

Paper-11 Indirect Taxation

Time Allowed: 3 hours

Full Marks: 100

Working notes should form part of the answers.

1. Answer the following questions [1 × 20= 20]

(i) What are the powers given to the State Government under Article 246(3)?

Answer: As per Article 246(3), State Government has exclusive powers to make laws for State with respect to any matter enumerated in List II of Seventh Schedule to Constitution.

(ii) A biscuit manufacturing company prints on the packages the MRP of ₹5.00 for the state of West Bengal, ₹6.00 for Madhya Pradesh and ₹7.00 for the rest part of India. What will be the Assessable Value for the purpose of calculating the excise duty?

Answer:

The assessable value for the purpose of calculating excise duty will be ₹7.00.

(iii) A manufacturer produces a product which is not sold but supplied to a related person who consumes it in his production process. What will be the valuation for such captive consumption?

Answer:

In case goods are supplied to a 'related person' but consumed by the related person and not sold, valuation will be done on the basis of cost of production plus 10% [Proviso to rule 9].

(iv) A retailer sold cold drinks to its buyers for ₹20 (₹10 for the cold drinks and the balance ₹10 for the bottle) if they want to get it at their home. The retailer refunds the amount of the bottle if the buyer returns it in the usable condition. Then whether the amount taken for returnable bottles should be included in the assessable value or not?

Answer:

In case of durable/returnable containers, all that would be necessary, as per the Board's Circular No. 643/34/2002-CX dated 1-7-2002 [2002 (143) E.L.T. T39], is to include the amortised cost of the container in the price of the product itself; the returnable deposit taken from the buyer or deposit of the empty container by him would not then be treated as additional consideration.

(v) Discuss whether the excise duty is attracted on excisable goods manufactured by or on behalf of the Government.

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Answer:

Excise duty shall be levied and collected on all excisable goods other than salt which are produced or manufactured in India by, or on behalf of Government, as it applies in respect of goods which are produced or manufactured by non-government manufacturers. Thus excise duty is payable on goods manufactured by, or on behalf of, the Government also.

(vi) "Goods already exported cannot be confiscated under Customs Act." — Explain.

Answer:

Goods already exported cannot be confiscated under Section 113. The reason is that goods already exported are not available for confiscation.

(vii) Is anti-dumping duty is payable by EOUs under the Customs Act, 1962?

Answer:

Export Oriented Unit (EOU) is exempt from antidumping duty as such. However, if the imported goods are sold as such or have been used for manufacture and sale of goods in India, then antidumping duty will become payable.

(viii) What is the condition for levy of Specific Safeguard Duty u/s 8C of Customs Tariff Act?

Answer:

If Central Government conducting such enquiry as it deems fit, is satisfied that any article is imported into India from People's Republic of China:

- in such increased quantity, and
- so as to cause or threatening to cause, market disruption to domestic industry.

(ix) Are Barge or Lighterage charges not to be added to the customs value while calculating the value of imported goods?

Answer:

Lighterage or barge charges are includible to the custom value while calculating the value of imported goods.

(x) What are the types of Drawback rates?

Answer: Duty drawback rates are of following types – (a) All Industries Rate (b) Brand Rate and (c) Special Brand Rate.

(xi) Mittal, a consulting engineer, raised a bill of ₹2,19,225 (including Service Tax) on her client for Consultancy Services rendered by her on January 15, 2015. If a partial payment of ₹1,33,945 is received by Mittal on February 5, 2014, what would be the amount of Service Tax payable by him for the quarter ended on March 31, 2015.

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Answer:

In the present case, it is assumed that Mittal, an individual, had taxable service for less than ₹50 lakhs in the previous year.

Hence service tax payable in this case will be: $(₹1,33,945 \div 1.1236) \times 0.1236 = ₹14,734$

(xii) Determine the point of taxation in case of copyright, trademarks etc.

Answer:

In this case, point of taxation will be each time when the payment received or the date when the invoice is issued by the provider of service, whichever is earlier. But as per Rule 8A, where date of invoice or date of payment is not available, the Central Excise Officer can conduct best judgment assessment to determine the point of taxation.

(xiii) “A service provider cannot opt for centralised registration under service tax even though he has centralised billing system.” — Discuss

Answer:

A person can obtain centralized registration at his option, if (a) he has centralized billing system or Centralised accounting system in respect of such service and (b) Such Centralised billing or Centralised Accounting system are located in one or more premises.

(xiv) Mr. A is a provider of taxable service under the brand name of others. He started his business in April, 2014. Taxable turnover for the year 2014-15 is ₹ 5 lakh. Whether registration is compulsory for him and why?

Answer:

Yes. For Mr. A registration is compulsory under the Finance Act, 1994.

(xv) The Reserve Bank of India (RBI) has provided some valuable services to the Government of India. Whether RBI is required to pay service tax on the services provided by it and why?

Answer:

RBI is not liable to pay the service tax. All types of services provided by RBI are included in the Negative List of services.

