

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) "The recovery from buyer is an essential condition for levy of indirect taxes" — Critically examine.

Answer:

In general, indirect taxes are recovered from buyer, but 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.

(ii) State the functional areas of Settlement Commission.

Answer:

The settlement Commission is constituted under section 32 of the Central Excise Act, 1944 in order to settle easily the tax disputes of Customs and Central Excise involving high revenue stake and thereby save time and energy of both the applicant and the department.

(iii) What is Account Current?

Answer:

Account Current is a record for duty liability settled by cash payments, where every credit represents duty paid and every debit represents the duty liability. It is otherwise called Personal Ledger Account (PLA).

(iv) How many copies of Account Current are distributed?

Answer:

The PLA must be prepared in triplicate. Original and duplicate copies of the PLA should be sent to the Central Excise Officer along with the return in ER-1/ ER-2/ ER-3.

(v) What is the method of the valuation for stock transfer in case of excise?

Answer:

In case of stock transfer in excise, value to be adopted is the price prevailing in depot at the time of clearance from factory.

(vi) Is customs duty levied on goods derelict, wreck, jetsam etc.? State with reason.

Answer to MTP_Intermediate_Syllabus 2012_Jun15_Set 2

Answer:

As per section 21 of the Customs Act, 1962, all goods derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India, unless it is shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under this Act.

(vii) What is APTA in the context of customs?

Answer:

Bangladesh, Sri Lanka, South Korea, India and China are exchanging tariff concessions under Asia-Pacific Trade Agreement (APTA). Certificate of Origin (CoO) is required to be obtained from Export Inspection Council [EIC].

(viii) What is Non Injurious Price in Anti Dumping Duty?

Answer:

Non Injurious Price is the sale price which is constructed (i.e. arrived at/ ascertained) for the domestic industry, which will give a reasonable return on investment and if Domestic Industry is able to sale its product at that price it will claim no injury.

(ix) Can EOU/SEZ/EHTP/BTP/STP supply goods against advance authorization?

Answer:

EOU/SEZ/EHTP/DTP/STP units can supply goods against advance authorisation.

(x) In which form application for advanced authorization is made?

Answer:

Application for authorisation shall be made in duplicate in 'Aayat Niryat Form'.

(xi) What is the place of provision for Passenger Transportation Services?

Answer:

As per rule 11 of Place of Provision of Services Rules, 2012, the place of provision of a passenger transportation service is the place where the passenger embarks on the conveyance for a continuous journey.

(xii) XY & Co., a proprietary firm provides service relating to security of building to PS & Co, a partnership firm, for ₹ 10 lakhs. State the persons liable to pay service tax.

Answer:

Here the security services are provided by an individual to partnership firm hence the person liable to pay service tax is service provider i.e. XY & Co.

Answer to MTP_Intermediate_Syllabus 2012_Jun15_Set 2

(xiii) What is the value of taxable services of transport of passengers of air if the amount charged from passengers for flights starting from London to Mumbai ₹350 lakhs (exclusive of service tax)?

Answer:

The amount charged from passengers for flights starting from London to Mumbai is ₹350 lakhs. Here place of embarkation is London, viz outside India. Hence place of provision as per rule 11 of Place of Provision Rules is London, viz outside India. Therefore, it is not chargeable to service tax in India.

(xiv) Is Services provided outside employment for a consideration taxable?

Answer:

Services provided outside employment for a consideration would be covered under the definition of 'service'. Hence taxable.

(xv) Is Services provided on contract basis taxable?

Answer:

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.

(xvi) State the distinction between 'Zero Rated Sale' and 'Exempted Sale'.

Answer:

Distinction between 'Zero Rated Sale' and 'Exempted Sale' is that in case of 'Zero Rated Sale', credit is available on tax paid on inputs, while in case of exempted sale, credit of tax paid on inputs is not available.

(xvii) Are sale of bundles of old newspapers as waste papers exempt from CST and why?

Answer:

When the newspapers are sold as waste papers, they are not newspapers and hence they are goods. Therefore, sale of bundles of old newspapers as waste papers is taxable.

(xviii) Whether Government subsidy form part of sale price under Central Sales Tax Act, 1956?

Answer:

Government subsidy does not form part of sale price.

(xix) Define Cross-Border Transaction in the context of International transactions.

Answer:

A transaction is considered as cross-border transaction if it originates in one country and gets concluded in another country. Thus, it is not necessary that every international transaction within the meaning of section 92B of the Income-tax Act is a cross-border transaction or vice-versa.

Answer to MTP_Intermediate_Syllabus 2012_Jun15_Set 2

(xx) What are the Challenges in the comparability analysis of International transactions?

Answer:

Increased market volatility and increased complexity in international transaction have thrown open serious challenges to comparability analysis and determination of arm's length price.

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

(a) Describe how indirect taxes are administered in India.

Answer:

The Department of Revenue of the Ministry of Finance exercises control in respect of matters relating to the indirect taxes through a Statutory Boards, namely, the Central Board of Excise and Customs (CBEC). Matters relating to the levy and collection of all the indirect taxes (customs duties, central excise duties, service tax) fall within the purview of CBEC. The Board has been constituted under the Central Board of Revenue Act, 1963.

