

Paper 11- Indirect Taxation

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Full Marks: 100

Time allowed: 3 hours

The figures in the margin on the right side indicate full marks.
Working notes should form part of the answer.

1. Answer the following questions:

(A) Multiple choice questions:

[7×2=14]

- (i) A vessel *Bhishma*, sailing from U.S.A. to Australia via India. *Bhishma* carries various types of goods namely 'A', 'B', 'C' & 'D'. 'A' & 'B' are destined to Mumbai Port and balance remains in the same vessel. Subsequently vessel chartered to Australia. The transit goods are:
- (a) 'A' & 'B'
 - (b) 'C' & 'D'
 - (c) 'A', 'B', 'C' & 'D'
 - (d) None of the above.
- (ii) Which of the following have been held as not to be a manufacturer?
- (a) Person manufacturing for own consumption
 - (b) A job-order worker
 - (c) A contractor
 - (d) Loan licensee.
- (iii) Which of the following form is used to get registered under CST?
- (a) Form F
 - (b) Form G
 - (c) Form A
 - (d) Form B
- (iv) Payment was credited in the books of accounts on 7.6.2016. Payment was credited in the bank account on 10.6.2016. Date of change in effective rate of tax is on 8.6.2016. In case of point of taxation, the date of payment will be:
- (a) 10.6.2016
 - (b) 07.6.2016
 - (c) 08.6.2016
 - (d) None of the above.
- (v) The types of duty drawback rates include:
- (a) All Industry Rate
 - (b) Brand Rate
 - (c) Special Brand Rate
 - (d) All of the above.
- (vi) The List III (Concurrent List) of Seventh Schedule to Constitution contains:
- (a) entries under exclusive jurisdiction of Union Government
 - (b) entries under exclusive jurisdiction of States
 - (c) entries where both Union and State Governments can exercise power
 - (d) None of the above.
- (vii) Section 14A of Central Excise Act deals with:
- (a) CENVAT Credit Audit
 - (b) Excise Audit 2000
 - (c) Valuation Audit
 - (d) Central Excise Revenue Audit.

Answer:

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

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- (vi) (c)
(vii) (c)

(B) Say Yes or No for the following question: [6×1=6]

- (i) Central Excise Revenue Audit (known as CERA Audit) conducted by the office of the Comptroller and Auditor General of India.
(ii) Countervailing Duty (CVD) is payable while calculating anti-dumping duty.
(iii) In case of pilferage, no duty is payable at all.
(iv) CBE & C has developed a software application called Automation of Central Excise and Sales Tax (ACES), which aims at improving tax-payer services, transparency, accountability and efficiency in indirect tax administration.
(v) All services provided to RBI are included in the negative list.
(vi) Service tax came into force from the year 1994.

Answer:

- (i) Yes
(ii) No
(iii) Yes
(iv) No
(v) No
(vi) Yes.

(C) Match the following: [5×1=5]

	Column 'A'		Column 'B'
1.	Gambling	A	Negative list service
2.	CST	B	Value based on retail sale price
3.	Services provided to the United Nations	C	Exempted under mega exemption
4.	Warehouse	D	Applies to the whole of India including the state of Jammu & Kashmir
5.	Section 4A of the Central Excise Act	E	Private or public

Answer:

- 1 → A
2 → D
3 → C
4 → E
5 → B

Answer any five questions from the following.
Each question carries 15 marks.

2.(a) Sri Ram, a Registered Dealer at Mumbai, furnishes the following information:

	(₹)
(i) Inter-state sale of goods	40,00,000
This includes the following—	
(ii) Excise duty	45,000
(iii) Goods returned on 17/1/2017 [These goods were sold on 12/4/2016]	1,05,000
(iv) Cash discount shown in invoice and allowed according to prevailing trade practice	50,000
(v) Freight and transportation charges (of this ₹ 1,50,000 is on inclusive basis)	4,50,000
(vi) Insurance premium paid prior to delivery of goods	75,000

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(vii) Installation and commissioning charges levied separately in invoices	75,000
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Compute the tax liability under the CST Act, assuming the rate of tax @ 2%. [10]

Answer:

	(₹)
Sales turnover	40,00,000
Less: Deductions	
Cash discount according to normal trade practice	50,000
Freight and transportation charges – deductible to the extent shown separately in the invoices	3,00,000
Installation and commissioning charges levied separately in invoices	75,000
Turnover inclusive of CST	35,75,000
Less: Central Sales Tax	70,098
Taxable turnover	35,04,902

Note: It is assumed that local VAT rate of the seller state is @2%. Therefore, goods returned after 6 months from the date of sale attracted CST @2%.

