

PAPER – 8: INDIRECT TAX LAWS

Question No. 1 is compulsory

Answer any **five** questions from the remaining six questions.

Question 1

- (a) Mr. Premkumar is planning to start a new unit for manufacture of electrical switches from 01-04-2016. He wants your advice whether it is beneficial or not to avail exemption under Notification No. 8/2003 CE as amended for the year 2016-17. He plans to manufacture and sell one lakh switches under the brand name 'Sketches' registered in his name during 2016-17 and he fixes the selling price of switches at ₹150 per switch inclusive of all taxes except VAT, being the market price of similar switches. He also expects to receive ₹ 25 lakhs towards conversion charges for job work to be undertaken under Notification No. 214/86. The duty/service tax involved on proposed purchases for 2016-17 is as follows:
- Excise duty on raw material purchases ₹ 9,37,500
- Service tax on input services (including KKC and SBC) ₹ 15,000
- Excise Duty on capital goods ₹ 1,25,000
- Advise Mr. Premkumar. Assume the rate of excise duty as ₹ 12.5%. **(5 Marks)**
- (b) (i) How the tax liability on composite and mixed supplies is determined under GST law? Answer in single sentence each. **(2 Marks)**
- (ii) Define 'intra State supply' and 'inter-State supply' under GST law. Is it correct to say that inter-State supply attracts both CGST and SGST? **(3 Marks)**
- (c) (i) Explain the concept of 'Dual GST'. **(2 Marks)**
- (ii) Bring out the salient features of cross utilization of Input Tax Credit (ITC) under the GST Law? **(3 Marks)**
- (d) Mehul imported certain goods in April, 2017. An 'into Bond' bill of entry was presented on 15-04-2017 and goods were cleared from the port for warehousing. Assessable value on that date was US \$ 60,000. The order permitting the deposit of goods in warehouse for 4 months was issued on 22-04-2017. Mehul deposited goods in warehouse on the same day but did not clear the imported goods within the warehousing period which got over on 22-08-2017. A notice was issued under section 72 of the Customs Act, 1962 demanding duty, interest and penalty. Mehul cleared the goods on 15-09-2017. Compute the duty and interest payable by Mehul, while removing the goods from the warehouse.

The Suggested Answers for Paper 8: Indirect Tax Laws are based on the provisions as amended by the Finance Act, 2016 and notifications/circulars issued up to 31.05.2017 which were relevant for November, 2017 examinations.

Following information is made available.

	Particulars	15-04-2017	22-08-2017	15-09-2017
(i)	Rate of Exchange per US\$ as notified by CBEC	₹ 65	₹ 64.50	₹ 64
(ii)	Rate of Basic Customs Duty (advalorem)	12%	10%	8%

Additional duties of Customs leviable under section 3(1) and 3(5) of the Customs Tariff Act are exempt. **(5 Marks)**

Answer

- (a) **Option-I: SSI exemption is availed for Financial Year 2016-17:** Since assessee is manufacturing goods in his own brand name, he is eligible for SSI exemption under Notification No. 08/2003 CE dated 01.03.2003 up-to a turnover of ₹ 150 lakh. **Therefore, excise duty payable in cash is Nil.**

[Clearances for job work under Notification No. 214/86 are excluded from ₹ 150 lakh turnover]

Option-II: SSI exemption is not availed for Financial Year 2016-17

Particulars	₹
Computation of excise duty on goods sold	
Assessable value for 1 lakh switches (rounded off) = [₹ 150 × 100/112.5] × 1,00,000 [Note-1]	1,33,33,333
Excise duty @ 12.5% (rounded off) [A]	16,66,667
Computation of CENVAT credit available for set off	
Excise duty on capital goods [Note-2]	1,25,000
Add: Credit of excise duty on raw material availed	9,37,500
Add: Credit of service tax availed [₹ 15,000 × 14/15] [Note-3]	14,000
CENVAT credit available for set off [B]	10,76,500
Excise duty payable in cash = [A] – [B]	5,90,167

Assessee -Prem kumar is advised to go for option-I as there is a loss of ₹ 5,90,167 (duty payable in cash) in option II.

Notes:-

- Excise duty has been excluded from the price of switches fixed at ₹ 150 per switch [including all duties]. Job charges does not attract any duty liability. Hence ignored.
- Since assessee is eligible for SSI exemption, full credit of capital goods is available in year of purchase, even though assessee is not availing said exemption.

3. SBC is not CENVATable and credit of KKC is not available to manufacturer.

- (b) (i) A composite supply comprising of two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply vide section 8(a) of CGST Act, 2017.

A mixed supply comprising of two or more supplies shall be treated as supply of that particular supply that attracts highest rate of tax in terms of section 8(b) of CGST Act, 2017.

- (ii) Where the location of the supplier and the place of supply of goods or services are in the same State/Union territory, it is treated as **intra-State supply** of goods or services respectively.

Where the location of the supplier and the place of supply of goods or services are in (i) two different States or (ii) two different Union Territories or (iii) a State and a Union territory, it is treated as **inter-State supply** of goods or services respectively.

No, it is not correct to say that inter-State supply attracts both CGST and SGST as inter-State supply attracts IGST. However, IGST is the sum total of CGST and SGST/UTGST.

- (c) (i) Under dual GST model, GST is imposed concurrently by the Centre and States, i.e. Centre and States simultaneously tax goods and services. Centre has the power to levy GST on inter-state supplies of goods and/or services.
- (ii) (i) CGST credit cannot be utilized for payment of SGST/UTGST.
(ii) SGST/UTGST credit cannot be utilized for payment of CGST.
(iii) Credit of IGST can be utilized for the payment of CGST/SGST/UTGST and vice versa.

