

Paper 16 – Tax Management and Practice

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Full Marks: 100

Time allowed: 3 hours

Answer Question No. 1 which is compulsory and any five from the rest

- 1.(a) Fill in the blanks: [5×1=5]**
- (i) In case of goods liable for confiscation amounting upto ₹ 50,000, the adjudicating authority for confiscating goods u/s 122 of the Customs Act, 1962 will be the _____ of Customs.
 - (ii) _____ area means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the Special Economic Zones, 100% Export Oriented Units /Electronic Hardware Technology Park /Software Technology Park /Bio Technology Park.
 - (iii) When service receiver is liable to pay service tax instead of service provider, it is termed as _____.
 - (iv) An appeal can be filed to _____ against the penalty order passed by commissioner (Appeals) or CIT.
 - (v) No _____ can be filed against the directors issued by Joint Commissioner under section 144A.

Answer:

- (i) Superintendent
- (ii) Domestic tariff
- (iii) reverse charge
- (iv) ITAT
- (v) appeal

- (b) Choose the most appropriate alternative: [5×1=5]**
- (i) If the invoice is issued within the prescribed period of 30 days from the date of completion of the provision of service, the point of taxation will be:
 - (a) Date of invoice
 - (b) Date of invoice or date of payment, whichever is earlier
 - (c) Date of completion of the provision of service
 - (d) Date of completion of the provision of service or date of payment, whichever is earlier.
 - (ii) Indian Institute of Management, Ahmedabad provided services by way of Executive Development Programme for ₹ 55 lakhs. The amount of Service Tax liability (@15%) will be:
 - (a) Nil
 - (b) ₹ 5.78 lakhs
 - (c) ₹ 8.25 lakhs
 - (d) None of the above.
 - (iii) If senior advocate provide service of ₹ 1,50,000/- to business entity for Legal services, then who is liable to pay service tax?
 - (a) Senior advocate
 - (b) Business entity
 - (c) Exempted service
 - (d) None of the above.
 - (iv) The Board has prescribed that the information and documents shall be kept and maintained for a period of _____ years from the end of the relevant assessment year.
 - (a) 5 yrs
 - (b) 6 yrs
 - (c) 8 yrs

- (d) 10 yrs
- (v) The Settlement Commission _____ grant immunity from prosecution for an offence under the Indian Penal Code or under any Central Act.
- (a) Shall
- (b) Shall not.

Answer:

- | | |
|-------|-----|
| (i) | (b) |
| (ii) | (c) |
| (iii) | (a) |
| (iv) | (c) |
| (v) | (b) |

- (c) State true or false with reasons: [5×2=10]
- (i) In FTP, advance authorization scheme is a type of duty remission scheme.
- (ii) Leasing and Hire Purchase Transactions are deemed sales under VAT.
- (iii) In CST, subsidy given by Government to manufacturers to compensate cost of production will form part of sale price.
- (iv) An appeal to the Commissioner (Appeal) shall be made in Form No 35.
- (v) The General Clauses Act accepts the thumb impression as one of the modes of signing, valid and binding, therefore it is not be considered as a ground of rejecting the application of the assessee.

Answer:

- (i) False. In FTP, there are various export promotion schemes. Advance authorization scheme is a type of duty exemption scheme.
- (ii) True. Leasing and Hire Purchase Transactions are deemed sales under VAT. These deemed sales are taxable under VAT.
- (iii) False. Government subsidy does not constitute amount payable to the dealer (by his customer) as consideration for the sale of goods. Hence, it is not includible in sale price.
- (iv) True: As per Rule 45(1) Section 249(1) an appeal to the Commissioner (Appeal) shall be made in Form No 35.
- (v) True: The General Clauses Act accepts the thumb impression as one of the modes of signing, valid and binding, therefore it is not be considered as a ground of rejecting the application of the assessee. [CIT v Kanhaiya Lal and Sons] (2005) 273 ITR 425 (All)]

2. The Profit & Loss account of Amit Private limited for the year ended 31.3.2017 shows a profit of ₹ 75 Lakhs after debiting the following items;

1. ₹ 2 Lakhs contributed to Employee Welfare Trust.
2. ₹ 12 Lakhs paid towards course fee and hostel expenses for MBA course of a close relative of a director. The relative is not in employment with the company.
3. ₹ 3.50 Lakhs being expenses incurred on installation of a traffic signal, so as to facilitate its employees coming to overcome traffic jam and save office time.
4. ₹ 3 Lakhs spent of gift items distributed to various dealers under the company's sales incentive scheme.
5. ₹ 6 Lakhs being expenses incurred on the travelling of the wife of MD, who accompanied him on tour to Singapore on invitation of trade and commerce chamber, Singapore.
6. ₹ 3 Lakhs being amount paid in march 2017 consequent upon change in currency rate due to exchange fluctuation in excess of the amount due to the supplier of the machinery.
7. ₹ 18,000 and ₹ 9,000 paid in cash on 25.10.2016 by two separate vouchers to a contractor who carried out certain repair work in the office premises.

