CA FINAL, INDIRECT TAX LAWS

Suggested Answers for May, 2017 Exam

Q. 1 (a): CNC India Ltd. is engaged in the manufacture of machines. It has supplied one machine to M/s. Advaith India Ltd. At a price of ₹ 11,25,000 (excluding excise duty & VAT). Cash discount @ 3% on price of the machinery is allowed to M/s. Advaith India Ltd. Further, following additional amounts as indicated below have been charged from M/s. Advaith India Ltd. (5)

SI. No.	Particulars	₹
(i)	Expenses pertaining to installation and creation of the machine at Advaith India factory. (Machine was permanently affixed to earth)	40,000
(ii)	Pre-delivery inspection charges (charges separately by CNC India Ltd.)	11,250
(iii)	Cost of durable and returnable packing (such cost has been amortised and included in the cost of the machine	5,000
(iv)	Warranty Charges charged separately by CNC India.	1,00,000
(v)	Advertisement and publicity charges borne by Advaith	60,000
(vi)	After sales service chargers (charged separately by CNC India Ltd.)	20,000

Advaith India has supplied material worth ₹ 50,000 free of charge to CNC India Ltd. for being used in production of machine. Determine the Assessable value for calculation of Central Excise Duty payable thereon from the aforesaid information. There was no opening or closing inventory. CNC India is not eligible for exemption in terms of notification 8/2003 it. 01-03-2003 during the current financial year 2016-17 when the clearance of the machine was effected. Make required assumptions and show the working Notes separately.
(Need not calculate Central Excise Duty payable)

Ans. 1(a): Computation of Assessable Value of Machine Supplied by CNC India Ltd

		₹	
	Price before discount and taxes	**11,25,000**	**Remarks**
	Less discount @3%	**33,750**	**Amount payable is after cash discount only**
	Price after discount	**10,91,250**	
SI No.	**Add Other Expenses chargeable to duty, collected from customer.**		
(i)	Expenses pertaining to installation and creation of the machine at Advaith India factory. (Machine was permanently affixed to earth).	~~40,000~~	Non chargeable as not in connection with sale.

(ii)	Pre-delivery inspection charges (charges separately by CNC India Ltd.)	11,250	Chargeable which enhance the marketability
(iii)	Cost of durable and returnable packing (such cost has been amortised and included in the cost of the machine).	~~5,000~~	Non chargeable, assumed not included in the price above
(iv)	Warranty Charges charged separately by CNC India.	1,00,000	Includible as per Section 4(3)(d)
(v)	Advertisement and publicity charges borne by Advaith	60,000	Includible as part of consideration
(vi)	After sales service chargers (charged separately by CNC India Ltd.)	20,000	Includible as part of sale agreement
(vii)	Supply of material worth ₹ 50,000 free of charge by customer	50,000	Includible as per Rule 6 of Valuation Rules
	Assessable Value	13,32,500	

(b) Compute service tax liability (to be paid in cash) from the following particulars of services of M/s. Utkarsh & Co. for the month of October, 2016 (5)

S.No.	Particulars	Amount (₹)
1.	Construction of road for general public.	16,75,000
2.	Renovation service provided to Government relating to plant for sewerage treatment.	12,00,000
3.	Gross amount (excluding all taxes) charged for providing works contract service.	2,00,000
4.	Actual value of material transferred in the above works contract (i.e.S.No. 3) (VAT under the relevant state VAT Law has been paid on this value).	1,40,000
5.	Service tax paid on input service (excluding SBC and KKC).	2,800
6.	SBC paid on input services.	100
7.	KKC paid on input services.	100
8.	Excise duty paid on the capital goods, purchased during the year, used in the provision of works contract service.	2,000
9.	Excise duty paid on inputs used in the provision of works contract service.	10,750

M/s. Utkarsh & Co. has paid service tax of ₹ 2, 50,000 during the preceding financial year.
Rate of service tax is 15.00 %. (14% + 0.50% Swachh Bharat Cess +0.50 % Krishi Kalyan Cess)

Working notes should form part of your answer.

Ans 1 (b):

Computation of Service Tax Liability (to be paid in cash) for M/s. Utkarsh & Co. for the month of October, 2016.

S No	Particulars	Amount (₹)	
1.	Construction of road for general public.	~~16,75,000~~	Exempt Entry No. 13, Mega Exemption
2.	Renovation service provided to Government relating to plant for sewerage treatment.	~~12,00,000~~	Exempt Entry, 12
3.	Gross amount (excluding all taxes) charged for providing works contract service.	2,00,000	
4.	Deduct Actual value of material transferred in the above works contract (i.e.S.No. 3) sold in the works contract.	1,40,000	
5	Value Chargeable under Service Tax	60,000	

Service tax payable:

TAXES	TOTAL	Service tax @14 on 60,000	SBC @.0.5% on 60,000	KKC @.0.5% on 60,000
	₹9,000	8,400	300	300
Less Cenvat credit Input services: Capital Goods: (50%)	 2,900 1,000	 2,800 1,000		 100 ......
Net tax Payable	5,100	4,600	300	200

Notes:

1. No cenvat credit is available on material used in works contract as they are not inputs as per the definition under Rule 2(k) of the Rules, 2004.
2. Only 50% of the credit on capital goods has been taken as it was mentioned that capital goods were purchased are during the year.
3. SBC shall be paid in cash only as no credit is allowed on that.
4. KKC is available as credit but can be used only for paying KKC on output service.

