APPENDIX II

SOLVED PAPER C.A. FINAL MAY 2008
(INDIRECT TAXES)

PART –A

1. (a) Briefly explain any **two** of the following with reference to the Central Excise Rules, 2002 :

(i) Assessee

(ii) Daily stock account

(iii) Large tax payer

(b) M/s Khan Ltd. is a small scale unit manufacturing plastic name plates for motor vehicles as per specifications provided to them by their customers, who are vehicle manufactures. For purposes of classification under the first schedule to the Central Excise Tariff Act, 1985 the assessee has claimed that the plastic name plates are "Parts and accessories of motor vehicles". The Central Excise Department has proposed classification as "Other plastic products", in respect of these plastic name plates. The department's view is that the motor vehicle is complete without the affixation of name plates and cannot be treated as a part of the motor vehicle. Write a brief note on whether the stand taken by the department is correct in law ?

(c) Discuss briefly the validity of the following statements with reference to the Cenvat Credit Rules, 2004 :

(i) Basic Excise duty credit can be utilized both for payment of Basic Excise duty and Education cess and Secondary and Higher Education cess.

(ii) Cenvat credit on inputs lying in stock or in process or contained in the final product shall be reversed when the final product is subsequently exempted unconditionally in terms of an exemption notification issued under Section 5A of the Central Excise Act, 1944.

(d) State Briefly whether the following circumstances would constitute "manufacture" for purposes of Section 2(f) of the Central Excise Tariff Act, 1985 (Tariff Act) :

(i) Both inputs and the final product fall under the same tariff heading under the first schedule to the Central Excise Tariff Act, 1985 (Tariff Act).

(ii) Inputs and final product fall under different tariff headings of the Tariff Act.

Ans: (a) Refer Rule 2(c) and Q. Nos. 23 and 52 in Ch – 5.

(b) Refer **Pragati Silicons P. Ltd. v. CCEx. [2007] 211 ELT 534 (SC)** on Page 2.8.

(c) *(i)* True, refer Q. No. 19 and 23 in Ch – 4. *(ii)* Refer Q. No. 40 in Ch – 4.

(d) Refer Q. No. 31 in Ch – 1. Further, even if inputs and final product fall under different headings of the Tariff Act, the same doesn’t mean that manufacture is involved. In short, change in tariff heading is not to be looked upon while deciding whether manufacture is involved or not.

2. (a) Explain Briefly with reference to Rule 21 of the Central Excise Rules, 2002 relating to remission of duty the following :

(i) Can remission of duty be granted on goods cleared from the factory after payment of duty, but which were destroyed by fire in transit?

(ii) Upon grant of remission of duty the Cenvat credit on inputs used in final product has to be reversed.

(b) A unit availing small scale exemption in terms of Nofn. No. 8/2003 — C.E., Dated 1-3-2003 as amended during the year 2006-07 found that it has exceeded the exemption limit by Rs. 20 lakhs. Accordingly, appropriate duty was paid after obtaining registration and in accordance with the prescribed procedure.

In the Year 2007-08 the unit estimates that the aggregate value of clearances for the purpose of the aforesaid notification would be Rs. 140 lakhs. Write a brief note on the steps to be adopted for the purpose of due compliance with the requirements of the aforesaid notification and the requirement of the Central Excise Act, 1944 and the Rules made thereunder.

(c) Write a note on the valuation of goods on the basis of retail sale under Section 4A of the Central Excise Act, 1944.

Ans: (a) *(i)* No. Refer Q. No. 36, 37(b), 38(b) in Ch – 5. *(ii)* Refer Q. No. 27 in Ch – 4.

(b) During 2006-07, exemption was available only for first clearances of excisable goods upto Rs. 100 lakhs. Therefore, on exceeding the said exemption limit, the assessee-SSI got itself registered and paid the appropriate duty of excise on the excess clearances of Rs. 20 lakhs.

With effect from the financial year 2007-08, the exemption limit has been increased to Rs. 150 lakhs. Since the unit estimates that the aggregate value of clearances for the purposes of the SSI-exemption will be Rs. 140 lakhs i.e. the same will not exceed Rs. 150 lakhs, therefore, the assessee is not required to remain registered with the Central Excise Authorities. It should surrender its registration certificate. Further, in compliance with SSI-exemption Notification, it should file a declaration and obtain a declarant code, as its value of clearances during the preceding financial year exceeds Rs. 90 lakhs.