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8. Interest of ₹ 2 Lakhs was paid in March, 2017 to a company on a loan taken from a company. Tax deducted at source from such interest was deposited in July, 2017.

Additional Information:

- (a) Provision for audit fees of ₹ 6 Lakhs was made in the books for the year ended 31.3.2016 without deducting tax at source. Such fees was paid to the auditors in September, 2016 after deducting tax under section 194J and the tax so deducted was deposited on 7.10.2016. 30% of audit fees was disallowed in the assessment year 2017-18.
- (b) During the year the company purchased 10,000 shares of Pankaj Ltd. at ₹ 40 per share. The fair market value of such shares on the date of transaction was ₹ 60 per share.

Compute total income of Amit Private limited for the A.Y 2017-18 and tax payable on such income indicating reasons for treatment of each item. Ignore the provisions relating to minimum alternate tax. [16]

Answer:

Computation of Total Income of Amit Private Ltd.

Particulars	Amount (₹)
Profit and gains of business or profession	75,00,000
Add: Expenses debited to profit and loss account but not allowable	
Contribution to Employee Welfare Trust disallowed under section 40A(9)	2,00,000
Expenses on course fee and hostel expenses for MBA course of a close relative of a director. The relative is not in employment with the company of Amit Private Ltd is not deductible under section 37 (Enkay (India) Rubber Co. Pvt Ltd v CIT (2003) ITR 521 (Del)) Such expenditure is not incurred wholly and exclusively for the purpose of business. Hence, it should be added back to compute business income.	12,00,000
Expenses incurred on installation of a traffic signal, so as to facilitate its employees coming to overcome traffic jam and to be on time, is in the interest of the business so that the work get completed on time and is hence an allowable expense under section 37(1) (Infosys Technology Ltd)	—
Expenses on distribution of gift items distributed to various dealers under the company's sales incentive scheme to promote goodwill and made in the interest of business. Such gifts are prompted by commercial expediency and hence the expenditure is allowable under section 37(1). (CIT v Avery Cycle Industries Limited. (2008) 298 ITR 239 296 ITR 393 (P & H))	—
Expenses on travelling of the wife of MD, who accompanied him on tour to Singapore on invitation of trade and commerce chamber, Singapore is not allowable expense on the grounds of commercial expediency and business considerations.	—
Increase in liability due to change in currency rate and paid to the supplier of machinery is to be added to cost of the asset irrespective of the method of accounting as per section 43A. Hence, it should be added back to compute by business income.	3,00,000
Payment made to a contractor for repair work in a day by two separate vouchers in cash is not a allowable expense as per section 40A(3), since the aggregate payment in a day exceeds the limit of ₹ 20,000	27,000
Interest of ₹ 2 Lakhs was paid in March, 2017 on which tax deducted at source was remitted to the Government before the due date of filing return (i.e 30.09.2017) is allowable as per section 40(a)(ia).	—
Less: Expenditure allowable as deduction but not debited to PL Account	
Depreciation on the amount of ₹ 3 lakh added in cost of machinery @15% for the year.	45,000

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Provision for audit fees for the year ended 31.3.2016 for which tax was not deducted in the F.Y 2015-16 but was deducted and paid in F.Y 2016-17 is allowable as deduction in the A.Y 2017-18, as per the provision to section 40(a)(ia). 30% of ₹ 6,00,000.	1,80,000
	90,02,000
Income from other sources	2,00,000
Difference between the aggregate fair market value of share of a closely held company and the consideration paid for purchase of such shares is deemed as income in the hands of the purchasing company under section 56 (2)(viiia). Since the difference exceeds 50,000 the entire sum is taxable.	
Total Income	92,02,000

Computation of tax liability of Amit Private Ltd for A.Y 2017-18.

