

The suggested answers for Indirect Taxes (Paper 8) are based on the provisions as amended by Finance Act, 2005 and Notifications/Circulars issued up to 31.10.2005 which are relevant for May 2006 examinations.

PAPER – 8 : INDIRECT TAXES

Question Nos. 1, 6 and 9 are compulsory. In addition thereto, answer any two questions from Part “A” and one question from Part “B”.

PART – A

Question 1

- (a) *Briefly explain any two of the following with reference to the provisions of Central Excise Act, 1944:*
- (i) *Wholesale dealer*
 - (ii) *Factory*
 - (iii) *Dutiability of waste and scrap* (2 x 2 = 4 Marks)
- (b) *With reference to CENVAT Credit Rules, 2004, discuss giving reason whether the following statements are true or false:*
- (i) *Credit of duties of excise on inputs will not be available if inputs are used in intermediate product, which is exempt from duty, even though the final product is dutiable.*
 - (ii) *A manufacturer can sell the inputs on which CENVAT credit has already been availed of, as they are, provided he pays the amount equal to the credit availed.*
 - (iii) *A manufacturer is eligible for CENVAT credit in the cases stated below:*
 - (1) *Inputs used in trial runs;*
 - (2) *Materials used for maintaining factory building.* (3 x 2 = 6 Marks)
- (c) *With reference to the Central Excise Act, 1944 and the rules thereunder, explain briefly whether the following persons require registration or not?*
- (i) *Persons, who manufacture excisable goods chargeable to 'nil' rate of duty;*
 - (ii) *Central Government undertakings manufacturing excisable goods;*
 - (iii) *100% EOU.* (3 x 2 = 6 Marks)
- (d) *ABC Company imported medicines in pallets with one big box containing assorted medicines in smaller units which were, then, repacked in thermocole boxes of different sizes which again were put into cardboard boxes. The cardboard boxes were in turn labelled containing, interalia, the name of the medicine, the name of the manufacturer, the quantity, batch no., manufacturing date, expiry date and name of the marketing agency. The department relying upon note 5 to chapter 30, claimed that the activities as aforesaid amount to manufacture i.e., bulk pack to retail pack.*
- Decide whether the above activities tantamount to manufacture.* (4 Marks)

Answer

- (a) (i) As per section 2(k) of the Central Excise Act, 1944, wholesale dealer means a person who buys or sells excisable goods wholesale for the purpose of trade or manufacture and includes a broker or commission agent who, in addition to making contracts for the sale or purchase of excisable goods for others, stocks such goods belonging to others as an agent for the purpose of sale.
- (ii) As per section 2(e) of the Central Excise Act, 1944, factory means any premises, including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured, or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on.
- (iii) The issue relating to dutiability of waste and scrap was settled by the Supreme Court by its decision in *Khandelwal Metal & Engineering Works Vs Union of India 1985 20 ELT 222* by holding that notwithstanding that process waste and scrap arose as intermediate products or by-products out of final products, such process waste and scrap, if marketable, would be chargeable to duty in view of the incorporation of the specific sub-headings in various chapters of the tariff. The Apex court has held that process waste and scrap is a commercially distinct and identifiable product and has commercial value. Hence, such waste and scrap is chargeable to duty if covered in the Tariff.
- Therefore, the position as it currently stands is that all process waste and scrap if incorporated in the Tariff and if marketable would be chargeable to duty. It is important to note here that as the excise duty is on manufacture, the waste and scrap actually generated in the course of manufacture alone is chargeable to duty and the waste and scrap generated without any process is not liable to excise duty.
- (b) (i) False. It was held in *CCEx. v. Hindustan Sanitaryware 2002 (145) ELT 3 (SC)* that CENVAT credit would be available in respect of duty paid on inputs even if intermediate product is exempt from duty but the final product is dutiable. Further, the Central Board of Excise and Customs has clarified vide *Clarification No. B-4/7/2000-TRU, dated 03.04.2000* that the CENVAT credit shall not be denied if the inputs are used in any intermediate product of the final product even if such intermediate product is exempt from payment of duty so long as the final product is dutiable. The basic idea is that CENVAT credit should be admissible so long as the inputs are used in or in relation to the manufacture of dutiable final products, whether directly or indirectly.
- (ii) True. Rule 3(5) of CENVAT Credit Rules, 2004 *inter alia* provides that a manufacturer of the final products can remove inputs on which CENVAT credit has been taken, as such, from the factory if he pays an amount equal to the credit availed in respect of such inputs and such removal is made under the cover of an invoice referred to in rule 9 of CENVAT Credit Rules, 2004.