CBEC deals with the tasks of formulation of policy concerning levy and collection of customs and central excise duties and service tax, prevention of smuggling and administration of matters relating to customs, central excise, narcotics to the extent under CBEC's purview and service tax. The Board is the administrative authority for its subordinate organizations, including Custom Houses, Central Excise and Service Tax Commissionerates.

The State level indirect taxes are administered by Commercial Tax Departments of the respective States.

(b) Write the advantages of indirect taxes (any two).

Answer:

Advantages of Indirect Taxes:

- (i) **Easy management:** Indirect taxes mainly relate to organized sector. Hence, it is convenient to control, i.e., levy, control and collection of indirect taxes are easy.
- (ii) **Assured Collection:** Being easier to control, the incidence of tax evasion is comparatively less. So, the contribution of indirect taxes to the Government shows an increasing trend, as the business progress.

(c) Write down the differences between direct tax and indirect tax.

Answer:

The following are the differences between direct tax and indirect tax:

Direct Taxes	Indirect Taxes
Taxable event : Taxable Income / Taxable Wealth of the Assesseees.	Taxable event: Purchase / Sale / Manufacture of goods and provision of services.

Answer to MTP_Intermediate_Syllabus 2012_Jun15_Set 2

Collection: After the income for a year is earned or valuation of assets is determined on the valuation date.	Collection: At the time of sale or purchases or rendering of services.
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(3) Answer any two questions [2 × 8=16]

(a)(i) Boral Ltd., which is engaged in the manufacture of excisable goods started its business in May, 2014. It availed small scale exemption in terms of Notification No. 8/2003-C.E. dated 01-03-2003. The following details are provided (₹):

15,000 kg of inputs purchased @ ₹ 992.70 per kg. (inclusive of excise duty @ 12.36%)	1,48,90,500
Capital goods purchased on 25-06-2014 (inclusive of excise duty at 12.36%)	45,60,000
Finished goods sold (at uniform transaction value throughout the year)	2,50,00,000

Calculate excise duty payable by M/s. Boral Ltd. in cash, if any, during year 2014-15. Rate of duty on finished goods sold may be taken at 12.36% and you may assume that selling price is exclusive of central excise duty. There is neither any processing loss nor any inventory of input and output. Show your workings notes with suitable assumptions as required. [6]

Answer:

Computation of duty payable by Boral Ltd. during financial year 2014-15

Particulars	Units	₹/unit	₹
Total value of all finished goods Less:	15,000	1,666.67	2,50,00,000
Exemption of ₹150 lakhs	9,000	1,666.67	1,50,00,000
Dutiable clearances (60% clearances are exempt and 40% dutiable)	6,000	1,666.67	1,00,00,000
Duty @ 12.36% on final product		206.00	12,36,000
Total Credit on inputs [Duty = ₹ 992.70 x 12.36 ÷ 112.36]	15,000	109.20	16,38,000
Less: 60% credit relating to exempted clearances [Reversal under Rule 6 of the CENVAT CREDIT Rules, 2004]	9,000	109.20	9,82,800
Credit relating to dutiable clearances	6,000	109.20	6,55,200
Add: Credit relating to capital goods [100% credit available in first year to SSI- units] [₹ 45,60,000 x 12.36 ÷ 112.36]			5,01,616
Total CENVAT Credit			11,56,816
Duty payable in cash [Duty on Final Product – CENVAT Credit]			79,184

Answer to MTP_Intermediate_Syllabus 2012_Jun15_Set 2

(a)(ii) Under Central Excise Tariff Act goods are classified using 8-digit system as headings under 'Harmonised System of Nomenclature' — Justify. [2]

Answer:

In case of harmonised system of nomenclature under Central Excise Tariff Act, goods are classified using 4 digit system as headings. Further 2 digits are added for sub-classification, called 'sub – headings' and further 2 digits are added for sub-sub-classification, which is termed as 'tariff item'. Thus Goods are classified under Central Excise Tariff Act under the —Harmonized System of Nomenclature having eight digit classifications. Rate of duty is indicated against each 'tariff item' and not against heading or sub-heading.

(b)(i) When is the CENVAT Credit on inputs not admissible? [5]

Answer:

CENVAT Credit is not admissible on the following:-

- (1) Light diesel oil, high speed diesel oil, Motor spirit commonly known as petrol.
- (2) Any goods used for –
 - (i) Construction of a building or a civil structure or part thereof; or
 - (ii) laying of foundation or making of structure for support of capital goods.
 - (iii) Capital goods (unless the same are used as parts or components in the manufacture of a final products.
 - (iv) Motor Vehicles
 - (v) Any goods are used primarily for personal use or consumption of any employee including food articles etc.
 - (vi) Goods having no relationship with whatsoever with the manufacture of final product.
- (3) If nthe final products is exempt from excise duty except in relation to removals to EOU/FTZ/SEZ or clearance under the bond/LUT etc.
- (4) Whan inputs are not received at the point of manufacture.
- (5) When received on documents which do not specify the duty paid or where there is no duty paying document.
- (6) When not used to manufacture of excisable goods.

(b)(ii) What is Automation of Central Excise and Service Tax or ACES? [3]

Answer:

The Central Board of Excise & Customs has developed a new software application called Automation of Central Excise and Service Tax or ACES, which aims at improving taxpayer services, transparency, accountability and efficiency in indirect tax administration. It is a

Answer to MTP_Intermediate_Syllabus 2012_Jun15_Set 2

centralized, web based software application which automates various processes of Central Excise and Service Tax for Assessee and Department, and gives complete end to end solution.