(xvi) “VAT helps in checking tax evasion and in achieving neutrality.” — Is the statement true?

Answer:

Yes, the statement is true.

(xvii) What is ‘Goods’ under CST Act?

Answer:

As per section 2(d) of Central Sales Tax Act, 1956, 'Goods' includes all materials, articles, commodities and all other kinds of movable property, but does not include newspapers, actionable claims, stocks, shares & securities.

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The definition of 'Goods' is inclusive definition which declares that all materials, articles commodities and all other kinds of movable property are goods and excludes some specified items.

(xviii) Define 'Sale' in the purview of Central Sales Tax Act.

Answer:

As per Section 2(g) of Central Sales Tax Act, 'Sale' means any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration, but does not include a mortgage or hypothecation of or a charge or pledge on goods.

(xix) When the Assessing Officer can refer for computation of arm's length price under section 92C to the Transfer Pricing Officer?

Answer:

The Assessing Officer may refer the computation of arm's length price under section 92C to the Transfer Pricing Officer if he considers it necessary and expedient and an approval of the Commissioner has been obtained.

(xx) State the validity of Advanced Pricing Agreement.

Answer:

The Advanced Pricing Agreement shall be valid for such previous years as are specified in the agreement which in no case shall exceed five consecutive previous years.

(2) Answer any two questions [2 × 2= 4]

(a) Whether recovery from buyer is not essential condition for levy of indirect taxes?

Answer:

In general, indirect taxes are recovered from buyer, it is not an essential feature of indirect taxes. Tax on goods or services will be valid even if it is not recovered or recoverable from buyer.

(b) State the power of taxation under Constitution of India.

Answer:

(i) The Central Government gets tax revenue from Income Tax (except on Agricultural Income), Excise (except on alcoholic drinks) and Customs.

(ii) The State Governments get tax revenue from sales tax, excise from liquor and alcoholic drinks, tax on agricultural income.

(iii) The Local Self Governments e.g. municipalities, etc. get tax revenue from entry tax and house property tax.

Article 265 provides that no tax shall be levied or collected except by authority of Law. The authority for levy of various taxes has been provided for under Article 246 and the subject matters enumerated under the three lists set out in the Schedule VII to the Constitution.

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(c) List out the items which will appear on the Concurrent List (list III) given in Schedule Seven of the Constitution.

Answer:

(b) Concurrent List (List-III) given in Schedule Seven of constitution:

Both union and State Government can exercise power in respect of —

Entry No.17A – Forest Income

Entry No. 25 – Education Income

(3) Answer any two questions [2 × 8=16]

(a) (i) M/s. Kalpana Ltd., sold machinery to Mr. Gupta at a price of ₹ 7 lakhs on 15th June, 2014 and the same was removed from the factory at Kolkata. The rate of excise duty applicable is 12.36% on the date of removal. Mr. Gupta refused to take delivery of the machine when it reached his destination. In the meantime, M/x. Kalpana Ltd. increased the prices of the similar type of machinery to ₹ 8.5 lakhs with effect from 16th June, 2013. The machinery as refused by Mr. Gupta has been sold on 20th June 2014 to Mr. Basu at the revised price of ₹ 8.5 lakhs. The excise duty including Education Cess is 12.36% applicable with effect from 10th June, 2014.

Explain the following with reasons:

(a) What is the value to be taken as assessable value?

(b) What is the rate of excise duty applicable and duty payable on above transaction?

(c) The Central Excise Officer is demanding duty on the price of ₹ 8.5 lakhs at the time of sale to Mr. Basu. Is he right in his approach?

Does cost of production have any bearing on the assessable value?

[4]

Solution:

(i) The price prevailing at the time of removal from factory (i.e. ₹ 7 lacs on 15th June 2014 is the assessable value.

(ii) The applicable rate of duty is @12.36% and duty amount is ₹ 86,520 (i.e. ₹ 7 lacs x 12.36/100).

(iii) The Central Excise Officer is not right in his approach.

(iv) Cost of production has no bearing with assessable value in present case. Central Excise valuation can be below manufacturing cost. If price is the sole consideration and dealing between seller and buyer are arm's length, assessable value will be decided on the basis of selling price, even if it is below manufacturing cost. So cost of manufacturing will not change the assessable value.

(a)(ii) Determine the cost of production on manufacture of the under-mentioned product for purpose of captive consumption in terms of Rule 8 of the Central Excise Valuation Rules, 2000 (amount in ₹)

Direct material	13,483
Direct wages & salaries	7,900
Works overheads	5,700
Quality control costs	4,800
Research and development costs	2,700

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Administrative overheads	3,900
Selling and distribution costs	3,200
Realizable value of scrap	1,300

The Administrative Overheads are in relation to production activities.
Material cost includes Excise duty ₹ 1,483.