- (iii) 1. True. Inputs used in trial runs during the production or commissioning of plant are eligible for CENVAT credit as they are considered to have been used in or in relation to the manufacture of final product [*Fertiliser Corporation of India v. CCE 1990 (50) ELT 494 CEGAT*].
2. False. Materials used for maintaining factory building only facilitate manufacture and are not integrally used in or in relation to manufacture of final products and hence are not eligible for CENVAT Credit.
- (c) (i) No, because manufacturers of goods which are chargeable to 'NIL' rate of duty are exempt from registration provided a declaration is filed.
- (ii) Yes, as the provisions of section 6 of the Central Excise Act, 1944 read with rule 9 of Central Excise Rules, 2002 apply in respect of every person who manufactures or produces excisable goods (including Central/State Government Undertakings or undertakings owned or controlled by autonomous corporations) in India.
- (iii) No, as 100% EOU is deemed to be registered under Rule 9. However, such unit shall be required to get itself registered if it removes excisable goods to domestic tariff area (DTA) or procure excisable goods from DTA.
- (d) The facts of the case are similar to the case of *CCEx., Mumbai v. Johnson & Johnson Ltd., 2005 (188) ELT 467 (SC)*. While dismissing the case, the Supreme Court observed that merely packing for being marketed does not amount to manufacture for the purpose of Note 5 to Chapter 30 of Central Excise Tariff. The products have to be repacked from *bulk packs to retail packs* so as to make them marketable to the consumer for the activity to be termed as 'manufacture'. In that case there was no evidence relied upon by the department to the effect that the cardboard boxes or the thermocole containers in which the units were placed were 'retail packs'.
- In view of the abovementioned decision, the activity of repacking described in the question would not amount to manufacture.

Question 2

- (a) *The assessee was a manufacturer of I.C. engine parts like piston and gudgeon pins. He used to procure from the market piston rings and circlips and supply them along with the items that he had manufactured, to the buyers. He was also selling these procured items separately. The department contended that those bought-out items, supplied along with the manufactured items, were part of piston assembly and therefore, their value should be included in the value of the piston assemblies cleared by the manufacturer. But the assessee contended that the piston rings and circlips were all different parts of I.C. engine and therefore they were not to be considered as parts of another item.*
- Decide whether the contention of the department is correct or not. (6 Marks)*
- (b) *Explain whether an application from an NRI for advance ruling under section 23C, regarding determination of whether a certain process would amount to manufacture, is maintainable? (4 Marks)*

- (c) State the procedure for valuing excisable goods that are to be sold from depot/branch or premises of a consignment agent under the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. (5 Marks)

Answer

- (a) This problem is based on the case of *Goetze (India) Ltd. v. CCE, Chandigarh 2004 (169) ELT 274 (Tri.-Del.)*. The case was decided in favour of the assessee. The Tribunal observed that the trading practice made it clear that each of the item was bought and sold separately and not as parts of one item. The fact that they were assembled together in an I.C. engine or that each part had an integral function in an assembly was not sufficient to hold that one item formed part of another item.

The Tribunal reiterated the well settled law that excise duty was a levy on manufacture and a manufacturer would be liable to pay duty on the goods manufactured by him and not on all the goods supplied by him. Therefore, it was decided by the Tribunal that value of such items would not be included in the assessable value of the manufactured goods.

In view of the abovementioned decision, the contention of the department is not correct.

- (b) As per section 23C of the Central Excise Act, 1944, advance ruling can be sought only in respect of the following matters:
- (i) classification of any goods under the Central Excise Tariff Act, 1985.
 - (ii) notifications issued in respect of excise duty under the Central Excise Act, the Central Excise Tariff Act and duty chargeable under any other law for the time being in force.
 - (iii) applicability of exemption notification issued under section 5A having effect on rate of duty.
 - (iv) principles to be adopted for determination of value of goods.
 - (v) admissibility of credit of excise duty paid or deemed to have been paid on the goods used in or in relation to the manufacture of the excisable goods.

Thus, a person cannot obtain an advance ruling to decide whether a process would amount to manufacture or not as such a matter is not covered by section 23C. Further, it was held in *Shonkh Technologies International Ltd. (AAR)* that an application for advance ruling cannot be maintained in respect of determination of a question as to whether a process amounts to manufacture or not.

- (c) As per rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a depot, premises of a consignment agent or any other place or premises (hereinafter referred to as 'such other place') from where the excisable goods are to be sold after their clearance from the place of removal and where the assessee and the buyer of the said goods are not related and the price is the sole consideration for the sale, the value shall be the normal transaction value of such goods

sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment.

