

The Suggested Answers for Paper – 8 : Indirect Taxes are based on the provisions applicable for A.Y. 2004-05, which is the assessment year relevant for November 2004 exams.

PAPER – 8 : INDIRECT TAXES

Question Nos. 1, 6 and 9 are compulsory.

*Answer any **two** questions from PART - A and **one** question from PART – B.*

PART – A

Question 1

- (a) *State briefly the provisions of the CENVAT Credit Rules, 2002 in respect of removal of inputs and capital goods on which CENVAT credit has been availed in any **two** of the following cases:*
- (i) *Capital goods removed in good condition after being put to use for a period of two years, in respect of which period, depreciation under the Income-tax Act, 1961 was claimed.*
 - (ii) *An input becomes a waste and is sold as scrap.*
 - (iii) *Sale of the factory along with the said inputs and capital goods. (2 x 2 = 4 marks)*
- (b) *Briefly explain the provisions of the Central Excise Act, 1944 pertaining to "Related persons". (4 marks)*
- (c) *Write a brief note on the following with reference to Notification Nos.8/2003-CE and 9/2003-CE dated 1.3.2003 relating to small scale units:*
- (i) *determination of 'value' for the purposes of the said notifications;*
 - (ii) *availability of CENVAT Credit on capital goods under the said notifications;*
 - (iii) *treatment in respect of 'Clearances of excisable goods without payment of duty' as specified in the said notifications. (1 + 2 + 3 = 6 marks)*
- (d) (i) *Discuss briefly with reference to the provisions of the Central Excise Act, 1944 whether the following process would amount to 'manufacture' :*
- XYZ Corporation is engaged in the process of mixing aluminium paste, metal lacquer and thinner resulting in the production of aluminium paint having a shelf life of 8-10 hours. (3 marks)*
- (ii) *Explain briefly whether duty liability under the Central Excise Act, 1944 will be attracted in the following case:*
- MN & Co. engaged in the manufacture of Vanaspati oil used activated clay for deodorizing, bleaching and decolouring of oil. As a result of this processing the activated clay was transformed into "spent earth" which was nothing but the residue of activated clay. The activated clay residue lost its absorbent character during the course of refining and bleaching of oil. Excise Department sought to classify the*

"spent earth" under Central Excise Tariff Chapter Heading No. 1507, which reads as:

"residues resulting from treatment of fatty substances or animal or vegetable waxes".
(3 marks)

Answer

- (a) (i) As per Rule 3(4) of the Cenvat Credit Rules, 2002 when capital goods on which Cenvat credit has been taken are removed *as such* from the factory, the manufacturer of the final products shall pay an amount equal to the credit availed in respect of such capital goods and such removal shall be made under the cover of an invoice. However, the rule does not provide for a situation where capital goods are removed in good condition after being put to use for some time. Therefore, provisions of Rule 3(4) of the Cenvat Credit Rules, 2002 will hold equally good in these situations also. Thus, where the capital goods are removed in good condition, the manufacturer of the final products shall pay an amount equal to the credit availed.
- (ii) If inputs become waste and sold as scrap, it cannot be said that input is cleared 'as such' [Rule 3(4) of the Cenvat Credit Rules 2002]. What is cleared is 'waste' and duty will be payable as if waste has been removed.
- (iii) If factory is sold, it does not amount to removal of inputs and capital goods. In such case, no duty is payable on inputs and capital goods [*Metzeller Automotive vs. CCE 2004 (167) ELT 208(Tri.)*].
- (b) Section 4(3)(b) of Central Excise Act, 1944 contains the provisions pertaining to related person. As per the provisions of this section persons shall be deemed to be "related" if-
- (i) they are inter-connected undertakings;
 - (ii) they are relatives;
 - (iii) amongst them the buyer is a relative and a distributor of the assessee, or a sub-distributor of such distributors; or
 - (iv) they are so associated that they have interest, directly or indirectly, in the business of each other.
- Explanation - In this clause –
- (i) "inter-connected undertakings" shall have the meaning assigned to it in clause (g) of Section 2 of the Monopolies and Restrictive Trade Practices Act, 1969; and
 - (ii) "relative" shall have the meaning assigned to it in clause (41) of Section 2 of the Companies Act, 1956;
- (c) (i) The value for the purposes of the two notifications would mean the value fixed under section 4 or section 4A or the tariff value fixed under section 3(2).

- (ii) The units availing the benefit of Notification No.8/2003 (i.e. full exemption) cannot avail Cenvat credit on inputs. However, they can avail Cenvat credit on capital goods but the same can be utilized for payment of duty on final products only after the turnover reaches Rs. 100 lakhs.

The units availing the benefit of Notification No.9/2003 (opting for payment of 60% of normal duty) are allowed to avail and utilize Cenvat credit both on inputs and capital goods.

- (iii) As per paragraph 3A of Notification Nos. 8/2003 and 9/2003, "clearances of excisable goods without payment of duty" in the following cases only shall be excluded for the purpose of determining the aggregate value of clearances of excisable goods for home consumption:

- (a) to a unit in the Free Trade Zone
- (b) to a unit in the Special Economic Zone
- (c) to a 100% Export Oriented Undertaking
- (d) to a unit in the Electronic Hardware or Software Technology Park
- (e) supplies to United Nations or an international organization for their official use or supplied to projects funded by them on which exemption of duty is available in terms of Notification No.108/95-CE dated August, 28, 1995.

