PAPER – 16: Tax Management and Practice

The following table lists the learning objectives and the verbs that appear in the syllabus learning aims and examination questions:

	Learning objectives	Verbs used	Definition
LEVEL C	KNOWLEDGE What you are expected to know	List	Make a list of
		State	Express, fully or clearly, the details/facts
		Define	Give the exact meaning of
	COMPREHENSION What you are expected to understand	Describe	Communicate the key features of
		Distinguish	Highlight the differences between
		Explain	Make clear or intelligible/ state the meaning or purpose of
		Identity	Recognize, establish or select after consideration
		Illustrate	Use an example to describe or explain something
	APPLICATION How you are expected to apply your knowledge	Apply	Put to practical use
		Calculate	Ascertain or reckon mathematically
		Demonstrate	Prove with certainty or exhibit by practical means
		Prepare	Make or get ready for use
		Reconcile	Make or prove consistent/ compatible
		Solve	Find an answer to
		Tabulate	Arrange in a table
	ANALYSIS How you are expected to analyse the detail of what you have learned	Analyse	Examine in detail the structure of
		Categorise	Place into a defined class or division
		Compare and contrast	Show the similarities and/or differences between
		Construct	Build up or compile
		Prioritise	Place in order of priority or sequence for action
		Produce	Create or bring into existence
	SYNTHESIS How you are expected to utilize the information gathered to reach an optimum conclusion by a process of reasoning	Discuss	Examine in detail by argument
		Interpret	Translate into intelligible or familiar terms
		Decide	To solve or conclude
	EVALUATION How you are expected to use your learning to evaluate, make decisions or recommendations	Advise	Counsel, inform or notify
		Evaluate	Appraise or asses the value of
		Recommend	Propose a course of action

Paper 16 – Tax Management and Practice

Time Allowed: 3 hours **Full Marks: 100**

This paper contains 9 questions, divided in two sections Section A and Section B. In total 7 questions are to be answered. Answer any five questions from Section A (out of six questions - Questions Nos. 1 to 6).

In Section B, Question No. 9 is compulsory and answer any one question from the remaining two questions of the section (i.e. out of Question nos. 7 & 8).

Students are requested to read the instructions against each individual question also. All workings must form part of your answer. Assumptions, if any, must be clearly indicated.

All the questions relate to the assessment year 2015-16, unless stated otherwise.

Section A

Answer any five Questions

1. (a) Rohini Ltd is engaged in the business of growing and manufacturing tea in India. For the previous year 31.3.2014 its composite business profits before allowing deduction U/s 33AB are ₹60,00,000. On 1.09.2014 it deposited a sum of ₹11,00,000 in the Tea Development Account. During the previous year 2012-13 Rohini Ltd. had incurred a business loss of ₹14,00,000 which has been carried forward. On 25.01.2015, it withdraws ₹10 lakh which is utilised as under:

₹6,00,000 for purchase of non-depreciable asset as per the scheme specified

₹ 3,00,000 for purpose other than specified in the scheme.

₹1,00,000 was spent for the purpose of scheme on 05.04.2015.

(i) Compute the business income of Rohini Ltd. for assessment year 2014-15.

(ii) What are the tax consequences of money misutilised/not utilised?

(iii) What will be the consequence if the asset which was purchased for ₹6,00,000 is sold for ₹8,00,000 in April, 2015. **[6]**

Solution:

As per rule 8, before disintegrating the business profits into agricultural income and non-agricultural income, the income is to be computed under the head "profits and gains from business and profession", which means besides other deductions, the deduction under section 33AB must have also been claimed.

Computation of Total Income of Rohini Ltd.

Previous year 2013 –14 (Assessment year 2014–15)	
Composite profits before allowing deduction u/s 33AB	60,00,000
Less: Deduction u/s 33AB 40% of ₹60,00,000 or ₹11,00,000, which is less	11,00,000
	49,00,000
Less: 60% of ₹49,00,000 being agricultural income	29,40,000
Non-agricultural business income taxable under section 28	19,60,000
Less: B/F Business loss of Assessment year 2013 – 14	14,00,000
Taxable business Income	5,60,000

Previous year 2014–15 (Assessment year 2015–16)	
Computation of amount misutilised/ not utilized	
(i) Amount withdrawn from tea Development Account but misutilised	3,00,000
(ii) Amount withdrawn from Tea Development Account but not utilised for specified purpose in the same previous year 2014–15 in which it was withdrawn	1,00,000
	4,00,000

40% of ₹4,00,000 shall be taxable as business income of assessment year 2015–2016 and balance of ₹2,40,000 shall be treated as agricultural income .

Previous year 2015–16 (Assessment year 2016–17)	
Sale price	8,00,000
Less: Cost of non depreciable asset	6,00,000
Short-term capital gain	2,00,000

Since the asset is sold within 8 years, the cost of the asset i.e. ₹6,00,000 should be business income as the entire cost had been allowed is deduction in the past but out of this ₹6,00,000, 60% shall be agricultural income (as the deduction u/s 33AB was allowed before disintegration) and balance 40% i.e. ₹2,40,000 will be business income taxable under the head "Income from business and profession".

1. It may noted that as per rule 7A in case of growing and manufacturing of rubber, 65% of income shall be agricultural income, and 35% of the income shall be business income instead of 60% or 40%, as the case may be, in case of growing and manufacturing of tea.
2. Similarly as per rule 7B in case of coffee grown and cured by the seller in India, 75% of the income shall be agricultural income and 25% of the income shall be business income whereas in case of coffee grown, cured, roasted and grounded by the seller 60% of the income shall be agricultural income and 40% of the income shall be business income.

(b) Compute the capital gain in the following cases:

(1) (i) P commenced a business on 15.04.1991. The said business is sold by P on 18.04.2014 and he received ₹12,00.000 towards goodwill.

(ii) What will be your answer in the above case, if P had acquired the goodwill for this business for a consideration of ₹2,00.000.

(2) R has been living in a rented accommodation since May 1994 and he is paying a rent of ₹500 per month. The landlord got the house vacated from R on 16.07.2014 and paid a sum of ₹5,00,000 for vacating the house.

(3) S is a Chartered Accountant practicing in Delhi since January 1983. He transfers the practice to another Chartered Accountant Y on 15.07.2014 and charges ₹5,00,000 towards goodwill.