Q.1.(c) Compute the Service Tax payable on independent services provided by All in One Service Company Ltd." for the month of September 2016.Service tax @ 15% (including SBC & KKC) has been charged separately wherever applicable and not included in the service value. Ignore exemption for Small Service Provider under Notification No. 33/2012 dated 20-06-2012. Notes should form part of the answer. Details of services provided are given below. (5)

S.No	Particulars	Amount (₹)
(i)	Service provided by way of repair or maintenance of an aircraft owned by Rajasthan State Government.	5.00,000
(ii)	Exhibiting Movies on television channels.	3,00,000
(iii)	Transportation of goods by vessel from a place outside India up to the customs station of clearance in India.	4.00.000
(iv)	Construction and installation of original works pertaining to Bengaluru	9,00,000

(v)	Metro — Contract entered on 05-06-2016. Transportation of passengers with accompanied belongings by an Air conditioned stage carriage other than motor cab.	6,00,000
	Total	**27,00,000**

Ans. 1 (c):

All in One Service Company Ltd

All the above are taxable now:

Service tax is payable @15% (14%+ 0.5%+0.5%) on 27,00,000.

Important Notes:

1. Item No. (iii) Above became taxable now. Earlier it was non-taxable. Even transport of goods to India for transhipment to another country became taxable in 2017.
2. In Item No. (v) No abatement needs to be considered as the abatement is subject to condition that cenvat credit has not been availed on inputs, input services and capital goods. The question is silent on this point.

(d) M/s. AMTL Ltd. Kolkata imported CNC Grinding machine from Catalyst hic. USA, complete with accessories and spares in October 2015 for use in the manufacture of high precision micro tools. Basic cost of machine with accessories US S F.O.B. 50.000. Catalyst inc. supplied one extra set of accessories valued at US S 2000 free of cost to cover for transit damage. Other details available were as follows: (5)

S. No.	Particulars	Amount
1.	Warranty Cost Payable to Catalyst Inc. (Not included in the cost of the Machine i.e. US $ 50000)	US $ 4,500
2.	Design & Development charges paid in USA (not included in the cost of the Machine i.e. US $ 50000)	US $ 6,000
3.	Licence Fee, AMTL is required to pay in USA	US $ 1,000
4.	Value of Drawings supplied by AMTL Ltd. Kolkata free of cost and is necessary for customising machine to the needs of AMTL Ltd. Kolkata	US $ 1,000
5.	Freight by AIR	US $ 15,000
6.	Buying Commission paid to Indian Agent in India	₹ 30.000

Bill of Entry presented on 10-11-2015 and the rate of exchange notified by CBEC on this date was ₹66.25 per US $ and rate of BCI) was 7.5%.

Date of arrival of aircraft was 06-11-2015 and rate of exchange notified by CBEC on this date was 66.50 per US $ and rate of BCD was 7.5%.

Machine was insured but insurance premium was not shown/available In/ from the invoice,

From the above particulars, compute the assessable value for purpose of Customs duty payable. Make suitable assumptions wherever required.

Working notes should form part of your answer.

Note: Custom duty calculations need not be shown.

Ans. 1 (d):

Sr. No.	Particulars	Value (₹)
1	FOB Value	$ 50,000.00
2	Add Freight by AIR @20%	10,000.00
3	Add insurance @1.125%	562.50
4	Add other charges: items 1,2,3&4 above	12,500.00
5	CIF Value of imported goods	**73,062.50**

Assessable value = 101% of **73,062.50 = $ 73,793.125**

Value in INR @ 66.25= ₹ 48,88,794.5 (48,88,795 rounded off)

Notes:

1. Buying commission is not includible, Rule 10(1) of Valuation Rules, 2007
2. Air freight restricted to 20% and insurance at 1.125% are added to the of FOB value given above.
3. Free supplies of accessories were not considered for value as they were not charged separately.
4. Rate of exchange as on the date of submission of Bill of Entry has been taken as per Section 14 of the Customs Act, 1962

2.(a) M/s RGH, manufacturer of excisable goods have cleared their manufactured final production during October 2016 and the excise duty payable for the month is ₹7,30,000, without considering the following details of excise duty/service tax paid by them during the month at the time of purchase of goods/procurement of input service respectively. (4)