- (d) (i) The facts of the case are similar to the facts in the case of *T.N. State Transport Corporation Ltd. v. Contractor of Central Excise Madurai 2004 (166) ELT 433 (SC)*. In this case the Supreme Court had held that mixing of aluminum paste lacquer and thinner in exact proportions resulted in the formation of a separate and distinct product with an identity of its own and was known in the market as aluminum paint. It was held by the Court that the shelf life of 8-10 hours of the product was sufficient to market it. Therefore the mixing process would amount to manufacture.

- (ii) The facts of the given case are similar to the facts of the case of *CCEx. v. Markfed Vanspathi & Allied Industries 2003 (153) ELT 491(SC)* wherein the Supreme Court has held that merely because goods fall in a chapter heading under the Central Excise Tariff they do not become excisable unless there is manufacture and the goods are marketable. It was observed by the Apex Court that merely because the goods fell in the said tariff heading it could not be said that there was 'deemed manufacture'. The burden to prove that there was manufacture and what was manufactured was on the revenue. No evidence was placed to show that there was manufacture. Spent earth was earth on which duty had been paid. It remained earth even after the processing. Thus, if duty was to be levied again it would tantamount to levy of double duty on the same product, which was not permissible.

Question 2

- (a) (i) *PQR Ltd. who are in the manufacture of excisable goods had the practice of providing full reimbursement to all its dealers towards the value of damaged goods. The company used to charge a certain sum towards the cost of freight in the return of the damaged goods to it. No other consideration was received by the company. The Central Excise Department has issued a show cause notice that the return freight in respect of damaged goods has to be included in the assessable value for purposes of duty. Examine briefly the correctness in law of the show cause notice.*
(2 marks)
- (ii) *State briefly whether "damage discount" is permissible as a deduction for purpose of arriving at the assessable value under Section 4 of the Central Excise Act, 1944.*
(2 marks)
- (b) *Write a brief note on the following powers exercised through exemption notifications issued under the Central Excise Act, 1944:*
- (i) *Power not to recover duty of excise not levied or short-levied as a result of general practice, under Section 11C;*
- (ii) *Power to grant exemption from duty of excise under Section 5A. (2 + 3 = 5 marks)*
- (c) *Briefly enumerate the specified categories of persons/premises that have been exempted in terms of Rule 9(2) of the Central Excise Rules, 2002 from obtaining registration under Section 6 of the Central Excise Act, 1944.*
(6 marks)

Answer

- (a) (i) The facts in this case are similar to the facts in *Neelkamal Plastics Ltd., v. CCE, Noida (2004) 164 ELT 197 (Tribunal-Delhi)*. In this case the CESTAT had held that the amount collected by the company was related to the cost of return freight on the damaged goods and hence did not in any way represent the value of the goods. The assessee company did not receive any additional consideration for the sale nor were any clearances effected towards replacement without payment of duty. Therefore, the return freight was not liable to be added to the assessable value.
- (ii) It has been decided by the Supreme Court in *CCE v Vikram Detergent Ltd. 2001 (127) ELT 641 (SC)* that "damage discount" is in the nature of a refund or benefit to the buyer by way of compensation for damage, breakage or losses suffered by the goods after removal from the factory and is not eligible for deduction.
- (b) (i) Under section 11C, if the Central Government is satisfied
- (a) that a practice was, or is, generally prevalent regarding levy of duty of excise (including non-levy thereof) on any excisable goods; and
- (b) that such goods were, or are, liable

- (i) to duty of excise, in cases where according to the said practice the duty was not, or is not being, levied, or
- (ii) to a higher amount of duty of excise than what was, or is being, levied, according to the said practice,

then, the Central Government may, by notification in the Office Gazette, direct that the whole of the duty of excise payable on such goods or as the case may be, the duty of excise in excess of that payable on such goods, but for the said practice, shall not be required to be paid in respect of the goods on which the duty of excise was not, or is not being, levied, or was, or is being, short-levied, in accordance with the said practice.

- (ii) Under section 5A, the Central Government is empowered to grant exemption in public interest either absolutely or subject to conditions (either before or after removal) from the whole or any part of the duty of excise payable. Notifications issued under section 5A (1) are not applicable to 100% EOU/FTZ/SEZ unless otherwise specified. This is because such units are exempted under other notifications issued specially for them.

The Central Government in public interest can issue a special order under circumstances of an exceptional nature stating reasons thereof and exempting excisable goods from payment of duty. The date of effect of the notification will be the date of its issue.

The Central Government, if it considers it necessary or expedient so to do, can insert an explanation in such notification or order, by notification in the Official Gazette at any time within one year of issue of the notification for the purpose of clarifying the scope or applicability of such notification.