(4) R purchased tenancy right on 01.04.1979 for ₹1,60,000. The same was sold by him on 14.08.2014 for ₹20.00.000. Fair market value of tenancy right as on 01.04.1981 was ₹2.50,000. [4]

Solution:

(1)

		₹
(i)	Sale Consideration	12,00,000
	Less: Indexed cost of acquisition (Self generated)	Nil

	Long-term capital gain	12,00,000
(ii)	Sale Consideration	12,00,000
	Less: Indexed cost of acquisition – ₹$2,00,000 \times \frac{1,024}{199}$	10,29,146
	Long-term capital gain	1,70,854

(2)

	₹
Sale Consideration	5,00,000
Less: Indexed cost of acquisition (Since self generated)	Nil
Long-term capital gain	5,00,000

(3) Since the asset transferred is goodwill of a profession and not of business, it is treated as self-generated asset and there is no capital gain on self-generated asset.

(4)

	₹
Sale Price	20,00,000
Less: Indexed cost of acquisition – ₹$1,60,000 \times \frac{1,024}{100}$	16,38,400
Long-term capital gain	3,61,600

In case of tenancy right, the option to assume market value as on 01.04.1981 is not allowed.

(c) From the following details, compute the Gross Total Income of A for the assessment year 2015 – 16:

	₹
1. Taxable income from salary	**80,000**
2. Income from house property house 'A' (let out)	**(-) 95,000**
House 'B' (Self – occupied , interest on borrowed money)	**(-) 9,000**
3. Short –term capital gain	**12,000**
4. Loss from long- term assets	**25,000**
5. Interest on securities (gross)	**10,000**

[4]

Solution:

		₹	₹	₹
1.	Taxable income from salary		80,000	
	Less: Loss under the head house property set off		80,000	Nil
2.	Income from property A (let out)		(-) 95,000	
	House B self occupied		(-) 9,000	
			(-) 1,04,000	
	Less: Set off from salary	80,000		
	Set off short term capital gain	12,000		
	Set off from income other sources	10,000	1,02,000	
	Balance loss carried forward		2,000	Nil

3.	Income from capital gain: Short-term capital gain Less: Loss under the head house property set off Long-term capital loss to be carried forward		 12,000 12,000 (-) 25,000	 Nil
4.	Income from other sources: Interest on securities Less: Loss under the head house property set off Gross total income		 10,000 10,000 	 Nil Nil

Loss from long-term capital assets cannot be set off against short-term capital gain or income under other heads of income. Such a loss of ₹25,000 which could not be adjusted in the assessment year 2014-15 will be carried forward to the subsequent assessment years. Loss from house property amounting to ₹2,000 shall be carried forward.

(2)(a) 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)	**105**
Labour Charges paid for execution of the contract	**40**
Cost of Consumables used not involving transfer of property in goods	**5**
Material purchased and used for the Contract, taxable at 12.5% VAT (VAT included)	**45**

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. [3]

Solution:

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

Particulars	₹ Lakhs
Total Contract Value (excluding VAT)	105
Less: Labour Charges paid for execution of the contract	(40)
Less: Cost of Consumables used not involving transfer of property in goods	(5)
Taxable Turnover,	60
Output VAT Payable [₹ 60 lakhs × 12.5%]	7.5
Less: Input Tax Credit	
• On Materials Purchased Inclusive of VAT $\left[\frac{12.5}{112.5}\times ₹45\,\text{lakhs}\right]$	(5)
• On Plant purchased $\left[\frac{4}{104}\times ₹10.4\,\text{lakhs}\right]$	(0.4)
Net VAT Liability	2.1

(b) Define 'Dealer' as per CST Act. Name the persons who are included in the definition of 'Dealer'. [3]

Answer:

As per sec 2(b) of the CST Act - 'Dealer' means any person:

- who carries on (whether regularly or otherwise), the business of
- buying, selling, supplying or distributing goods, directly or indirectly,
- for cash or for deferred payment, or for commission, remuneration or other valuable consideration.

Dealer includes the following:

(i) 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.

(ii) A Factor, Broker, Commission Agent, Del-credre 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

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.

(c) Determine the value on which Excise duty is payable in the following instances –

A. P Ltd. sold goods to Q Ltd. at ₹ 100 per unit. In turn, Q Ltd. sold the same to R Ltd. at a value of ₹ 110 per unit. P ltd. and Q Ltd. are related, whereas Q Ltd. and R Ltd. are unrelated,

B. P Ltd. & Q Ltd. are interconnected undertakings u/s 2(g) of MRTP Act. P Ltd. sells goods to Q Ltd. at value of ₹ 100 per unit and to R Ltd. at ₹ 110 per unit, who is an independent buyer.

C. P Ltd. sells goods to Q Ltd. at a value of ₹ 100 per unit. The said goods are captively consumed by Q Ltd. in its factory. P Ltd and Q Ltd. are unrelated. The cost of production of the goods to P Ltd. is ₹ 120 per unit.

D. P Ltd. sells Motor Spirit to Q Ltd. at ₹ 31 per litre. But Motor Spirit has administrated price of ₹ 30 per litre, fixed by the Central Government.

All the price mentioned above are exclusive of Excise Duty. [3]

Answer:

Particulars	Assessable Value (AV)	Rule/ Section	Reasoning
Sale to Related Person	₹ 110	Rule 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000	Buyer and Seller are related. Therefore, Buyer's resale price to unrelated person will be AV.
Sale to interconnected undertakings (ICU)	₹ 110 to B; ₹ 110 to C	Rule 10 & Section 4 of the Central Excise Act	Sales are made to both ICU and unrelated persons. Hence, for removal to ICU, AV shall be as per

and Independent Person			Rule 10 and in such case the AV shall be the price as if they are not related. Hence, the unrelated price of ₹ 110 must be considered. For removal to Unrelated persons, the AV shall be as per Section 4 and AV shall be the actual sale price charged.
Sale to Unrelated person for captive consumption	₹ 100	Section 4(1)(a)	AV for sale to Unrelated Person will be Transaction Value. Mode of consumption by such Unrelated Buyer has no bearing on the AV.
Sale of Motor Spirit at a price > Administered Price	₹ 31	Section 4(1)(a)	Where goods are sold at a price higher than the administered price, such higher price shall be considered as AV.

