be:

(i) Predeposit = 7.5% of 16,00,000 = ₹ 1,20,000

(ii) Predeposit = 10% of 24,00,000 = ₹ 240,000

(iii) Predeposit = 7.5% of 36,00,000 = ₹ 270,000

(iv) ***There is no cooresponding provision for predeposit in case of revision petition made to the Central Govt.***

Notes:

(1) In case of second appeal, the 10% predeposit is in addition to earlier deposit of 7.5%

(2) No predeposit is required on interest demanded.

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