- (c) Rule 9(2) empowers the Board to issue notification for giving exemption from registration subject to conditions and safeguards. Accordingly the Central Board of Excise and Customs by Notification no. 36/2001 C.E. (N.T.) dated 26.6.2001 has exempted the following specified categories of persons/premises from obtaining registration:
 - (i) Persons who manufacture the excisable goods, which are chargeable to nil rate of excise duty or are fully exempt from duty by a notification.
 - (ii) Small-scale unit availing the slab exemption based on value of clearances under a notification.
 - (iii) In respect of final products falling under chapter 61 or 62 the job-worker need not get registered if the principal manufacturer undertakes to discharge the duty liability.
 - (iv) Persons manufacturing excisable goods by following the warehousing procedure under the Customs Act, 1962 subject to the following conditions:
 - a. the said excisable goods and any intermediary or by-product including the waste and refuse arising during the process of manufacture of the said goods under the Customs Bond are either destroyed or exported out of the country to

the satisfaction of the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, in charge of the Customs Bonded Warehouse;

- b. the manufacturer shall file a declaration in the specified form in triplicate for claiming exemption under this notification;
- c. no drawback or rebate of duty of excise paid on the raw materials or components used in the manufacture of the said goods, shall be admissible.
- (v) The person who carries on wholesale trade or deals in excisable goods (except first and second stage dealer, as defined in CENVAT Credit Rules, 2002).
- (vi) A 100% EOU, or a unit in FTZ or SEZ including STP/EHTP licensed or appointed, as the case may be, under the provisions of the Customs Act, 1962.
- (vii) Persons who use excisable goods for any purpose other than for processing or manufacture of goods availing benefit of concessional duty exemption notification.

Question 3

- (a) *Briefly explain the procedure with respect to "Provisional Assessment" under the Central Excise Rules, 2002.* (4 marks)
- (b) *Write a brief note on "Export under bond to Nepal where payment is in freely convertible foreign currency" with reference to the Central Excise Act, 1944 and the Rules. (5 marks)*
- (c) *With reference to Rules 12 and 17(3) of the Central Excise Rules, 2002 and Rule 7(5) of the CENVAT Credit Rules, 2002 explain in brief the main contents of the Returns to be filed with the Central Excise Department by an assessee in Form E.R. -1, E.R.-2 and E.R.-3.* (6 marks)

Answer

- (a) As per Rule 7 of the Central Excise Rules, 2002, provisional assessment can be resorted to when the duty cannot be determined at the point of clearance of the goods. The rule read with the guidelines issued by the Board on 1.9.2001, sets out the procedure for provisional assessment as follows:

The assessee should make a detailed request to Divisional Assistant/Deputy Commissioner of Central Excise, indicating:-

- (a) Specific grounds and documents and information for want of which final assessment cannot be made.
- (b) Periods for which provisional assessment is required.
- (c) Rate of duty or the value or both, as the case may be, proposed to be applied by assessee for provisional assessment; and
- (d) Undertaking to appear before Assistant/Deputy Commissioner within 7 days or such date fixed by him, and furnish all relevant information and documents within the time specified by the Assistant/Deputy Commissioner in his order, so as to enable the proper

officer to finalize the provisional assessment.

On receipt of such application, the Assistant/Deputy Commissioner will examine it to ascertain whether provisional assessment is necessary at all. If the reasons/ grounds are not sufficient, he may ask the assessee to appear before him on an appointed day and time, and if he is satisfied that provisional assessment is not necessary, he may pass a reasoned order rejecting the same and also ordering the rate of duty or the value, to be applied by the assessee.

Where the Deputy/Assistant Commissioner of Central Excise is satisfied with the genuineness of the assessee's request he will issue a specific order directing provisional assessment clearly stating:-

- a. The grounds on which Provisional Assessment has been ordered.
 - b. The rate and /or value, as the case may be, at which duty has to be provisionally paid.
 - c. The amount of differential duty for which bond is to be executed covering the period, if any, during which assessee paid duty provisionally under the deeming provisions, after applying the rate and/ or value specified in (b) above.
 - d. The amount of security or surety as may be fixed by Assistant Commissioner keeping in view the instructions issued by the Board from time to time.
- (b)** Export under bond to Nepal where payment is in freely convertible currency, shall be subject to following conditions, namely:-
- (i) The importer in Nepal, shall open an irrevocable letter of credit in favour of the exporter in India, before the export takes place. However, this is not necessary in the case of export of –
 - (a) All excisable goods other than consumer goods and
 - (b) Motor vehicles,
 if they are exported without payment of duty as-
 - (i) supplies to projects financed by any United Nations agency, the International Bank for Reconstruction and Development, International Development Association, the Asian Development Bank or any other multilateral agency of like nature; and
 - (ii) to all diplomatic missions in Nepal provided the Indian Embassy or the Ministry of External Affairs certifies that the import is for the personnel of the diplomatic community;
 - (ii) the exporter shall furnish a bond in the prescribed form before the Deputy/Assistant Commissioner of the Central Excise having jurisdiction over the factory, warehouse, or the approved premises or such other officer as authorized by the Board in this behalf, from where the goods are removed for export to Nepal,