(d) M/s. Ram Ltd., a manufacturer of various excisable goods, furnishes you with the following information for the year ended 31st March, 2015. From the under mentioned information, determine whether the company will be entitled SSI exemption under Notification No. 8/2003, dated 01-03-2003 during the financial year 2015-16:

(1) Clearances of finished excisable goods covered under Section 4A of Central Excise Act [Notified abatement 20%] RSP of goods ₹ 120 lakhs;

(2) Value of clearances of inputs as such under Rule 3(5) of Cenvat Credit Rules, 2004 on which Cenvat Credit has been taken ₹ 20 lakhs;

(3) Value of clearances of excisable goods bearing brand name of foreign company which is assigned in favour of Ram Ltd. ₹ 110 lakhs;

(4) Value of clearance as licensee of goods carrying the brand name of another person upon full payment of duty = ₹ 200 lakhs;

(5) Value of clearance of waste and scrap which were exempt from duty = ₹ 30 lakhs;

(6) Value of clearances of plastic containers for packing of pickles produced by them under brand name of Quick Pickles. Quick pickles use these plastic containers ₹30,00,000;

(7) Clearances of other excisable goods ₹ 134 lakhs. [5]

Solution:

Computation of value of clearances in the financial year 2014-15:

		₹ in lakhs
1	Clearances of finished excisable goods covered u/s 4A of Central Excise Act (₹120 lakhs - 20%)	96
2	Value of clearances of inputs as such under Rule 3(5) of Cenvat Credit Rules, 2004 on which Cenvat Credit has been taken. [WN-1]	--
3	Value of clearances of excisable goods bearing brand name of foreign company which is assigned in favour of Ram Ltd. [WN-2]	110
4	Value of clearance as licensee of goods carrying the brand name of	---

	another person upon full payment of duty [WN-3]	
5	Value of clearance of waste and scrap which were exempt from duty [WN-4]	30
6	Value of clearances of plastic containers for packing of pickles produced by them under brand name of Quick Pickles. [WN-5]	30
7	Clearances of other excisable goods.	134
	Total value of clearances	400

Working Note:

(1) As per Circular No. 57/88, dated 27-10-1988 in case inputs on which Cenvat credit has been taken are removed as such, there value shall not be included in value of clearances of ₹400 lakhs. Since the same have not been manufactured by the assessee.

(2) In case if trade mark of foreign company is assigned in favour of assessee, then assessee becomes the owner of such trade mark and exemption in respect of clearances made under such brand name will be available, hence the same shall be included in determination of value of clearances of ₹400 lakhs.

(3) Since the said goods are manufactured in brand name of another person, hence the same are not eligible for exemption and the value of the same shall not be included in determination of ₹400 lakhs.

(4) Clearances of waste and scrap shall be includible in value of clearance for determination of ₹400 lakhs even if the same are exempt from duty.

(5) Clearances of plastic containers bearing the brand name of others is included provided that such plastic containers are meant for use as packing materials by the person whose brand name such goods bear. Hence, clearances of plastic containers bearing the brand name of Quick Pickles would be included.

Since the value of clearances for home consumption does not exceeds ₹400 lakhs in the financial year 2014-15, Ram Ltd. is eligible to claim the benefit of exemption under Notification No. 8/2003-CE, dated 01-03-2003 in the financial year 2015-16.

(3)(a) "Mingle Engineering Ltd", a Korean Non Resident Company, had entered into an agreement for designing, fabricating, hook-up and commissioning of a platform in Bombay High with "Crude Oil India Ltd" an Indian Company. The agreement entered into was in two parts, one for the value to be charged for fabrication of structure in Korea for ₹20 Crores (having element of Profit in it of ₹ 2 Crores) and other for the Installation and Commissioning of the structure in Bombay High for ₹15 Crores (having element of Profit in it of ₹1.5 Crores). The Korean Company will also be setting up an Office in India for the activity of installation and commissioning of the platform which is likely to be completed in 9 months.

On these facts, you are required to answer -

(i) Whether the office of Mingle Engineering Ltd. to be opened in India be considered as its "Permanent Establishment"/ "Business Connection"?

(ii) The amount of profits, if any, of the Non-Resident Company subject to tax in India.

(iii) The Income subject to Tax in India, when the ALP of the fabrications of structure is determined at ₹ 19 Crores. [5]

Solution:

1. **Permanent Establishment**: The Korean Company for the purpose of commissioning of the platform in Bombay High Seas shall be having an office in India for a period of around 9 months. Maintaining of an Office by the Non-Resident in India for the conduct of its business shall be treated as a 'Permanent Establishment'
2. **Principles of Taxation**: In a contract for fabrication, designing, hook-up and commissioning of platform in Bombay High, fabrication work was completed in Korea. PE was established in India after fabrication but before installation. Hence, profits relating to fabrication in Korea are not taxable in India, but income relating to installation is taxable.
3. **Conclusion:**

   (a) Variation = $\frac{\text{Computed ALP} - \text{Actual Price}}{\text{Acutal Price}} = \frac{19-20}{20} = 5\%$ (absolute % is taken, being Cost %)

   (b) Since, the above variation exceeds the permissible 3% limit, the difference of ₹ 1 Crore being excessive payment / cost is disallowed.

   (c) So, Profits attributable to the PE are only ₹1.5 Crores relating to activity of commissioning, hook up and installation of the platform in Bombay High, which is being conducted / supervised from the Office in India.

   (d) The profits of ₹ 2 Crores relating to the fabrication work of the platform is not taxable in India, because the completed structure is to be supplied from Korea. Such profits are not attributed to the PE, because the work of fabrication was completed in Korea prior to coming into existence of the PE connection in India. However, Income there from is subject to ALP.

(b) What are the modes of transfer of Intangible Assets under Internal transactions? [2]

Answer:

General Rule: The following general rules of ALP shall apply to Intangible Property Transactions between Associated Enterprises.

Transferor ALP = Price at which a Comparable Independent Enterprise would be willing to transfer the property.

Transferee ALP = price that a Comparable Independent Enterprise would be prepared to pay, depending on the value and usefulness of the intangible property to the Transferee in its business.

Transfer Mode: Either – (i) through outright sale, or (ii) by a Royalty under a licensing agreement.