- (d) **Computation of import duty payable**

Particulars	Amount (US \$)
Assessable value	60,000
	Amount (₹)
Assessable value in Indian currency (US \$ 60,000 x ₹ 65) [Note-1]	39,00,000
Customs duty @ 10% [Note-2]	3,90,000
Add: Education Cess @ 2%	7,800
Add: Secondary and Higher Education Cess @ 1%	<u>3,900</u>
Total customs duty payable	<u>4,01,700</u>

Computation of interest payable under section 61(2) of the Customs Act, 1962

Interest payable = ₹ 9245 (4,01,700 x 15% x 56/365) (rounded off) [Note3]

Notes:-

1. Rate of exchange on the date of presentation of into-bond bill of entry is considered while computing assessable value vide third proviso to section 14(1) of the Customs Act, 1962.
2. Goods not removed within permissible warehousing period are deemed to be improperly removed on the last day of expiry of warehousing period vide *Kesoram Rayon v. CC 1996 (86) ELT 464 (SC)*. Thus, the rate of duty prevalent on last day on which goods should have been removed is considered while computing customs duty.
3. As per section 60(1) of the Customs Act, 1962, interest is payable @ 15% p.a. (as notified under section 47 of the Customs Act, 1962 vide *Notification No. 28/2002 Cus (NT) dated 13.05.2002*) on duty payable at the time of clearance of the goods from warehouse, from the expiry of 90 days from date of order for warehousing (22.07.2017) till the date of payment of duty on such goods (15.09.2017). Thus, no. of days for which interest shall be payable are 56 [10 days of July + 31 days of August + 15 days of September].

Question 2

- (a) ABC Ltd. manufactured Product X on job work basis for Suvaidha Ltd. with the condition that only raw material will be supplied by Suvaidha Ltd. and all other expenses are to be borne by ABC Ltd. and the job charges will be payable at ₹ 150 per unit of Product X. The details of transactions for November, 2016 are as follows:

Cost of Raw material (1500 units including excise duty at 12.5%)	₹ 16,87,500
Freight inward for moving raw material to ABC Ltd.	₹ 15,000
Consumables used by ABC Ltd., for job work	₹ 1,00,000
Calibration charges paid by ABC Ltd., for the goods manufactured (excluding service tax)	₹ 12,500
Quantity of Product X manufactured	1500 units

Find the assessable value per unit of Product X under Central Excise (Determination of Price of Excisable Goods) Rules, 2000 for the purpose of payment of excise duty (i) if Suvaidha Ltd., uses Product X for further manufacture (ii) if Product X is sold ₹ 1,200 per unit from the premises of ABC Ltd. by Suvaidha Ltd. **(4 Marks)**

- (b) Compute the service tax liability wherever applicable.

Ignore exemption for small service provider under Notification No. 33/2012 dated 20-06-2012 in all cases. Assume the rate of service tax as 15% (including SBC and KKC cess). Service value is exclusive of service tax.

Notes should form part of your answer.

Sl. No.	Nature of Service	Consideration in Lakh (₹)
1.	Vigyan Kendra has agreed to render training on farm practices to trainers of trainers, who in turn train other trainers - Advance received.	8.00
2.	Textora, a registered service provider is liable to Service Tax on one of its services, for the first time on 13-04-2017. Consideration is received on 2-05-2017. However, invoice is raised on 18-05-2017.	9.20
3.	Rakesh is on the Arbitral Tribunal and is requested to provide services to another Arbitral Tribunal for a service consideration	14.00
4.	Vigyan Kendra has provided research methodology training to students of a registered education institution. It has agreed to receive service consideration from the institution, against which an invoice has been raised.	10.00
5.	An Employee of Elica sports Limited, provides service as a player to a Franchisee Cricket team to participate in a tournament.	25.00
6.	Anitha receives consideration, from Realtors Inc., while performing classical dance to promote and endorse their marketing efforts in selling flats	0.80
7.	Pruthvi Developers receives consideration from its client in the course of construction of residential complex. (i) Carpet area - 1800 sq.ft. (ii) Amount charged being	125.00
8.	Nethravathi exchanged \$ 1,28,000 and obtained in Indian Rupees (RBI reference rate was not available for the day)	80.00

(8 Marks)

- (c) Pyramid Expo Ltd. has exported some goods by air. The FOB price of goods exported is US \$ 50,000. The shipping bill was presented electronically on 7-3-2017 and Let Export Order is passed by proper officer on 19-4-2017. The rate of exchange notified by CBEC on 7-3-2017 and 19-4-2017 are 1 US \$ = ₹ 65 and 1 US \$ = ₹ 64 respectively. Compute the export duty payable by Pyramid Expo with the help of following details provided.

Particulars	Date	Rate of Duty
Presentation of shipping bill	7-3-2017	12%
Let Export order	19-4-2017	10%

(4 Marks)

Answer**(a) Computation of assessable value per unit of Product X**

	Particulars	₹
(i)	If Suvaiddha Ltd. uses Product X for further manufacture:	
	Cost of raw materials ₹ 16,87,500	
	Less: Central excise duty ($₹16,87,500 \times 12.5/112.5$) <u>₹ 1,87,500</u>	15,00,000
	[presuming that CENVAT credit of the excise duty paid on the raw materials is available.]	
	Add: Freight inward	15,000
	Add: Job charges ($₹ 150 \times 1,500$ units) [Note-1]	<u>2,25,000</u>
	Assessable Value of 1,500 units of Product X [Note-2]	<u>17,40,000</u>
	Assessable Value per unit [$₹ 17,40,000/1,500$]	1,160
(ii)	If Product X is sold from the premises of job-worker - ABC Ltd.:	1,200
	Assessable value per unit of product X is the transaction value of such goods sold by the principal manufacturer (Suvaiddha Ltd.) vide rule 10A(i) of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.	

Notes:

- (1) Cost of consumables and calibration charges paid by ABC Ltd. are already included in the job charges and hence need not be included separately.
- (2) The assessable value will be landed cost of raw material at the premises of job worker plus the job charges.