- (iii) After the exports are effected the exporter shall furnish a certificate of remittances from the Reserve Bank of India or an authorized bank in India, showing that full payment for the goods has been duly received in freely convertible currency. On receipt of such a certificate and on the satisfaction that the goods have been exported in terms of the bond, the bond accepting authority shall discharge the exporter of his liabilities under the bond.
- (c) Rule 12 of Central Excise Rules, 2002 provides that every assessee shall submit to the Superintendent of Central Excise a monthly return in Form ER-1, of production and removal of goods and other relevant particulars, within ten days after the close of the month to which the return relates. However, an assessee availing exemption under a notification based on the value of clearances in a financial year (SSI), and textile units in textile sector manufacturing yarn, unprocessed fabrics and readymade garments falling under Chapter 50, 51, 52, 53, 54, 55, 58, 60, 61 or 62 shall file a quarterly return in Form ER-3, of production and removal of goods and other relevant particulars, within twenty days after the close of the quarter to which the return relates.

Rule 7(5) of Cenvat Credit Rules, 2002 requires the manufacturer to submit within ten days from the close of each month, a monthly return in the prescribed form to the Superintendent of Central Excise. In case of a manufacturer availing of an exemption based on the value of clearances, the form has to be submitted within twenty days of the close of every quarter.

Under Rule 17(3), 100% EOU units, units in FTZ or SEZ are required to submit a monthly return in the Form ER 2 in respect of the goods manufactured in, and receipt of inputs and capital goods, in the unit. The return is to be submitted to the Superintendent of Central Excise within 10 days from the close of the month to which the return relates.

Following are the requirements of returns:

- (i) The return should be on basis of 6 digit Tariff Heading. If same product attracts different rates of duty, all rates should be mentioned separately, even if such different rates are within the same month.
- (ii) If goods are cleared for export under bond, these should be indicated separately.
- (iii) Quantity should be indicated by relevant abbreviations i.e. kg. Mt etc.
- (iv) Value indicated should be as per section 4, 4A or tariff value as applicable. In case of exports, ARE-1/ ARE-2 invoice value should be indicated.
- (v) If duty on some invoices is paid on provisional basis, the details are required to be given in the ER-1 return.
- (vi) Details of CENVAT Credit availed and utilised has to be provided in Form ER-1 and ER-3.

Question 4

- (a) *State briefly against whom prosecution may be launched in the case of "offences by companies" under Section 9AA of the Central Excise Act, 1944.* (3 marks)

- (b) Write short notes on the following with reference to the Central Excise Act, 1944 and the Rules made thereunder:
- (i) Duty payment "under protest"
 - (ii) "Refund claim" under Section 11B. (3 x 2 = 6 marks)
- (c) State in brief the provisions relating to "Invoice" under Rule 11 of the Central Excise Rules, 2002. (6 marks)

Answer

- (a) As per provisions of section 9AA prosecution may be launched against any person, director, manager, secretary or other officers of a company, who is responsible for the conduct of the business of the company/firm and is found guilty of the offence under the Central Excise Act/Rules.

The provision makes every person in charge of the business of the company at the time of the commission of the offence to be guilty of the offence besides the company itself. However, it will be a defence for such a person that the offence was committed without his knowledge or that he has exercised due diligence to prevent the commission of the offence.

The section also deems any director, manager, secretary or other officer to be guilty where the offence is attributable to their consent or connivance or neglect. The term company includes a firm and association of individuals and the term director will mean a partner in relation to a firm.

The term "in charge of and responsible to the company" would mean that the person was in overall control of the day to day affairs of the company.

- (b) (i) **Duty payment under protest:**

Section 11B of the Central Excise Act, 1944 provides that the time limit of one year for claiming of 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:

- (a) The assessee shall inform the Superintendent or Inspector of Central Excise in writing giving reasons for paying duty under protest and dated acknowledgement will be given to him.
- (b) 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.

- (c) 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.

(ii) Refund Claim

Any person claiming refund of excise duty may make an application for refund of such duty to the Assistant/Deputy Commissioner of Central Excise before the expiry of one year from the relevant date. The meaning of the term “relevant date” has been set out in the Explanation (B) to Section 11B. The application shall be accompanied by such evidence to establish that the excise duty in relation to which such refund is claimed has been paid by the applicant and the incidence of such duty has not been passed on by him to any other person. However, the limitation of one year shall not apply if duty has been paid under protest.

If the Assistant/Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund. However, the excise duty as determined by the Assistant/Deputy Commissioner of Central Excise shall be paid to the applicant, instead of being credited to the Fund, if such amount is relatable to—

- (a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;
 - (b) unspent advance deposits lying in balance in the applicant’s account current maintained with the Commissioner of Central Excise;
 - (c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules or any notifications;
 - (d) the duty of excise paid by the manufacturer, if he had not passed on the incidence of such duty to any other person;
 - (e) the duty of excise borne by the buyer, if he had not passed on the incidence of such duty to any other person;
 - (f) the duty of excise borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify.
- (c)** (1) No excisable goods shall be removed from a factory or a warehouse except under invoice signed by the owner or his authorized agent.
- (2) However, textile yarns, fabrics and readymade garments can be cleared on proforma invoice. In case of cigarettes, which are under physical control, invoice should be countersigned by the Excise officer.