2.(b) State the advantages of VAT over the conventional system of taxation. [5]

Answer:

Advantages of VAT are as follows:

1. Tax burden is only at the last i.e. consumption stage. This is useful for taxation structure based on 'destination principle'.
2. It becomes easier to give tax concessions to goods used by common man or goods used for manufacture of capital goods or exported goods.
3. Exports can be freed from domestic trade taxes.
4. It provides an instrument of taxing consumption of goods and services.
5. Interference in market forces is minimum.
6. Simplicity and transparency.
7. Aids tax enforcement by providing audit trail through different stages of production and trade.
8. Thus, it acts as a self-policing mechanism resulting in lower tax evasion.
9. Tax rates can be lower as tax is levied on retail price and not on wholesale price.

3.(a) R & Co. furnish the following expenditure incurred by them and want you to find the assessable value for the purpose of paying excise duty on captive consumption. Determine the cost of production in terms of rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules 2000 and as per CAS – 4 (Cost Accounting Standard):

		₹
(i)	Direct material cost per unit inclusive of excise duty at 12.5%	880
(ii)	Direct wages	225
(iii)	Other direct expenses	125
(iv)	Indirect materials	100
(v)	Factory overheads	200
(vi)	Administrative overhead (25% relating to production)	100

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	capacity)	
(vii)	Selling and distribution expense	150
(viii)	Quality control	25
(ix)	Sale of scrap realised	20
(x)	Actual profit margin	15%

[8]

Answer:

Cost of production is required to be computed as per CAS-4. Material cost is required to be exclusive of Cenvat credit available.

	Particular	Total Cost (₹)
1.	Material Consumed (Net of Excise duty) [₹(880 -97.77)]	782.23
2.	Direct Wages	225.00
3.	Other Direct Expenses	125.00
4.	Works Overhead [indirect material (₹ 100) plus factory overhead (₹ 200)]	300.00
5.	Quality control cost	25.00
6.	Administrative Overhead (25% relates to production activity)	25.00
	Less : Sale of Scrap	(20.00)
	Cost of Production	1,462.23
	Add: 10% profit margin on cost of production ₹ 1,462.23 x 10%)	146.22
	Assessable value as per Rule 8 of the valuation rules	1,608.45

Note: Actual profit margin is not relevant for excise valuation.

3.(b) ABC & Co., a SSI unit, furnishes the following details of clearances for the previous financial year

(₹ in lakhs)

Value of clearances in the preceding financial year	665
It includes:	
(i) Clearances of non-excisable goods	45
(ii) Exports to Bhutan	120
(iii) Clearances to a unit in the STP without payment of duty and VAT	65
(iv) Job work not fulfilling conditions under notification no. 84/94-CE dated 11.04.2014 and 214/86-CE dated 25.03.2016	25
(v) Clearances of goods subject to valuation u/s 4A of the Central Excise Act, 1944 (eligible for abatement of 30%)	200
(vi) Clearances of excisable goods manufactured in rural area bearing brand name of another company	75

Determine whether it is eligible for SSI exemption during the current year with suitable explanations.

[7]

Answer:

Following is to be excluded from ₹ 665 lakhs –

- (i) non-excisable goods to be excluded - ₹ 45 lakhs
- (ii) cannot be excluded
- (iii) deemed exports i.e. supplies to STP - ₹ 65 lakhs
- (iv) cannot be excluded [it is presumed that ₹ 25 lakhs is value of goods and not only job charges]
- (v) It is presumed that ₹ 200 lakhs is turnover on basis of MRR. So, its assessable value @ 70% is ₹ 140 lakhs. Hence, only ₹ 140 lakhs are to be considered as value of excisable goods and ₹ 60 lakhs to be excluded.

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(vi) cannot be excluded as these are eligible for SSI exemption. These can be cleared without payment of excise duty.