(b) Computation of service tax liability

Sl. No.	Particulars	Value of taxable service [₹ in lakh]	Service tax @ 15% (including SBC & KKC) [₹ in lakh]
1.	Advance received for training on farm practices to trainers (Note-1)	8.00	1.2
2.	Service taxable for the first time (Note-2)	9.20	1.38
3.	Services provided by an Arbitral Tribunal to another Arbitral Tribunal (Note-3)	14.00	2.1

4.	Research training to students of registered education institution (Note-4)	10.00	1.5
5.	Service provided as a player to a Franchisee Cricket team. (Note-5)	25.00	3.75
6.	Consideration received for performing classical dance to promote marketing efforts in selling flats of Realtors Inc. (Note-6)	0.80	0.12
7.	Construction of residential complex (Note-7)	37.50 (125.00 x 30%)	5.625
8.	Exchange of foreign currency (Note-8)	0.8	0.12

Notes:-

1. Agricultural extension services are covered in negative list of services under section 66D(d)(vi) of the Finance Act, 1994. However, as per section 65B(4), agricultural extension services involves training of farmers and not trainers. Thus, given service is not covered in the negative list and hence taxable. Further, explanation to rule 3 of Point of Taxation Rules, 2011 provides that advances are taxable on the date of their receipt.
2. Said service is taxable in accordance with provisions of rule 5 of Point of Taxation Rules, 2011, as both issuance of invoice and receipt of payment happen after 13.04.2017.
3. Services provided by an Arbitral Tribunal to another Arbitral Tribunal are taxable as exemption earlier granted vide Mega Exemption Notification No. 25/2012 ST dated 20.06.2012 has been withdrawn. It has been assumed that consideration is paid by service recipient, being a business entity whose turnover in the preceding financial year exceeds rupees ten lakhs.
4. Research training to students of registered education institution is taxable as only specified services provided to educational institutions are exempt vide Mega Exemption Notification No. 25/2012 ST dated 20.06.2012 and research methodology is not among them.
5. Service provided as a player to a Franchisee Cricket team is taxable as services provided by an individual player to only a recognized sports body for participation in a sporting event organized by a recognized sports body are exempt vide Mega Exemption Notification No. 25/2012 ST dated 20.06.2012.
6. Classical dance performance for consideration upto ₹ 1,50,000 is exempt vide Mega Exemption Notification, but such services provided as a brand ambassador are excluded. Thus, the said service is taxable.

7. As per section 66E(b) of the Finance Act, 1994, construction of residential complex is taxable. Abatement of 70% is claimed under *Notification No. 26/2012 ST dated 20.06.2012* assuming that CENVAT credit of inputs has not been taken and amount charged includes value of land.
8. Exchange of foreign currency is taxable under explanation 2 to section 65B(44) of the Finance Act, 1994. As per rule 2B of the Service Tax (Determination of Value) Rules, where 2006, value in the present case = ₹ 80 lakh × 1% = ₹ 0.8 lakh, where RBI reference rate of a currency is not available.

(c) **Computation of export duty**

Particulars	Amount (US \$)
Assessable Value	50,000
	Amount (₹)
Assessable Value = US \$ 50,000 × ₹ 65	32,50,000
Export duty @ 10%	3,25,000

Notes:-

1. The transaction value i.e., FOB price of export goods is considered as assessable value in terms of section 14(1) of the Customs Act, 1962.
2. As per third proviso to section 14(1) of the Customs Act, 1962, assessable value has to be calculated with reference to the rate of exchange notified by CBEC on date of presentation of shipping bill of export.
3. The rate of duty prevalent on the date of let export order is considered for computing export duty vide section 16(1)(a) of the Customs Act, 1962.

Question 3

- (a) Assessee Hexawire Ltd. claimed benefit of SSI exemption notification under Central Excise Act on clearances made using brand name of a foreign company assigned to it under an agreement, with an exclusive right to use in India. Revenue rejected the claim. Discuss the validity of Revenue's contention with reference to decided case, if any. **(4 Marks)**
- (b) Traintree Ltd., filed appeal before Commissioner (Appeals) on 16-06-2016 (15-06-2016 being a public holiday) against the adjudication order demanding service tax which was received by them on 15-03-2016 with request for condonation of delay in filing the appeal under section 85 of Finance Act, 1994. The appeal was dismissed by the Commissioner (Appeals) on the ground that appeal was filed beyond the condonable time limit. Examine whether the stand of the Commissioner (Appeals) is correct in view of the decided case law on the subject. **(4 Marks)**

- (c) Zeus Technologies Ltd. have manufacturing operations in the SEZ. They procured certain scientific and technical consultancy services to undertake manufacturing activity. The services were obtained before commencement of manufacturing activity. Later, they applied for refund of service tax paid on such input services under relevant notification. The department denied the refund since the input services were not part of SEZ operations for which the assessee was given permission for. Examine the tenability of the contention of the Revenue with reference to a decided case, if any. **(4 Marks)**
- (d) Nateshan filed an application for provisional release of seized goods under section 110A of the Customs Act, 1962. The order for provisional release of goods was issued but before provisional release was effected, maximum period for issue of show cause notice elapsed. Nateshan sought unconditional release of goods on the ground of non-issue of show cause notice. The department contended that it was mandatory for the importer to comply with the order of provisional release, and the importer could not seek remedy by praying for return of goods unconditionally as per section 110(2) and section 124 of the Act as order for provisional release had already been made. Discuss the correctness of the stand taken by the department as per the provisions of Customs Act decided case law, if any. **(4 Marks)**

Answer

- (a) SSI exemption is not available in respect of clearances which bear a brand name of another person in terms of Notification No. 8/2003 CE dated 01.03.2003. The issue in the given case is that whether the use of brand name by the assessee assigned to it by a foreign company with right to use the same exclusively in India, amounts to using the brand name of another person.