(c) Mr. Pal of US sends US$ 1,000 to his father in India as follows —

- **Mr. Pal pays US$ 1,050 to Bank of America (US$ 1,000 + US$ 50 as charges)**
- **Bank of America pays US$ 1,030 to Canara Bank (India) (US$ 30 as charges)**
- **Canara Bank pays US$ 1,005 to M/s. Shan (US$ 5 as charges).**
- **M/s. Shan pays ₹ 59,900 (US$ 1,000 × ₹ 60 per USD less ₹ 100 towards charges) to Mr. Pal's father. RBI rate has all through been ₹ 61 per US$.**

Calculate the taxability of this chain. [4]

Solution:

In light of the Circular No. 180/06/2014-ST dated 14th October, 2014, US$ 1,000 remitted by Mr. Pal to his father is a transaction in money and is therefore, not a service and is not liable to service tax. The taxability of various charges is as follows —

Service Provider	Service Recipient	Amount	Taxability
Bank of America (US)	Mr. Pal (US)	$50	Not taxable
Canara Bank	Bank of America (US)	$ 30 × ₹ 61 or any other rate as per Rule 11 of the Service Tax Rules, 1994	Intermediary services under Rule 9(c) of Place of Provision of Services Rules, 2012 and therefore, taxable in hands of Canara Bank.
M/s. Shan	Canara Bank	$ 5 × ₹ 61 or any other rate as per Rule 11 of the Service Tax Rules, 1994	Intermediary services under Rule 9(c) of Place of Provision of Services Rules, 2012 and therefore, taxable in hands of M/s. Shan
M/s. Shan	Mr. Pal's father	US$ 1,000 × [RBI Rate ₹ 61 -Payment at ₹ 60] = ₹ 1,000	Currency conversion services, valued as per Rule 2B of the Service Tax (Determination of Value) Rules, 2006, are liable to service tax in hands of M/s. Shan
M/s. Shan	Mr. Pal's father	₹ 100 additional charges	Liable to service tax in hands of M/s. Shan

(d) Mr. Ravi has provided the following services during the year 2014-15. Determine whether he is eligible for threshold exemption during the year 2015-16:

(1) Services provided outside India : ₹ 1 lakh ;

(2) Services (falling under negative list): ₹ 2 lakh ;

(3) Services fully exempt under other notifications : ₹ 3 lakh ;

(4) Declared Services (Sum charged ₹ 4 lakh, but, value determined as per the valuation rules is 60% i.e., ₹ 2,40,000) ;

(5) Services (where amount charged is ₹ 60,000, but, after abatement, value is ₹ 20,000); and

(6) Other services provided: ₹ 7 lakh (including ₹ 1 lakh towards services where whole of the service tax was payable by the service recipient) [3]

Solution:

Mr. Ravi would be eligible for threshold exemption under Not. No. 33/2012-ST, if the "aggregate value" of taxable services provided during the year 2014-15 is upto ₹ 10 lakhs.

The relevant computations are shown below —

Particulars	Treatment	₹
(1) Services provided outside India	Not taxable service, as not liable to service tax u/s 66B of the Finance Act, 1994 - Not includible	NIL

(2) Services (falling under negative list)	Not taxable service, as not liable to service tax u/s 66B - Not includible	NIL
(3) Services fully exempt under other notifications	Specifically excluded in determination of aggregate value	NIL
(4) Declared Services	Value as determined as per section 67 and Valuation Rules is to be taken	2,40,000
(5) Services eligible for abatement	Abatement is a form of partial exemption. Value as per section 67 viz. ₹ 60,000 shall be taken.	60,000
(6) Other Services	Includible (Even services covered under reverse charge are includible) (It is assumed that Mr. Ravi is not a GTA service provider).	7,00,000
Aggregate Value under Not. No. 33/2012-ST for Financial Year 2014-15		10,00,000
Since the aggregate value is ₹10 lakhs (i.e., not exceeding ₹10 lakhs) during Financial Year 2014-15, Mr. Ravi is eligible for threshold exemption during the financial year 2015-16.		Eligible for exemption

(4)(a) M/s. Rani & Co. imported goods declaring transaction value of ₹ 500 per unit, which was rejected. Rules 4 and 5 of Import Valuation Rules are found inapplicable. M/s. Rani & Co. furnishes you the following data and requests you to compute the value of imported goods as per Rule 7:

1. **Sale Price in India (after processing, etc.): ₹ 1,125 p.u. (inclusive of VAT @ 12.5%);**
2. **Commission to Indian agent on above sales: 5% of sale price (before VAT);**
3. **Cost of processing after import: ₹ 55 p.u.**
4. **Freight and Insurance from Port of import onwards: ₹ 40 and ₹ 10 p.u.**
5. **General Expenses and Overheads in India are absorbed at: ₹ 110 p.u.**
6. **Net profit margin (normally earned by others also): 10% of sale price (before VAT)**
7. **Rate of Basis Customs Duty: 10% + 3% EC/SHEC (no other duty leviable).**
8. **Handling charges at customs port at time of import: ₹ 45 p.u.**

Ignore Cenvat Credit/Input Credit related aspects. [6]

Solution:

Computation of Customs Value under Rule 7

Particulars	**₹ (p.u.)**
Selling price (inclusive of VAT)	1,125
Less: (i) VAT (1,125 × 12.5% ÷ 112.5%)	125
Sale Price before VAT	1,000
Less: (ii) Commission on sales	50
(iii) Cost of processing in India	55
(iv) Post-import freight and insurance (₹ 40 + ₹ 10 = ₹ 50 p.u.)	50
(v) General Expenses (post-import)	110
(vi) Net profit margin in India	100
Cum-duty price	635
[This amount is inclusive of customs duty, as only the post import	

expenses and VAT have been deducted.]	
Less: (vii) Customs Duty @ 10.3% [635 × 10.3 ÷ 110.3]	59.3
Customs Value	575.7

Note: Handling Charges at port are already included within the value of ₹ 575.7, as Rule 7 involves reverse workings.

(b) State the procedures for duty drawback on Re-Export as per Sec. 74 of the Customs Act, 1962. [4]

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.

(c) Mention few incentives which are being offered to SEZ units to attract investments in those areas. [4]

Answer:

The incentives and facilities offered to the SEZ units for attracting investments are -

(i) Duty free import/domestic procurement of goods for development, operation and maintenance of SEZ units.