[4]

Solution:

Calculation of cost of production in terms of Rule 8 of Valuation Rules, 2000 (amounts in ₹)

Direct material (13,483 – 1,483 = 12,000)	WN 1	12,000
Direct wages & salaries		7,900
Works overheads		5,700
Quality control costs	WN 2	4,800
Research and development costs	WN 2	2,700
Administrative overheads	WN 2	3,900
Selling and distribution costs	WN 3	-
Total		37,000
Less : Realisable Value of scrap	WN 4	1,300
Cost of production		35,700
Value of excisable goods under Rule 8 @ 110% of cost of production		39,270

Working notes:

1. Raw-material cost shall be taken net of excise duty assuming Cenvat credit is available.
2. Quality control cost, Research and Development cost and Administration overheads related to production shall form part of cost of production as per CAS-4.
3. Selling and distribution costs shall not form part of cost of production.
4. Realizable value of scrap shall be deducted to arrive at cost of production.

(b)(i) Snow Ltd. sold 100 units manufactured by it for ₹ 15,000 per unit. It had received interest-free advance of ₹ 3,00,000 from the buyer for the whole of the year. Compute the assessable value of 100 units sold in following independent case:

- (i) The price charged from other buyers is ₹ 14,500 per unit.
- (ii) The price charged from other buyers is ₹ 16,300 per unit.
- (iii) The normal rate of interest is 12% per annum and the price charged from other buyers is ₹16,300 per unit.

[4]

Solution:

Computation of Assessable Value of Snow Ltd.: As per the explanation 2 to Rule 6 of the Central Excise Valuation Rules, 2000, where an assessee receives any advance payment from the buyer against delivery of any excisable goods, no notional interest on such advance shall be added to the value unless the Central Excise Officer has evidence to the effect that the advance received has influenced the fixation of the price of the goods. Hence, the assessable value shall be determined as under:

- (i) Assessable value = ₹ 15,000 x 100 = ₹ 15,00,000.
No notional interest shall be added as advance received has not influenced the price.
- (ii) Assessable value = (₹ 15,000 + ₹ 1,300) x 100 = ₹ 16,30,000.
₹ 1,300 shall be added as notional interest (₹16,300 - ₹ 15,000) as the price charged is influenced due to the receipt of advance.
- (iii) Assessable value = (₹ 15,000 + ₹ 1,300) x 100 = ₹ 16,30,000.

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Rate of interest is irrelevant, however, ₹ 1,300 shall be added as notional interest (₹ 16,300 - ₹ 15,000) as the price charged is influenced due to the receipt of advance.

(b)(ii) Why indirect taxes are called regressive in nature as against direct taxes? [4]

Answer:

Direct taxes depend on paying capacity. Rich person is taxed more compared to poor person. But Indirect taxes do not depend on paying capacity. Since the indirect tax is uniform, the tax payable on commodity is same, whether it is purchased by a poor man or a rich person. Hence, the indirect taxes are termed as 'regressive'.

Although this argument is only partially correct for indirect taxes; as it is possible to levy lower taxes on goods of daily consumption while levying higher taxes on luxury goods and the regressive effect can be reduced in many circumstances.

(c) M/s. Human Care Ltd. has introduced a new product 'Paradise' toothpaste, notified under Section 4A of the Central Excise Act, 1944, with a notified abatement of 30%. Determine the central excise duty payable if rate of duty is 12%, education cess is 2% and secondary and higher education cess is 1%:

- (i) 1,500 pieces having retail sale price (RSP) ₹ 65 per piece are sold in retail packages to wholesale dealer at ₹ 50 per piece.**
- (ii) 2,500 pieces having RSP ₹ 65 per piece are sold in retail packages, but buyer is charged for 2,100 pieces only at ₹ 50 per piece (400 pieces have been given free as quantity discount).**
- (iii) 50 pieces were given away as free samples, without any RSP on the pack.**
- (iv) 350 multi-packs were cleared at ₹ 80 per pack, each containing two toothpaste tubes and one toothbrush free (without any RSP on it). Each tooth paste tube was having RSP ₹ 70, which was scored out and each multi-pack had RSP of ₹ 130.**

Make suitable assumptions wherever required and show the calculations with appropriate notes. [8]

Solution:

The duty is as computed below —

Particulars	₹
(i) 1,500 pieces @ RSP ₹ 65 per piece (The packages sold are 'retail packages' meant for retail sale to consumer. The fact that the same is to a wholesaler is irrelevant because the relevant factor is 'package', which is 'retail package'. Hence, the goods will be assessed under RSP based duty. The actual sale price is irrelevant for the purposes of section 4A.)	97,500

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(ii) 2,500 pieces @ RSP ₹ 65 per piece (Even if price is charged for 2,100 pieces and 400 pieces are given free as quantity discount/bonus, such bonus quantity is also manufactured product and is, therefore, liable to duty. Section 4A refers to deemed value, which will be computed for all the 2,500 pieces removed from the factory in 'retail packages')	1,62,500
(iii) Samples : 50 pieces @ RSP ₹ 70 per piece (Samples of notified goods are to be valued under section 4A only and RSP of identical goods is to be taken as the value even if the RSP is not indicated on the pack)	3,500
(iv) Multi-packs : 350 packs RSP ₹ 130 per piece (In case of multi-packs, if RSP of individual items is scored out, then, RSP of multi-pack is to be considered. Here, the multi-pack contains tooth brush as well, which is not a commodity of same kind as the toothpaste; however, a composite RSP of ₹ 130 is affixed, which includes the value of toothpaste as well as toothbrush.)	45,500
Total RSP	3,09,000
Less /Abatement @ 30%	92,700
Assessable Value under section 4A	2,16,300
Duty @ 12.36%	26,735