- (3) The invoice shall be serially numbered and shall contain the registration number, name of the consignee, description, classification, time and date of removal, rate of duty, quantity and value, of goods and the duty payable thereon.
- (4) The invoice should be prepared in triplicate in the following manner:
 - (i) The original copy being marked as ORIGINAL FOR BUYER
 - (ii) The duplicate copy being marked as DUPLICATE FOR TRANSPORTER
 - (iii) The triplicate copy being marked as TRIPLICATE FOR ASSESSEE
- (5) Only one copy of invoice book shall be in use at a time, unless otherwise allowed by the Assistant/Deputy Commissioner of Central Excise.
- (6) The owner or working partner or the Managing Director or the Company Secretary or any person duly authorized for this purpose shall authenticate each foil of the invoice book, before being brought into use.
- (7) Before making use of the invoice book, the serial numbers of the same shall be intimated to the Superintendent of Central Excise having jurisdiction over the factory of the assessee.
- (8) The provisions of rule 11 shall apply in all respects to goods supplied by first stage dealer or a second stage dealer.

Question 5

- (a) *State briefly as to who can make an application for "Advance Ruling" under Section 23A of the Central Excise Act, 1944.* (3 marks)
- (b) *Discuss briefly the power of the Appellate Tribunal to order "rectification of mistake" under Section 35C of 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.* (4 marks)
- (d) *State the provisions of Rule 17 of the Central Excise Rules regarding removal of goods by a 100% Export Oriented Undertaking for Domestic Tariff Area.* (5 marks)

Answer

- (a) The following persons can be "applicants" under section 23A(c) of the Central Excise Act, 1944:
 - (i) a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident; or
 - (ii) a resident setting up a joint venture in India in collaboration with a non-resident; or
 - (iii) a wholly owned subsidiary Indian company, of which the holding company is a foreign company,

who proposes to undertake any business activity in India and makes application for advance ruling.

- (b) As per section 35C(2), the Appellate Tribunal may, at any time within six months from the date of the order, with a view to rectifying any mistake apparent from the record, amend, any order passed by it and shall make such amendments if the mistake is brought to its notice by the Commissioner of Central Excise or the other party to the appeal.

However, an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the other party, shall not be made unless the Appellate Tribunal has given notice to the other party of its intention to do so and has allowed him a reasonable opportunity of being heard.

- (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, office, 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 the 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.

- (d) Where any goods are removed from a 100% Export Oriented Undertaking to domestic tariff area, such removal shall be made under an invoice by following the procedure specified in rule 11, and on payment of appropriate duty before removal of goods by debiting the account current required to be maintained for this purpose.

The unit shall maintain in the prescribed form, an appropriate account relating to production, description of goods, quantity removed, and the duty paid.

The unit shall submit a monthly return in the prescribed form (Form E.R.-2) to the Superintendent of Central Excise within ten days from the close of the month to which the return relates, in respect of excisable goods manufactured in, and receipt of inputs and capital goods in the unit.

PART B

Question 6

- (a) Explain briefly with reference to the provisions of the Customs Act, 1962 any **two** of the following :
- (i) Goods
 - (ii) Person in charge
 - (iii) Foreign going vessel. (2 x 2 = 4 marks)
- (b) (i) C & Co. imported second hand machinery and declared the transaction value in the Bill of Entry filed for purposes of assessment of import duty. The Assistant Commissioner of Customs ignored the transaction value and based on Chartered Engineer's certificate showing that the machinery was in working condition and had a residual life of 10 years he completed the assessment under Rule 8 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 after allowing maximum depreciation of 70%.
- Discuss briefly giving reasons whether the action of the Assistant Commissioner is valid in law. (3 marks)
- (ii) Due to congestion in the ports or non-availability of deep draught all ports are not navigable unto the jetty. Goods have to be discharged or transshipped at the outer anchorage with the help of barges. The charges associated with the delivery of cargo at outer anchorage are called "barging/lighterage charges". State giving reasons whether such charges have to be included for purposes of determination of assessable value under the Customs Valuation (Determination of price of Imported Goods) Rules, 1988. (3 marks)
- (c) Explain briefly the provisions of Rule 3 of the General Rules for the Interpretation of the First Schedule to the Customs Tariff Act, 1975. (4 marks)
- (d) State briefly the provisions of the Customs Act, 1962 relating to filing of "Import Bill of Entry". (6 marks)

Answer

- (a) (i) As per Section 2(22) of the Customs Act, 1962:
- "goods" include –
- (a) vessels, aircrafts and vehicle;
 - (b) stores;
 - (c) baggage;
 - (d) currency and negotiable instruments; and
 - (e) any other kind of movable property.

(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 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) “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 to any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes-

- (i) any naval vessel of a foreign Government taking part in any naval exercise;
- (ii) any vessel engaged in fishing or any other operations outside the territorial waters of India;
- (iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever.