Sl. No.	Particular	Amount (₹)	Remarks
(i)	On inputs "VK"	2,50,000	(Inputs pertaining to all purchases have been received by M/s RGH Ltd. In October 2016 factory except invoice dated 1st November 2016 for excise duty of ₹35,000 paid on Inputs "A" was received on 3rd November 2016.)
(ii)	On input service used in (excluding KKC and SBC) the	50,000	(Includes one invoice issued by clearing agent for clearance

	manufacture of the final product		of input or capital goods for ₹10,000
(iii)	On welding electrodes for repairs and maintenance of capital goods	25,000	Received in the factory in Oct. 2016
(iv)	Inputs used for pumping of water for captive use	32,000	-Do-
(v)	Tubes and pipes (used in factory) {Prices per tube – ₹2,000 price per pipe – ₹4000}	42,000	-Do-
(vi)	Special purpose motor vehicle (falling under tariff heading 8705) for use in the factory of manufacturer	2,00,000	-Do-
(vii)	Tools of Chapter 82 of the Central Excise Tariff Directly sent to another manufacturer (job worker) for production of goods	50,000	

Note : M/s. RGH Ltd. is not eligible w avail exemption under the notification based on value of clearance in a financial year. Calculate the duty payable in cash by MIs RGH Ltd. for the month of October 2016 after taking into account the CENVAT credit available. You are also required to provide working notes and explanations and which will form part of the answer.

Ans. 2 (a):

Statement showing availability of Cenvat Credit for the month of October 2016

Sl. No.	Particular	Amount (₹)	Remarks
(i)	On inputs "VK" Less credit on inputs received in November	2,50,000 35,000 2,15,000	Inputs received in November are not eligible for use for the payment of October
(ii)	On input service used in (excluding KKC and SBC) the manufacture of the final product	50,000	Manufacturer is not eligible to take credit on KKC. Assumed that the invoice issued by clearing agent for clearance of input or capital goods for ₹10,000 is upto the place of removal
(iii)	On welding electrodes for repairs and maintenance of capital goods	25,000	Received in the factory in Oct. 2016 eligible as inputs
(iv)	Inputs used for pumping of water for captive use	32,000	eligible as inputs
(v)	Tubes and pipes (used in factory) {Prices per tube – ₹2,000 price per pipe – ₹4000}	42,000	- Eligible as inputs as the value per piece is less than ₹ 10,000

(vi)	Special purpose motor vehicle (falling under tariff heading 8705) for use in the factory of manufacturer	~~2,00,000~~ 1,00,000	Eligible as capital goods. But only 50% can be availed
(vii)	Tools of Chapter 82 of the Central Excise Tariff Directly sent to another manufacturer (job worker) for production of goods	~~50,000~~ 25,000	Eligible as capital goods. So only 50% can be availed

Total credit available is ₹ 4,89,000.
Duty payable in cash= 7,30,000-4,89,000= 2,41,000

(b) From the following information determine (with brief reasons to be provided as part of the answer) the person liable to pay service tax and extent of service tax payable if all sums are exclusive of service tax and both service provider and service recipient are located in India. **(4)**

(1) Infrastructural support services provided by Government to a business entity : ₹ 16 lakh; Previous year turnover of the business entity was ₹9,50.000.

(2) Renting of immovable property services provided by Government to business entity : ₹25 lakh.

(3) Service provided by a Director of a company (not in the course of employment) to the company: ₹21 lakh;

(4) Mr. Rahul is Director of a ACH Ltd. also appointed as a Nominee Director of ING Ltd. Services provided by Mr. Rahul to ING Ltd.is ₹5 lakh.

Ans 2 (b):

(1) Business entity is liable to pay under reverse charge, but exempt as the turnover was not above 10 lakhs.

(2) Govt. is liable to pay service tax on ₹ 25 Lakh.

(3) Company is liable to pay on ₹ 21 lakh.

(4) ING Ltd. is liable to pay on ₹ 5 lakh.

Q.2 (c) Compute the service tax liability in each of the following independent cases **(4)**

Particulars	(₹)
Services provided by Government to various individuals for issuing passport	85,000
Transportation of passengers by Cable car	5,00,000
Speed post services provided by Mumbai Post office to various individuals (Amount charged does not exceed 5.000 in any of the Transaction)	10,00,000

Services provided by bio-incubators recognised by Biotechnology Industry Research Assistance Council (BIRAC)	8,00,000

Notes:

(1) Ignore the small service provider exemption under Notification No. 3312012 ST dated 20-06-2012.
(2) Service Tax and cesses have been charged separately, wherever applicable.
(3) All transactions have been undertaken in month of August 2016.
(4) Make suitable assumption whenever required.
(5) Brief reasons and working notes should form part of the answer.