Particulars	Amount (₹)
Tax on ₹ 92,02,000 @ 30%	27,60,000
Add: Education cess @ 2%	55,212
Secondary and higher education cess @ 1%	27,606
Total Tax Payable	28,43,420

3.(a) The regular assessment of Pankaj Ltd for the assessment year 2015-16 was completed under section 143(3) on 13th April, 2016. There was an audit objection by the Revenue Audit team that interest on loan should be partly disallowed as there was diversion of borrowed fund to sister concern without charge of interest.

Based on the above facts;

- (i) State, with reasons, whether the Assessing Officer can issue notice under section 148 (on 12th March, 2016) on the basis of audit objection of the Revenue Audit team.**
- (ii) If the action stated in (i) above is not permitted, what is the option open to the Revenue Department to deal with the said audit objection? [8]**

Answer:

- (i) Section 147 states that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess such income and also any other income chargeable to tax which has escaped assessment all comes to his notice subsequently in the course of the proceedings under this section.

The Assessing Officer should, therefore, have reason to believe that income chargeable to tax has escaped assessment. The belief should be that of the Assessing Officer and not of the audit team.

Further, the Income-tax Act, 1961 does not confer jurisdiction on the Assessing Officer to change its opinion on the interpretation of a particular provision earlier adopted by it. If the issue had already been considered earlier during the course of scrutiny assessment and the Assessing Officer had come to a conclusion that no disallowance of interest paid by the assessee is required even though loans had been given to sister concern without any interest, the same issue cannot be the basis of reassessment, merely because the revenue audit team takes a different view.

Therefore, the Assessing Officer cannot issue notice under section 148 on the basis of an audit objection of the Revenue Audit team.

- (ii) Option available to the Revenue Department

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The option open to the Revenue is initiation of proceedings under 263, by the jurisdictional Commissioner. He has the power to call for and examine the records, if he is of the opinion that the order passed by the Assessing Officer under section 143(3) is erroneous in so far as it is prejudicial to the interests of the Revenue.

However, where the Assessing Officer has considered the issue in the original assessment come to a conclusion that no disallowance of interest is called for, the Commissioner cannot initiate revisionary proceedings, merely because he holds a different view. Only where the view taken by the Assessing Officer is unsustainable in law, the Commissioner will be justified in initiating the revisionary proceedings under section 263. It was so held in CIT v Sohana Woollen Mills (2008) ITR 238 (P & H).

- 3.(b) Rajat, whose Gross Total Income for the Assessment Year 2017-18 is ₹ 3,85,000 (which includes long term capital gain of ₹ 40,000 and short term capital gain of ₹ 20,000) submits the following information:** [8]

Particulars	Amount (₹)
Contribution towards PPF	10,000
Lip paid for married son not dependant on him.	5,000
Mediclaime Premium paid by cheque for	
(a) Himself	
2,000	5,000
(b) For married son not dependant on him	
3,000	
He has made the following donations;	
(a) National Defense Fund	5,000
(b) PM's National Relief Fund	2,000
(c) Swachh Bharat Kosh	2,000
(d) Indira Gandhi Memorial Trust	5,000
(e) Delhi University	
(declared as an institution of national eminence)	2,000
(f) Zila Saksharta Samiti	4,000
(g) An approved charitable institution	25,000
(h) Government for family planning	20,000
(i) Donation of blanket to an orphanage	4,000
(j) Donations to National Children Fund	2,000
Compute Total Income for the A.Y 2017-18	

Answer:

Particulars	₹	₹	₹
Gross Total Income (includes LTCG but while claiming deduction u/s 80C to 80U, LTCG is to be excluded)			3,85,000
Less: Deduction u/s 80C to 80U:			
80C		15,000	
80D for himself	2,000		
For son not depended	-	2,000	
80G Donations			
(A) Donations to which qualifying limit does not apply.			
(a) Allowed 100%			
(i) National Defense Fund	5,000		
(ii) Delhi University	2,000		
(iii) Zila Saksharta Samiti	4,000		
(iv) National Children Fund	2,000		
(v) PM's National Relief Fund	2,000		
(vi) Swacch Bharat Kosh	2,000	17,000	
(b) Allowed @ 50%		2,500	
Indira Gandhi Memorial Trust (5,000)			

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(B) Donations Which are subjected to qualifying limit: Actual donations made to: (i) Government for family planning (ii) Approved Institutions	20,000 <u>25,000</u> 45,000 32,800		
But are limited to 10% of Adjusted total Income of ₹ 3,28,000 Out of 32,800 Donation of ₹ 20,000 For family planning @ 100%	20,000 <u>6,400</u>	26,400	62,900
Total Income			3,22,100

(B).