Hence, value to be excluded from ₹ 665 lakhs is ₹ (45 + 65 + 60) lakhs or ₹ 170 lakhs. Thus, value of goods cleared in previous year were ₹ 495 lakhs [₹ (665 - 170) lakhs]. Since this turnover exceeds ₹ 400 lakhs, ABC & Co. is not eligible for SSI exemption in current financial year.

4.(a) State the need for warehousing in customs.

[6]

Answer:

If the imported goods are not required immediately, importer may like to store the goods in a warehouse without payment of duty under a bond and then clear from warehouse when required on payment of duty. This will enable him to defer payment of customs duty till goods are actually required by him. In such case, importer can keep goods in warehouse without payment of customs duty. Goods are cleared from customs port under bond and kept in the warehouse. The importer can clear goods from customs warehouse on payment of duty when he requires the goods for use/consumption/sale.

This facility is available to traders as well as direct importers. A trader can import goods and keep in warehouse. He can supply the goods to buyers from warehouse, after paying customs duty. Thus, small importers, duty free shops etc. can procure goods from bonded warehouse without actually importing the goods.

A manufacturer can import inputs without payment of customs duty for manufacture in bond. He will have to export final product which was manufactured using imported duty free material.

Even duty free clearances can be made from bonded warehouse, if buyer is otherwise eligible for obtaining goods duty free.

4.(b) An importer has imported a machine from UK at FOB cost of 10,000 UK Pounds. Other details are as follows:

- (i) Freight from UK to Indian Port was 700 pounds.
- (ii) Insurance was paid to insurer in India: ₹ 6,000.
- (iii) Design and development charges of 2,000 UK Pounds were paid to a consultancy firm in UK.
- (iv) The importer also spent an amount of ₹ 50,000 in India for development work connected with the machinery.
- (v) 10,000 were spent in transporting the machinery from Indian Port to the factory of importer.
- (vi) Rate of exchange as announced by RBI was: ₹ 68.82 = one UK Pound.
- (vii) Rate of exchange as announced by CBE&C by notification was: ₹ 68.70 = one UK Pound.
- (viii) Rate at which bank recovered the amount from importer ₹ 68.35 = one UK Pound.
- (ix) Foreign exporters have an agent in India. Commission is payable to the agent in Indian Rupees @5% of FB price.

Customs duty payable was 10%. Excise duty rate is 12.5%. Education cess of customs is as applicable. Special CVD is payable at applicable rates. Find customs duty payable. What are the duty refunds/ benefits available if the importer is (A) manufacturer (B) service provider (C) trader? [6+3=9]

Answer:

FOB Value	10,000.00 UK Pounds
Add: Design & Development Charges	2,000.00 UK pounds

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Add: Ocean freight	700.00 UK Pounds
Total C & F	12,700.00 UK Pounds
Total in ₹ @ 68.70	₹ 8,72,490.00
Add: Insurance	₹ 6,000.00
Add: Local Agency commission 500 UK pounds @ ₹ 68.70 = 1 UK Pound	₹ 34,350.00
Total CIF Price	₹ 9,12,840.00
Add: Landing Charges @ 1% of CIF	₹ 9,128.40
Assessable Value	₹ 9,21,968.40
Assessable Value (rounded to)	₹ 9,21,968.00
Add: Basic Customs Duty (BCD) @10%	₹ 92,197.00
Sub-total	₹ 10,14,165.00
Add: Countervailing Duty (CVD) @ 12.5%	₹ 1,26,771.00
Sub-total	₹ 11,40,935.00
Add: 2% Education cess	₹ 4,379.00
Add: 1% SAH Education cess	₹ 2,190.00
Sub-total	₹ 11,47,504.00
Add: Spl. CVD	₹ 45,900.00
Value of imported goods	₹ 11,93,404.00

The following import duties are allowed as CENVAT credit:

If the importer	BCD ₹	CVD ₹	SPL.CVD ₹	Edu. CESS ₹
Manufacturer	CENVAT credit not allowed	1,26,771	45,900	CENVAT credit not allowed
Service provider	CENVAT credit not allowed	1,26,771	CENVAT credit not allowed	CENVAT credit not allowed
Trader	CENVAT credit not allowed	CENVAT credit not allowed	CENVAT credit not allowed. However refund is allowed if VAT paid. (₹ 45,900)	CENVAT credit not allowed

Note:

(1) Design and development work done in India and transport costs within India are not to be considered for purposes of 'Customs Value'.