Ans 2 (c):

Particulars	**₹**	**Remarks**
Services provided by Government to various individuals for issuing passport	~~85,000~~	Exempt under Entry No. 55 Of mega exemption
Transportation of passengers by Cable car	5,00,000	Now taxable, Entry 23 (c)
Speed post services provided by Mumbai Post office to various individuals (Amount charged does not exceed 5.000 in any of the Transaction.)	10,00,000	Taxable , for the postal services exemption limit of ₹ 5,000 is not applicable.
Services provided by bio-incubators recognised by Biotechnology Industry Research Assistance Council (BIRAC)	~~8,00,000~~	Exempt, vide Notification No.12/ 2016 , effective from 1st April, 2016

Service tax @ 15% (in all) is payable on the above values.

(d) Ganga Ltd., an Indian company located at Jaipur. imported into India certain commodities in July. 2016 from a country which is covered by a Notification issued under Section 9A of the Customs Tariff Act. 1975.

The relevant particulars relating to import are as follows:

(1) CIF value of the consignment — US $ 35,000
(2) Quantity imported — 700 kgs.
(3) Exchange rate applicable — US $ = ₹62
(4) Basic Customs Duty (BCD) — 20%
(5) As per the Notification, the anti-dumping duty leviable will be 75%of the difference between the cost of the commodity calculated @US $ 80 per kg. and the landed value of the commodity as imported.

You are required to calculate the amount of total Customs duty (including anti-dumping duty) payable by Ganga Ltd.

Note: Assume Additional duty payable under Section 3(1) and 3(5) of the Customs Tariff Act. 1975 are exempt but Education Cess and Secondary & Higher Education Cess may be adopted. Wherever applicable. Working notes with brief reasons should form part of the answer.

Ans. 2 (d):

Margin of Injury is calculated as given below:

(1) Fair market value= 700x 80= 56000 USD

(2) Landed value is computed as follows:

(3) Assessable value= 101% of CIF = 35,000x 1.01
= 35,350.0 USD

Add BCD @ 20%	=	7070.0
CESS @3% ON 7070	=	212.1
Landed value	=	42,632.1

(4) Difference between (1) and (2) above is 56000-42632.1 = 13,367.9

Anti-dumping duty = 75% of 13, 367.9= 10,025.925 USD

Total customs duty = 7282.1+ 10,025.925 USD=17,308.025

3. (a) M/s. Vishwas Packers purchased duty paid GI paper from the market and carried out printing on it according to the design and specifications of the customer. The printing was done on jumbo rolls of GIP twist wrappers. Logo and name of the product was printed on the paper in colourful form and the same was delivered to the customers in jumbo rolls without slitting. The customer intended to use the paper as a wrapping/packing paper for packing of their goods. Department issued a demand-cum show cause notice claiming that 'printing on jumbo rolls of GI paper as per design and specification of customers with logo and name of product in colourful form, amounts to manufacture" and Vishwas Packers is liable to pay excise duty thereon. Examine with the help of decided case law, if any, whether the Department is justified in issuing show cause notice for the recovery of duty. (4)

Ans 3 (a):

The question is based on the case of FILTRITE PACKERS, 2015 decided by the Supreme Court.

The honourable Supreme Court held that after printing the logo and other details on the GI paper as per the specifications of the customer became a new and distinct entity and hence there is manufacture.

The department, therefore is justified in demanding duty by issuing a show cause notice under Section 11A of The Central Excise Act, 1944

(**Note:** The answer can be a little lengthy with explanation of what is manufacture and that transformation is an essential test of manufacture.....).

(b) A city municipal corporation rented various properties owned by it and received rental income. When the Department demanded service tax on the rental income, it was contended by the corporation that as per the rental agreement the tenant is liable to pay any tax/levy

directly to the concerned authority and requested the department to recover the tax dues from the tenants. Write a brief note whether the stand of the corporation is correct? You can cake the help of the case law in support of your answer. (4)

Ans. 3 (b):

The facts of the instant question very much fit into the facts of the case KISHORE K.S v CHERTALA MUNICIPALITY, an old case. Decided by Keral High Court in 2011.
We can also refer to RASHTRIYA ISPAT NIGAM case.

The settled rule is the liability under service tax can be shifted to the other party through an agreement. In the instant question the facts were not given clearly. In fact the tenants were liable to rent could also be made liable to pay taxes attached to the rent amounts. Their contention that the liability of the municipality cannot be shifted to the tenants is untenable under law because service tax is an indirect tax and the service provider is entitled to pass on the burden to the recipient.

Comment: The question based on the above case now falls under Section 66D (a), as amended 'Any service provided by Govt. or a local authority to business entities are taxable under reverse charge,

Since it is a service of renting of immovable property, no reverse charge is applicable. The Municipality is liable to pay.