The facts of the given case are similar to a case of *CCE v. Otto Bilz (India) Pvt. Ltd* 2015 (324) ELT 430 (SC) decided by the Supreme Court. In that case, the Supreme Court observed that owing to the assignment of the brand name in favour of the assessee under an agreement by the foreign company, the assessee was using the trade mark in its own right as its own trade mark and therefore, it could not be said that it was using the trade mark of another person. Hence, assessee was entitled to SSI exemption.

Thus, in the given case, rejection of SSI exemption by Revenue is not valid.

- (b) Sub-section (3A) of section 85 of the Finance Act, 1994 and proviso to said sub-section provides that the limitation period for filing an appeal with Commissioner (Appeals) is 2 months and that delay in filing said appeal can be condoned within a further period of 1 month.

The facts of the given case are similar to a case of *CCus & CEx. v. Ashok Kumar Tiwari* 2015 (37) STR 727 (All.) decided by the High Court wherein the High Court made the following observations:

- (i) Since limitation period and period to condone the delay are stipulated in section 85 in terms of 'months', such a stipulation can only mean a calendar month.

- (ii) Section 3(35) of the General Clauses Act, 1897 also defines the expression “month” to mean a month reckoned according to the British calendar.
- (iii) Further, while computing limitation period, the date of receipt of order is to be excluded vide section 9 of General Clauses Act, 1897. Since original limitation period and period for condoning delay in filing appeal expired on a public holiday, assessee filed the appeal on next working day which was within the stipulated time.

Applying the above decision to the given case, the original limitation period [2 months] and period for condoning delay in filing appeal [1 month] expired on 15.06.2016, which was a public holiday. Thus, the appeal filed by Taintree Ltd. on next day i.e., 16.06.2016 is filed within the stipulated time and the Commissioner (Appeals) has the jurisdiction to condone the delay in filing of appeal. Hence, the stand of Commissioner (Appeals) is not correct.

- (c) The facts of the given case are similar to a case of *Commissioner of Service Tax v. Zydus Technologies Limited 2014 (35) STR 515 (Guj.)* decided by the High Court wherein the High Court held that the assessee shall be entitled to refund; as though the operations of the assessee did not reach the commercial production stage, the input services of scientific and technical consultancy procured by them were in relation to the manufacture which would take place at a later date.

Services rendered for a period prior to actual manufacture of final product is commercial activity/production and assessee is entitled to exemption under *Notification No. 12/2013 ST dated 01.07.2013* by way of refund claimed.

In view of the aforesaid decision, the contention of the Revenue is not tenable.

- (d) The High Court in a case of *Akanksha Syntex (P) Ltd. v Union of India 2014 (300) ELT 49 (P&H)* has addressed the issue that whether unconditional release of goods can be claimed under section 110(2) in a case where goods have been ordered to be released provisionally under section 110A of the Customs Act, 1962.

It made the following significant observations in that case:

- (i) Section 110(2) of the Customs Act, 1962 strikes a balance between the Revenue's power of seizure of goods and an individual's right to get the seized goods released by prescribing a limitation period of 6 months from the date of seizure if no show cause notice (SCN) within that period has been issued under section 124(a) of the Customs Act, 1962 for confiscation of the goods.
- (ii) Any order for provisional release shall not take away the right of the assessee to get his seized goods released where SCN is not issued under section 124 within 6 months [or extended period].
- (iii) The remedy of provisional release is independent of remedy of claiming unconditional release under section 110(2) of the Customs Act, 1962.

Therefore, in view of the afore-mentioned observations of the High Court, the stand taken by the Department is not correct.

Alternative Answer

However, Bombay High Court took a contrary view in case of *Jayant Hansraj Shah v. Union of India and Others* 2008 (229) E.L.T. 339 (Bom.). It rejected the plea of the petitioner of unconditional release of the seized goods, with the following observations:-

- (i) It is only in the case where no provisional order is passed for release of the seized goods and if no notice is issued under section 124(a) for confiscation of the goods, will the section 110(2) apply and the respondent will be bound to release the goods.
- (ii) Any other reading of the section would mean that a person whose goods are seized would seek a provisional release of the goods, get an order of provisional release, allow the authorities to proceed to believe on that basis that such person seeks to release the goods provisionally and on the expiry of the period of six months if notice is not issued under section 124(a) then contend that the terms for provisional release of the goods are no longer binding as the period of six months has expired and no notice has been served.
- (iii) The period of notice is only when the respondents seek to confiscate the goods. If there be a provisional release order it is not within the jurisdiction of the respondents to proceed to issue the notice under section 124. Therefore, as procedure for confiscation could not have been initiated pursuant to the order of provisional release the contention that the goods should be released has to be rejected.

Question 4

- (a) What is the due date for issue of notice to demand excise duty in normal (non-fraud) cases under Section 11A of Central Excise Act, 1944 and in following cases as per the amended provisions:-

- (i) A central excise assessee has filed revised return on 29-04-17 in place of return filed for the month of March, 2017.
- (ii) CENVAT credit was wrongly availed on 31-03-2016 and return under Rule 9(7) of CENVAT Credit Rules, 2004 showing availment was filed on the due date. **(4 Marks)**

- (b) Moksha Bank Ltd. is engaged in providing services, which are both taxable and exempted. You have the following information at your disposal:

Value of different services of the bank for the year ended 31-03-2017

Particulars	Amount in (₹)
Value of Exempted services	2,00,000
Value of Taxable services	8,00,000

CENVAT Credit on input services for the month of April, 2017	60,000
CENVAT Credit of ₹ 60,000 includes service tax paid on input services exclusively used for provision of exempted services	20,000
CENVAT Credit of ₹ 60,000 includes service tax paid on input services exclusively used for provision of taxable services	10,000

The bank wants to determine the CENVAT credit for set-off against output tax payable, during April 2017, under Rule 6 (3)(ii) and under Rule 6(3B) of CENVAT Credit Rules, 2004 and avail the option more beneficial to it. Determine which of the two options is more beneficial to the bank. **(4 Marks)**