(b) (i) The facts in this case are similar to the facts in *Tolin Rubber Pvt. Ltd. v. COC, Cochin* (2004) 163 ELT 289 (SC). In this case the Supreme Court stated that the value of the goods has to be determined as per Rule 4(1) of the Customs Valuation Rules, 1988 and only in circumstances specified under Rule 4(2) the transaction value as per Rule 4(1) has to be rejected and further determination has to be made as per Rule 8. The assessing authority had not provided any reasons for rejecting the transaction value. It was held by the Supreme Court that the Bill of Entry as made by the company and the transaction value as declared by it had to be accepted by the Department.

Applying the same ratio to the given situation, it could be said that the action of the Assistant Commissioner in the instant case is not valid in law.

(ii) As per *M.F. (D.R.) Circular No. 29/2004-Cus., dated 13.04.2000*, the barging/lighterage charges borne by the importer in bringing the goods from the outer anchorage to the landmass should be included in the assessable value as “extended cost of transportation” under Rule 9(2)(a) of the Customs Valuation Rules, 1988. The value of the goods is deemed to be the price at which such goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade. The importation gets completed when the goods reach the landmass of the country and not at the outer anchorage point. Therefore, all the expenses incurred by the importer in bringing the goods to the landmass of the country will be includible in the assessable value.

- (c) Rule 3 is to be applied when classification cannot be decided by Rules 1 and 2.

Rule 3 of General Rules for the Interpretation of Customs Tariff provides that when by application of Rule 2(b) or for any other reason, goods are prima facie classifiable under two or more headings, classification shall be effected as follows:

- (a) The heading which provides most specific description shall be preferred to the heading providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of goods.
- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale which cannot be classified by reference to (a), shall be classified as if they consisted of material which gives them their essential character, in so far as this criterion is applicable.
- (c) When the goods cannot be classified by reference to (a) or (b) they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.
- (d) It is the duty of the importer of any goods to make an application to the proper officer for clearance of the goods. The goods may be cleared for home consumption or for deposit in a warehouse or for transit or transshipment. Therefore, there are three types of bills of entries prescribed for these three different purposes.

Form I (white) - for home consumption

Form II (yellow) - for warehousing

Form III (green) - for ex-bond clearance for home consumption

The form, of the bill of entry is governed by Bill of Entry (Forms Regulations, 1976). Normally the Bill of Entry is in four copies:

- (a) Original meant for the customs authorities for assessment and collection of duty;
- (b) Duplicate, indented as an authority to the custodian of the cargo to release cargo;
- (c) Triplicate, as a copy for record for the importer; and
- (d) Quadruplicate, as a copy to be presented to the bank

A facility has now been provided for clearance of the goods by making an electronic declaration to the Customs Computer System through network facility. The bill of Entry (Electronic Declaration) Regulations, 1995, provide the details.

The importer is required to declare in the Bill of Entry amongst other things –

- the particulars of packages,
- the descriptions of the goods, in terms of the description given in the Customs Tariff.

According to Section 46(3) a bill of entry is to be normally filed after the delivery of the import manifest (vessel/aircraft)/import report (vehicle). However, the bill of entry can be presented even before the delivery of the import manifest if vessel is expected to arrive within 30 days from the date of such presentation.

Question 7

- (a) State whether the principle of "unjust enrichment" applies to refund of export duty under the Customs Act, 1962. (2 marks)
- (b) Write short notes on the following with reference to the Customs Act, 1962:
- Duty on pilfered goods
 - Reimportation of goods. (2 x 2 = 4 marks)
- (c) XYZ Co., the assessee, has claimed before the Customs Authority that since the exports of goods in its case attracted no duty, the value, for purposes of Customs Act, 1962, to be declared shall be the value of the goods, which he expects to receive on sale of goods in the overseas market.
Briefly discuss giving reasons whether the stand taken by XYZ Co. is correct. (3 marks)
- (d) State in brief the features of "Special Economic Zone" with reference to the Customs Act, 1962. (6 marks)

Answer

- (a) The Tribunal in the case of *Commissioner of Customs, Bangalore v. Ken Agritech Pvt. Ltd.* 2004 (166) E.L.T 339 (Tri. – Bang.) has held that the provisions relating to unjust enrichment introduced in section 27 by way of amendment in the Customs Act could only apply to refund of import duty under the said section. Since refund of export duty is dealt with under section 26 of the Act and the same has not been amended by the Parliament, the provisions relating to unjust enrichment introduced under section 27 could not be made applicable to refund of export duty under the said section 26.
- (b) (i) **Duty on pilfered goods**
As per section 13 of Customs Act, 1962, if any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods. However, where such goods are restored to the importer after pilferage, the importer becomes liable to pay duty.
- (ii) **Re-importation of goods**
As per section 20, if goods are imported into India after exportation therefrom, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof.