Question 3

- (a) *Explain the provisions regarding maintenance of daily stock account of stored goods under rule 10(1) of Central Excise Rules, 2002.* (4 Marks)
- (b) *Write a short note on the procedure in respect of exported goods subsequently re-imported and returned to factory.* (5 Marks)
- (c) *Comment on the following:*
 - (i) *Excise department cannot challenge the reasonability of MRP printed on the package.*
 - (ii) *If any excisable goods are exempted from duty of excise absolutely, the manufacturer of such goods will be bound to avail of the exemption.*
 - (iii) *SSI units whose turnover exceeds Rupees 90 lakhs per annum have to give a declaration in the prescribed form.*
 - (iv) *Annual Financial Information Statement (ER-4) is required to be submitted by the assesses paying duty of Rs. 4 crores or above per annum through PLA.* (4 x 1 = 4 Marks)
- (d) *What is CT-1 certificate?* (2 Marks)

Answer

- (a) As per Rule 10(1) of the Central Excise Rules, 2002 a daily stock account has to be maintained by every assessee. The records should be maintained on daily basis in a legible manner, indicating particulars regarding:
 - (a) description of goods produced or manufactured
 - (b) opening balance
 - (c) quantity produced or manufactured
 - (d) inventory (i.e. stock) of goods
 - (e) quantity removed
 - (f) assessable value
 - (g) amount of duty payable and
 - (h) particulars regarding amount of duty actually paid

The first and last page of such account book shall be duly authenticated by the producer or manufacturer or his authorized agent. All such records shall be preserved for 5 years. Separate records for different grades/qualities are to be kept.

- (b) Exported excisable goods, which are re-imported for carrying out repairs, reconditioning, refining, remaking or subject to any similar process, may be returned to the factory of manufacturer for carrying out the said processes and subsequent re-export.

Notification No. 42/2001-CE (NT) as amended prescribes the procedure in respect of exported goods subsequently re-imported and returned to the factory as under:

- (i) The manufacturer shall maintain separate account for return of such goods in the daily stock account and shall make suitable entry in the said account after the goods are processed, repaired, reconditioned, refined or remade.
 - (ii) Such re-import and re-export shall be governed by the provisions of the Customs Act, 1962.
 - (iii) Any waste or refuse arising as a result of the said processes shall be removed from the factory after the payment of appropriate duty or destroyed after informing the proper officer in writing at least 7 days in advance and after observing such conditions and procedure as may be specified by the Commissioner of Central Excise.
 - (iv) Thereafter, the duty payable on such waste or refuse may be remitted by the said Commissioner of Central Excise.
- (c) (i) True. The central excise department cannot challenge the reasonability of MRP printed on the package. It can only satisfy itself that there is a declaration of MRP in prescribed form [*ITC Ltd. v. CCEx., New Delhi 2004 (171) ELT 433 (SC)*].
- (ii) True. As per section 5A(1A) of the Central Excise Act, 1944, if any excisable goods is exempt from duty of excise absolutely, the manufacturer of such goods will be bound to avail the exemption.
- (iii) False. SSI units whose turnover exceeds Rs.40 lakhs per annum have to give a declaration in the prescribed form.
- (iv) False. Annual Financial Information Statement (ER- 4) is required to be submitted by the assessee paying duty of Rs.1 crore or above per annum through PLA.
- (d) CT-1 certificate is the document on the basis of which a merchant-exporter can procure excisable goods for export without payment of duty. Such a certificate has to be obtained from the Superintendent of Central Excise. CT-1 forms are issued to the merchant-exporter in lots of 25 covering a period of 1 to 3 months depending on his track record. The merchant-exporter has to send the CT-1 form to the manufacturer from whom the goods are to be procured for exports and should specify the estimated amount of duty liability in the said certificate. CT- 1 is valid for one year from the date of issue.

CT-1 contains the details of bond amount, quantity of goods to be received, value and duty involved.

Question 4

(a) A SSI unit has effected clearances of goods of the value of Rs. 475 lacs during the financial year 2005-06. The said clearances include the following:

- (i) Clearance of excisable goods without payment of excise duty to a 100% EOU Rs.120 lacs
- (ii) Job work in terms of Notification No. 214/86 CE, which is exempt from duty Rs.75 lacs
- (iii) Export to Nepal and Bhutan Rs.50 lacs
- (iv) Goods manufactured in rural area with the brand name of the others Rs.90 lacs

Examine with reference to the notification governing SSI under the Central Excise Act whether the benefit of exemption would be available to the unit for the financial year 2006-07. (5 Marks)

- (b) (i) Whether provisional assessment can be initiated by the department of excise?
- (ii) What is the remedy available with the department in case assessing officer does not find the self assessment filed by the assessee in order? (2 + 3 = 5 Marks)
- (c) State the provisions relating to confiscation and penalty under CENVAT Credit Rules, 2004. (5 Marks)

Answer

(a) A SSI unit shall be eligible for benefit of exemption notification only if value of clearances during preceding financial year does not exceed Rs.400 lakhs.