- (c) Magna Insurance, carrying on life insurance business provides single premium annuity (insurance) policies where the amount allocated for investment / savings is not intimated to the policy-holders. It has opted for composition rate of tax with respect to such annuity policies and the single premium charged from various policy holders was ₹ 18,00,000 during the year 2016-17. Determine the service tax liability including cess under amended provisions with suitable notes. **(4 Marks)**
- (d) (i) Sankesh collaborators, has deposited imported goods in a private warehouse. Proper officer intends to supervise and have physical control over such goods and expects the licensee not to allow removal of goods without his permission. To what extent intention of the proper officer is correct? **(2 Marks)**
- (ii) Sankesh collaborators, has wholly transferred ownership of warehoused goods to another person and is seeking cancellation of bond executed under section 59 of the Customs Act, 1962. Explain whether this is permissible and mention conditions to be imposed, if any. **(2 Marks)**

Answer

- (a) As per section 11A, show cause notice has to be issued within two years from the relevant date.
- (i) In case of submission of revised return, the relevant date is the date of such submission i.e., 29.04.2017 under rule 12 of the Central Excise Rules, 2002.
Therefore, the last date for issuance of show cause notice will be 29.04.2019 in non-fraud case.
- (ii) Rule 14(1) of the CENVAT Credit Rules, 2004 stipulates that wrongly availed CENVAT credit is recovered under section 11A of the Central Excise Act, 1944. Since clauses (i) to (vi) of explanation 1(b) to section 11A do not provide any specific relevant date in case of wrongful availment of CENVAT credit, the same needs to be determined by general legal principles and logical interpretation of the provisions. Thus, either the last day of the month in which the credit is wrongly availed or the date of offence seem to be the most logical date to be considered as the relevant

date. The last date for issuance of show cause notice will be 31.03.2018 in non-fraud case.

(b) Option I – Rule 6(3)(ii) of the CENVAT Credit Rules, 2004

Computation of CENVAT credit available for set off	
Particulars	₹
CENVAT credit on input services	60,000
Less: CENVAT credit paid on input services used exclusively for provision of exempted services	(20,000)
Less: Reversal under rule 6(3)(ii) [Refer note below]	<u>(6,000)</u>
CENVAT credit available for set off	<u>34,000</u>
Note: Amount of reversal under rule 6(3)(ii)	
= Common credit $\times \frac{\text{Exempted services provided}}{\text{Total services provided}}$	
= ₹ 30,000 $[60,000 - 20,000 - 10,000] \times \frac{2,00,000}{2,00,000 + 8,00,000} = ₹ 6,000$	

Option II – Rule 6(3B) of the CENVAT Credit Rules, 2004

Computation of CENVAT credit available for set off

Rule 6(3B) of the CENVAT Credit Rules, 2004 provides an option to banks and financial institutions to pay for every month an amount equal to 50% of the **CENVAT credit availed** on inputs and input services in that month.

Thus, CENVAT credit available for set off by Moksha Bank Ltd. is ₹ 60,000 $\times$ 50% = ₹ 30,000.

Since higher amount of CENVAT credit is available for set off under rule 6(3)(ii), the same is beneficial for the Moksha Bank Ltd.

- (c)** Under the amended provisions, the composition rate of tax in case of single premium annuity (insurance) policies where the amount allocated for investment/savings is not intimated to the policy holder at the time of providing of service is **1.4%** of the single premium charged from the policy holder in terms of sub-rule (7A) of rule 6 of the Service Tax Rules, 1994 .

	Amount (₹)
The amount of service tax liability would be computed as under:	
Service tax = [₹ 18,00,000 $\times$ 1.4%]	25,200
Add: KKC = ₹ 25,200 $\times$ 0.5/14	900

Add: SBC = ₹ 25,200 × 0.5/14	900
Total service tax liability	27,000

- (d) (i) The warehouses are now under record based controls and not under the physical control (under lock of customs) of the customs officer. The licensee of a private warehouse has the custody and control of the warehouse and goods kept therein. However, a class of warehouses, known as special warehouses under section 58A of the Customs Act, 1962, is still under customs control in view of omission of section 62 of the Customs Act, 1962, by the Finance Act, 2016. Thus, the intention of the proper officer is not fully correct.
- (ii) In the given case, Sankesh Collaborators can cancel the bond executed by it provided the transferee executes the bond under section 59 for an amount equal to thrice the duty amount involved and furnish prescribed security vide section 59 of the Customs Act, 1962.

Question 5

- (a) *Mifil containers paid duty as per its invoice during clearance of manufactured goods to one of its customers, Ropeway Enterprises. Subsequently, the manufacturer had to reduce price on account of quality issues but failed to proportionately reduce duty paid on the invoice. During audit the proper officer has directed Ropeway enterprises, who has availed CENVAT credit based on the invoice, to reverse the proportionate value of credits so taken. You are requested to advise Ropeway Enterprises as to whether it has to comply with the directions or not.* **(4 Marks)**
- (b) (i) *Whether the following transactions can be treated as 'service' under Finance Act, 1994? Explain with reference to relevant provisions.*
- (1) *Sale of newly constructed ready to occupy flats for ₹ 1.5 crore per flat (including undivided share of land) after the issue of completion certificate by the competent authority.*
 - (2) *Sale of lottery tickets by lottery distributor of State Governments.*
 - (3) *Manufacture of alcoholic liquor for human consumption on job work basis.*
 - (4) *Sale of mobile SIM cards in bulk by distributor of mobile telephone operator.*
 - (5) *Transfer of unsecured loan for consideration.*
 - (6) *Sale of land.* **(6 Marks)**
- (ii) *Briefly explain Declared services with reference to the Finance Act, 1994.* **(2 Marks)**
- (c) *Customs Department has established improper exportation of goods against District Dover Ltd. The goods are liable for confiscation under section 113 of the Customs Act, 1962, and company is also liable to pay penalty under section 114 of the Act. Following further information is available for your consideration:*

It declares the value of the prohibited goods, meant to be exported as ₹ 2 lakhs.