(c) (i) DEB Ltd. has a manufacturing unit situated in Lucknow. In the financial year 2014-15, the total value of clearances from the unit was ₹ 465 lakhs.

The breakup of clearances is as under:

- i. Clearances worth ₹ 85 lakhs of certain non-excisable goods manufactured by it.**
- ii. Clearances worth ₹ 55 lakhs exempted under specified job work notification.**
- iii. Exports worth ₹ 100 lakhs (₹ 75 lakhs to USA and ₹ 25 lakhs to Nepal).**
- iv. Clearances worth ₹ 50 lakhs which were used captively to manufacture finished products those are exempt under notifications other than Notification No. 8/2003-CE., dated 01-03-2003 as amended.**
- v. Clearances worth ₹ 200 lakhs of excisable goods in the normal course.**

Explain briefly, the treatment for various items and state, whether the unit will be eligible for the benefits of exemption under Notification No. 8/2003-CE dated 1-3-2003 as amended for the financial year 2015-16. **[5]**

Solution:

In order to claim the benefit of SSI exemption in a financial year, the total turnover of a unit should not exceed ₹ 400 lakh in the preceding year.

For this purpose, the total value of clearances shall be calculated as follows – **(₹ lakhs)**

Total value of clearances	465
Less:	
(i) Clearances of certain non-excisable goods manufactured by it	85
(ii) Clearances exempted under specified job-work notification	55
(iii) Exports clearances to USA	75
(iv) Clearances of goods used captively to manufacture finished products, which are exempt under Notification other than SSI- exemption notification	Nil
Value of clearances	250

Unit eligible for exemption: Since the aggregate value of clearances during the preceding financial year doesn't exceed ₹ 400 lakhs, therefore, the unit is eligible for SSI - exemption in the financial year 2015-16.

(c)(ii) ABC Ltd. is engaged in the manufacture of 'paracetamol' tablets that has an MRP of ₹ 50 per strip. The company cleared 1,00,000 tablets and distributed as physician's samples. The

Answer to MTP_Intermediate_Syllabus 2012_Jun15_Set 2

goods are not covered by MRP, but the MRP includes 12.36% Excise Duty and 2% CST. If the cost of production of the tablet is ₹ 2 per tablet, determine the total duty payable. [3]

Answer:

If the product is not covered under MRP provisions, valuation provisions under section 4A of the Central Excise Act, do not apply. In that case, valuation is required to be done as per Central Excise Valuation Rules.

As per the CBEC's circular, any physicians samples or other samples distributed free of cost are to be valued under Rule 11 read with Rule 8 of Central Excise Valuation Rules, 2000.

As per Rule 8, such samples are to be valued at 110% of cost of production or manufacture. The given cost of production is ₹ 2, Assessable Value will be ₹ 2.20. Therefore, duty payable @ 12.36% on ₹ 2.20 = ₹ 0.27 per tablet.

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

(a)(i) State the situation where an abatement of duty on damaged or deteriorated goods is given in customs as per section 22 of the Customs Act. How the abatement of duty on damaged or deteriorated goods is computed? [4]

Answer:

Abatement of duty on damaged or deteriorated goods can be given in the following situations [Section 22 of the Customs Act]: Where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs, —

- that any imported goods had been damaged or had deteriorated at any time before or during the unloading of the goods in India; or
- that any imported goods, other than warehoused goods, had been damaged at any time after the unloading thereof in India but before their examination under section 17, on account of any accident not due to any wilful act, negligence or default of the importer, his employee or agent; or
- that any warehoused goods had been damaged at any time before clearance for home consumption on account of any accident not due to any wilful act, negligence or default of the owner, his employee or agent, then abatement of duty on damaged or deteriorated goods can be allowed.

The abatement of duty on damaged or deteriorated goods is computed as follows:

Duty leviable on such damaged or deteriorated goods

$\frac{\text{Duty chargeable on the goods before the damage or deterioration}}{\text{Value of the goods before damage or deterioration}}$	X	$\text{Value of the damage or deteriorated goods}$
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Abatement of duty on damaged or deteriorated goods

= Duty leviable on the goods before damage - Duty leviable on the goods after damage

Answer to MTP_Intermediate_Syllabus 2012_Jun15_Set 2

(a)(ii) When Provisional Anti-Dumping Duty is imposed in customs?

[2]

Answer:

When there is a pending determination of margin of dumping, duty can be imposed on provisional basis. After dumping duty is finally determined, Central Government can reduce such duty and refund duty extra collected than that finally calculated. Such duty can be imposed upto 90 days prior to date of notification, if there is history of dumping which importer was aware or where serious injury is caused due to dumping.