The item wise treatment shall be as under -

1. Clearance to 100% EOU shall be excluded for calculating the limit of 400 lakhs.
2. Clearance under Notification No. 214/86 shall be excluded for calculating the limit of 400 lakhs.
3. Export to Nepal & Bhutan is considered as home consumption and thus, it shall be included for computing limit of 400 lakhs.
4. The turnover of goods manufactured in rural area with the brand name of the others shall be included for computing limit of Rs.400 lakhs.

Calculation of clearances during financial year 2005-06:

Total value of clearances		475 lakhs
Less: Clearance to 100% EOU	120 lakhs	
Clearance under Notification No. 214/86	<u>75 lakhs</u>	<u>195 lakhs</u>
		<u>280 lakhs</u>

As the value of clearances for home consumption in financial year 2005-06 does not exceed Rs. 400 lakhs, the benefit of exemption shall be available to the SSI unit during financial year 2006-07.

- (b) (i) Rule 7 of the Central Excise Rules, 2002 gives an option to the assessee to make a request to the Assistant Commissioner/Deputy Commissioner of Central Excise for provisional assessment in case he is unable to determine the value of excisable goods or the rate of duty applicable thereto. Rule 7 does not give power to the department to order provisional assessment on its own. Thus, the excise department cannot *suo motu* issue directions for resorting to provisional assessment.

- (ii) Where the central excise officers during scrutiny or otherwise find that self-assessment is not in order, they may ask the assessee for all necessary documents, records or other information for issue of duty demand for differential duty, if any, after conducting inquiry.

If the assessee fails to provide such records or information, the department may raise the demand based on collateral evidences. In such a case, the burden will be on the assessee to provide information for appropriate re-determination of duty.

- (c) (1) If any person, takes CENVAT credit in respect of input or capital goods, wrongly or without taking reasonable steps to ensure that appropriate duty on the said input or capital goods has been paid as indicated in the document accompanying the input or capital goods specified in rule 9, or contravenes any of the provisions of these rules in respect of any input or capital goods, then, all such goods shall be liable to confiscation and such person, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention has been committed, or ten thousand rupees, whichever is greater.
- (2) In a case, where the CENVAT credit in respect of input or capital goods has been taken or contravention of any of the provisions of the Excise Act or the rules made thereunder with intention to evade payment of duty, then, the manufacturer shall also be liable to pay penalty in terms of the provisions of section 11AC of the Excise Act.
- (3) If any person, takes CENVAT credit in respect of input services, wrongly or without taking reasonable steps to ensure that appropriate service tax on the said input services has been paid as indicated in the document accompanying the input services specified in rule 9, or contravenes any of the provisions of these rules in respect of any input service, then, such person, shall be liable to a penalty which may extend to an amount not exceeding ten thousand rupees.
- (4) In a case, where the CENVAT credit in respect of input services has been taken or utilized wrongly by reason of fraud, collusion, willful mis-statement, suppression of facts, or contravention of any of the provisions of the Finance Act or of the rules made thereunder with intention to evade payment of service tax, then the provider

of output service shall also be liable to pay penalty in terms of the provisions of the section 78 of the Finance Act.

- (5) Any order under points (1), (2), (3) or (4) shall be issued by the Central Excise Officer following the principles of natural justice.

Question 5

- (a) Write a note on duty payment 'Under protest' with reference to the Central Excise Act, 1944 and the rules made thereunder. (3 Marks)
- (b) What are the orders that are appealable to Supreme Court under the Central Excise Act 1944? (3 Marks)
- (c) Explain briefly the provisions relating to 'Special Audit' in certain cases under section 14A of the Central Excise Act, 1944. (5 Marks)
- (d) What is Consumer Welfare Fund? How is this fund utilized? (4 Marks)

Answer

- (a) Section 11B of the Central Excise Act, 1944 provides that the time limit of one year for claiming refund of central excise duty shall not apply where the duty has been paid under protest.