5.(a) State whether the following will be covered within the scope of service or not.

- (i) **Services provided on contract basis**
- (ii) **Functions performed by MPs, MLAs, persons holding constitutional posts**
- (iii) **Amounts received by an employee from the employer on premature termination of contract of employment**
- (iv) **Service of Court/Tribunal**

[8]

Answer:

- (i) Services provided on contract basis: Services provided on contract basis i.e. principal to principal basis are not services in course of employment and therefore come within the ambit of taxable service.
- (ii) Functions performed by MPs, MLAs, persons holding constitutional posts: The functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member will not be covered in service.
- (iii) Amounts received by an employee from the employer on premature termination of contract of employment: It is not regarded as service. Such amounts paid by the employer to the employee for premature termination of a contract of employment are treatable as amounts paid in relation to services provided by the employee to

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the employer in the course of employment. Hence, amounts so paid would not be chargeable to service tax.

- (iv) Service of Court/Tribunal: Fees taken in any Court or tribunal established under any law for the time being in force is outside the coverage of 'service'.

5.(b) Mr. B agrees to undertake a works contract for M/S P Ltd. for repair, plastering, floor and wall tiling of a building for ₹ 20 Lakhs. The breaking up of gross value charged by Mr. B to P Ltd. is not available. M/S P Ltd. Supplied cement of ₹ 1 lakh free of cost, which was used by Mr. B during providing his service. Find out the service tax liability in the hands of Mr. B. [7]

Answer:

Service tax is payable on 70% of ₹ 21 lakhs i.e. on ₹ 14.70 lakhs. Hence, service tax @ 15% is ₹ 2,20,500.

The service provider is individual and service receiver is company. Hence, the transaction is subject to reverse charge. Mr. B is liable to pay 50% of service tax of ₹ 1,10,250.

Balance 50% of service tax is payable by M/s P Ltd. who are service receivers.

6.(a) State the characteristics of indirect taxes. [5]

Answer:

Characteristics of indirect taxes:

1. Indirect Tax is a tax where incidence and impact fall on two different persons.
2. Indirect Tax is regressive in nature.
3. The taxable event is the purchase / sale / manufacture of goods and provision of services.
4. Levied & collected from the consumer but paid/ deposited to the Exchequer by the Assessee / Dealer.
5. Tax burden is shifted to the subsequent / ultimate user.
6. At the time of sale or purchases or rendering of services.

6.(b) Write short note on the following: [2×5=10]

- (i) 'Dealer' under CST Act
- (ii) Registration Cum Membership Certificate

Answer:

- (i) According to section 2(b) of the CST Act, 'Dealer' means any person:
- A. who carries on (whether regularly or otherwise), the business of
 - B. buying, selling, supplying or distributing goods, directly or indirectly,
 - C. for cash or for deferred payment, or for commission, remuneration or other valuable consideration.

Dealer includes the following:

1. A Local Authority, a Body Corporate, a Company, any Co-operative Society or other Society, Club, Firm, HUF or Other Association of Persons which carries on such business.
2. A Factor, Broker, Commission Agent, Del - credere Agent, or any other Mercantile Agent, by whatever name called, and whether of the same description as herein before mentioned or not, who carries on the business of buying, selling, supplying or distributing, goods belonging to any principal whether disclosed or not, and
3. An auctioneer who carries on the business of selling or auctioning goods belonging to any principal, whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal.

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(ii) Registration Cum Membership Certificate: Exporter has to obtain Registration Cum Membership Certificate (RCMC) from Export Promotion Council (EPC) or Commodity Board. Membership of EPC is compulsory, if an exporter intends to get export incentives or obtains authorization to import/export items, except restricted items. In other cases, membership is optional - para 2.56 of FTP 2015-2020.

RCMC means certificate of registration and membership granted by an Export Promotion Council/Commodity Board/ Development Authority or other competent authority as prescribed in FTP or Handbook of Procedures - para 9.46 of FTP 2015-2020.