(b) Following transactions took place in the factory of Pisco Ltd. —

- (i) An imported consignment of Raw Materials was received vide Bill of Entry dated 2nd Dec, showing the following Customs Duty payments —**
- | | |
|--------------------------------|-----------------|
| Basic Customs Duty | ₹ 10,000 |
| Additional Duty (CVD) | ₹ 12,000 |
| Special Additional Duty | ₹ 4,000 |
- (ii) A consignment of 1,000 kgs of inputs was received. The Excise Duty paid as per the invoice was ₹ 12,360. While the input was being unloaded 45 kgs were damaged, and were found to be not usable.**
- (iii) Some inputs for final product were received. These were accompanied by a certified Xerox Copy (photo copy) of Invoice No. 270 dated 23rd Dec. indicating the Excise duty of ₹ 5,500 has been paid on inputs. The original for duplicate copy of invoice are not traceable.**

Indicate the eligibility of CENVAT Credit under the CENVAT Credit Rules, 2004 with explanations where necessary. [6]

Solution:

Eligibility of Cenvat credit

Situation	Eligible Amount	Reasoning
Imported Consignment	₹ 16,000	Countervailing Duty for Excise Duty and VAT Equivalent will be eligible for credit under CENVAT Credit Rules. Basic Customs Duty of ₹ 10,000 is not eligible.
Loss of Inputs	₹ 11,804	<ul style="list-style-type: none"> Inputs used in the manufacture of dutiable finished products alone are eligible for CENVAT Credit. When inputs are damaged irretrievably before usage in the manufacturing process, duty attributable to such goods cannot be claimed as CENVAT Credit. Therefore, duty for 955 Kgs alone is eligible for CENVAT Credit = ₹ 12,360 x 955 Kgs used / 1,000 Kgs received.

Answer to MTP_Intermediate_Syllabus 2012_Jun15_Set 2

Inputs received under Photocopy of Invoice	₹ 5,500	<ul style="list-style-type: none"> • Duty can be claimed only if inputs have been received and documents evidencing payment of duty is available. • CENVAT Credit is allowable on Photostat copies of authenticated invoices. <p style="text-align: center;">[Kothari General Foods Corpn Ltd 144 ELT 338 (Tri.)]</p>
Total Credit	₹ 33,304	

(c) From the following particulars, calculate assessable value and total customs duty payable:

- (i) Date of presentation of Bill of entry : 14-05-2014 [Rate of BCD 25%; Exchange Rate: ₹43.40 and rate notified by CBEC ₹ 43.80]
- (ii) Date of arrival of goods in India: 27-05-2014 [Rate of BCD 20%; Exchange Rate; ₹ 44.10 and rate notified by CBEC ₹ 44.20]
- (iii) Rate of Additional Customs Duty : 12%;
- (iv) CIF value 2,000 US Dollar; Air Freight 500 US Dollars, Insurance cost 100 US Dollars [Landing Charges no ascertainable].
- (v) Education Cess applicable 3%
- (vi) Assume there is no special CVD.

Also determine the Cenvat credit eligibility if the buyer is — (1) manufacturer (2) service provider and (3) trader. [Provide working notes as and when required] [6]

Answer:

Computation of assessable value and the total customs duty payable –

CIF value	US \$	2,000
Less: Freight	US \$	500
Insurance	US \$	100
FOB Value	US \$	1,400
Add: Air Freight restricted @ 20% of FOB value	US \$	280
Insurance (actual amount)	US \$	100
CIF value	US \$	1,780
CIF Value in Indian ₹ (CIF Value in US\$ x ₹ 43.80 per US\$)	₹	77,964

Answer to MTP_Intermediate_Syllabus 2012_Jun15_Set 2

Add: 1% for landing charges	₹	780
Assessable value [A]	₹	78,744
Add: Basic Customs duty @ 20% of [A]	[B] ₹	15,749
Total for additional duty of customs u/s 3(1) Customs Tariff Act, 1975 [C]	₹	94,493
Add: Additional Customs Duty (@ 12% of ₹ 94,493 i.e., [C])	[D] ₹	11,339
Add: Education Cess on total customs duty i.e., 3% of [B+D]	[E] ₹	813
Total for the levy of additional duty of customs u/s 3(5) of Customs Tariff Act, 1975 [F=C+D+E]	₹	1,06,645
Add: Additional duty of customs equal to sales tax etc. [G]	₹	---
Total cost of imported goods	₹	1,06,645
Total Customs duty [B+D+E+G] (rounded off)	₹	27,901

Cenvat credit eligibility:

- (1) Buyer, who is manufacturer, is eligible to avail Cenvat credit of [D] and [G] above. As there is no Special CVD as per section 3(5) of the Customs Tariff Act, 1975, he will be eligible to avail credit of [D] only.
- (2) A buyer who is service provider is eligible to avail Cenvat credit of [D] above.
- (3) A trader who sells imported goods in India after charging VAT/ sales tax can get refund of Special CVD of 4%, i.e. [G] above. Alternatively, he can pass on the credit of Special CVD also to his customer. In this case, as there is no Special CVD, the trader cannot avail the said benefit.

Working Notes:

- (1) Rate of exchange notified by CBEC on the date of presentation of bill of entry has been considered.
- (2) Rate of duty as applicable on the arrival of aircraft which is later than the date of submission of the bill of entry has been considered.
- (3) Landing charges @ 1% have been considered as per Rule 10(2)(b) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
- (4) Since Air freight exceeds 20% of FOB value of goods, it shall be restricted to 20% of FOB value of goods.

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

(a) Describe the benefits in case of supply to EOUs (Export Oriented units) from DTA (Domestic tariff Area) units?