- (c) This issue has been addressed to by the Supreme Court in the case of *M/s. Om Prakash Bhatia v. Commissioner of Customs, Delhi 2003 (155) E.L.T. 423*. The Apex Court observed that for finding the true export value of the goods, section 14 of the Customs Act, 1962 has to be read along with section 2(41) which defines the word 'value'. Value in relation to any goods means the value thereof determined in accordance with the provisions of section 14(1). Section 14 specifically provides that in case of assessing the value for purpose of export, value is to be determined at the price at which such or like goods are ordinarily sold or offered for sale at the place of exportation in the course of international trade where the seller and buyer have no interest in the business of each other and the price is the sole consideration for the sale. Therefore, for determining the export value of the goods, the method of determining the value under section 14 has to be followed even if no duty is leviable on the export of goods. Hence, the contention of XYZ Co. in the instant case will be rejected.

(d) Features of Special Economic Zone

The main features of SEZ are as follows :

- (a) SEZ may be set up in the public, private, joint sector or by State Government as notified by the Ministry of Commerce and Industry.
- (b) The Central Government is empowered to make rules regarding the requirements relating to goods or class of goods admissible to SEZ, nature of operations and the conditions to be fulfilled and the procedure to be followed.
- (c) Any goods admitted to a special economic zone from the domestic tariff area shall be chargeable to export duties at such rates as are leviable on such goods when exported. However, this would be subject to the rules made in this regard under Section 76F.
- (d) Any goods removed from special economic zone for home consumption shall be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under Customs Tariff Act, 1975 as leviable on such goods when imported.
- (e) SEZ units may be set up for :
 - (i) Manufacture of goods,
 - (ii) Rendering of services,
 - (iii) Production,
 - (iv) Processing,
 - (v) Assembling,
 - (vi) Trading,
 - (vii) Repair, re-making, re-conditioning, and re-engineering,

- (viii) Making of gold/silver/platinum jewellery and articles thereof or in connection therewith.
- (f) Goods going into the SEZ area from Domestic Tariff Area (DTA) shall be treated as deemed exports.
- (g) Goods coming from the SEZ area into DTA shall be treated as if the goods are being imported.

Question 8

- (a) *Explain briefly the procedure for clearance of warehoused goods for home consumption under Section 68 of the Customs Act, 1962. (3 marks)*
- (b) *State in brief with reference to the provisions of Section 129A of the Customs Act, 1962 the matters relating to which no appeal shall lie before the Appellate Tribunal. (3 marks)*
- (c) *Enumerate briefly the penalties under Section 114 of the Customs Act, 1962 for attempt to export goods improperly. (4 marks)*
- (d) *Explain the manner of filing drawback claim under the Duty Drawback Rules pursuant to Section 74 of the Customs Act, 1962. (5 marks)*

Answer

- (a) The importer of any warehoused goods may clear them for home consumption under section 68 of the Customs Act, 1962, if-
 - (a) a bill of entry for home consumption in respect of such goods has been presented in the prescribed form;
 - (b) the import-duty leviable on such goods and all penalties, rent, interest, and other charges payable in respect of such goods have been paid; and
 - (c) an order for clearance of such goods for home consumption has been made by the proper officer.

However, the owner of any warehoused goods may, at any time before an order for clearance of goods for home consumption has been made in respect of such goods, relinquish his title to the goods upon payment of rent, interest, other charges and penalties that may be payable in respect of the goods and upon such relinquishment, he shall not be liable to pay duty thereon.
- (b) As per section 129A, no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order passed by the Commissioner (Appeals) under section 128A; if such order relates to, -
 - (a) any goods imported or exported as baggage;
 - (b) any goods located in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such

goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination;

- (c) payment of drawback as provided in Chapter X, and the rules made thereunder.
- (c) The person involved in commission or omission, in relation to any goods, which renders such goods liable to confiscation under section 113, or abets the same, shall be liable to penalties under section 114 in different types of cases as follows :
 - (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is greater;
 - (ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or 5000/-, whichever is greater;
 - (iii) in the case of any other goods, to a penalty not exceeding the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater.
- (d) (i) In the case of exports other than by post, a formal drawback claim, in the prescribed form, should be filed with the proper officer of Customs, within three months of the date of let export order (under section 51) and claim should be accompanied by
 - (a) triplicate copy of the Shipping Bill or Bill of Export in proof of export;
 - (b) Bill of entry or other document in proof of payment of import duty
 - (c) Export invoice and packing specification
 - (d) Bill of lading or airway bill as proof of effective export
 - (e) Permission of RBI etc.
 - (f) Import invoice and packing specification
 - (g) Any other document necessary
- (ii) The drawback department shall scrutinize these documents and issue a deficiency memo for further details or documents required and the exporter shall furnish them forthwith.
- (iii) The customs department shall pay to the exporters, or an agent specially authorized by the exporter to receive the drawback amount, the eligible drawback and interest if any.
- (iv) If there is any erroneous or excess payment of drawback, it shall be demanded and if the exporters fail to pay the demand, it can be recovered in the manner prescribed under section 142.

- (v) The Central Government can relax the provisions of these rules, in appropriate cases, on sufficient cause being shown by the exporter in individual cases.

In the case of exports by post, the outer cover should bear in bold letters an inscription "Drawback Export"; a declaration/claim in the prescribed form should be submitted along with parcel; and the date of receipt of this claim in the Customs department from the postal authorities, will be deemed to be the date of filing of the drawback claim.