(ii) 100% Income Tax Exemption on Export Income for SEZ Units u/s 10AA of the Income Tax Act for first 5 years, 50% for next 5 years thereafter and 50% of the ploughed back export profit for next 5 years.

(iii) External Commercial Borrowing by SEZ units upto US $ 500 million in a year without any maturity restriction through recognized banking channels.

(iv) Exemption from Central Sales Tax.

(v) Exemption from Service Tax.

(vi) Single window clearance for Central and State level approvals.

(vii) Exemption from State Sales Tax and other levies as extended by the respective State Governments.

(5)(a) Chakarvarti is a Cost Accountant drawing following salary and allowances:

	(₹)
• **Basic pay**	**20,000 p.m.**
• **Dearness allowance**	**1,000 p.m.**
• **City Compensatory allowance**	**100 p.m.**

- **House Rent allowance 750 p.m.**
- **Reimbursement of cost of travel and course fee to attend a seminar at Ooty 5,500**
- **Bonus at 20% of salary including Dearness allowance is also received. He is given a motor car (below 1.6 ltr,) and is entitled to use it for both office and private purposes. His employer also pays ₹400 p.a. on a Personal Accident Insurance Policy consistent with its policy of insuring all its employees. Deductions have been made from his salary as follows:**
  - **Contribution to a recognized provident fund ₹ 1,000 p.m. and contribution to an approved superannuation fund ₹ 400 p.m.**

  There are matching contributions for both by the employer.
- **Chakarvarti was in receipt of the following from a partnership firm where he was sharing one-third of the profits:**
- **₹ 45,000 as share of profits.**
- **₹ 30,000 as salary from the firm.**
- **₹ 20,000 as commission there from.**
- **He was a member of an association of persons from where he was paid ₹ 50,000 as share of profits. The association is chargeable to tax at the maximum marginal rate of tax.**
- **He donated ₹ 25,000 to National Foundation for Communal Harmony.**

  Chakarvarti's minor son earned ₹35,000 by way of interest on public deposit in a company.
- **Chakarvarti received ₹ 700 as interest in savings bank account in a (non-nationalised) scheduled bank. He pays ₹ 3,200 p.a. as life insurance premium.**
- **Chakarvarti is living in his own house. Annual value as fixed by Municipal Corporation is ₹ 7,200, while half year's tax is ₹ 900. He pays ₹ 100 as insurance on this property besides ₹ 3,600 as interest on ₹30,000 on mortgage, of this property. The borrowing was partly (₹ 20,000) for acquiring the house and the balance (₹10,000) for purchasing a home air-conditioner for the house.**
- **Chakarvarti received a gift valuing ₹ 4,900 on the occasion of the silver jubilee of the company. It is stated that a uniform amount was paid to each employee on this occasion.**

Compute the assessee's total income for the assessment year 2015 – 16. [6]

Solution:

		₹	₹
(a)	Salary @ ₹20,000 per month	2,40,000	
(b)	Dearness allowance @ ₹1,000 p.m.	12,000	
(c)	City Compensatory Allowance @ ₹100 p.m.	1,200	
(d)	Bonus at 20% of 2,52,000 (2,40,000 + 12,000)	50,400	
(e)	House rent allowance @ ₹750	9,000	
(f)	Use of car (1,800 × 12)	21,600	
	Gross salary Less: Deduction	3,34,200 Nil	3,34,200
Income from House Property			
	Annual value of self –occupied house	Nil	
	Interest on borrowings allowed	2,400	
	Loss from property		(-) 2,400
Profits and gains from business or profession			

(a)	Share of profit is not taxable in his hands		
(b)	Salary and commission (30,000 – 1,500)		50,000
Income From Other sources			
(a)	Bank interest	700	
(b)	Interest on public deposit to minor son (35,000 – 1,500)	33,500	34,200
	Gross Total Income		4,16,000
(I)	Deduction u/s 80C (see Note)	20,000	
(II)	Deduction u/s 80G: Donation for national Foundation for Communal harmony	25,000	45,000
	Total Income		3,71,000
Amount on which deduction u/s 80C is allowed			
• Employee's contribution to Provident Fund • Employee's contribution to superannuation fund • Life Insurance Premium			12,000 4,800 3,200
			20,000

1. Since the assessee lives in his own house, house rent allowance is taxable.
2. Share of profit from the Association of Persons in this case will not be taxed in the hands of Chakarvarti as the AOP has paid tax at the maximum marginal rate. It will also not be included in Total Income.

(b) The estimated Gross Total Income of R is ₹8,45,000 which includes ₹1,00,000 on account of LTCG earned on 16.09.2014. Compute the Advance Tax Payable R, assuming ₹11,000 has been deducted at source during the financial year 2014-15. [4]

Solution:

	₹
Estimated tax Liability with LTCG On ₹7,45,000 On LTCG of ₹1,00,000 @ 20%	 74,000 20,000
	94,000
Add: Education cess & SHEC @ 3%	2,820
	96,820
Less: TDS	11,000
	85,850
Estimated Tax Liability without LTCG Tax on ₹7,45,000 = ₹74,000 + ₹2,220	76,220
Less: TDS	11,000
	65,220
Tax payable on 1st installment i.e. by 15.09.14 30% of ₹65,220	19,566
Tax payable on 2nd installment i.e. by 15.12.2014 (by including LTCG) 60% of ₹85,820 = 51,492 – ₹19,566	31,926
Tax payable on 4th installment i. e. by 15.03.2015 100% of ₹85,820 – [₹19,566 + 31,926]	34,328

(c) M, has computed his Gross Total Income for the assessment year 2015-16 which amounted to ₹4,70,000. It includes ₹3,70,000 on account of long-term capital gain. He has deposited ₹ 1,20,000 in a PPF during the previous year. Compute the tax payable by M, a resident in India assuming that (i) he is less than 60 years of age; (ii) more than 60 years of age. [4]

Solution:

(A) When he is less than 60 years of age

	₹
Gross Total Income exclusive of income taxable at special rate	1,00,000
Less: Deduction under section 80C, limited to ₹1,00,000 being total income exclusive of long-term capital gain	1,00,000
	Nil
Add: Long-term capital gain	3,70,000
Taxable income	3,70,000
Tax on total income exclusive of long-term capital (Nil + ₹2,50,000 shifted from LTCG)	Nil
Tax on Long-term capital gain @ 20% on ₹1,20,000 (₹3,70,000 – ₹2,50,000 shifted to other income)	24,000
Tax payable	24,000
Less: Rebate under section 87A	2,000
	22,000
Add: Education cess & SHEC @ 3%	660
Total tax payable	22,660

(B) When he is 60 years old

Tax on total income of ₹3,70,000 (computed as above)	
Tax on total income exclusive of long-term capital gain (Nil + ₹3,00,000 shifted from long-term capital gain)	Nil
Tax on long-term capital gain @ 20% on ₹70,000 (₹3,70,000 – ₹3,00,000 shifted to other income)	14,000
	14,000
Less: rebate under section 87A	2,000
	12,000
Add: Education cess & SHEC @ 3%	360
Total tax payable	12,360

(6)(a) Mr. Rajesh carries on his own business. For the year ending 31.03.2015 his Trading/Profit and Loss Account was as follows: -

	₹		₹
Opening stock	**2,20,000**	**Sales**	**1,62,89,000**
Purchases	**1,36,09,000**	**Closing stock**	**2,52,000**
Salaries	**2,56,000**	**Interest on jay Co. Ltd. Debentures**	**2,000**
Rent	**5,61,000**	**Dividend from UTI**	**2,000**
Bonus	**3,000**	**Discount received**	**12,000**
Printing, postage and stationery	**4,000**	**Race winning (Gross)**	**12,000**
Miscellaneous expenses	**4,000**		
Advertisement expenses	**22,000**		

Drawings	**12,000**		
LIC premium	**5,000**		
Car expenses:			
Drivers Salary	**6,000**		
Petrol & repairs	**12,000**		
Property tax	**4,000**		
Cost of NSC (VIII series)	**6,000**		
Net profit	**18,45,000**		
	1,65,69,000		**1,65,69,000**

Additional information

(a) Advertisement expenses included cost of 20 gift packs of ₹1,100 each presented to leading esteemed customers on occasion of Diwali.

(b) The car was used both for business and personal purposes. 2/3rd is for business purposes.

(c) The property tax of ₹4,000 was in respect of his self-occupied house whose value is ₹18,000.

(d) Rent paid includes ₹4,00,000 from which tax was deducted at source on 31-03-2015 but the same was deposited on 16-10-2015.

Compute the Gross Total Income of Mr. Rajesh for assessment year 2015 – 16 showing the incomes under various heads. [6]

Solution:

Computation of Total Income of Mr. Rajesh for the assessment year 2015 – 16

	₹	₹	₹
Profit and gains from Business or Profession			
Net profit as per P & L A/c.		18,45,000	
Add: Expenses/Payments not admissible			
Drawings	12,000		
LIC Premium	5,000		
Car expenses			
Driver salary (1/3)	2,000		
Petrol (1/3)	4,000		
Property Tax	4,000		
Cost of NSC	6,000		
30% of the rent of ₹4,00,000, TDS on account of which was deposited after due date of return u/s 139(1)	1,20,000	1,53,000	
		19,98,000	
Less: Incomes which are not taxable under this head			
Interest on debentures	2,000		
Dividend from U. T. I.	2,000		
Horse race income	12,000	16,000	
Income from Business			19,82,000
Income from other Sources			
Interest	2,000		
Dividend form U. T. I.	Exempt		
Horse race income	12,000		14,000
Gross total Income			19,96,000
Less: Deductions under Chapter VIA U/s 80C (LIC – ₹5,000 + NSC – ₹6,000)			11,000
Taxable income			19,85,000

(b) The following is the income of Shri Sudhir Kumar for the previous year 2014 – 15:

	₹
(a) Profits from business in Iran received in India.	**5,00,000**
(b) Income from house property in Iran received in India.	**1,20,000**
(c) Income from house property in Sri Lanka deposited in a bank there.	**1,80,000**
(d) Profits of business established in Sri Lanka deposited in a bank there, this business is controlled in India (out of ₹2,00,000 a sum of ₹1,00,000 is remitted in India).	**2,00,000**
(e) Income from profession in India but received in England	**2,40,000**
(f) Profits earned from business in Kanpur.	**1,60,000**
(g) Income from agriculture in England, it is all spent on the education of children in London.	**2,70,000**

From the above particulars ascertain the taxable income of Shri Sudhir Kumar for the previous year 2014-15, if Shri (i) a resident and ordinarily resident, (ii) not ordinarily resident, and (iii) a non-resident. [4]

Solution:

Taxable Income of Shri Sudhir Kumar for the previous year 2014 – 15

		R & OR (₹)	NOR (₹)	NR (₹)
(1)	**Income received in India wherever accrues**			
	(i) Profit from business in Iran received in India.	5,00,000	5,00,000	5,00,000
	(ii) Income from house property in Iran received in India	1,20,000	1,20,000	1,20,000
(2)	**Income accrued in India wherever received**			
	(i) Profit earned from business in Kanpur.	1,60,000	1,60,000	1,60,000
	(ii) Income from profession in India but received in England.	2,40,000	2,40,000	2,40,000
(3)	**Income accrued and received outside India**			
	(i) Income from house property in Sri Lanka deposited in bank there.	1,80,000	-	-
	(ii) Profit of business established in Sri Lanka deposited there, business being controlled from India.	2,00,000	2,00,000	-
	(iii) Income from agriculture in England.	2,70,000	-	-
	Total Income	16,70,000	12,20,000	10,20,000

(c) S Ltd. is a building contractor and has agreed to provide works contract services by way of construction (notified under Point of Taxation [POT] Rules as continuous supply of services). The terms of payment of total ₹ 100 lakhs are finalized as follows:

Installment	Amount	Event on which consideration payable	Date of completion of such event	Date of Invoice (DoI)	Date of Payment (DoP)
1	**15%**	**Signing of agreement**	**1 Aug 14**	**5 Aug 14**	**4 Aug 14**
2	**45%**	**Construction of floor**	**1 Nov 14**	**10 Nov 14**	**15 Nov 14**
3	**30%**	**Completion of finishing**	**1 Jan 15**	**5 Feb 15**	**10 Feb 15**