Answer:

The benefits of Supply to EOUs (Export Oriented units) from DTA (Domestic tariff Area) units:

Answer to MTP_Intermediate_Syllabus 2012_Jun15_Set 2

1. **Deemed Export:** Supplies from DTA to EOU/ EHTP/ STP/ BTP units will be regarded as "Deemed Exports". The DTA Supplier shall be eligible for relevant entitlements under the FTP, besides discharge of export obligation, if any, on the Supplier. Also, the EOU/ EHTP/ STP/ BTP units shall, on production of a suitable disclaimer from DTA Supplier, be eligible for obtaining entitlements specified under the provisions relating to deemed exports in FTP. For claiming deemed export duty drawback, they shall get brand rates fixed by the DC, wherever All Industry Rates of Drawback are not available.
2. **Additional Benefits:** In addition, EOU/ EHTP/ STP/ BTP units shall be entitled to following:
 - (i) Reimbursement of Central Sales Tax (CST) on goods manufactured in India. Interest at 6% will be payable on delay refund of CST, if the case is not settled within 30 days of receipt of complete application.
 - (ii) Exemption from payment of Central Excise Duty on goods procured from DTA on goods manufactured in India.
 - (iii) Reimbursement of duty paid on fuel procured from Domestic Oil Companies/ Depots of Domestic Oil Public Sector Undertakings as per Drawback Rate notified by DGFT from time to time. Reimbursement of Additional Duty of Excise levied on fuel under the Finance Acts would also be admissible.
 - (iv) CENVAT Credit on Service Tax paid.

(b) Explain the various Input Duty Relief Schemes.

Answer:

Various schemes have been devised to obtain inputs free from duty or to grant refund of the same. In some schemes, the unit has to be isolated from domestic production units, while in some schemes, the units producing goods for domestic production are also entitled to get inputs free of cost.

A. Schemes where export production unit has to be isolated from domestic production units – There are schemes where units producing goods for export purposes have to be isolated from domestic units. The schemes are - EOU, STP, EHTP, BTP and SEZ. [BTP – Bio-Technology Park]

B. Schemes where domestic production unit can get inputs free from taxes - The schemes of EOU, SEZ, STP, BTP and EHTP are suitable where the unit is exclusively or at least predominantly for export purposes. There are other schemes where a unit producing goods for domestic purposes is also entitled to get inputs / capital goods without payment of customs duty / excise duty. These can be broadly classified as follows.

C. Relief of excise duty on inputs – (a) Cenvat credit of duty paid on inputs can be utilized for payment of excise duty on other final products. Alternatively, refund of duty paid on inputs can be obtained (b) Same result can be achieved by paying duty on final product and claiming rebate. In this case, additional benefit is that duty paid on capital goods will also get refunded indirectly. In first case, only duty paid on inputs is refundable (c) Obtaining inputs without payment of excise duty under notification No. 43/2001-CE(NT). This is advisable when there are

Answer to MTP_Intermediate_Syllabus 2012_Jun15_Set 2

one or two major identifiable inputs (d) Rebate of duty paid on inputs under notification No. 41/2001- CE (NT) (e) Excise portion of Duty drawback.

D. Relief of customs duty on inputs – (a) Advance Authorisation (b) Duty Entitlement Pass Book scheme (DEPB) (c) DFIA (d) Customs portion of duty drawback.

E. Capital goods at concessional rate - Capital goods can also be obtained at concessional rate of customs duty under EPCG scheme.

It should be noted that an exporter can get relief only once. He cannot get double benefit.

(c) Discuss the concept of Duty Drawback on Re-Export goods.

Answer:

Section 74 of Customs Act, 1962 provide for drawback if the goods are re-exported as such or after use. This may happen in cases like import for exhibitions, goods rejected or wrong shipment etc. The re-exported goods should be identifiable as having been imported and should be re-exported within two years from date of payment of duty when they were imported. This period (of two years) can be extended by CBE&C on sufficient cause being shown. These should be declared and inspected by Customs Officer. Original shipping bill under which the goods were imported should be produced. The goods can be exported as cargo by air or sea, or as baggage or by post. After inspection, export and submission of application with full details, 98% of the customs duty paid while importing the goods is repaid as drawback.

Section 74 is applicable when imported goods are re-exported as it is and article is easily identifiable, while section 75 is applicable when imported materials are used in the manufacture of goods which are then exported – *ABC India Ltd. v. UOI* 1992(61) ELT 205 (Del HC).

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

(a)(i) M/s. SURYA Ltd. received the following sums (exclusive of taxes). Compute its service tax liability (Ignore small service provider's exemption)-

- (1) Commission from selling of various goods belonging to other parties : ₹ 6.5 lakh ;**
- (2) Commission from acting as Clearing and Forwarding Agent: ₹ 6.8 lakh ;**
- (3) Commission from acting as clearing agent: ₹ 4.8 lakh ;**
- (4) Commission from acting as forwarding agent: ₹ 2 lakh ;**
- (5) Margin earned from trading in shares : ₹ 4.6 lakh ;**
- (6) Margin from trading in futures : ₹ 4.8 lakh ;**

[6]

Solution:

Computation of service tax liability:

- (1) Commission from selling of various goods belonging to other parties : ₹ 6.5 lakh - Taxable;