Particulars	₹
Tax on ₹ 3,22,100	8,000
Long term capital gain ₹ 40,000 @ 20%	3,210
	11,210
Less: Rebate u/s 87A	5,000
	6,210
Add: Education cess & SHEC @ 3%	186
	6,396
Tax rounded off	6,400

Note:

1. Adjusted Gross Total Income is calculated as under:

Gross Total Income	3,85,000
Less: LTCG	40,000
Deduction u/s 80C to 80U expecting 80G	<u>17,000</u>
	<u>57,000</u>
	<u>3,28,000</u>

2. Donations made in kind of blankets do not qualify for deduction u/s 80G.

4.(a)(i) What do you understand by Deemed Exports under Foreign Trade Policy? [4]

(ii) Describe SION (Standard Input Output Norms) in the context of foreign trade policy. [4]

Answer:

- (i)** Deemed Exports: Goods manufactured in India and supplies from DTA to EOU, EHTP, STP & BTP units will be regarded as deemed exports and DTA supplier shall be eligible for export incentives.

The following supplies considered as deemed exports:

Goods supplied by a manufacturer:

1. Supply of goods against Advance Authorisation/Advance Authorisation for Annual Requirement/DFIA.
2. Supply of goods to units located in EOU/STP/BTP/EHTP.
3. Supply of capital goods against EPCG authorization.
4. Supply of marine freight containers by 100% EOU provided said containers are exported within 6 months by another 100% EOU.

Goods supplied by a Main contractor/sub-contractor:

1. Supply of goods to projects or turnkey contracts financed by multilateral or bilateral agencies/Funds notified by Department of Economic Affairs (DEA), under International Competitive Bidding.
2. Supply of goods to any project where import is permitted at zero customs duty.
3. Supply of goods to mega power projects against International Competitive Bidding.
4. Supply to goods to UN or international organisations.
5. Supply of goods to nuclear projects through competitive bidding (need not be international competitive bidding).

6. Export of finished goods from job worker's premises may be permitted, provided such premises are registered with Central Excise authorities. Where job worker is SEZ/EOU/EHTP/STP/BTP unit, no such excise registration is required and export may be effected either from job worker's premises or from premises of unit. Export of such products from job worker's premises shall not be allowed through third parties as provided in FTP. It means third party supply shall not be eligible for benefits/exemption.

- (ii) Standard Input Output Norms or SION in short is standard norms which define the amount of input/inputs required to manufacture unit of output for export purpose. Input output norms are applicable for the products such as electronics, engineering, chemical, food products including fish and marine products, handicraft, plastic and leather products etc. SION is notified by DGFT in the Handbook, and is approved by its Boards of Directors.

An application for modification of existing Standard Input-Output norms may be filed by manufacturer exporter and merchant-exporter. The Directorate General of Foreign Trade (DGFT) from time to time issue notifications for fixation or addition of SION for different export products. Fixation of Standard Input Output Norms facilitates issues of Advance License to the exporters of the items without any need for referring the same to the Headquarter office of DGFT on repeat basis.

Basics Requirements of Standard Input Output Norms:

For fixation/modification of Standard Input Output Norms (SION) following details are required:

- Technical Details of the export product
- Chartered Engineer certificate certifying the import requirements of raw materials
- Production and Consumption data of the manufacturer/supporting manufacturer of the preceding three licensing years, duly certified by the Chartered accountant/Cost Accountant/Jurisdictional Excise Authority.

- 4.(b) Macline Cola Co. of UK entered into contracts with three Indian companies namely ABC Ltd., Pepsi Co. Ltd, Coca Cola Ltd. for supplying known-how. Macline Cola Co. made an application to the Authority for Advance Rulings (AAR) on the rate of withholding tax on receipts applicable to it.**

Also, Coca Cola Ltd also made an application to the Assessing Officer for determination the rate at which tax is deductible on the payment made to non- resident company i.e Macline Cola Co.

The Authority for Advance Rulings (AAR) rejected the application of Macline Cola Co. on the ground that the question raised in the application is already pending before an Income tax authority. [8]

Answer:

As per clause (i) of the first proviso to section 245R(2), the Authority for Advance Rulings shall not allow a application where question raised in the application is already pending before any income-tax authority or Appellate Tribunal or any court.