4	**10%**	**Handing over of possession**	**5 Mar 15**	**10 Mar 15**	**10 Mar 15**

Determine the Point of Taxation. **[4]**

Solution:

As per Rule 3 of the Point of Taxation [PoT] Rules, 2011, in case of continuous supply of services, date of completion of service means date of completion of each event specified in the agreement on which service tax becomes payable. The PoT is as determined below:

Installment	DoS (Date of Completion of Provision of Service)	DoI (Date of Invoice)	DoP (Date of Payment)	PoT (Point of Taxation)
1	1 Aug 14	5 Aug 14	4 Aug 14	4 Aug 14 [DoP, as payment received before DoI]
2	1 Nov 14	10 Nov 14	15 Nov 14	10 Nov 14 [DoI, as invoice issued within 30 days of DoS]
3	1 Jan 15	5 Feb 15	10 Feb 15	1 Jan 15 [DoS, as invoice not issued within 30 days of DoS]
4	5 Mar 15	10 Mar 15	10 Mar 15	10 Mar 15 [DoI = DoP; Invoice issued within 30 days of DoS]

Section B

Question no. 9 is compulsory and Answer any one Question from 7 & 8.

7. Answer the following Questions [3x5=15]

(a) What is the nature of incentive received under the scheme formulated by the Central Government for recoupment of capital employed and repayment of loan taken for setting up/expansion of a sugar factory – Capital or Revenue? [5]

Answer:

CIT vs. Kisan Sahkari Chini Mills Ltd. (2010) 328 ITR 27 (All.)

The assessee, engaged in the business of manufacture and sale of sugar, claimed that the incentive received under the Scheme formulated by the Central Government for recoupment of capital employed and repayment of loans taken from a financial institution for setting up/ expansion of a new sugar factory is a capital receipt. The Assessing Officer, however, treated it as a revenue receipt.

On this issue, the High Court followed the ruling of the Apex Court in CIT vs. Ponni Sugars and Chemicals Ltd. (2008) 306 ITR 392, wherein a similar scheme was under consideration. In that case, the Apex Court had held that the main eligibility condition for the scheme was that the incentive had to be utilized for the repayment of loans taken by the assessee to set up a new unit or substantial expansion of an existing unit. The subsidy receipt by the assessee was, therefore, not in the course of a trade and hence, was of capital nature.

(b) What is the nature of liquidated damages received by a company from the supplier of plant for failure to supply machinery to the company within the stipulated time – a capital receipt or a revenue receipt? [5]

Answer:

CIT vs. Saurashtra Cement Ltd. (2010) 325 ITR 422 (SC)

The assessee, a cement manufacturing company, entered into an agreement with a supplier for purchase of additional cement plant. One of the conditions in the agreement was that if the supplier failed to supply the machinery within the stipulated time, the assessee would be compensated at 5% of the price of the respective portion of the machinery without proof of actual loss. The assessee received 8.50 lakhs from the supplier by way of liquidated damages on account of his failure to supply the machinery within the stipulated time. The Department assessed the amount of liquidated damages to income-tax. However, the Appellate Tribunal held that the amount was a capital receipt and the High Court concurred with this view.

The Apex Court affirmed the decision of the High Court holding that the damages were directly and intimately linked with the procurement of a capital asset i.e., the cement plant, which lead to delay in coming into existence of the profit-making apparatus. It was not a receipt in the course of profit earning process. Therefore, the amount received by the assessee towards compensation for sterilization of the profit earning source, not in the ordinary course of business, is a capital receipt in the hands of the assessee.

(c) Whether the Tribunal was right in law in not deciding the issue on the merits and allowing the expenditure claimed by the assessee u/s.35D of the I. T. Act on the ground that such claim was not disallowed in earlier years and thereby allowing to perpetuate an error on the face of very clear and undisputed provision of law? [5]

Answer:

DCIT v. Gujarat Narmada Valley Fertilizers Co. Ltd. (2013) 215 Taxman 616 (Guj.)(HC)

The assessee claim deduction under Section 35D of the Act since last seven years. In the year under consideration, such claim was made to the extent of ₹87.73 lakh. The Assessing Officer restricted it to ₹13.50 lakh on the ground that only eligible expenses are allowed to be spread over under Section 35D of the Act and therefore, expenses only to the extent that have nexus to the eligible projects are admissible.

Tribunal noted that in last seven years, no such disallowances were made. Referring to and relying on the decision in case of *Radhasoami* Satsang v. CIT 193 ITR 321, the Tribunal directed that such benefit be granted. It is an undisputed position that claim under Section 35D of the Act

did not arise for consideration for the first time. Since last several years, the Assessing Officer granted such claim on the same consideration. The Tribunal therefore, correctly held that such claim could not have been suddenly disallowed. We may refer to a decision of this Court in case of Saurashtra Cement & Chemical Industries Ltd. v. Commissioner of Income-tax, Gujarat, reported in [(1980) 123 ITR 669], wherein, in the context of successive claim of tax holiday, the Court held that the ITO was not justified in refusing to continue the benefit of such tax holiday granted to the assessee in the earlier years, without disturbing the relief granted for the initial years. We are conscious that the issue is not identical in nature. However, the Income-tax Act recognizes the principle of consistency. In the present case, for as many as seven years, previously the Assessing Officer did not dispute certain claims and therefore, the Tribunal correctly interpreted that the Assessing Officer has sought to reopen the issue.

8. Answer the following Questions [5×3=15]

(a) Whether inputs can be confiscated under rule 15 of the CENVAT Credit Rules, 2004 on the ground of non-accountal of inputs in the records maintained in computer? [5]

Answer:

Green Alloys Pvt. Ltd. vs. UOI 2009 (235) ELT 405 (P & H)

The High Court held that the procedure for seizure had to be reasonable and fair. There had to be some basis for continuing to detain the goods. In the instant case, it could not be held that there was a clear case for confiscation only on the ground that the seized goods had been found to be entered in the stock register, but not in the excel sheet in the computer.
There was nothing to show that in respect of such goods, there had been wrongful availment of CENVAT credit. Revenue sought to draw the presumption of wrongful availment of CENVAT credit on the ground that there was little value addition to the finished product over and above the value of the raw material. However, the High Court held it to be a debatable issue. Therefore, the Court held that there was not a strong prima facie case for confiscation of goods which would justify continued detention of goods.