(c) The adjudication order was passed and was forwarded to the assesse. However, assesse did not receive the same. It learnt about the order only after receipt of a letter from the Superintendent, nearly after lwo years, directing it to pay the dues as per said order. Thereafter, a copy of that order was made available to the assesse.

The appeal filed by the assessed against the said order was rejected by the Commissioner (Appeals) as well as by the Tribunal, as being barred by limitation.

The assesse contended that the appeal could not be held to be barred by limitation as no order was received by it.

Write a brief note with the help of decided case law, if any, whether under the provisions of Service Tax Law (i.e. Finance Act, 1994) the period of limitation can be computed from the date of forwarding of the order where such order has not been received by the assesse? (4)

Ans. 3 (c):
The case with the similar facts as above has been decided by Bombay High Court recently in ENESTEE ENGINEERING (P)Ltd., 2016 (Bom)

The Bombay High Court in the instant case held that communication of order is essential to recover the tax from the assesse. There was nothing to establish on the material placed by the department to show that the order was properly served on the party. so, the limitation starts only when the party receives the order.

The period of limitation shall be counted from the date of order received, not the date of forwarding the order. The case was remanded (sent back) for fresh order.

(d) Whether a notice issued to an Importer under Sec. 110 of Customs Act, 1962 is legally valid if the same is issued to the Customs Broker of the importer instead of the importer himself? Write a brief note with reference to the relevant provisions and case law if any. (4)

Ans. 3 (d):

This question is also based on a recent case decided by Delhi High court in 2016 in SANTOSH HANDLOOMS where it has been held that the notice issued under section 110, (seizure of goods and document liable to be confiscated) cannot be issued to the customs broker, rather it should be served on the importer itself.

When the goods and documents are seized under Section110 of the Act, 1962, the proviso to sub section (1) says that the owner of the goods shall be served a notice by the proper officer. It is therefore serving a notice on the customs broker is invalid under a law.

4. (a) A manufacturer of excisable goods paid duty of 2 lakhs provisionally under Rule 7 of Central Excise Rules, 2002 on 6th February, 2016 for the month of January 2016 electronically, after following prescribed procedure. They further paid ₹50.000 on l5th April, 2016 and submitted documents for final assessment on the same day. After finalization of provisional assessment by the department on 30-06-2016. They were required to pay a further sum of ₹5.000 which was paid on 30th July, 2016. Calculate the interest payable, if any, by the manufacturer on the finalization of provisional assessment under Sec. 11AA of Central Excise Act. 1944. (4)

Ans. 4 (a):

As per final assessment order total duty payable is ₹ 2,55, 000.

1. On ₹ 2 Lakh paid on due date, 6th Feb, no interest is payable.
2. On 50,000 paid on 15th April interest is payable from 7th Feb to15th April
3. On ₹ 5,000 interest is payable from Feb 7 till the date of payment, i.e., 30th July
4. Rate of Interest is 15%
5. 50,000x69/366x 15%= ₹ 1414 (rounded off U/ Section 37D)
6. 5,000x175/366x15% = ₹ 359 (rounded off)

Total ₹ 1,773

Notes:

Rate of interest is 15%;
2016 is a leap year

(b) With reference to the amendments made by the Finance Act, 2016 and position of law as existing on 31st October, 2016. Briefly write a note on the following: (4)

Ans 4 (b):

(i) Implication on passengers' transportation service by metered cab.

Metered cab is one in which meter reading in distance travelled and fare chargeable are available. A metered cab is different from radio taxi. Transportation service by metered cab are under negative list [Section 66D (o)(vi)].

(ii) One person company can pay service tax on quarterly basis.

One person company can pay service tax quarterly if the turnover in previous year did not exceed ₹ 50,00,000

(c) With reference to the provision of law as on 6-6-2016. Briefly explain as to who is the person responsible to pay service tax in the following cases: (4)

Ans. 4 (c):

(i) Legal services are provided by Senior Advocates to business entities.
The service is taxable and the person receiving the services from the senior advocate is liable to pay service tax provided his previous year turnover exceeded 10 lakh rupees.

(ii) Representational services are provided by Senior Advocates to any business entity. Same as the recipient is liable to pay service tax.

(iii) Where contract for representational services provided by the Senior Advocates to any business entity has been entered into through another advocate or firm of advocates.

Here the litigant is liable to pay, pl. Refer to Notification No.34/ 2016 effective, 20th June, 2016

(d)(i) Mr. Devendra an Indian Entrepreneur, went to China to explore new business opportunities on 05-04-2016. The following details regarding imports are submitted by him with the Customs authorities on return to India on 20-02-2017.

(a) 2 Music systems each worth ₹23,000.