(4) Answer any two questions [2 × 6= 12]

(a) State briefly with reasons whether credit under the CENVAT Credit Rules, 2004 would be available in the following cases:

- (i) Final product is cleared in durable and returnable packing material.
- (ii) An input becomes a waste and is sold as scrap.
- (iii) Inputs used in trial runs

[6]

Answer:

(a) The admissibility of CENVAT credit is discussed as under –

- (i) **Final product is cleared in durable and returnable packing material:** Yes, The definition of 'input' covers all goods used in the factory of production by the manufacturer and such packing has relationship with the manufacture of the final products therefore, Cenvat credit will be available on durable and returnable packing material. Besides this, since the proportionate cost of durable container is included in assessable value of final product, they are eligible for Cenvat credit.
- (ii) **An input becomes a waste and is sold as scrap:** Yes. If inputs becomes waste and sold as scrap, it cannot be said that input is cleared 'as such' [Rule 3(4) of the Cenvat Credit Rules 2004]. What is cleared is 'waste' and duty will be payable as if waste has been

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removed. In case the inputs have become waste during the manufacturing process, then the CENVAT credit shall be allowed on such waste, even if such waste is exempted or chargeable with nil rate of duty.

- (iii) **Inputs used in trial runs:** Yes. Inputs used in trial runs during the production or commissioning of plant are eligible for CENVAT credit as they are used in the manufacture of final product. Since trial run/ production is a pre-requisite for manufacture of the final product, hence, they bear relationship with the manufacture of the final product. Hence, they are eligible as 'input'. - Fertiliser Corporation of India v. CCEx.

- (b) **A commodity is imported into India from a country covered by a notification issued by the Central Government under section 9A of the Customs Tariff Act, 1975. Following particulars are made available :**

CIF value of the consignment: US\$ 30,000

Quantity imported: 600 kgs.

Exchange rate applicable: ₹ 50 = US\$ 1

Basic customs duty: 20%.

Education and secondary and higher education cess as applicable.

As per the notification, the anti-dumping duty will be equal to the difference between the costs of commodity calculated @ US\$70 per kg. and the landed value of the commodity as imported.

Appraise the liability on account of normal duties, cess and the anti-dumping duty.

Assume that only 'Basic Customs Duty' (BCD) and education and secondary and higher education cess are payable. [6]

Solution:

The following points are to be taken note of –

- (1) The question clearly states that only basic customs duty, EC and SHEC thereon and anti-dumping duty are leviable on the goods in question and no other duty viz. additional duty of customs u/s 3(1) of the Customs Tariff Act, 1975 or special additional duty of customs u/s 3(5) of the Customs Tariff Act, 1975 is leviable.
- (2) For the purposes of the notifications imposing anti-dumping duty, "landed value" means the assessable value as determined under the Customs Act, 1962 and includes all duties of customs except duties levied under sections 3, 8B, 9 and 9A of the said Customs Tariff Act, 1975.
- (3) No EC and SHEC is imposable on anti-dumping duty.

Keeping in mind the aforesaid, the relevant computations are as under

	(Amounts in ₹)
CIF Value of the consignment (in Indian ₹) [US \$ 30,000 x ₹ 50]	15,00,000
Add: Landing Charges @ 1%	15,000
Assessable Value	15,15,000
Add: Basic Customs Duty @ 20%	3,03,000
Add: EC and SHEC @ 3% on Basic Customs Duty	9,090
Landed Value/Cost of the goods [A]	18,27,090
Cost of commodity for the purposes of anti-dumping notification [B]	21,00,000

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[600 Kg. x US\$ 70 per Kg. x ₹ 50 per dollar]	
Anti-dumping duty [B - A]	2,72,910

(c) Distinguish between Safeguard Duty and Anti-dumping Duty for the purpose of customs. [6]

Solution:

The difference between safeguard duty and anti-dumping duty are listed below –

Basis	Safeguard Duty	Anti-dumping Duty
1. Levy under	Section 8B or 8C of the Customs Tariff Act, 1975.	Section 9A of the Customs Tariff Act, 1975.
2. Objective	To ensure that bulk imports of goods do not cause serious injury / disruption to domestic industry.	To ensure that goods are not imported at lower than normal value (dumping), thereby, causing loss to domestic market.
3. Based on	Increased imports in quantity.	Imports at value less than normal value.
4. Quantum	Levied as determined by the Government.	Cannot exceed margin of dumping.
5. Duration	Remains in force for 4 years, extendable upto 10 years from date of levy.	Remains in force for 5 years, extendable by further 5 years.
6. Exception	Not levied if imports from a developing country doesn't exceed 3% and total imports from all developing countries (each with share upto 3%) doesn't exceed 9% in total.	Exceptions to levy of this duty are listed in section 9B of the Customs Tariff Act, 1975.