RCMC is valid from the 1st April of licensing year and is valid for five years - para 2.95 of HBP 2015-2020.

Application form for RCMC is given in form ANF-2C given in HBP 2015-2020 - para 2.93 of HBP 2015-2020.

7.(a) State the distinction between abatement and composition in service tax. [7]

Answer:

Practically, result of both abatement and composition scheme appears to be same. However, abatement is nothing but partial exemption from service tax payable, subject to prescribed conditions, while composition scheme is an easy mode of calculating value of service, where finding value of taxable service is difficult.

Thus, in abatement, value of service does not get reduced, while in composition scheme, value of service is to be calculated only after applying formula as given in composition scheme.

However, this distinction has not been fully followed. In case of some services, abatement is actually used as a composition scheme.

The distinction between composition scheme and abatement scheme is relevant for calculating the ₹ 10 lakhs exemption limit for small service providers. In case of abatement, the value of service does not get reduced. However, composition scheme is only simplified method of calculating value of service for payment of service tax. Hence, in case of composition scheme, value will be such that the service tax will be 15% of such value.

For example, in case of works contract service where service tax is payable on 60% of gross amount charged. If such gross amount is ₹ 100, service tax payable will be 15% of ₹ 60. Hence, 'value of service' will be ₹ 60 (and not ₹ 100). This principle should apply to all composition schemes like restaurant service, life insurance, sale of lottery tickets, sale of foreign currency etc.

7.(b)(i) Service tax of ₹ 4,000 for the month of June, 2016 was paid on its own 30.07.2016 by an HUF, with interest. The value of taxable services provided by it during the preceding financial year was ₹ 12 lakhs. Determine the amount of interest and penalty payable u/s 75 & 76 of the Finance Act, 1994. [4]

Answer:

Service tax was payable on 6-7-2016. Delay is of days. Interest rate is 12%, as value of taxable service did not exceed ₹ 60 lakhs in previous financial year. Hence, interest under section 75 of Finance Act, 1994 is $(₹ 4,000 \times 0.12 \times 24)/365 = ₹ 31.56$. No penalty is payable under section 76 of Finance Act, 1994 as service tax with interest was paid on own.

7.(b)(ii) State the application of Place of Provision of Services Rules in the following cases:

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(A) Z, an Indian company sends engineer to USA for training to be provided by X in USA. Payment made by Z to X in foreign exchange.

(B) X, a Cost Accountant in J&K provides audit services to Z, located in Delhi. [4]

Answer:

(A) As per Rule 4(b) of Place of Provision of Services Rules, place of provision of service is outside India. Hence, no service tax is payable. Here, reverse charge mechanism is not applicable to Z.

(B) As per Rule 3 of Place of Provision of Services Rules, place of provision of service is India. So, service tax is applicable. Service tax payable by Z under reverse charge mechanism.

8.(a) PK Japan and XYZ Ltd. India are associated enterprises XYZ imports 200 ACs' from PK at a price of ₹ 15,000 p.u. and these are sold to ITC Hotel Ltd. at a price of ₹ 17,000 p.u. XYZ has brought similar products from Samsung India Ltd. and sold to Oberai Hotel at a gross profit of 10% of sales. XYZ incurred freight ₹ 400; customs duty ₹ 1,500 p.u. in case of purchases made from PK Japan and ₹ 200 in case of purchase made from Samsung India Ltd. Compute ALP and the amount of increase in Total Income of XYZ Ltd. if any due to such ALP. [9]

Answer:

	₹
In this case, arm's length price is determined as under:	
Resale price of goods purchased from PK Japan	17,000
Less: Normal Gross profit Margin @ 10%	(-)1,700
Less: Difference in the expenses connected with purchases (1,900 – 200)	(-)1,700
Arm's Length Price	13,600
Price paid to PK (200 units x 15,000)	30,00,000
Arm's Length Price (200 units x 13,600)	27,20,000
Increase in the total income of XYZ Ltd. due to reduction in purchase cost	2,80,000

8.(b) What are different types of methods for arm's length price? [6]

Answer:

Arm's length price can be computed by following methods:

- Comparable Uncontrolled Price method,
- Resale Price Method,
- Cost plus Method,
- Profit Split Method,
- Transactional Net Margin Method,
- Any other method prescribed by the Board.