As per the Supplementary Instructions issued by Central Board of Excise and Customs, any assessee who desires to pay duty under protest, may do so by following the procedure mentioned below:

- (i) The assessee shall inform the Superintendent or Inspector of Central Excise in writing giving reasons for paying duty under protest and a dated acknowledgement shall be given to him.
 - (ii) The assessee shall mark invoices or monthly/quarterly returns indicating the goods on which duty is paid 'under protest'. If it is a lump-sum duty payment in respect of past demand, he may record the fact of duty payment under protest in the Personal Ledger Account, CENVAT Account and the Daily Stock Account.
 - (iii) If a case is appealed against by the assessee or where the appeal period for further appeal is available, he may continue to pay duty under protest. However, if decision is not in his favour and he exhausts the appellate remedy or does not appeal within stipulated period, he shall not have any right to pay duty under protest.
- (b) As per section 35L of the Central Excise Act, 1944, an appeal shall lie to the Supreme Court from
- (a) any judgment of the High Court delivered -
 - (i) in an appeal made under section 35G or
 - (ii) on a reference made under section 35G by the Appellate Tribunal before the 1st day of July, 2003 or
 - (iii) on a reference made under section 35H

if the High Court certifies the case to be fit for appeal to the Supreme Court. The High Court can certify any case on its own motion or on an oral application made by or on behalf of the aggrieved party, immediately after passing of the judgement.

- (b) any order of the Appellate Tribunal having relation to the determination of rate of duty or value of goods, among other things.
- (c) If at any stage of enquiry, investigation or any other proceedings before him, any Central Excise Officer not below the rank of an Assistant/Deputy Commissioner of Central Excise having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or determined by a manufacturer or any person, he may, with the previous approval of the Chief Commissioner of Central Excise, direct such manufacturer or such person to get the accounts of his factory, offices, depots, distributors or any other place, as may be specified by the said Central Excise officer, audited by a Cost Accountant, nominated by the Chief Commissioner of Central Excise in this behalf.

The Cost Accountant shall submit the audit report duly signed and certified to the said Central Excise Officer within the period specified by him or the period further extended on an application made to him. However, in any case the aggregate of the original and extended period cannot exceed 180 days.

The manufacturer shall be given an opportunity of being heard in respect of any material gathered on the basis of audit and proposed to be utilized in any proceedings under the Central Excise Act or Rules. This special audit can be conducted notwithstanding that the accounts of the manufacturer or the person have been audited under any other law for the time being in force or otherwise.

- (d) The Consumer Welfare Fund is established by the Central Government under section 12C of the Central Excise Act, 1944 wherein the following amounts are credited:-
 - (i) the refund of duty of excise/customs, which is not to be granted to the applicant.
 - (ii) any income from investment of the amount credited to the Fund and any other monies received by the Central Government for the purposes of this Fund.

As per section 12D, any money credited to the fund shall be utilized by the Central Government for the welfare of the consumers in accordance with such rules framed in this behalf. The Central Government shall maintain or, if it thinks fit, specify the authority, which shall maintain, proper and separate account and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor General of India.

PART - B

Question 6

- (a) *Briefly explain with reference to the provisions of the Customs Act, any two of the following:*
 - (i) *Indian customs waters*

- (ii) *Person-in-charge*
- (iii) *Foreign going vessel or aircraft* (2 x 2 = 4 Marks)
- (b) *M/s. AJ imported some inputs and paid basic customs duty Rs.5 lakhs, surcharge on customs duty Rs.50,000 and CVD Rs.1 lakh. Calculate the amount that he can claim as CENVAT credit. Would it make any difference, if the assessee is not a manufacturer but a service provider?* (3 Marks)
- (c) *Explain the meaning of:*
 - (i) *Similar goods*
 - (ii) *Identical goods* (6 Marks)
- (d) *Briefly elucidate the meaning of "Importer" under the Customs Act.* (2 Marks)
- (e) (i) *If the applicant does not co-operate or obtains order by fraud, whether the Settlement Commission is empowered to send the case back to the officer for further action as per law ? Answer in the light of amended provisions of section 127MA of the Customs Act, 1962.*
- (ii) *What is meant by 'boat notes'?* (3 + 2 = 5 Marks)

Answer

- (a) (i) As defined by section 2(28) of the Customs Act, 1962 'Indian customs waters' means the waters extending into the sea up to the limit of contiguous zone of India under section 5 of the Territorial waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and includes any bay, gulf, harbour, creek or tidal river.
- (ii) As per section 2(31) of the Customs Act, 1962 person-in-charge means-
 - (a) in relation to a vessel, the master of the vessel;
 - (b) in relation to an aircraft, the commander or the pilot-in-charge of the aircraft;
 - (c) in relation to a railway train, the conductor, guard or other person having the chief direction of the train;
 - (d) in relation to any other conveyance, the driver or other person-in-charge of the conveyance.
- (iii) As per section 2(21) of the Customs Act, 1962, foreign going vessel or aircraft means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes-
 - (a) any naval vessel of any foreign Government taking part in any naval exercises;
 - (b) any vessel engaged in fishing or any other operations outside the territorial waters of India;

- (c) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever.
- (b) M/s. AJ can take credit of Rs.1,00,000 i.e. of additional duty of customs (CVD). Rule 3(1) of CENVAT Credit Rules, 2004 allows the credit of additional duty of customs imposed under section 3 of the Customs Tariff Act, 1975. The credit of other two duties i.e. basic custom duty and the surcharge on customs duty is not allowed.