In the instant case, no case of Macline Cola Co. is pending before the Assessing Officer as the application has been made by the resident Indian company i.e. Coca Cola Ltd. (and not the foreign company) before the Assessing Officer for determination of rate of tax at which the tax has to be deducted by it at source so that it may not commit any default.

Although the question raised pertains to one of the payments made or to be made to the nonresident applicant, it was not one pending determination before any income-tax authority in the applicant's case.

Hence, the application of Macline Cola Co. cannot be rejected by the AAR on the ground that the question raised in the application is already pending before an income-tax authority.

5.(a)(i) Mr. Ram has provided the following services during the year 2016-17. Determine whether he is eligible for small service provider exemption during the year 2017-18:

- 1. Service exported to USA ₹ 25,00,000**
- 2. Fee from agricultural activities ₹ 2,50,000**
- 3. Services provided by way of transport of defence material in a vessel for ₹ 4,50,000**
- 4. Declared services (value as determined under valuation rules is 40% of the total amount charged) for ₹ 6,00,000**
- 5. Value of construction services (in which 70% abatement has been provided) for ₹ 2,00,000.**
- 6. Legal consultancy services (reverse charge applicable) for ₹ 7,00,000. [8]**

(ii) Sri Hanuman is a practicing Cost Accountant. His Gross taxable services during the year 2016-17 are ₹ 9,50,000. Is registration compulsory for him? If so in which year? [2]

Answer:

(i)

Statement showing aggregate value of Mr. Ram in the P.Y. 2016-17

Particulars	Amount	Working note
Service exported to USA	Nil	Not includible
Fee from agricultural activities	Nil	Not includible
Services provided by way of transport of defence material in a vessel	Nil	Not includible
Declared services	2,40,000	6,00,000 x 40%
Value of construction services	60,000	30% includible
Legal consultancy services	7,00,000	Fully includible
Aggregate value (as per NT 33/2012)	10,00,000	

Since, the aggregate value is ₹ 10,00,000 during the financial year 2016-17, Mr. Ram is eligible for small service provider exemption during the year 2017-18.

(ii) Yes, Registration is compulsory in the year 2016-17.

5.(b) State briefly the provisions of the CENVAT Credit Rules, 2004 in respect of removal of inputs and capital goods on which CENVAT credit has been availed in 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. [6]**

Answer:

- (i)** An amount equal to CENVAT credit taken on the said capital goods, reduced by 2.50% for each quarter of a year or part thereof from the date of taking the CENVAT credit is required to be paid.
- (ii)** Where input goods or capital goods are scrapped they are deemed to have undergone a manufacture as they are no longer in their original form. If this scrapped item is named in the central excise tariff duty will be payable as an amount as per the tariff on waste or scrap at the time of place of removal.
- (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.

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

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connection are as follows:

- (i) Freight from Japan to India Port 20,000 Yen
- (ii) Insurance paid to Insurer in India ₹ 10,000
- (iii) Designing charges paid to Consultancy firm in Japan 30,000 Yen
- (iv) M/s. XYZ Industries had expended ₹ 1,00,000 in India for certain development activities with respect to the imported equipment
- (v) XYZ Industries had incurred road transport cost from Mumbai port to their factory in Karnataka ₹ 30,000
- (vi) The Central Board of Excise and Customs had notified for purpose of section 14(3)* of the Customs Act, 1962 exchange rate of 1 Yen = ₹ 0.3948. The interbank rate was 1 Yen = ₹ 0.40
- (vii) M/s XYZ Industries had effected payment to the Bank based on exchange rate 1 Yen = ₹ 0.4150.
- (viii) The commission payable to the agent in India was 5% of FOB cost of the equipment in Indian Rupees.