(c) Refer Q. No. 48 in Ch – 3.

3. (a) With reference to the Central Excise Act, 1944 and the Rules made there under write a brief note on the circumstances when personal penalty could be imposed on a director of a company or a partner of a firm or an employee or a transporter.

(b) M/s MM & Co. a machinery manufacturer effected clearances from its factory with effect from 1-4-2006 by payment of duty under protest and had also filed an appeal against the order for payment of duty. On 15-5-2006 one of its customers M/s BB & Co. had purchased the machines from M/s MM & Co. On 23-5-2007 the appeal filed by M/s MM & Co. was decided in favour of M/s MM & Co. Pursuant to the said order in the appeal filed by M/s MM & Co., its customer M/s BB & Co. filed a refund claim on 1-6-2007 claiming refund of duty suffered by M/s BB & Co. This claim for refund of duty was rejected by the department on the ground of 'unjust enrichment' as well as on the ground of 'limitation'. Explain briefly with reference to Section 11 B of the Central Excise Act, 1944 whether the action of the department is correct in law.

(c) Explain briefly the following with reference to the provisions of the Central Excise Rules, 2002 and relevant notification issued there under with regard to e-payment of duty :

(i) The threshold limit for mandatory e-payment of duty;

(ii) How and in what manner the time of payment would be reckoned under the e-payment system ?

(iii) The due dates for payment of duty under the e-payment scheme in respect of an assessee.

Ans: (a) Refer Q. No. 5 in Ch – 18.

(b) Refer Q. No. 22 in Ch – 15.

(c) Refer Q. No. 9 in Ch – 5.

4. (a) State briefly the procedure to be adopted for clearance of 'prototypes' which are sent for trial or development test from the factory in terms of the Central Excise Rules, 2002.

(b) Will omission on the part of the assessee to provide correct information constitute 'suppression of facts'' for purpose of the proviso to Section 11A of the Central Excise Act, 1944? Write a brief note with reasons.

(c) Briefly examine the provisions relating to 'Settlement Commission' under the Central Excise Act, 1944 with particular reference to the changes brought in by the Finance Act, 2007.

(d) M/s Smart Ltd., manufacture certain excisable goods that are exempt from duty in terms of a notification provided Cenvat credit of duty paid on input is not taken by the manufacturer. M/s Smart Ltd., had taken the credit of duty pain on inputs, but reversed the same before its utilisation. The department denied the benefit of exemption on the ground that once the credit is taken it is immaterial whether the same is reversed before or after utilisation of such credit. State briefly whether the action of the department is correct under the Central Excise Act and Rules made thereunder with reference to decided case law if any.

Ans: (a) Refer Q. No. 35 Rule 16C in Ch – 5.

(b) Refer **Continental Foundation, Jt. Venture v. CCEx. [2007] 216 ELT 177 (SC)** on page 15.9

(c) Refer discussion under the caption '**Settlement of Cases and Customs & Central Excise Settlement Commission'** starting from page 17.4.

(d) Refer **CCEx. v. Bombay Dyeing & Mfg. Co. Ltd. [2007] 215 ELT 3 (SC)** on page 4.15.

5. (a) State briefly the provisions of the Central Excise Act, 1944 relation to arrest of a person.

(b) Write short notes on the following :

(i) Desk review under Excise Audit, 2000.

(ii) Duty drawback under Section 37 of the Central Excise Act, 1944.

(c) Based on the following particulars arrive at the Cenvat credit available on clearance of goods to Domestic Tariff Area (DTA) from an Export Oriented Unit (EOU) :

Assessable value	Rs. 20 lakhs
Basic customs duty	10%
Excise duty	16%
Education cess	2%
Secondary and Higher Education cess	1%
VAT payable under State VAT law	4%

Solution : (a) Refer Q. No. 42 in Ch – 5.

(b) *(i)* Refer Q. No. 48 in Ch – 5. *(ii)* Refer Q. No. 13 in Ch – 12.