It will not make any difference if the assessee is a service provider as credit of additional duty of customs (CVD) can be availed both by the manufacturers and the service providers alike.

Note: It has been assumed that the additional duty of customs (CVD) referred to in the question is not the additional duty of customs (CVD) leviable under section 3(5) of the Customs Tariff Act, 1975 as in that case the service provider will not be entitled to avail the CENVAT credit.

- (c) (i) As per rule 2(e) of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, similar goods means imported goods
 - (a) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;
 - (b) produced in the country in which the goods being valued were produced; and
 - (c) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person,but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods.
- (ii) As per rule 2(c) of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, identical goods means imported goods-
 - (i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not effect the value of the goods;
 - (ii) produced in the country in which the goods being valued were produced; and
 - (iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person,but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost

for use in connection with the production and sale for export of these imported goods.

- (d) As per section 2(26) of the Customs Act, 1962 importer in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer.
- (e) (i) As per the provisions of section 127-I, if the applicant does not cooperate, the Settlement Commission can send the case back to the proper officer for further action as per law. Similarly, as per section 127C(11) read with section 127C(9), if the order is obtained by misrepresentation of facts or fraud, the order stands void and the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and proper officer may, notwithstanding anything contained in any other provision of the Customs Act, complete such proceedings at any time before the expiry of two years from the date of the receipt of communication that the settlement became void.

Section 127MA of the Customs Act, 1962 has been amended by the Finance Act, 2005 with effect from 13.05.2005 to provide for sending back of a case to the Appellate Tribunal by the Settlement Commission in the event of non-cooperation by the assessee. Section 127MA does not provide for sending back of a case to the proper officer. It must be noted that section 127MA is only of academic importance in view of the fact that it applies only in respect of the applications filed on or before 29.02.2000.

- (ii) In case the vessel arriving at the port does not get a birth, then, the import cargo is taken from the ship to the shore and the export cargo is taken from the shore to the ship in boats. Section 35 of the Customs Act, 1962 stipulates that no imported goods shall be water borne for being loaded in any vessel, and no export goods which are not accompanied by a shipping bill, shall be water borne for being shipped unless the goods are accompanied by a 'boat note' in the prescribed form.

Question 7

- (a) *What is the purpose of interpretation rules regarding Customs Tariff? Do they form part of the tariff schedule? Explain the 'Akin Rule' of interpretation.* (4 Marks)
- (b) *What do you understand by first appraisement and second appraisement systems under the Customs Act, 1962?* (4 Marks)
- (c) *State the procedure for clearance of goods imported by post.* (5 Marks)
- (d) *Can the rate of drawback be determined provisionally by the exporter? Briefly explain.* (2 Marks)

Answer

- (a) The Customs Tariff has a set of six rules for interpretation of the tariff schedule and two general explanatory notes. The six rules of interpretation and two general explanatory notes are integral part of the schedule. The purpose of their inclusion is:

- (i) to give clear direction as to how the nomenclature in the schedule is to be interpreted and
- (ii) to give statutory force to the interpretation rules and the general explanatory notes.

Rule 4 of the rules of interpretation is called as akin rule. This rule lays down that goods which cannot be classified in accordance with rules 1, 2 and 3 of the rules of interpretation shall be classified under the heading appropriate to the goods to which they are most akin.

- (b) Section 17 of the Customs Act, 1962 stipulates that after bill of entry or shipping bill has been presented, the proper officer may examine and test the goods. After such examination and testing, the proper officer assesses the duty leviable on such goods.

Under the first appraisement system, the goods are examined first and then they are assessed. The appraiser normally resorts to this method if he is not able to make assessment on the basis of declaration made in the bill of entry or shipping bill and the documents submitted along with them and deems that inspection is necessary. The importer himself may also request 'first check procedure', if he cannot give all required details regarding description/value of goods. He has to make request for first check examination at the time of filing of bill of entry.

Under the second appraisement system, the information and documents furnished by the importer are adequate to determine the correct tariff nomenclature, tariff classification and valuation of the goods for purposes of assessment. In such a situation, physical examination of the goods or their weighment or testing is only a confirmatory check. Under this system, such an examination is carried out after assessment and collection of duty.