Value as determined under the Customs Act, 1962, is ₹ 2.50 Lakhs.

It has also exported other goods which are neither prohibited nor dutiable but action of the company amounts to improper exportation, Additional information is as follows:

Value as declared by the exporter is ₹ 1.20 lakhs

Value as determined under the Customs Act, 1962 is ₹ 0.80 lakhs

Determine the maximum penalty that can be imposed under each of the above circumstances. State the statutory provisions also briefly. (4 Marks)

Answer

- (a) Where a manufacturer avails credit of the amount of duty paid by supplier as reflected in the excise invoice, but subsequently the supplier allows some trade discount or reduces the price, without reducing the duty paid by him, entire amount of duty paid by the manufacturer, as shown in invoice would be available as credit, provided such supplier does not file/claim refund on account of reduction in price. This is because credit of duty "paid" by the supplier and not duty "payable" by the supplier, is allowed under rule 3 of the CENVAT Credit Rules, 2004. However, if the duty paid is also reduced along with reduction in price, reduced excise duty would only be available as credit as clarified by *Circular No. 877/15/2008-CX dated 17.11.2008*.

In view of the foregoing discussion, if Mifil Containers does not file any refund claim for excess excise duty paid by it, Ropeway Enterprises need not reverse the proportionate value of credit.

- (b) (i) (1) Construction of a complex or building intended for sale to a buyer where the entire consideration is received after issuance of completion certificate by the competent authority is not a declared service vide section 66E(b) of Finance Act, 1994 and hence, falls outside the scope of definition of service under section 65B(44) of Finance Act, 1994.
- (2) As per explanation 2(ii)(a) to section 65B(44) of the Finance Act, 1994, "transaction in money or actionable claim" which is excluded from the definition of service does not include, *inter alia*, activity carried out by a lottery distributor on behalf of the State Government in relation to selling of lottery. Thus, the same falls within the scope of definition of service under Finance Act, 1994.
- (3) Manufacture of alcoholic liquor for human consumption on job work basis falls within the ambit of definition of service under Finance Act, 1994. Further, such services are also specifically excluded from the negative list of services under section 66D(f) of Finance Act, 1994.
- (4) Sale of mobile SIM cards in bulk by distributor of mobile telephone operator falls within the definition of service and thus, is a service under Finance Act, 1994.

However, the same is exempt from payment of service tax vide Mega Exemption Notification No. 25/2012 ST dated 20.06.2012.

- (5) Unsecured loan is an actionable claim and the definition of service excludes an actionable claim. Thus, transfer of unsecured loan falls outside the scope of definition of service under section 65B(44)(a)(iii) of Finance Act. However, if a service fee or processing fee or any other charge is collected in the course of transfer or assignment of a debt then the same would be chargeable to service tax.
- (6) Transfer of title in immovable property by way of sale is excluded from the definition of service under section 65B(44)(a)(i) of Finance Act, 1994.
- (ii) As per section 65B(22) of Finance Act, 1994, declared service means any activity carried out by a person for another person for consideration and declared as such under section 66E of Finance Act, 1994.

Few examples of declared services are –

- (a) renting of immovable property,
- (b) Construction service
- (c) temporary transfer or permitting the use or enjoyment of any intellectual property right;
- (d) development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software;
- (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;
- (f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods;
- (g) activities in relation to delivery of goods on hire purchase or any system of payment by instalments;
- (h) service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity.
- (i) assignment by the Government of the right to use the radio-frequency spectrum and subsequent transfers thereof
- (j) service portion in the execution of works contract.

Note: Students may give any two examples of declared services enlisted under section 66E of the Finance Act, 1994.

- (c) As per section 114 of the Customs Act, 1962, maximum penalty payable on improper exportation of:

- (i) prohibited goods is three times the value of the goods as declared by the exporter or the value as determined under the Customs Act, 1962, whichever is the greater. Therefore, the maximum penalty payable is ₹ 7.5 lakh [₹ 6 lakh (3 x ₹ 2 lakh) or ₹ 7.5 lakh (3 x ₹ 2.5 lakh), whichever is greater].
- (ii) any other goods is the value of the goods as declared by the exporter or the value as determined under the Customs Act, 1962 whichever is the greater. Therefore, the maximum penalty payable is ₹ 1.2 lakh [₹ 1.2 lakh or ₹ 0.8 lakh, whichever is greater].

Question 6

- (a) (i) *Stock lying on the shop-floor of Nato Dynamics has been transferred without physical removal to a new owner. Since there is actual transfer of ownership, the department is insisting on payment of duty. Comment on the action taken by the department in the present case. (2 Marks)*
- (ii) *There is a change in the constitution of the manufacturer, who is unaware of the consequences of such change on the existing excise registration. Advise the manufacturer suitably on the course of action to be taken by him. (2 Marks)*
- (b) *Maruthi OPC failed to pay service tax amounting to ₹ 12 lakhs for March, 2016 before due date but paid the same on 06-06-16. Out of ₹ 12 lakhs, ₹ 10 lakhs was collected from their customers and balance is pending realization. Work out the interest payable by them for delay in payment of service tax. The turnover of the company was ₹ 58 lakhs during 2014-15. (4 Marks)*
- (c) *Find the service tax payable in the following independent cases:*
 - (i) *Licence fee of ₹ One crore payable for mining rights to State Government by a business entity for May 2016 on 01-06-2016, but paid on 01-06-2017 along with interest of ₹ 15 lakhs.*
 - (ii) *Charges amounting to ₹ 25 lakhs received by a private testing agency for testing of LPG cylinders to comply with statutory requirement.*
 - (iii) *Rental income received by a local body for leasing its commercial complex to postal department for ₹ 25000.*
 - (iv) *Spectrum user charges of ₹ 20 crores per month payable to Government for right to use radio frequency spectrum towards monthly instalment of upfront fee for March 2016 and April 2016. (4 x 1= 4 Marks)*
- (d) *Answer any **two** out of four questions below.*
 - (i) *Smuggled goods were seized from Mr. Das by Customs authorities in Airport on his arrival from Dubai. During adjudication proceedings, he claimed before the adjudicating authority exemption under a Customs Notification applicable for imported goods. Examine whether benefit of exemption notification available for imported goods can be extended to smuggled goods. Answer in two sentences. (2 Marks)*