PART C

Question 9

- (a) Answer any **four** of the following with reference to the Finance Act, 1994 as amended relating to applicability of service tax:

- (i) One professionally qualified engineer with one non-professionally qualified engineer rendering engineering consultancy services under the name and style of ABC Consultancy Pvt. Ltd.
- (ii) Business Auxiliary services provided by a Commission Agent.
- (iii) An institute providing pre-school coaching and training.
- (iv) Ship repair services including dry docking within port premises.
- (v) Blood test and analysis services provided by a commercial pathology laboratory.

(2 x 4 = 8 marks)

- (b) Answer any **two** of the following with reference to the provisions of the Finance Act, 1994 as amended relating to service tax:

- (i) Services rendered after 1.7.2003 under a maintenance contract of machinery entered into prior to the effective date i.e., 1. 7 .2003 and in respect of which the bill has been raised and the value in full received from the customer prior to 1.7.2003.
- (ii) What is the date of payment of service tax where the amount of service tax is paid by cheque and is presented to the designated bank on April 25, 2004 and realised by the bank on April 27, 2004? Whether any interest and penalty is attracted in this case?
- (iii) Whether service tax credit availed on input services during the period April 1, 2004 to April 24, 2004 can be utilized for the payment of service tax on the output services provided for the month/quarter ended March, 2004, which is due for payment on April 25, 2004.

(2 x 2 = 4 marks)

- (c) Briefly discuss the provisions of the Finance Act, 1994 as amended relating to service tax with respect to any **one** of the following taxable services:

- (i) Event Management
- (ii) Video Tape Production Services.

(3 marks)

Answer

- (a) (i) Service tax shall be applicable on ABC Consultancy Pvt. Ltd. as consulting engineer includes self-employed, professionally qualified engineer who may or may not employ others to assist him or it could be an engineering firm whether organized as a sole proprietorship, partnership, a private or public limited company [Commissioner of Central Excise, New Delhi, Trade Notice No. 53 – C.E. (Service Tax)/97, dated 04.07.1997].
- (ii) Service tax shall not be attracted as the business auxiliary service provided by commission agent has been exempted vide *Notification no. 13/2003-S.T. dated 20.6.2003 w.e.f. 1.7.2003*.
- (iii) An institute providing pre-school coaching and training has been specifically excluded from the definition of Commercial training or coaching center under clause (27) of section 65 of the Finance Act, 1994. Thus, service tax shall not be attracted on it.
- (iv) As per *CBE&C Circular No. 67/16/2003-ST dated 10.11.2003* ship repair services including dry docking within port premises come within the ambit of port services and thus are chargeable to service tax.
- (v) Any testing or analysis services provided in relation to human being or animals are specifically excluded from the definition of technical testing and analysis under clause (106) of section 65 of the Finance Act, 1994. Thus, service tax will not be attracted on this service.
- (b) (i) *Notification no. 11/2003 S.T. dated 20.6.2003* exempts the service rendered in relation to maintenance or repair under a contract which was entered in to prior to 1.7.2003, if the bill for the service is raised prior to 1.7.2003 and the value of the service is received prior to 1.7.2003. Thus, in this case no service tax will be charged.
- (ii) As per sub-rule 2A of Rule 6 of the Service Tax Rules, 1994 the date of presentation of cheque to the designated bank, subject to realization is the date of payment. Thus, in this case the date of payment will be 25th April, 2004 as the cheque has been realized on 27th April, 2004.
- The cheque is deposited before due date and has been realized a day or two after. In such a case the date of presentation of cheque is the date of payment i.e. 25.4.2004. Hence, no interest and penalty is chargeable as there is no delay in payment of service tax [*Eicher Consultancy Services vs. CCE 2003 (157) EL T 432*].
- (iii) The proviso to sub-rule 1 of Rule 4 of the Service Tax Credit Rules, 2002 provides that while paying service tax on the output service, the service tax credit shall be utilized only to the extent such credit is available on the last day of a month/quarter, for payment of service tax relating to the month/quarter, as the case may be. Hence,

the credit availed in the month of April 2004 cannot be utilized for paying service tax for the month of March 2004.

(c) (i) Event Management

Event management means any service provided in relation to planning, promotion, organising or presentation of any arts, entertainment, business, sports or any other event and includes any consultation provided in this regard [Section 65(40)]. The scope of the taxable service includes any service provided to a client by an event manager in relation to event management. [Section 65(105)(zu)]

Event Manager means any person who is engaged in providing any service in relation to event management in any manner. [Section 65(41)] The value of the taxable service shall be the gross amount charged by the service provider for such service rendered by him.

(ii) Video Tape Production Services

The taxable service shall include any service provided to a client by a video production agency in relation to video tape production, in any manner [Section 65(105)(zi)]. Video production agency means any professional videographer or any commercial concern engaged in the business of rendering services relating to video tape production. [Section 65(119)]

Video tape production means the process of any recording of any programme, event or function on a magnetic tape and includes editing thereof in any manner.[Section 65(120)]. The value of the taxable service shall be the gross amount charged by the service provider for the service rendered by him but does not include the cost of unrecorded magnetic tape or such other storage devices if any sold to the client during the course of providing the service.