- (c) Clearance of goods imported by post is governed by sections 82 to 84 of the Customs Act, 1962. Any label or declaration accompanying the goods showing the description, quantity and value thereof, shall be treated as "an entry for import" under the Customs Act. The rate of duty and tariff value applicable to goods imported by post shall be the rate and valuation in force on the date on which the postal authorities present to the proper officer a list containing the particulars of such goods for the purpose of assessment of duty. In case the goods are imported by a vessel and the list of the goods containing the particulars is presented before the date of the arrival of the vessel, the crucial date shall be the date of arrival of the vessel.

The procedure for clearance of imported goods by post is as under:

- (i) Post parcels are allowed to pass from port/airport to Foreign Parcel Department of Government Post Offices without payment of customs duty. The Postmaster hands over to Principal Appraiser of Customs the memo showing total number of parcels

- from each country of origin, parcel bills or senders' declaration, customs declaration and despatch notes, and other information that may be required.
- (ii) The mail bags are opened and scrutinised by Postmaster under supervision of Principal Postal Appraiser of Customs. Packets suspected of containing dutiable goods are separated and presented to Customs Appraiser with letter mail bill and assessment memos.
 - (iii) The Customs Appraiser marks the parcels which are required to be detained as (a) necessary particulars are not available or (b) mis-declaration or under-valuation is suspected or (c) goods are prohibited for import. Other parcels are assessed without opening, on the basis of details given in parcel bill or dispatch notes. The duty is assessed and is entered on parcel bill. These are then audited and returned to Postmaster. Postmaster will hand over parcel to addressee only after collecting the customs duty.
 - (iv) Parcels selected by Appraiser for examination are opened and examined. If required, details are called from addressee. After inspection, the parcels are sealed with a distinctive seal. If mis-declaration or under-valuation is noted or goods are prohibited goods for imports these will be detained and reported to Customs Commissioner. After assessment, these will be handed over to Post Master, who will hand over to addressee on receipt of payment of customs duty.
- (d) The exporter may be granted provisional duty drawback when he executes a bond binding himself to repay the entire or excess amount of drawback. Where an exporter desires that he may be granted drawback provisionally, he may make an application in writing to the Commissioner of Central Excise or Commissioner of Customs and Central Excise that a provisional amount be granted to him towards drawback on the export of such goods pending determination of the final amount or drawback. The manufacturer may be allowed provisional duty drawback of an amount not exceeding the amount claimed by him in respect of such export.

Question 8

- (a) *M/s. XYZ Ltd. were liable for the duty assessed and payable on certain import which, it paid under protest and filed a claim for refund of duty on the ground that duty had been wrongly levied. On rejection of claim for refunds, the assessee filed an appeal before Tribunal which was also dismissed on the ground that as no appeal had been filed against the assessment order, the refund claim was not maintainable. Assessee seeks your advice for remedy. Discuss whether the stand taken by the Tribunal is correct.*
(5 Marks)
- (b) *Write a note on warehousing period under section 61 of the Customs Act, 1962.*
(4 Marks)
- (c) *What is residual method of valuation? Bring out your answer with reference to the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988.* (6 Marks)

Answer

- (a) The facts of the case are similar to the case of *Priya Blue Industries Ltd. v. CCus.*, 2004 (172) ELT 145 (SC). The Supreme Court has held in this case that refund claim under section 27 of the Customs Act, 1962 can be made by any person who has paid duty in pursuance of an assessment order. However, such a claim for refund cannot be made without challenging the order of assessment in appeal. It cannot be inferred that if the assessment is not correct, a party can file a claim for refund and the correctness of the assessment order can be examined while considering the claim for refund.

So long as the order of assessment stands the duty would be payable as per that order. Unless that order is modified in appeal or has been reviewed, the order of assessment stands and thus, a claim for refund contrary to such an order cannot be maintained.

A refund claim is not an appeal proceeding. The officer considering refund claim cannot sit in appeal over an assessment made by a competent officer.

Thus, in view of the abovementioned decision the stand taken by the Tribunal is correct.

- (b) Section 61(1) of the Customs Act, 1962 provides that any warehoused goods may be left in the warehouse in which they were deposited or in any warehouse to which they may be removed-

- (a) in the case of capital goods intended for use in any hundred percent export oriented undertaking, till the expiry of five years;
- (b) in the case of goods other than capital goods, intended for use in any hundred per cent export-oriented undertaking, till the expiry of three years; and
- (c) in the case of any other goods, till the expiry of one year,

after the date on which the proper officer has made an order under section 60 permitting the deposit of the goods in a warehouse.