Answer to MTP_Intermediate_Syllabus 2012_Jun15_Set 2

- (2) Commission from acting as Clearing and Forwarding Agent: ₹ 6.8 lakh - Taxable;
- (3) Commission from acting as clearing agent: ₹ 4.8 lakh - Taxable;
- (4) Commission from acting as forwarding agent: ₹ 2 lakh - Taxable;
- (5) Margin earned from trading in shares : ₹ 4.6 lakh - Shares are securities and "goods" and trading in goods is a service covered within negative list u/s 66D(e) - Not taxable;
- (6) Margin from trading in futures: ₹ 4.8 lakh - Futures are securities and "goods" and trading in goods is a service covered within negative list u/s 66D(e) - Not taxable;

Taxable Value = ₹ (6.5+6.8+4.8+2) lakhs = ₹ 20.10 lakhs; and service tax thereon @ 12.36% = ₹2,48,436.

(a)(ii) Describe the taxability of 'bundled services' with suitable example. [4]

Answer:

'Bundled service' means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services. An example of 'bundled service' would be air transport services provided by airlines wherein an element of transportation of passenger by air is combined with an element of provision of catering service on board. Each service involves differential treatment as a manner of determination of value of two services for the purpose of charging service tax is different.

Example - A hotel provides a 4-D/3-N package with the facility of breakfast. This is a natural bundling of services in the ordinary course of business. The service of hotel accommodation gives the bundle the essential character and would, therefore, be treated as service of providing hotel accommodation.

(b)(i) Uday Ltd. of Mumbai (having diversified business) has provided the following services, whose values are listed below. Compute its service tax liability:

- (1) Services provided to a company located in Colombo in relation to organization of a sport event in Colombo: ₹ 25 lakh;
- (2) Services provided to a company located in Srinagar in relation to festival celebration in Srinagar: ₹ 5 lakh;
- (3) Services provided to a company located in Chennai in relation to fashion show in Dubai: ₹12 lakh;
- (4) Services of online database access and retrieval services provided from its website: ₹17 lakhs (out of this, ₹10 lakh was provided to recipients located outside India). [5]

Solution:

The taxable value and service tax is computed below (amount in ₹) —

(1)	Services provided to a company located in Colombo in relation to organization of a sport event in Colombo: As per Rule 6 of the Place of Provisions Rules, 2012, in case of services provided in relation to organization of events, the services shall be taxable at the place of location of event. Since event is held in non-taxable territory, it is not	Nil
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Answer to MTP_Intermediate_Syllabus 2012_Jun15_Set 2

	liable to service tax.	
(2)	Services provided to a company located in Srinagar in relation to festival celebration in Srinagar: As per Rule 6 of the Place of Provisions Rules, 2012, in case of services provided in relation to organization of events, the services shall be taxable at the place of location of event. Since event is held in non-taxable territory, it is not liable to service tax.	Nil
(3)	Services provided to a company located in Chennai in relation to fashion show in Dubai: Since services are in relation to event held in Dubai, hence, as per Rule 6, they are not taxable. But, since the services are provided to a recipient located in taxable territory (Chennai) and both service provider and recipient are located in taxable territory, hence, as per Rule 8, these services are liable to service tax.	₹ 12,00,000
(4)	Services of online database access and retrieval services provided from its website: As per Rule 9, the place of provision is the place of location of service provider. Since service provider Navin Ltd. is located in Mumbai (taxable territory), hence, these services will be taxable in full irrespective of location of the service recipient.	₹ 17,00,000
	Total Taxable Value	29,00,000
	Service tax @ 12.36%	3,58,440

(b)(ii) Explain abatements and composition schemes in the context of service tax. Also state the distinction between them. [5]

Answer:

Service tax is payable on value of taxable service. In case of some services, composition schemes are available while in some cases, partial abatement is available.

Composition schemes - 'Composition scheme' is a simplified scheme for payment of service tax when calculation of 'value of service' for payment of service tax is very cumbersome or difficult.

In composition scheme, some easy method is prescribed (like deduction of some ad hoc amount) to arrive at the value of taxable service. Composition scheme is at the option of assessee.

Abatement i.e. partial exemption - In case of some services, service tax is payable on lower value, i.e. abatement is available from amount charged. Abatement is nothing but partial exemption from service tax. However, in case of some services, abatement is used as a composition scheme.

Answer to MTP_Intermediate_Syllabus 2012_Jun15_Set 2

Abatement is subject to certain conditions like restrictions on availment of Cenvat credit. If assessee does not want to avail the abatement, he simply should not comply with the conditions. In that case, he is required to pay service tax.

Distinction between abatement and composition scheme: 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 of value of taxable service is difficult. However, this distinction has not been fully followed. In case of some services, abatement is actually used as a composition scheme.