(c) Refer Q. No. 28 in Ch – 4.

PART –B

6. (a) Explain briefly with reference to the provisions of the Customs Act, 1962 the following :

(i) Appointment of officers of customs

(ii) Tariff value

(b) M/s Hind IT Co. imported laptops with Hard Disc Drivers (HDD) preloaded with operating software like Windows XP, XP home etc. The department has claimed that the said laptop along with the operating software was classifiable and assessable as a single unit. It is the claim of the assessee that the software loaded HDD should be classified and assessed separately as an exemption is available as per notification issued under Section 25(1) of the Customs Act, 1962. Decide with a brief note whether the action proposed by the department is correct in law.

(c) Write a note on "Project Imports" under the Customs Tariff Act, 1975 enumerating the eligible projects and the minimum investment criteria, if any.

(d) XYZ Industries Ltd., has imported certain equipment from Japan at an FOB cost of 2,00,000 Yen (Japanese). The other expenses incurred by M/s XYZ Industries in this connection are as follows :

(i) Freight from Japan to Indian port 20,000 Yen

(ii)	Insurance paid to Insurer in India	Rs. 10,000
(iii)	Designing charges paid to Consultancy firm in Japan	30,000 yen
(iv)	M/s XYZ Industries had expended Rs. 1,00,000 in India for certain development activities with respect to the imported equipment	
(v)	XYZ Industries Ltd. had incurred road transport cost from Mumbai port to their factory in Karnataka	Rs. 30,000
(vi)	The Central Board of Excise and Customs had notified for purpose of Section 14(3) of the Customs Act, 1962 exchange rate of 1 yen = Rs. 0.3948. The inter bank exchange rate was 1 yen = Rs. 0.40	
(vii)	M/s XYZ Industries had effected payment to the Bank based on exchange rate 1 yen = Rs. 0.4150	
(viii)	The commission payable to the agent in India was 5% of FOB cost of the equipment in Indian Rupees.	

Arrive at the assessable value for purposes of Customs duty under the customs Act, 1962 providing brief notes wherever required with appropriate assumptions.

Solution : (a) *(i)* Refer Q. No. 18 in Ch – 7. *(ii)* Refer Q. No. 2 in Ch – 9.

(b) Refer **CC v. Hewlett Packard India Sales (P) Ltd. [2007] 215 ELT 484 (SC)** on page 9.19.

(c) Refer Q. No. 20 in Ch – 8. There is no minimum investment criterion for the purpose.

(d) Refer Illustration No. 9.13 in Ch – 9.

7. (a) Explain briefly with reference to the provisions of the Customs Act, 1962 whether the owner of the warehoused goods has the right to relinquish his title to such goods after the expiration of the warehousing period or the extended warehousing period as the case may be and also state whether any charges shall become payable upon such relinquishment.

(b) State briefly any five illustrative cases under the Customs, Central Excise Duties and Service-tax Drawback Rules, 2006*, where the All Industry Drawback rates will not apply.

*[*Should be "1995" – Authors]*

(c) State briefly the provisions of the Customs Act, 1962 relation to payment of interest in case of provisional assessment.

Ans: (a) Refer **JK Cement Works v. CCEx. [2008] 223 ELT 138 (Raj.)** and **CC. v. i2 Technologies Software (P) Ltd. [2007] 217 ELT 176 (Kar.)** on page 11.11.

(b) The All Industry Drawback rates do not apply when any other benefit is obtained by the assessee in respect of duties/taxes paid by it or where the assessee has obtained any exemption from duties. Accordingly, the following are some *illustrative cases* where the all industry rates will not apply –

(i) goods manufactured in customs bonded warehouse ;

(ii) goods manufactured in discharge of obligation against Advance License Scheme. *However, excise duty portion of duty drawback rate is allowable*;

(iii) goods imported against Duty Free Replenishment Certificate (DFRC) Scheme. *However, excise duty portion of duty drawback rate is allowable*;

(iv) goods manufactured or exported under Duty Entitlement Pass Book (DEPB) Scheme ;

(v) exports by 100% EOU or a unit located in SEZ ;

(vi) goods exported under rebate in terms of Rule 18 of Central Excise Rules, 2002 ;

(vii) goods exported without payment of duty in terms of Rule 19(2) of Central Excise Rules, 2002. *However, customs duty portion of duty drawback rate is allowable.*

(c) Refer Q. No. 10 in Ch – 7.