However,

- (i) in the case of any goods which are not likely to deteriorate, the period specified in clause (a) or clause (b) or clause (c) may, on sufficient cause being shown, be extended-
 - (A) in the case of such goods intended for use in any hundred percent export oriented undertaking, by the Commissioner of Customs, for such period as he may deem fit, and
 - (B) in any other case, by the Commissioner of Customs, for a period not exceeding six months and by the Chief Commissioner of Customs for such further period as he may deem fit;
- (ii) in the case of any goods referred to in clause (c) if they are likely to deteriorate, the Commissioner of Customs may reduce the aforesaid period of one year to such shorter period as he may deem fit.

- (c) Rule 8 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 provides the residual method of valuation. According to this rule, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value should be determined using reasonable means consistent with the principles and general provisions of these rules and sub-section (1) of Section 14 of the Customs Act, 1962 and on the basis of data available in India.

No value should be determined under the provisions of this rule on the basis of —

- (i) the selling price in India of the goods produced in India;
- (ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
- (iii) the price of the goods on the domestic market of the country of exportation;
- (iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 7A;
- (v) the price of the goods for export to a country other than India;
- (vi) minimum customs values; or
- (vii) arbitrary or fictitious values.

PART -C

Question 9

- (a) Explain whether the following activities come under the service tax liability:
- (i) Reimbursement of expenses like cess, customs duty, port dues claimed by custom house agents;
 - (ii) Surveillance fee collected by a credit rating agency;
 - (iii) Transporters who are rendering "Express Cargo Service" for delivery.

(3 x 2 = 6 Marks)

- (b) (i) M/s. Renu Consultants are a labour contractor of manpower to M/s. Sanu Creations. They charge to the principal employer for the wages of their labour which amounts to Rs.1,20,000 plus their service charge of 12,000 for arranging the labour. The issue is whether service tax is payable on the gross amount charged by them or only their charges for labour. Examine the case and advise suitably.
- (ii) For providing beauty treatment services, a parlour uses materials such as cosmetics and toilet preparations. Whether the cost of such materials will be included in the value of taxable service? Whether any abatement is admissible on account of the value of materials consumed in providing the service? (4 + 3 = 7 Marks)

- (c) (i) What is the time limit under Rule 4A for raising/issuing an invoice for services?
- (ii) What is the due date for monthly/quarterly payment of service Tax?

(1+ 1 = 2 Marks)

Answer

- (a) (i) Service tax is not leviable on the reimbursement of expenses incurred by the custom house agents in respect of the statutory levies like cess, custom duty etc. [CCEx., New Delhi, Trade Notice No. 39/97-C.E., S.T.39/97, dated 11.06.1997].
- (ii) Service tax is to be paid on the surveillance fee collected by a credit rating agency [M.F. (D.R.) Letter No.11/3/98-TRU, dated 07.10.1998].
- (iii) Transporters rendering "Express Cargo Service" for door to door delivery of goods and articles are liable to service tax as the nature of service provided by them is not different from the service provided by the conventional courier agencies [Circular F. No. 341/43/96-ST (TRU) dated 31.10.1996].
- (b) (i) Section 67 states that value of any taxable service is the gross amount charged by the service provider for the taxable services rendered by him. The labour contractor charges to the principal employer for the wages of his labour plus his service charges for arranging the labour.
- Further, the department has clarified vide M.F. (D.R.) Letter F.No.B1/6/2005-TRU dated 27.07.2005 that service tax is to be charged on the full amount of consideration for the supply of manpower, whether full-time or part-time. The value includes recovery of staff costs from the recipient e.g. salary and other contributions. Even if the arrangement does not involve the recipient paying these staff costs to the supplier (because the salary is paid directly to the individual or the contributions are paid to the respective authority) these amounts are still part of the consideration and hence form part of the gross amount.
- Hence the taxable amount is the entire amount i.e. Rs1,32,000.
- (ii) It has been clarified vide M.F. (D.R.) F. No.B11/1/2002 TRU dt. 01.08.2002 that the cost of cosmetics and toilet preparations used for providing the service shall be included in the value of taxable service as they are not sold as such but are integral to the service provided. No abatement will be admissible on account of the value of material consumed in providing the service.
- (c) (i) As per Rule 4A(1) of Service Tax Rules, 1994, an invoice is to be issued within 14 days from the date of completion of the taxable service or receipt of payment towards the value of taxable service, whichever is earlier.
- (ii) The due date for monthly/quarterly payment of service tax is 5th of the following month or quarter as the case may be, except that the payment for the month/quarter ending in March will have to be made by 31st March.