(5) Answer any two questions [2 × 4= 8]

(a) "SEZ are like a separate island within country." — describe SEZ (Special Economic Zone) in relation to taxation issues.

Answer:

SEZ is as if it is a separate island as if outside India, where inputs, capital goods and input services can be obtained without duty and service tax. SEZ are governed by Special Economic Zones Act and SEZ Rules.

Goods can be brought in SEZ without payment of customs duty or excise duty. Supplies to SEZ from other parts of India are treated as 'exports' and are entitled to all export benefits. On the other hand, supplies from SEZ unit to any person outside SEZ is treated as 'import' by that person and normal customs duty is payable.

(b) State the procedures to claim for duty drawback at the time of export.

Answer:

At the time of export, exporter shall endorse on the 'shipping bill' the description, quantity and other details to decide whether goods are eligible for duty drawback. He should submit one extra copy of shipping bill for drawback purposes. Copy of Invoice should be submitted. If shipping bill under drawback is submitted electronically, that itself will be treated as claim for drawback.

Declaration by Exporter – A declaration should be made rule 12(1)(a)(ii) of Duty Drawback Rules, on shipping bill or bill of export that claim of drawback. Further declarations are also required when brand rate or special brand rate has been fixed. These declarations have to be signed by exporter.

Triplicate copy of Shipping Bill is the drawback copy and should be marked as 'Drawback Claim Copy'. It should be submitted with pre-receipt on reverse side with revenue stamp.

Declaration for non-availment of Cenvat – (a) If the manufacturer-exporter or supporting manufacturer of merchant exporter is registered with Central Excise, fact of non-availment of Cenvat credit can be verified from ARE-1 form furnished (b) If the manufacturer-exporter or supporting manufacturer of merchant exporter is not registered with Central Excise, they have to submit self-declaration about non-availment of Cenvat in prescribed form.

(c) What are the export incentives available to the manufacturer?

Answer:

The export incentives for manufacturers are —

- a) Indigenous inputs without payment of excise duty or rebate if duty paid.
- b) No excise charged on final product or rebate if duty paid.
- c) Imported inputs without payment of customs duty, or rebate if duty paid.
- d) No export duty on export of final product.
- e) Bank finance on priority basis and at concessional rate of interest.
- f) Import of capital goods at concessional rate (under EPCG scheme).
- g) Exemptions/relaxations from Income tax.
- h) Exemption from sales tax on final product (refund of CST paid on inputs in case of EOU. No CST for
- i) supply to SEZ and SEZ units).
- j) Usance bills of exchange executed by an exporter in relation to export transaction are fully exempt from stamp duty – SO 804(E) dated 8-7-2004.

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(6) Answer any two questions [2 × 10= 20]

(a)(i) An interior decorator charges ₹ 7,00,000 from a client for providing professional services. The breakup of the bill is as follows:-

- i. Value of furniture sold to the client – ₹ 3,50,000
- ii. Labour and facility charges – ₹ 1,50,000
- iii. Value of materials consumed in providing the service – ₹ 2,00,000

Compute the amount of service tax to be charged from the client. Provided all the amounts are exclusive of service tax. [5]

Solution:

Computation of service tax payable:

	(₹)
Value of furniture sold to the client <small>[Sale of furniture is 'sale of goods', which cannot be regarded as a service. Though sale is in course of providing the service, however, it constitutes a separate sale, because the parties intend to have separate rights arising out of sale. Such sale cannot be charged to service tax.]</small>	Sale, not service
Add: Labour and facility charges <small>[They are for provision of interior decoration service; hence, includible in value]</small>	1,50,000
Add: Value of materials consumed in providing the service <small>[Materials consumed viz. consumables, etc. in providing services are a part of the value of the service, because service cannot be provided without them.]</small>	2,00,000
Value of service	3,50,000
Service Tax @ 12.36%	43,260

(a)(ii) PQR Ltd. enters into a contract with TBZ Ltd. for construction of a new building primarily for the purpose of commerce or industry for a total consideration of ₹ 370 lakhs on 02-04-2013. The relevant details are given as under –

Stage	Date [Expected]	Date of issuance of invoice	Date of Payment	Amount of Payment (₹)
Initial/Booking	02-04-2014	02-04-2014	02-04-2014	50 lakhs
50% completion of building <small>[after getting certificate from the stipulated Chartered Engineer]</small>	14-10-2014	20-10-2014	26-10-2014	120 lakhs
75% completion of building <small>[after getting certificate from the stipulated Chartered Engineer]</small>	22-02-2015	24-03-2015	26-03-2015	110 lakhs

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100% completion of building [after getting certificate from the stipulated Chartered Engineer]	30-07-2015	20-08-2015	10-08-2015	90 lakhs
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Determine the Point of Taxation in respect of each of above stage of completion. [5]