(c)(i) A Ltd. provided services valuing ₹ 8 lakhs during the financial year 2013-14. During 2014-2015, it has provided taxable services valuing ₹ 10 lakhs and has received payments towards payable services ₹ 8.5 lakhs. It has also received services in the nature of transport of goods by road on 1-4-2014, valuing ₹ 50,000 (exclusive of service tax), in respect of which it is the person liable to pay service tax. Freight has been paid on 10-6-2014. Compute the service tax, if any, payable by A Ltd. for the financial year 2014-2015. It is given that goods transport service is exempt to the extent of 75% of value thereof. [6]

Solution :

Value of transport services received	= ₹ 50,000
Less: abatement 75% on ₹ 50,000	= ₹ 37,500
Taxable services	₹ 12,500

Service tax liability in the hands of A Ltd (2014-15) = ₹ 1,545 (i.e. ₹ 12,500 x 12.36/100)

Note:

- (i) The company is eligible for small service provider exemption during the financial year 2014-15, as the value of taxable services provided during financial year 2013-14 does not exceed ₹ 10 lakhs.
- (ii) For the value of taxable services provided during the financial year 2014-15, no tax liability would arise, as the payments received or services provided do not exceed ₹ 10 lakhs. However, for goods transport agency services received, in respect of which M/s. A Ltd. is the person liable to pay service tax, the company cannot claim for small service provider exemption.

(c)(ii) Mr. X practicing Cost Accountant received ₹ 20,00,000 (exclusive of service tax) in the June 2014. He paid service tax on 26th July 2014. Gross receipt in the year 2013-14 is ₹ 25 lakhs. You are required to calculate Interest on delay payment of service tax. [4]

Answer :

Service tax @12.36% on ₹ 20,00,000 = ₹ 2,47,200.

Due date of payment of service tax = 6th July, 2014.

No. of days delay = 20 days

Interest = ₹ 2,032 (i.e. ₹ 2,47,200 x 15/100 x 20/365)

Answer to MTP_Intermediate_Syllabus 2012_Jun15_Set 2

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

(a)(i) Compute the VAT liability of Usha for the month of March, 2015 using the invoice method of computation of VAT - Purchases from the local market (including VAT @ 4%) – ₹62,400, Storage cost incurred – ₹ 800, Transport Cost – ₹ 1,750. Goods sold at a margin of 10% on the cost of such goods sold. VAT rate of sales is 4%. [4]

Solution:

Since VAT credit on purchases is available, VAT paid on purchases does not form cost of the product. Purchase price inclusive of VAT is ₹ 62,400. VAT rate is 4%. Hence, net purchase cost is ₹ 60,000 [(₹ 62,400 × 100)/104]. VAT @ 4% of ₹ 60,000 is ₹ 2,400.

Hence, total cost of goods is ₹ 62,550 (₹ 60,000 + ₹ 800 + ₹ 1,750). Add 10% margin of ₹6,255 (10% of ₹ 62,550). Thus, selling price is ₹ 68,805.

Vat payable on sale price of ₹ 68,805 @ 4% is ₹ 2,752. Vat credit available is ₹ 2,400. Hence, net Vat payable is ₹ 352 (₹ 2,752 - ₹ 2,400).

Note that Value added to product is ₹ 800 + ₹ 1,750 + ₹ 6,255 i.e. ₹ 8,805. 4% of this amount is ₹ 352. Thus, effectively, Vat is paid only on Value added.

(a)(ii) Mr. P of Kolkata sells goods to Mr. T of Hyderabad and delivers the same at Kolkata to ABC Transport. The lorry receipt was sent to Mr. T by post. While goods were in transit, Mr. T sells the goods to Mr. U of Vijayawada by making an endorsement of LR and goods were diverted to Vijayawada. Is the second sale between Mr. T and Mr. U chargeable to tax? [2]

Solution:

The first sale by Mr. P to Mr. T is chargeable to central sales tax. However, sale of goods by T to U is exempt under Section 6(2) of Central Sales Tax Act, 1956 i.e. subsequent sale by transfer of documents to avoid multiple tax incidences.

Note: Form E-I from P and Form C from U has to be received by T.

(b) Umar Constructions undertakes works contracts and maintains sufficient records to quantify the labour and other service charges. From the details given below, calculate the taxable turnover, input tax credit and net VAT payable under the State VAT Law.

Sl. No.	Particulars	Amount (₹)
(i)	Total contract price (excluding VAT @ 12.5%)	1,95,00,000
(ii)	Materials purchased and used for the contract taxable at 12.5% VAT (inclusive of VAT)	33,75,000
(iii)	Labour charges paid for execution of the contract (excluding VAT @12.5%)	40,00,000
(iv)	Other service charges paid for the execution of the contract (excluding VAT @12.5%)	20,00,000

Answer to MTP_Intermediate_Syllabus 2012_Jun15_Set 2

Cost of consumables used not involving transfer of property in goods (excluding VAT @12.5%)	15,00,000
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Umar Constructions also purchased a plant for use in the contract for ₹ 20,80,000 (inclusive of VAT). In the VAT invoice relating to the same VAT was charged at 4% separately.

Assume 100% input tax credit is available on capital goods immediately. [6]

Answer:

The question states that -

- ◆ contractor maintains sufficient records to quantify the labour charges;
- ◆ hence, value of transfer of property in goods involved in execution of works contract is to be computed by deducting labour and service charges from total contract price.