- (ii) A star export house wishes to import goods which are exempt under Foreign Trade Policy (FTP) subject to fulfilment of export obligation. However, Customs Notification giving effect to the FTP is yet to be issued. Can the export house import the goods claiming exemption under FTP in the absence of Customs Notification? **(2 Marks)**
- (iii) Briefly discuss the conditions to be satisfied for remission of duty in case of volatile goods under the provisions of the Customs Act, 1962. **(2 Marks)**
- (iv) Enumerate the goods specified as volatile for the purposes of remission of duty under the provisions of Customs Act, 1962. **(2 Marks)**

Answer

- (a) (i) As per rule 4(1) of Central Excise Rules, 2002, excisable goods cannot be removed from the place of manufacture/warehouse without payment of duty.

However, change of ownership does not mean 'removal' of goods as removal means physical shifting of goods. Thus, when stock lying in the factory is transferred to new owners without any physical removal of goods from the factory, no duty is payable. [*Indorama Synthetics (I) Ltd. v. CCE 2005 (190) E.L.T. 193 (Tri. - Mumbai)*].

- (ii) As per Notification No. 35/2001 CE (NT) dated 26.06.2001 as amended, if the manufacturer is a firm or a company or association of persons and the change in the constitution is leading to change in PAN, the manufacturer needs to register himself afresh.

However, if the change in constitution does not lead to change in PAN, the same needs to be intimated to the jurisdictional Central Excise Officer within 30 days of such change by way of amendment to the registration details to be carried out online. This will not result in any change in the registration number.

- (b) As per section 75 of Finance Act, 1994 read with Notification No. 13/2016 ST dated 01.03.2016, in case of collection of any amount as service tax but failing to pay the amount so collected to the credit of the Central Government on or before the prescribed due date, simple interest @ 24% p.a. is payable. However, in all other cases, simple interest @ 15% p.a. is payable.

Such rate of interest gets reduced by 3% p.a. if the value of taxable services of a service provider does not exceed ₹ 60 lakh during any of the years covered by the notice or during the preceding financial year.

Hence, in the given case, the concessional rates of interest will be available to Maruthi OPC as its turnover was ₹ 58 lakh in the preceding financial year.

Due date for payment of service tax for the month of March 2016	31.03.2016
Date when service tax was actually paid	06.06.2016

Period	Rate of interest (p.a.)	Delay	Interest (₹)
01.04.2016 to 06.06.2016	21%	67 days	$10,00,000 \times 21\% \times 67/366 = 38,443$ (rounded off)
01.04.2016 to 06.06.2016	12%	67 days	$2,00,000 \times 12\% \times 67/366 = 4393$ (rounded off)
Total interest			42,836

- (c) (i) As per section 66D(a)(iv) of Finance Act, 1994 read with *Notification Nos. 6/2016 ST dated 18.02.2016 & 15/2016 ST dated 01.03.2016*, services provided by Government to a business entity are taxable presuming that the turnover of the business entity in the previous year was more than ₹ 10,00,000 and thus, it is not eligible for exemption under *Notification No. 25/2012 ST dated 20.06.2012*.

Further, interest chargeable on deferred payment in case of such service, where payment for such service is allowed to be deferred on payment of interest, is included in the value of the taxable service in terms of rule 6(2)(iv) of the Service Tax (Determination of Value) Rules, 2006 as amended vide *Notification No. 23/2016 ST dated 13.04.2016*.

Therefore, assuming that the State Government has allowed the payment of licence fee to be deferred on payment of interest, the value of taxable service will be ₹ 1,15,00,000 and service tax @ 15% payable thereon will be ₹ 17,25,000.

- (ii) Testing services provided by the Government/ local authority required under any law are exempt vide *Mega Exemption Notification No. 25/2012 ST dated 20.06.2012* and not the services provided by a private testing agency. Thus, service tax payable @ 15% on such services will be ₹ 3,75,000.
- (iii) Services provided by the Government or a local authority to another Government or local authority is exempt from service tax vide *Mega Exemption Notification No. 25/2012 ST dated 20.06.2012*. Thus, no service tax will be payable on renting services provided by local body to Department of post.
- (iv) **Assuming the payment in relation to spectrum as spectrum user charges:**
Services provided by Government by way of allowing a business entity to use radio frequency spectrum during the financial year 2015-16 on payment of spectrum user charges are exempt from service tax vide *Mega Exemption Notification No. 25/2012 ST dated 20.06.2012* presuming that spectrum user charges payable for the month of April, 2016 does not pertain to financial year 2015-16. Thus, service tax on

spectrum user charges for March 2016 will be exempt and for April 2016 will be ₹ 3,00,00,000 (15% of ₹ 20 crore).

Assuming the payment in relation to spectrum as upfront fee:

As per Mega Exemption Notification No. 25/2012 ST dated 20.06.2012 read with Circular No. 192/02/2016 ST dated 13.04.2016, right to use a natural resource assigned by the Government before 1st April, 2016 is exempt from service tax. However, said exemption is applicable only for one time charge payable, in full upfront or in installments, for assignment of right to use such natural resource.

Since in the given case, the upfront fee is being paid in instalments, the same will be exempt from service tax.