Solution:

The above case falls under continuous supply of service and the point of taxation shall be determined as under-

Stage of Completion	Deemed date of completion of provision of service as per Explanation 1 to Rule 6	Point of Taxation	Reason/Remarks
Initial/ Booking	02-04-2014	02-04-2014	Date of issuance of invoice as well as Date of Payment is same i.e. 02-04-2014.
50%	14-10-2014	20-10-2014	Since invoice has been issued on 20-10-2014 i.e. within 30 days from the date of completion of provision of service [which is 14-10-2014], comparison has been made between Date of issuance of invoice [20-10-2014] and Date of Payment [26-10-2014]. Accordingly, Point of Taxation will be 20 – 10-2014.
75%	22-02-2015	22-02-2015	Since invoice has been issued on 24-03-2015 i.e. after 30 days from the date of completion of provision of service [which is 22-02-2015], comparison has been made between Date of Completion of Provision of Service [22-02-2015] and Date of Payment [26-03-2015]. Accordingly, Point to Taxation will be 22-02-2015.
100%	30-07-2015	10-08-2015	Since invoice has been issued on 20-08-2015 i.e. within 30 days from the date of completion of provision of service [which is 30-07-2015], comparison has been made between Date of issuance of Invoice [20-08-2015] and Date of Payment [10-08-2015]. Accordingly, Point of Taxation will be 10-08-2015.

(b) (i) Bhubaneswar Ltd. Carried out following works, all of which are leviable to sales-tax/VAT as transfer of property involved in the execution of works contract (the sum charged given below are exclusive of all taxes) -

(1) New constructions: ₹ 65 lakh;

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- (2) Additions and alterations to damaged structures on land to make them workable: ₹ 30 lakhs;
- (3) Supply along with erection, commissioning and installation of plants: ₹ 87 lakhs;
- (4) Maintenance and repair of goods: ₹ 35 lakhs;
- (5) Maintenance and repair of immovable property: ₹ 42 lakhs;
- (6) Finishing and Glazing Services of an immovable property: ₹ 12 lakh;
- (7) Other works contracts: ₹ 6 lakh.

Compute taxable value and service tax thereon.

[8]

Solution:

Computation of taxable value & service tax: Since data regarding valuation under Rule 2A(i) is not given, value is computed as per Rule 2A(ii) at specified % of gross amount charged.

	Amount charged ₹	% of amount charged	Taxable Value ₹
New constructions (It is "original works")	65,00,000	40.00%	26,00,000
Additions and alterations to damaged structures on land to make them workable (It is "original works")	30,00,000	40.00%	12,00,000
Supply along with erection, commissioning and installation of plants (It is "original works")	87,00,000	40.00%	34,80,000
Maintenance and repair of goods	35,00,000	70.00%	24,50,000
Maintenance and repair of immovable property	42,00,000	70.00%	29,40,000
Finishing and Glazing Services of an immovable property	12,00,000	70.00%	8,40,000
Other works contracts (Assumed it is neither original works nor any works contract in relation to maintenance, etc. of goods)	6,00,000	70.00%	4,20,000
Total Taxable Value under Rule 2A(ii)			1,39,30,000
Service Tax @ 12.36%			17,21,784

(b)(ii) Mr. A is a provider of taxable service under the brand name of others. He started his business in April, 2014. Taxable turnover for the year 2014-15 is ₹ 5 lakh. Whether registration is compulsory for him and why? [2]

Answer:

Yes, Registration is compulsory for service provider irrespective of his turnover, if he provides service under the brand name of others. For Mr. A registration is compulsory under the Finance Act, 1994.

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(c)(i) Compute taxable value and service tax from following sums received by M/s. Prince Medical Centre (exclusive of service tax) (Ignore small service provider's exemption) -

- (1) Testing (with Transmission of medical samples between laboratories): ₹ 15 lakh ;
- (2) Medicines consumed as a part of health care services : ₹ 8.50 lakh ;
- (3) Preventive health care services : ₹ 6 lakh ;
- (4) Treatment along with Facilities provided such as TV, AC, room rent, meal to patient (as a part of package): ₹ 74 lakh ;
- (5) Genetic affinity examination for determining biological father : ₹ 14 lakh ;
- (6) Hair transplant services due to injury in a fire accident: ₹ 18 lakh ;
- (7) Cosmetic surgery of a film star : ₹ 18 lakh ;
- (8) Conducting medical examinations of individuals : ₹ 3 lakh [6]

Solution:

Computation of service tax liability:

- (1) Testing (with Transmission of medical samples between laboratories): ₹ 15 lakhs - Exempt;
- (2) Medicines consumed as a part of health care services - Such medicine are never sold - Dominant nature is health care services, which is exempt: ₹ 8.5 lakhs - Fully exempt.
- (3) Preventive health care services : ₹ 6 lakh - Exempt ("care" is also exempt);
- (4) Treatment along with Facilities provided such as TV, AC, room rent, meal to patient (as a part of package): ₹ 74 lakh - Natural bundling in ordinary course of business - Essential character is "health care services", which is exempt - Fully exempt;
- (5) Genetic affinity examination for determining biological father : ₹ 14 lakh - Not related to "diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy" - Not exempt - Taxable ;
- (6) Hair transplant services due to injury in a fire accident : ₹ 18 lakhs – Exempt, as it has been done to restore damage due to fire accident;
- (7) Cosmetic surgery of a film star : ₹ 18 lakhs – Not exempt – Taxable;
- (8) Conducting medical examinations of individuals: ₹ 3 lakhs – Exempt;

Taxable value = ₹ (14 + 18) lakhs = ₹ 32 lakhs and service tax thereon @ 12.36% = ₹3,95,520.