8. (a) State briefly with reference to the provisions of Section 27 of the Customs Act, 1962 whether the principle of "unjust enrichment" will apply in the following cases :

(i) refund of wrongly encashed bank guarantee

(ii) refund of excess interest paid by the assessee

(iii) refund of duty on car imported for personal use.

(b) The Committee of Commissioners of Customs is empowered under the Customs Act, 1962 to direct the filing of an appeal before the Appellate Tribunal in certain cases while in certain others it may direct an application to be filed before the Appellate Tribunal for determination of such points arising out of the decision or order as may be specified by the said committee. Write a brief note on the powers of the Committee of Commissioners of Customs bringing out the difference in the exercise of such powers.

(c) State in brief the provisions under the Customs Act, 1962 that seek to prohibit the import of goods infringing intellectual property rights (IPR).

Ans: (a) *(i)* No. Refer Q. No. 21(5) in Ch – 15.

(ii) While section 27 speaks of duty as well as interest and, therefore, *prima facie*, refund of excess interest paid by assessee under Customs law is also hit by bar of unjust enrichment. However, section 28D providing for presumption as to incidence of duty passed to buyer doesn't apply to interest. Further, it is inappropriate to assume that interest, which is a kind of penalty imposed for delay in payment of duty, can be passed onto the buyer. Therefore, principle of unjust enrichment doesn't apply to refund of excess interest. Even if it is said to be applicable to refund of excess interest, the burden to prove that incidence of interest has been passed rests on the Department.

(iii) No. Refer Q. No. 19 in Ch – 15.

(b) Refer Q. No. 8 and Q. No. 14 in Ch – 16.

(c) Refer Q. No. 21 in Ch – 7. In exercise of the powers conferred by section 11 to prohibit import/export of goods infringing patents, trademarks or copyrights, the Central Government has prohibited import of goods infringing Intellectual Property Rights (IPR). For this purpose, Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 have been notified.

The said rules provide that in case of goods infringing such IPRs, as are registered with the Commissioner of Customs, their import shall be prohibited. The import clearances of goods, which appear to be infringing goods, shall be suspended and the goods will be detained pending complete enquiry and examination. The goods ultimately found to be infringing goods are either to be destroyed or to be disposed of outside normal channels of commerce. The infringing goods cannot be re-exported.

PART– C

9. (a) State briefly whether the following services under the Finance Act, 1994 relating to service tax are taxable services (Answer any **three**) :

(i) Services provided in the State of Rajasthan by a person having a place of business in the State of Jammu and Kashmir.

(ii) Services provided from India for use outside India.

(iii) Service provided from outside India and received in India by an individual, otherwise than for purpose of use in business or commerce.

(iv) Service provided to an Export oriented unit.

(b) Briefly state the provisions under the Service Tax Rules, 1944 relating to filing of returns and also state any late fee payable for delay in filing of returns.

(c) Answer the following with reference to the Finance Act, 1994 as amended relating to applicability of Service tax :

(i) Sale of Lottery tickets.

(ii) Depository services and Electronic Access to Securities Information Services (EASI) provided by the Central Depository Services India Ltd.

(iii) Services provided by educational institutions like IIM's by charging a fee from prospective employers like corporate houses regarding recruiting candidates through campus interviews.

Solution : (a) *(i)* Refer Q. No. 4 in Ch – 19. *(ii)* Refer Q. No. 10 in Ch – 19. *(iii)* Refer Q. No. 11 in Ch – 19. *(iv)* Services provided to an export oriented unit are liable to service tax.

(b) Refer Q. No. 16 in Ch – 19.

(c) *(i)* Refer **Martin lottery agencies Ltd. v. UOI [2007] 8 STR 561 (Sikkim)** on page 20.15. *(ii)* Refer Issue No. (c) in point (F) of Service No. 3 'Banking and Other Financial Services' in Ch – 20. *(iii)* Refer Issue No. (a) in point (D) of Service No. 32 'Manpower Recruitment or Supply Agency's Service' in Ch – 20.

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