(b) Jewellery brought by Mr. Devendra worth ₹49,000. (18 Grams)

Write a brief note on his eligibility with regard to duty free baggage allowances as per the Baggage Rules, 2016. (2+2=4)

Ans. 4 (d)(i):

Mr. Devendra is not eligible for exemption from jewellery as he did not stay abroad over one year. Music systems are dutiable but covered under General free allowance of ₹ 50,000. Two alternative solutions are possible as given below:

1. ₹	2. ₹
Music systems: 46,000	Music systems: 46,000
Jewellery 49,000	Less GFA 50,000
Total 95,000	Duty payable nil
Less GFA 50,000	Dutiable Jewellery 49,000
Dutiable baggage: 45,000	
Duty @ 36.05%= ₹ 16,223	Duty @ 36.05%=₹17,665

Note: Under Baggage Rules, 2016, GFA has been increased to 50,000 even for a visit to China

(ii) Write a brief note on the changes made by Finance Act, 2016 with reference to amount of Warehousing Bond and Security under Section 59 of Customs Act 1962.

Ans. 4 (d)(ii):

As amended, a bond equal to thrice the amount of duty has to be submitted with security. Earlier it was twice the amount. This extra amount is to meet the mandatory penalty which is 100% of the duty.

5. (a) M/s. Sudarshan and Sons is a small scale unit manufacturing plastic name plates for motor vehicles as per specifications provided to them by their customers, who are vehicle manufacturers. For purposes of classification under the first schedule to the Central Excise Tariff Act, 1985 the assesses has claimed that the plastic name plates are "parts and accessories of motor vehicles".

The Central Excise Department did not agree with the assesse and has proposed classification as "other plastic products". 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. Briefly explain, whether the stand taken by the department is correct in law? (4)

Ans. 5 (a):

The contention of the department is not valid. In Pragati Silicons (p) Ltd., 2007, the Supreme Court held that plastic name plates cannot be classified as "other plastic products" because essentially these are used as accessories of motor vehicles under chapter 87 of the Tariff Act, 1985. **As per Rule 3(a)** of Rules for interpretation, specific description shall be preferred to general description of goods.

(b) MXN Laboratories are in the business of testing of drug samples in India for the customers located in India and abroad. They receive testing charges in foreign currency for testing done for both categories of customers and have not paid service tax treating it as export of service.

Write a brief note whether the stand of the MXN Laboratories is correct? (4)

Ans. 5 (b):

To be an export of service, the conditions specified under Rule 6A of Service Tax Rules, 1994 have to be satisfied.

One of the conditions therein is that the service shall be provided outside India. Since their customers are also located in India, the service cannot be treated as export of service. Mere receipt of charges in foreign currency is not enough to claim export benefits.
It is therefore suggested to MXN Laboratories that they should pay service tax on the services provided in India as their services are subject to tax under Rule 8 of POPSR, 2012

Note: The students are expected to write the conditions given under Rule 6A to get full marks.

(c) The services provided by Mr. X was brought into service tax net tor the first time from 01-04-2016. Explain with a brief note the taxability of the following transactions:

(i) Service rendered on 23.03.2016 but invoice was issued and payment was received on 02-04-2016.

(ii) Service rendered on 02.04.2016 but invoice was issued and payment was received on 23-03-2016.

(iii) Payment received on 28.03.2016 but invoice was issued on 10-04-16 and service is yet to be provided. (4)

Ans. 5 (c):

Rule 5 of POTR, 2011 is applicable for the above 3 cases.

(i) Taxable: Reason: Payment was received after the service became taxable.

(ii) Non taxable: Reason: payment was received and invoice issued, both prior to the date when the service became taxable.

(iii) Non taxable: Reason: payment received before the service became taxable and invoice issued within 14 days of service became taxable.

(iv) **Caution:** Students should read the question carefully and then apply Rule5

(d) With reference to Customs Act, 1962, explain briefly the "relevant date" for determination of rate of duty leviable on the imported material content in the waste or refuse. (4)

Ans. 5 (d):

The question is vague, may be purposely drafted to test the depths of understanding.
In fact the question is from Section 65 of the Customs Act, read with the provisions under Section 15 of the Act.

When the imported goods are processed in the bonded warehouse, wastage/ scrap is likely to arise. Such a waste is chargeable to duty when it is cleared for home consumption. In such a case rate applicable to scrap shall be taken as if such scrap has been imported.

Relevant date for rate of duty for such scrap (other cases) shall be the rate applicable on the date of payment (Section 15).

6. (a) Discuss briefly whether following cases can be settled in the Settlement Commission under Central Excise Act, 1944,

(i) Case where appeal is pending in CESTAT against the order issued by the Commissioner of Central Excise as adjudicating authority.

(ii) Case where a notice has been issued involving evasion of ₹2.5 crore pending adjudication and the applicant fully accepts the duty liability.

(iii) Case where the applicant accepts additional duty liability of ₹ 50 lakhs but not filed any return during the relevant period. (4)

Ans. 6 (a):

(i) No. Cases pending with the Tribunal cannot be taken up by the Commission. (Proviso to Section 32E).