(c)(ii) State the details which are contained in the service tax return? [4]

Answer:

The service tax return contains the following major details:

- (i) particulars of assessee viz. name, registration number, address, etc.;
- (ii) particulars of taxable services viz. Nature;
- (iii) particulars of period viz. financial year, half year period (April-September or October-March),
- (iv) particulars of value of taxable services viz. amount received, advance received, details of exempted services, abatement/exemption claimed, etc.;
- (v) particulars of service tax viz. service tax & education cess payable, details of payment, interest or penalty paid, payment of excess collection of service tax, if any, etc.;
- (vi) particulars of Cenvat Credit viz. opening balance, availed, utilized, closing balance, etc.

Answer to MTP_Intermediate_Syllabus 2012_Jun2015_Set 1

(7) Answer any two questions [2 × 6= 12]

(a)(i) Mr. Gaya, a dealer in Kolkata dealing in consumer goods, submits the following information pertaining to the Month of March, 2015:

- (i) Exempt goods 'A' purchased for ₹ 1,50,000 and sold for ₹ 1,70,000.
- (ii) Goods 'B' purchased for ₹ 2,00,000 (including VAT) and sold at a margin of 10% profit on purchases (VAT rate 12.5%);
- (iii) Goods C purchased for ₹ 1,25,000 (excluding VAT) and sold for ₹ 1,70,000 (VAT rate 4%);
- (iv) His unutilized balance in VAT input credit on 01.03.2015 was ₹ 2,000.

Compute the turnover, Input VAT, Output VAT and Net VAT payable by Mr. Gaya. [4]

Solution:

Computation of VAT payable

Finished goods	Tax on Finished Goods			Input Tax on Materials			Net (Output Tax - Input Tax) (₹)
	Value (₹)	Rate	Tax (₹)	Value (₹)	Rate	Tax (₹)	
Opening Balance						2,000	- 2,000
Goods A	1,70,000	NIL	Exempt	1,50,000	NIL	Exempt	0
Goods B (Purchase price excluding VAT = ₹ 2,00,000 × 12.5 ÷ 112.5)	1,95,556	12.50%	24,444	1,77,778	12.50%	22,222	2,222
Goods C	1,70,000	4.00%	6,800	1,25,000	4.00%	5,000	1,800
Total			31,244			29,222	2,022

(a)(ii) What is Independent Professional Audit in the context of VAT? [2]

Answer:

Independent Professional Audit is also termed as Compulsory VAT-Audit or External Audit and one of the types of audit prescribed under the VAT provisions. This audit is conducted as the Department Audit cannot check the tax evasion to a significant extent. It is prescribed by some of the States and carried out by Cost Accountants or Chartered Accountants.

(b)(i) Determine the Taxable Turnover, Input Tax Credit and net VAT payable by a Works Contractor from the details given below on the assumption that the Contractor maintains sufficient records to quantify the labour charges. Output VAT at 12.5%:

Particulars	(₹ in Lakhs)
Total Contract Price (excluding VAT)	120
Labour Charges paid for execution of the contract	53
Cost of Consumables used not involving transfer of property in goods	7
Material purchased and used for the Contract, taxable at 12.5% VAT (VAT included)	48

Answer to MTP_Intermediate_Syllabus 2012_Jun2015_Set 1

Contractor also purchased a Plant for use in the contract for ₹ 10.4 lakhs. In the VAT Invoice, VAT was charged at 4% separately, and the said amount of ₹ 10.4 Lakhs is inclusive of VAT. [4]

Solution:

Computation of Taxable Turnover, Input Tax Credit and net VAT liability

Particulars	₹ Lakhs
Total Contract Value (excluding VAT)	120
Less: Labour Charges paid for execution of the contract	(53)
Less: Cost of Consumables used not involving transfer of property in goods	(7)
Taxable Turnover, i.e.	60
Output VAT Payable [₹ 60 lakhs x 12.5%]	7.5
Less: Input Tax Credit	
• On Materials Purchased Inclusive of VAT $\left[\frac{12.5}{112.5} \times ₹ 48 \text{ lakhs} \right]$	(5.33)
• On Plant purchased $\left[\frac{4}{104} \times ₹ 10.4 \text{ lakhs} \right]$	(0.4)
Net VAT Liability	1.77

(b)(ii) Is transfer of property in goods without consideration chargeable to CST? [2]

Answer:

Sale u/s 2(g) of the CST Act, means transfer of property for cash or deferred payment or for any other valuable consideration. Where there is transfer of property in goods without consideration, it does not amount to sale within the meaning of the definition under the act and therefore CST is not attracted.