The computations in this regard are as follows -

	Value (excl. VAT) (₹)	VAT Rate	VAT (₹)
Total Contract Price	1,95,00,000		
Less: Labour charges (assumed inclusive of normal profit)	40,00,000		
Other service charges (assumed inclusive of normal profit)	20,00,000		
Cost of consumables (assumed inclusive of normal profit)	15,00,000		
Value of goods involved in works contract	1,20,00,000	12.50%	15,00,000
Materials purchased and used for contract (eligible for credit) [Value excluding VAT = ₹ 33,75,000 × 100 ÷ 112.5]	30,00,000	12.50%	3,75,000
Capital goods used for contract (eligible for credit; in fact, question itself states that capital goods are eligible for 100% credit) [Value excluding VAT = ₹20,80,000 × 100 ÷ 104]	20,00,000	4.00%	80,000
Net VAT payable in cash			10,45,000

(c) (i) Distinguish between a Sale for Export and Sale in the Course of Export in the context of Central Sales Tax. [2]

Answer:

Distinctions between a Sale for Export and Sale in the Course of Export

Answer to MTP_Intermediate_Syllabus 2012_Jun15_Set 2

Sale for Export	Sale in the Course of Export
(i) A sale effected by the dealer (seller) and he is not connected with the export of the goods which actually takes place subsequently.	(i) Seller has an express between the sale and the export.
(ii) Seller may or may not have the knowledge that the buyer intends to export the goods purchased.	(ii) The seller who purchases goods in India subsequently exports as such.
(iii) Seller has no intention for export.	(iii) Seller has clear intention to export.

(c)(ii) Are Lease Transactions subjected to levy of Value Added Tax under VAT Legislations? State in details. [4]

Levy: The Constitutional Authority to levy Sales Tax / VAT on Lease Transactions is contained in Article 366 of Constitution of India, which provides that tax on sale or purchase includes "a tax on the transfer of the right to use any goods for any purpose for cash, deferred payment or other valuable consideration."

Taxable Event: Transfer of right to use any "goods" for any purpose for a "valuable consideration". Hence, transfer of assets without consideration and lease of Immovable property does not attract levy of VAT / Sales Tax.

Taxable Turnover:

= Amount of Valuable Consideration Paid or Payable during given period + Any Charges before delivery thereof, (Less) Interest / Finance Charges included in Lease Payments (only in some States)

Input Tax Credit:

(i) Lessor's Books:

- Lessor will collect VAT on Lease Rentals over a period of time. Against such VAT Liability, the Lessor can claim Input Tax Credit of VAT Paid on purchase of the leased asset.
- Some States provide for claiming of Input Tax Credit on such purchases only over the lease period, and not against any other VAT liability.
- Some other States provide for complete utilization of Input Tax Credit on such purchase, against any VAT Liability. Some other States provide an option to carry forward the excess credit.

(ii) Input Tax credit on Capital Goods: Assets given on lease will be generally capitalized by the Lessor in his books, and will be treated as Capital Assets. Hence, provision relating to Input Tax Credit on Capital Goods will apply, i.e. utilization of credit over a period of time such within 36 Months etc.

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

(a) State the object of introducing Transfer pricing?

Answer:

There is legislative object behind provisions relating to transfer pricing. The existence of different tax rates in different countries offers multinational enterprises to fix up their prices for goods and services and allocate profits among the enterprises within the group in such a way that there may be either no profit or negligible profit in the jurisdiction which taxes such profits and substantial profit in the jurisdiction which is tax haven or where the tax liability is minimum. This may adversely affect a country's share of due revenue and which may lead to erosion of tax revenue. Therefore, transfer pricing provisions have been brought with a view to provide a statutory framework which can lead to computation of reasonable, fair and equitable profits and tax in India, in the case of such multinational enterprises.

(b) Write down the scope of international transaction.

Answer:

Scope of international transaction:

"International transaction" shall include—

- (i)** the purchase, sale, transfer, lease or use of tangible property including building, transportation vehicle, machinery, equipment, tools, plant, furniture, commodity or any other article, product or thing;
- (ii)** the purchase, sale, transfer, lease or use of intangible property, including the transfer of ownership or the provision of use of rights regarding land use, copyrights, patents, trademarks, licences, franchises, customer list, marketing channel, brand, commercial secret, know-how, industrial property right, exterior design or practical and new design or any other business or commercial rights of similar nature;
- (iii)** capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;
- (iv)** provision of services, including provision of market research, market development, marketing management, administration, technical service, repairs, design, consultation, agency, scientific research, legal or accounting service;
- (v)** a transaction of business restructuring or reorganisation, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or at any future date;

Answer to MTP_Intermediate_Syllabus 2012_Jun15_Set 2

(c) State the difficulties in applying the arm's length principle?

Answer:

The arm's length principle, although survives upon the international consensus, does not necessarily mean that it is perfect. There are difficulties in applying this principle in a number of situations.

- (a) The most serious problem is the need to find transactions between independent parties which can be said to be exact compared to the controlled transaction.
- (b) It is important to appreciate that in an MNE system, a group first identifies the goal and then goes on to create the associated enterprise and finally, the transactions entered into. This procedure obviously does not apply to independent enterprises. Due to these facts, there may be transactions within an MNE group which may not be between independent enterprises.
- (c) Further, the reductionist approach of splitting an MNE group into its component parts before evaluating transfer pricing may mean that the benefits of economies of scale, or integration between the parties, is not appropriately allocated between the MNE group.
- (d) The application of the arm's length principle also imposes a burden on business, as it may require the MNE to do things that it would otherwise not do (i.e. searching for comparable transactions, documenting transactions in detail, etc).
- (e) Arm's length principle involves a lot of cost to the group.