Arrive at the assessable value for purposes of customs duty under the Customs Act, 1962 providing brief notes wherever required with appropriate assumptions. [9]

Answer:

Statement showing computation of assessable value for the imported goods

Particulars	Amount in Yen	Remarks	Working note
Free on Board (FOB)	2,00,000		
Designing charges	30,000	Addable into the assessable value	
Development charges	—	Not addable into the assessable value, because these are post shipment expenses	
Road transport charges	—	Not addable into the assessable value, because these are post shipment expenses	
Commission	10,000	Addable into the assessable value	$2,00,000 \times 5\% = 10,000$
FOB value of the Customs	2,40,000		
	Amount in Rupees		
Total	94,752	Exchange rate of the Central Board of Excise and Customs (CBE&C) is relevant	$2,40,000 \text{ Yen} \times 0.3948$
Insurance	10,000	Addable into the assessable value	
Freight	7,896	Addable into the assessable value	$20,000 \times 0.3948$
Total CIF value	1,12,648		
1% loading and unloading on CIF	1,126.48		$₹ 1,12,648 \times 1\%$
Assessable Value	1,13,774.48 or 1,13,774		

6.(b) The following information relates to purchases and sales of K.K. Ltd. for the month of September 2016:

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(i)	Purchases for resale within the State	8,00,000
(ii)	Purchases from registered dealers who opted for composition scheme	4,00,000
(iii)	Purchases to be used as consumable stores for manufacture of taxable goods	6,00,000
(iv)	Purchases of goods where invoices does not show the amount of taxes separately	5,00,000
(v)	Purchases of goods for personal consumption	2,00,000
(vi)	Purchases of capital goods (not eligible for input credit)	5,50,000
(vii)	Purchases of capital goods (eligible for input credit)	5,76,000
Sales made within the State during the month of September 2016 was ₹ 50,00,000 on which VAT @ 4% was payable.		

Assuming that all purchases given above are exclusive of VAT @ 12.5%, Calculate:

(i) The amount of input tax credit available for the month of September 2016.

(ii) VAT payable for the month of September 2016.

(iii) Input tax credit carried forward.

Note: The input VAT credit on eligible capital goods is available in 24 equal monthly installments. (Make suitable assumptions where required and show the workings) [7]

Answer:

(i) Input tax credit available for the month of September 2016 is ₹ 1,78,000

Purchases for resale within the State	₹ 8,00,000
Purchases to be used as consumable stores for manufacture of taxable goods	₹ 6,00,000
Total purchases (other than capital goods) eligible for ITC	₹ 14,00,000
ITC = ₹ 14,00,000 x 12.5% =	₹ 1,75,000
ITC (on capital goods) = ₹ 5,76,000 x 12.5% x 1/24 =	₹ 3,000
Total ITC for the month of September 2016 =	₹ 1,78,000

(ii) VAT payable for the month of September 2016 is ₹ 22,000

Total sales = ₹ 50,00,000
4% VAT on sales = ₹ 50,00,000 x 4% = ₹ 2,00,000
Less: ITC = ₹ 1,78,000
Net VAT Payable = ₹ 22,000

(iii) Input tax credit carried forward is ₹ 69,000

ITC on capital goods = ₹ 72,000 – ₹ 3,000 = ₹ 69,000.

7.(a)(i) Rishabh Dev & Co. is engaged in the manufacture of liquid mosquitoes' destroyer. It obtains concentrated alletherin and converts it into diluted alletherin by adding solvent deodorized kerosene oil, perfume (as a masking agent) and DHT (as a stabilizing agent). Revenue alleges that the addition of stabilizing agent, masking agent etc. amounts to manufacture within the meaning of section 2(f) of the Central Excise Act, 1944. Do you think that Revenue's allegation is tenable in law? [6]

(ii) Assessee imported Compact Disk Read Only Memory (CD ROMs) containing images of drawings and designs of engineering goods. The Appellant (i.e. assessee), filed a Bill of Entry for the clearance of the CD ROM containing drawings, designs of engineering goods. The assessee claimed classification under Custom Tariff heading 4906, or, heading 4911, or, as Information Technology Software, or as CD ROM, where exemption is given from duty. However, the Department classified the same under Customs Tariff heading 8524.39 thereby recorded CD ROMs, liable to duty. Discuss in the light of decided case law, if any, whether the classification of the department is correct in law? [5]

Answer:

- (i) The final product manufactured by the respondent was a diluted form of insecticide-alletherin which would only kill small insects like mosquitoes. Hence, only the potency of the insecticide was being reduced.

Mere processing of the goods was not manufacture, unless a new product emerges as per section 2(f) of the Central Excise Act, 1944. In the present case, no new substance was formed and only a diluted form of original substance was packaged under a different brand name.

Therefore, it could not be termed as manufacture. The Revenue's allegation is not tenable in law. [CCE v Karam Chand 2009 (236) ELT 647 (HP)]

- (ii) The Hon'ble Supreme Court held that "What is made duty free is the Compact Disk Read Only Memory (CD-ROM) as it is and not a disc containing certain drawings and designs". It further said that the data in a compact disk does not fall within the meaning of the term 'software' to entail the benefit (i.e. nil rate of duty).