(ii) Yes can be taken up, since the case is above 3 lakh rupees.

(iii) Possible. The Commission may use its discretion in this case.

For details, please refer to the relevant provisions.

OR

XY Ltd. were issued with a demand notice of 50 lakhs which was confirmed by the adjudicating authority with penalty equal to duty demanded. Their appeal to Commissioner (Appeals) after payment of required pre deposit was dismissed. Now, they wish to file an appeal before CESTAT.

Write a brief note on the amount they are required to pay towards pre deposit for filing the appeal under Sec. 35F of Central Excise Act, 1944 before CESTAT : (1) if they dispute the order of the adjudicating authority demanding duty and penalty and (ii) if they accept the duty liability but dispute the imposition of equal penalty.

Ans. 6(a): (Alternative)

As per Sec. 35F of Central Excise Act, 1944 in case of first appeal, the pre-deposit is 7.5% of duty and not penalty.
It is 10% in case of second appeal
If only penalty is involved, in such a case it is 7.5% or 10% of the penalty as the case may be.
The above is a case of second appeal. In either of the cases above, 10% i.e., 50,000 is to be deposited.

Hence it is advised to dispute both duty and penalty for a deposit of ₹ 50,000/-.

(b) What is the time limit for issue of show cause notice to a person by the department for recovery of service tax not levied or short levied or not paid or short paid or erroneously refunded under 73 of Finance Act, 1994? Under what circumstances the department is not required to issue show cause notice to demand service tax under Sec. 73 for the pending dues?

Write a brief note with reference to the relevant provisions. (4)

Ans. 6 (b):

As per the latest amendments to Section 73, it is 30 months from the relevant date for normal cases. For fraud cases, it continues to be the same as 5 years.

Under Section 73 (1B), no show cause notice is necessary when the assesse specified the liability amount in self assessed returns filed but in arrears. In such cases, recovery proceedings can be initiated directly Under Section 87 without resorting to issue of SCN.

Note: answer is complete though brief.

(c) Write a brief note on the following: (2+2=4)

(i) What is the late fee payable for delay of 45 days in furnishing of returns under Sec. 70 of Finance Act, 1994?

(ii) Whether Goods Transport Agency is eligible for Small Service Provider Exemption? In what circumstances is the GTA liable to pay service tax?

Ans. 6(c):

(i) Rule 7C of Service Tax Rules read with section 70 of Finance Act, 1994 imposes late fee for late filing of returns;
Up to 30 days, it is ₹ 1000+ ₹100 per delay beyond 30 days subject to a maximum of ₹ 20,000.

For 45 days the late fee payable is ₹ 1000+1500= ₹2500.

(ii) Yes. Only on the turnover for which he is directly liable to pay service tax, he is required to pay tax subject to threshold limit of ₹ 10 lakh.
Services provided by him under reverse charge (where he is not paying service tax)
Are not included in his turnover for computing the threshold limit of ₹10,00,000

GTA is liable to pay service tax himself in those cases other than those falling under reverse charge as specified under Rule 2(1) (d) (B) of Service Tax Rules, 1994.
Moreover, where he provides services to a person in non-taxable territory, say, J & K, the GTA is directly liable.

(d) The objective of MEIS scheme is to neutralize the customs duties paid on inputs used in the export goods. Whether the statement is correct? What are the ineligible categories for MEIS scheme? Write a brief note with reference to the Foreign Trade Policy. (4)

Ans. 6 (d):
The objective of MEIS Scheme is to offset infrastructural inefficiencies and the associated costs of exporting products produced in India giving special emphasis on those which are of India's export interest and have the capability to generate employment and enhance India's competitiveness in the world market.

Ineligible Categories for MEIS Scheme:

(i) EOUs / EHTPs / BTPs/ STPs who are availing direct tax benefits / exemption.
(ii) Supplies made from DTA units to SEZ units
(iii) Export of imported goods covered under paragraph 2.46 of FTP;
(iv) Exports through trans-shipment, meaning thereby exports that are originating in third country but transshipped through India;
(v) Deemed Exports;
(vi) SEZ/EOU/EHTP/BPT/FTWZ products exported through DTA units;
(vii) Items, which are restricted or prohibited for export under Schedule-2 of Export Policy in ITC (HS), unless specifically notified in Appendix 3B.
(viii) Service Export. And others.

Note: The answer is lengthy. Student may skip some portion to save time.

7.(a) Explain briefly the provisions relating to Special Audit under Sec. 14A of the Central Excise Act. 1944. (4)

Ans. 7 (a):
Section 14A refers to valuation Audit under Excise.

- Valuation audit is conducted by a **CA/ CMA** under Sections 14 A where audit fee is to be borne by the Department.
- Valuation Audit has to be finished within 180 days.
- Undervaluation and complicated cases involving high stake will be the cause of valuation audit.
- Chief commissioner nominates the auditor for valuation audit

Please refer to Section 14A for further details.