(b) Whether time-limit under section 11A of the Central Excise Act, 1944 is applicable to recovery of dues under compounded levy scheme? [5]

Answer:

Hans Steel Rolling Mill vs. CCEx., Chandigarh 2011 (265) E.L. T. 321 (S.C.)

The Apex Court elucidated that compounded levy scheme is a separate scheme from the normal scheme for collection of excise duty on goods manufactured. Rules under compounded levy scheme stipulate method, time and manner of payment of duty interest and penalty. Since the compounded levy scheme is comprehensive scheme in itself, general provisions of the Central Excise Act and rules are excluded from this scheme.

The Supreme Court affirmed that importing one scheme of tax administration to different scheme is inappropriate and would disturb smooth functioning of such unique scheme. Hence, it held that the time-limit under section 11A of the Central Excise Act, 1944 is not applicable to recovery of dues under compounded levy scheme.

(c) What are the conditions and the circumstances that would attract the imposition of penalty under section 11AC of the Central Excise Act, 1944? [5]

Answer:

UOI vs. Rajasthan Spinning & Weaving Mills 2009 (238) ELT 3 (SC)

The Apex Court, overruling the decision of the Tribunal, held that mandatory penalty under section 11AC of the Central Excise Act, 1944 is not applicable to every case of non-payment or short-payment of duty. In order to levy the penalty under section 11AC, conditions mentioned in the said section should exist. Supreme Court ruled that the Tribunal was not justified in striking down the levy of penalty against the assessee on the ground that the assessee had deposited the balance amount of excise duty (that was short paid at the first instance) before the show cause notice was issued. The Apex Court elaborated that the payment of the differential duty whether before/after the show cause notice is issued cannot alter the liability for penalty. The conditions for penalty to be imposed are clearly spelt out in section 11AC of the Act.

Supreme Court clarified that both section 11AC as well as proviso to sub-section (1) of section 11A use the same expressions : "....by reasons of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,... ". Hence, it drew the inference that the penalty provision of section 11AC would come into play only if the notice under section 11A(1) states that the escaped duty was the result of any conscious and deliberate wrong doing and in the order passed under section 11A(2), there is a legally tenable finding to that effect.

9. Answer the following Questions [7+8 =15]

(a) Can the Assessing Officer issue notice under section 154 to rectify a mistake apparent from record in the intimation under section 143(1), after issue of a valid notice under section 143(2)? [7]

Answer:

CIT vs. Haryana State Handloom and Handicrafts Corporation Ltd. (2011) 336 ITR 699 (P&H)

On this issue, the Punjab and Haryana High Court referred to the Delhi High Court ruling in CIT vs. Punjab National Bank (2001) 249 ITR 763, where it was held that rectification of an intimation cannot be made after issuance of notice under section 143(2) and during the pendency of proceedings under section 143(3). It was held that if any change was permissible to be effected, the same can be done in the assessment under section 143(3) and not by exercising the power under section 154 to rectify the intimation issued under section 143(1)

In the present case, the Punjab and Haryana High Court relying, inter alia, on the said decision held that the scope of proceedings under section 143(2) is wider than the power of rectification of mistake apparent from record under section 154. The notice under section 143(2) is issued to ensure that the assessee has not understated the income or has not computed excessive loss or underpaid the tax. It is only on consideration of the matter and on being satisfied that it is necessary or expedient to do so that the Assessing Officer issues the notice under section 143(2). Therefore, the Assessing Officer has to proceed under section 143(3) and issue an assessment

order. If issue of notice under section 154 is permitted to rectify the intimation issued under section 143(1), then it would lead to duplication of work and wastage of time.

Therefore, it was concluded that proceedings under section 154 for rectification of intimation under section 143(1) cannot be initiated after issuance of notice under section 143(2) by the Assessing Officer to the assessee.

(b) Whether the smuggled goods can be re-exported from the customs area without formally getting them release from confiscation? [8]

Answer:

In Re Hemal K. Shah (Order No. 102/2011- Cus., Dated 14-6-2011 In F.No. 380/82/B/10-RA)

Facts of the Case:

Shri Hemal K. Shah, a passenger, who arrived at SVPI Airport, Ahmedabad on 20-6-2009, had declared the total value of goods as ₹ 13,500 in the disembarkation slip. On detailed examination of his baggage, it was found to contain Saffron, Unicore Rhodium Black, Titan Wrist watches, Mobile Phones, assorted perfumes, Imitation stones and bags. Since, the said goods were in commercial quantity and did not appear to be a bona fide baggage, the said goods were placed under seizure. The passenger in his statement admitted the offence and showed his readiness to pay duty on seized goods or re-shipment of the said goods. The adjudicating authority determined total value of seized goods as ₹ 8,39,760 (CIF) and ₹ 10,91,691 (LMV); ordered confiscation of seized goods u/s 111(d) and (m) of the Customs Act, 1962 imposed penalty of ₹ 2,50,000 on Hemal K. Shah, confirmed and ordered for recovery of customs duty on the goods with interest and gave an option to redeem the goods on payment of fine of ₹ 2,00,000 which should be exercised within a period of three months from the date of receipt of the order. On appeal by Hemal K. Shah, the appellate authority allowed re-export of the confiscated goods.

Point of Dispute:

The Department disputed the re-export of confiscated goods. They said that the goods which have been confiscated were being smuggled in by the passenger without declaring the same to the Customs and are in commercial quantity. In view of these facts, the appellate authority has erred in by allowing the re-export of the goods by reducing the redemption fine and penalty. While doing so, he has not taken into account the law laid down by the Hon'ble Supreme Court in the case of CC, Kolkata vs. Grand Prime Ltd. [2003 (155) E.L.T. 417 (S.C.)]

Decision of the Case:

The Government noted that the passenger had grossly mis-declared the goods with intention to evade duty and smuggle the goods into India. As per the provision of Section 80 of Customs Act, 1962 when the baggage of the passenger contains article which is dutiable or prohibited and in respect of which the declaration is made under Section 77, the proper officer on request of passenger detain such article for the purpose of being returned to him on his leaving India. Since passenger neither made true declaration nor requested for detention of goods for re-export, before customs at the time of his arrival at Airport. So the re-export of said goods cannot be allowed under Section 80 of Customs Act.