Software is a computer program, which enables the computer to function. The drawings and designs of engineering goods recorded on a CD ROM could not be regarded as a "computer program" or "instructions" meant for functioning of computer. In fact, they are "output" of computer software, which generate such drawings and designs. Therefore, they are not Information Technology Software.

The Supreme Court has ruled that the department can impose appropriate duty on the import of CD ROMs containing images of drawing and designs of engineering goods. The assessee cannot claim clearance of such goods at zero duty, said the apex court in the case of M/s L.M.L. Ltd v Commissioner of Customs (2010).

Therefore, the classification of the department is correct in law.

- 7.(b) The assessee was engaged in the manufacture of sugar. The Central Government directed him to maintain buffer stock of free sale sugar for the specified period. The Government of India extended buffer subsidy towards storage, interest and insurance charges for the said buffer stock of sugar. Department issued a show cause notice to the assessee raising the demand of service tax alleging that amount received by the assessee as buffer subsidy was for the services covered within the definition of 'storage and warehousing services'. [5]**

Answer:

Service tax not chargeable on the buffer subsidy provided by the Government for storage of free sale sugar, under the category of 'storage and warehousing services', because the buffer stock is maintained for specified period at the direction of the government to maintain free sale supply, under the Sugar Development Fund Act, 1982.

Where stored goods are belongs to assessee's own goods and no one can provide service to himself. Government of India extended subsidy on account of loss of interest, cost of insurance etc. incurred on account of maintenance of stock [CCE v Nahar Industrial Enterprises Ltd. 2010 (19) STR 166 (P&H)].

- 8.(a) Doc solutions Inc a US company, sells laser printer cartridge drums to its Indian Subsidiary quality printing ltd at \$10 per drum. Doc solutions Inc.has other takers in India for its cartridge Drums, for whom the price is \$15 per drum. During the year, Doc solutions had supplied 10,000 cartridge to Quality printing ltd. Determine the Arm length price and taxable income of quality printing ltd if its income after considering the above is ₹ 35,00,000. Compliance with TDS provisions may be assumed and rate per USD is ₹ 65. [8]**

Answer:

Computation of Total Income of Quality Printing Ltd

Particulars	Amount (₹)	Amount (₹)
Total Income before adjusting for difference due to Arm's Length Price		35,00,000
Add: Difference on account of adopting Arms' Length Price Amount actually paid to Doc solutions [10,000 x \$ 10 x ₹ 65]	65,00,000	
Less: Amount under Arm's Length Price [10,000 x \$ 10 x ₹ 65]	<u>94,50,000</u>	
Incremental cost on Adopting ALP	32,50,000	
U/s 92(3), taxable Income cannot be reduced on applying ALP. Therefore, difference on account of ALP is ignored.		
Total Income of Quality Printing Ltd		35,00,000

8.(b) US Ltd. a US Company has a subsidiary, IND Ltd in India. US Ltd sells computer Monitors to IND Ltd, for resale in India. US Ltd also sells computer Monitor to CMI Ltd, another computer reseller. Its sells 50,000 computer monitor to IND Ltd at ₹ 11,000 p.u. The price fixed for CMI Ltd is ₹ 10,000 per unit. The warranty in case of sale of monitors by IND Ltd is handled by IND Ltd however, for sale of monitors by CMI Ltd, US Ltd is responsible for warranty for 3 months. Both US Ltd and IND Ltd offer extended warranty at a standard rate of ₹ 1,000 per annum. On these facts, how the assessment of IND Ltd is going to be affected? [8]

Answer:

1. The enterprises shall be deemed to be Associated Enterprises, if at any time during the previous year, one enterprise holds, directly or indirectly, shares carrying not less than 26% of shares/ voting power in the other enterprise.
2. Analysis and Conclusions: In the above case, ALP is as follows:

Particulars	Amount (₹)
Sales Price	10,000
Less: Adjustments for warranty period of three months (₹ 1,000 x 3/12 months)	(250)
Adjusted Purchase Price, i.e Arms Length Price	9,750
Purchase price of Ind Ltd	11,000
Less: ALP as computed above	9,750
Difference being excessive cost disallowed (Income Per Unit)	1,250
Additional Income (Income Per Unit 1,250 x 50,000 units)	6,25,00,000