(c)(i) Sri Pramod, a Registered Dealer at Mumbai, furnishes the following information:

		(₹)
(i)	Inter-state sale of goods This includes the following—	40,00,000
(ii)	Excise duty	38,000
(iii)	Goods returned on 17/1/2015 [These goods were sold on 12/4/2014]	89,000
(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	60,000
(vii)	Installation and commissioning charges levied separately in invoices	68,000

Compute the taxable turnover under the CST Act, assuming the rate of tax @ 2%. [4]

Answer to MTP_Intermediate_Syllabus 2012_Jun2015_Set 1

Solution:

Computation of taxable turnover

	(₹)
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	68,000
Turnover inclusive of CST	35,82,000
Less: Central Sales Tax	70,235
Taxable turnover	35,11,765

Note: Goods returned after 6 months from the date of sale attracted CST @2%.

(c)(ii) What are the goods purchase on which CENVAT Credit is not available under VAT law? [2]

Answer:

CENVAT Credit is not be available of certain goods purchased like petroleum products, liquor, petrol, diesel, motor spirit (position of furnace oil is not clear in white paper, but many States do not give credit).

(8) Answer any two questions [2 × 4= 8]

(a) Your client company is a subsidiary of a foreign company, having its registered office in India. This company has transaction of imports of raw materials and components and also exports of its manufacture components from & to holding company in Netherland and also other group companies in South East Asian countries. What are income tax regulations governing such international transactions?

Answer:

Computation of income from international transaction having regard to arm's length price [Section 92]:

- (1) Income to be computed as per ALP: Any income arising from an international transaction shall be computed having regard to the arm's length price.
Expense or interest also to be determined at ALP: The allowance for any expense or interest arising from an international transaction shall also be determined having regard to the arm's length price (ALP).
- (2) Allocation/apportionment of common costs shall be done having regard to the ALP: Where in an international transaction or specified domestic transaction, two or more associated enterprises enter into a mutual agreement or arrangement for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises, the cost or expense allocated or apportioned to, or, as the case may be, contributed by, any such enterprise shall be determined having regard to the arm's length price of such benefit, service or facility, as the case may be.

Answer to MTP_Intermediate_Syllabus 2012_Jun2015_Set 1

(3) Any allowance for an expenditure or interest or allocation of any cost or expense or any income in relation to the specified domestic transaction shall be computed having regard to the arm's length price.

(4) Provisions of ALP not to apply if it results in reduction of income/increase of losses: The provisions shall not apply in a case where the computation of income or the determination of the allowance for any expense or interest or the determination of any cost or expense allocated or apportioned, or, as the case may be, contributed, has the effect of reducing the income chargeable to tax or increasing the loss, as the case may be, computed on the basis of entries made in the books of account in respect of the previous year in which the international transaction or specified domestic transaction was entered into.

(b) One of the methods for determining Arm's Length Price is Resale Price Method (RPM). State the applicability of RPM.

Answer:

RPM is applied in a backward process. From the sale price to an unrelated third party, appropriate adjustments to the gross margin are made by comparing the transaction to other, third party transactions.

- (1) This method can be applied when there are no comparable uncontrolled sales and an applicable resale price is available within a reasonable time before or after the controlled sale.
- (2) Where the reseller does not add substantial value to the goods through physical modification. Limited enhancements such as packaging, repackaging, labeling or minor assembly ordinarily do not generally affect the use of RPM. Hence, RPM may not be applicable if the reseller performs value added functions.
- (3) RPM is more accurate where it is realized within a short time of the reseller's purchase of goods.
- (4) RPM is ordinarily used when the controlled reseller does not use intangible property to add substantial value to the products.
- (5) RPM is applied when the reseller does not alter the physical characteristics of the product.
- (6) Where the reseller has the exclusive right to resell the goods, the gross margin would be affected by factors like size of market, existence of substitute goods, and level of activity undertaken by the reseller.

(c) After visiting USA, Mrs. & Mr. Sunil brought to India a lap top computer valued at ₹ 60,000, personal effects valued at ₹ 85,000 and a personal computer for ₹55,000. What is the customs duty payable?

Solution:

1. **Exemption:** Personal Effects and One Laptop are exempt from duty.
2. **General Free Allowance:** The General Free Allowance for the Passenger's of Age \geq 10 years, and returning after stay abroad of $>$ 3 days is ₹ 45,000. [Rule 3 of Baggage Rules, 1998]
3. **Rate:** Rate of Duty applicable for Baggage = 35% + EC @ 2% + SHEC @ 1% = 36.05%
4. **Duty:** Duty payable on Baggage = ₹ (55,000 - 45,000) \times 36.05% = ₹ 3,605.