(b) (i) The registration certificate may be revoked by the Deputy/Assistant Commissioner if no documents are received within 14 days of the date of filing the registration application. Write a brief note on the validity of the above statement with reference to provisions of the Finance Act. 1994.

Ans. Hint: The registration certificate may be revoked by the Deputy/Assistant Commissioner if no documents are received within ~~14~~ 15 days of the date of filing the registration application

(ii) Write short note on the provisions relating to filing of service tax return by input service distributor. (2+2=4)

Ans. Filing of service tax return by Input Service Distributor is governed by Rule 9 of Cenvat credit Rules, 2004.

Rule 9 (10): The input service distributor, shall furnish a half yearly return in such form as may be specified, by notification, by the Board, giving the details of credit received and distributed during the said half year to the jurisdictional Superintendent of Central Excise, not later than the last day of the month following the half year period.

Rule 9 (11): The input service distributor referred to in sub-rule (10), as the case may be, may submit a revised return to correct a mistake or omission within a period of sixty days from the date of submission of the return under sub-rule (10).

(c) An Assesse collected 1.5 crores as Service Tax in the financial Year2014-15 and ₹2.00 crores in the financial Year 2015-2016 but deposited only ₹ 1.00 crore during financial year 2014-15 and ₹ 1.00 crore during financial 2015-16 with the Government till 30-09-2016.He was arrested on 25-10-2016. The assesse did not dispute the liability to pay the service tax to the Government but he submitted that only the amount collected between 01-10-2015 to 31-03-2016 should be considered while calculating the amount for applying the penal provision u/s 89(1) (ii) of Finance Act 1994. Revenue contended that since failure to deposit Service Tax with Central Government 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 decided case law (if any) whether the contention of Assesse is maintainable or Revenue will succeed in its contention. If Revenue succeeds in its contention, what could be the term of imprisonment as per amended Section 89 of Finance Act 1994.Write a brief note with reference to the relevant provisions. (4)

Ans 7 (c):

The facts of the case are similar to the facts of the case of KANDRA RAMESH BABU, decided by Bombay High Court.
In this case the revenue won the case as the Bombay High Court in its highness held that it is a case of continuous offence. So there were arrears prior to amendment which can be considered to calculate the amount of arrears and the person can be arrested for non payment.

The service provider collected the tax from customers but did not deposit with the govt. only a small amount was deposited.

Term of imprisonment as per amended Section 89 of Finance Act 1994 : The imprisonment is maximum seven years and minimum 6 months if the amount collected but not deposited with government exceeds 2 crore rupees.

(d) CBZ Ltd. has exported following goods to Germany. Write a brief note with reasons whether any duty drawback is admissible under Section 75of the Customs Act, 1962 in each of the following cases:

Production	FOB value of Exported Goods Amount In ₹	Market Price of goods Amount in ₹	Duty drawback rate
A	4,30,000	3,50,000	30% OF FOB
B	6,00,000	7,00,000	3.50% OF FOB
C	1,20,000	60,000	0.75% OF FOB
D	3,00,000	3,50,000	1.50% OF FOB

Note:
(1) Imported value of Product B is ₹ 8,00,000
(2) Product D is manufactured out of duty free inputs.
(3) Working notes should form part of the answer.

Ans. 7(d):

Production	FOB value of Exported Goods Amount In Rs	Market Price of goods Amount in Rs	Duty drawback rate	Amount of Duty Drawback	Eligible Amount of Duty Drawback
A	4,30,000	3,50,000	30% OF FOB	129,000	105,000
B	6,00,000	7,00,000	3.50% OF FOB	nil	nil
C	1,20,000	60,000	0.75% OF FOB	900	900
D	3,00,000	3,50,000	1.50% OF FOB	nil	nil

Notes:
Production A: Maximum DBK is 1/3 of market price. (Rule 8A of DBK Rules)

Production B: Value of export goods (FOB)is less than value of imported goods

Production C: Minimum amount of drawback is 1% of FOB or above ₹ 500 per shipment. (Rule8)

Production D: No duty paid, no DBK can be claimed.

Comments:
(1) Paper is as usual lengthy, not as easy as expected.
(2) A lot of emphasis was on latest amendments.
(3) FTP was covered only for 4 marks

The author is Shri S.P. Rao Tax Consultant and Visiting Faculty of ICAI and ICSI, New Delhi. He is also faculty at Chandiok's AddApptive Learning Solutions (CALS) in the subject of Indirect Tax Laws of CA Final. He can be reached at email: idtx@calearning.in / spraoidt@yahoo.com and Mobile No. : 9811737205

Disclaimer

Students may note that these solutions have been prepared by the author to guide and assist the students of CA Final. This represents the personal view and opinion of the author. Students are welcome to share their feedback and get clarifications.