- (d) (i) **No.** If the smuggled goods and imported goods are treated as the same, there will be no need for two different definitions under the Customs Act, 1962. Since one of the principal functions of the Customs Act is to curb the ills of smuggling in the economy, it will be contrary to the purpose of exemption notifications to give the benefit meant for imported goods to smuggled goods as held in *CCus. (Prev.)*, *Mumbai v. M. Ambalal & Co. 2010 (260) ELT 487 (SC)*.
- (ii) **No.** The exemptions extended by FTP can be taken only when the exemption notification is issued under the relevant tax laws. The provisions of Foreign Trade Policy cannot override tax laws.
- (iii) As per section 70 of the Customs Act, 1962, the conditions to be satisfied for remission of duty in case of volatile goods are:
- (i) The goods should be found deficient in quantity at the time of delivery from the warehouse;
 - (ii) The deficiency should be on account of natural loss, i.e. evaporation etc. and not due to pilferage or thefts.
- (iv) The goods specified as volatile for the purpose of remission of duty in terms of Notification No. 3/2016-Cus. (N.T.) dated 11.01.2016 are:
- (a) aviation fuel, motor spirit, mineral turpentine, acetone, methanol, raw naptha, vaporizing oil, kerosene, high speed diesel oil, batching oil, diesel oil, furnace oil and ethylene dichloride, kept in tanks;
 - (b) wine, spirit and beer, kept in casks
 - (c) liquid helium gas kept in containers
 - (d) crude stored in caverns

Question 7

- (a) *Renukamba Enterprises is engaged in the production of certain commodities using molasses. It procures such molasses through the help of an agent from a khandsari sugar*

factory. The proprietor of Renukamba Enterprises is obtaining molasses for the first time for his production unit. He needs your advice regarding dutiability on the above procurement. **(4 Marks)**

- (b) An Indian firm provided testing services to a U.K. based company which involves testing the emission levels of a newly developed car by the company. Testings were done in Karnataka, Tamil Nadu and London and Indian firm charged 10000 USD for testing. It is estimated that service charges payable for testing in Karnataka, Tamil Nadu and London would be 20%, 30% and 50% of the total testing service charges respectively. What is the place of provision for the above services under the Place of Provision of Services Rules, 2012 and the value for which service tax has to be paid assuming that conversion rate for USD is ₹ 65? **(4 Marks)**
- (c) East West Ltd., availed manpower supply services from Mr. Dayanand and received an invoice from him for ₹ 5.2 lakhs for the services provided for December 2015 on 31-12-2015. The amount was paid to Mr. Dayanand only on 01-06-2016 by the company. What is the point of taxation for the above transaction under Point of Taxation Rules, 2011 and what is the due date for payment of service tax? **(4 Marks)**
- (d) Explain the significance of duty credit scrips under Merchandise exports from India Scheme (MEIS). Vasant exports a consignment of hand crafted items through courier using e-commerce of FOB value of ₹ 48,000. Determine whether he is eligible for the above benefit. **(4 Marks)**

Answer

- (a) Renukamba Enterprises will be required to pay the duty on molasses procured by it from the khandsari sugar factory as if the molasses have been produced by it. As per rule 4(2) of Central Excise Rules, 2002, procurement through an agent will not make any difference. The duty will be payable irrespective of whether the goods, which are manufactured by Renukamba Enterprises with the use of molasses are excisable or not.

The applicable rate of duty on the khandsari molasses will be the rate in force on the date of receipt of such molasses in the factory of the Renukamba Enterprises vide rule 5(2) of Central Excise Rules, 2002.

- (b) As per rule 7 of the Place of Provision of Services Rules, 2012, where any performance based service referred in rule 4 of the Place of Provision of Services Rules, 2012 is provided at more than one location, including a location in the taxable territory, its place of provision is the location in the taxable territory where the greatest proportion of the service is provided.

In the given case, place of provision of testing service is Tamil Nadu as it is the location in the taxable territory where the greatest proportion of the service (30%) is provided and such service is taxable in India.

Further, service tax will be paid on entire service charges i.e., USD 10,000 x ₹ 65 = ₹ 6,50,000

- (c) In case of manpower supply service provided by any individual (Mr. Dayanand) located in the taxable territory to a business entity registered as body corporate, located in the taxable territory, service tax is payable by the recipient of service (East West Ltd.) on reverse charge basis in terms of Rule 2(1)(d)(i)(F) of the Service Tax Rules, 1994 read with Notification No. 30/2012 dated 20.06.2012.

As per rule 7 of Point of Taxation Rules, 2011, in case of services taxed under reverse charge mechanism, the point of taxation is the date on which payment is made subject to the condition that the payment is made within a period of 3 months of the date of invoice.

However, if the payment is NOT made within a period of 3 months of the date of invoice, point of taxation is the first day that occurs immediately after the expiry of said three months.

Since in the given case, payment (01-06-2016) is not made within 3 months of the date of invoice (31-12-2015), the point of taxation would be 01-04-2016.

As per rule 6(1) of the Service Tax Rules, 1994, the due date of payment of service tax by a company is 6th day of the following month i.e. 06-05-2016 and 05.05.2016 in case of non-electronic payment of service tax.

- (d) The significance of duty credit scrips under Merchandise Exports from India Scheme (MEIS) is to compensate infrastructural inefficiencies and associated costs involved in export of goods/products, which are produced/manufactured in India, especially goods having high export intensity, employment potential and thereby enhancing India's export competitiveness.

OR

1. The duty credit scrips in goods imported or domestically procured are freely transferable.
2. Utilisation of duty credit scrip is permitted for payment of excise duty for procurement from domestic sources, only of items permitted for imports under duty credit scrips.
3. The duty credit scrip will be valid for 18 months from the date of issue.

Export of handicraft items through courier, using e-commerce, of FOB value upto ₹ 25,000 per consignment is entitled for rewards under MEIS.

Since the FOB value of handicraft consignment exported by Vasant exceeds ₹ 25,000, he is not eligible for the above benefit.