

PAPER 11- INDIRECT TAXATION

Answer to PTP_Intermediate_Syllabus2012_Dec2015_Set 3

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 B	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
		Identify	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	

Paper 11- Indirect Taxation

Time Allowed: 3 Hours

Full Marks: 100

The figures in the margin on the right side indicate full marks.

All questions are compulsory. In question No. 1, all sub-questions are compulsory. In question Numbers 2 to 8, student may answer any two of the three sub-questions (a), (b) and (c). Wherever necessary, you may make suitable assumptions and state them clearly in your answer.

Working notes should form part of the answer.

1. Answer the following questions with suitable reasons: 1×20=20
- (a) State the condition for levy of Specific Safeguard Duty u/s 8C of Customs Tariff Act.
 - (b) Mention the types of Duty Drawback rates.
 - (c) State the date for determination of rate of duty in case of goods cleared from warehouse.
 - (d) A service provider cannot opt for centralised registration under service tax even though he has centralised billing system — Discuss.
 - (e) A biscuit manufacturing company prints on the packages the MRP of ₹5.00 for the state of West Bengal, ₹6.00 for Madhya Pradesh and ₹7.00 for the rest part of India. Calculate the Assessable Value for the purpose of calculating the excise duty?
 - (f) Mr. X, a dealer in Delhi, transfers property in goods to Ram of Bangalore without any consideration. Is the transfer chargeable to CST?
 - (g) Determine the point of taxation in case of copyright, trademarks etc.
 - (h) Goods already exported cannot be confiscated under Customs Act — Comment.
 - (i) Whether tailor made or unbranded software is good or not? Give reason.
 - (j) A manufacturer puts labeling on packaged products which is produced by him. Is such labeling amounted to manufacture?
 - (k) Whether an unsecured debt is transferred to a third person for a consideration will come under the purview of service tax or not? Comment.
 - (l) If an importer sold 75 units of imported goods @ ₹ 80, 65 units @ ₹ 75 and 50 units @ ₹ 55 in India, then what will be the basis of valuation of those imported goods? Provided, all the imported goods are identical or similar in nature.
 - (m) By whom Central Excise Revenue Audit is conducted? Also state his responsibility regarding this audit.
 - (n) R Ltd., a company incorporate in USA holds 30% shares of S Ltd. an Indian Company. It also holds 32% shares of G Ltd., a company incorporated in Germany. Whether S Ltd. and G Ltd. are associated enterprise?
 - (o) X Ltd. participates in the management or control or capital of Y Ltd. Whether X Ltd. and Y Ltd. is an associate enterprises?
 - (p) Mitali, a consulting engineer, raised a bill of ₹2,19,225 (including Service Tax) on her client for Consultancy Services rendered by her on January 15, 2015. If a partial payment of ₹1,33,945 is received by Mitali on February 5, 2015, calculate the amount of Service Tax payable by her for the quarter ended on March 31, 2015.
 - (q) "VAT helps in checking tax evasion and in achieving neutrality." — Is the statement true? Justify.
 - (r) Mr. X, a physiotherapist, providing his service in a clinical establishment in independent capacity. Is it taxable service?
 - (s) Which Article of Constitution of India empowers Central Govt. to levy taxes in List I of Seventh Schedule?
 - (t) Name the legislation which controls Foreign Trade Policy.

Answer:

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- (a) Condition for levy of Specific Safeguard Duty u/s 8C of Customs Tariff Act — If Central Government conducting such enquiry as it deems fit, is satisfied that any article is imported into India from People's Republic of China:
- in such increased quantity, and
 - so as to cause or threatening to cause, market disruption to domestic industry.
- (b) Duty drawback rates are of following types – (i) All Industry Rate (ii) Brand Rate and (iii) Special Brand Rate.
- (c) In the case of goods cleared from a warehouse under section 68 of the Customs Act, the date for determination of rate of duty in case of goods cleared from warehouse is the date of presentation of the Ex-Bond clearance Bill of Entry for home consumption under that section.
- (d) A person can obtain centralized registration at his option, if:
- (i) He has centralized billing system or centralised accounting system in respect of such service and
 - (ii) Such centralised billing or centralised accounting systems are located in one or more premises.
- (e) A manufacturer may print different prices for different States. In some cases, manufacturer earmarks different packages for different areas and marks different prices for different areas. If a package bears more than one retail sale price, maximum out of these will be deemed to be retail price for purpose of section 4A of the Central Excise Act [Explanation 2(a) to section 4A(4)]. In the given case, the assessable value for the purpose of calculating excise duty will be ₹7.00.
- (f) Sale u/s 2(g) of the CST Act, means transfer of property for cash or deferred payment or for any other valuable consideration. Where there is transfer of property in goods without consideration, it does not amount to sale within the meaning of the definition under the Act and therefore CST is not attracted in this case.
- (g) As per Rule 8 of Point of Taxation Rules, in respect of royalties and payments pertaining to copyrights, trademarks, designs or patents, where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and the payment for the benefit of such service is made subsequently. In this case, point of taxation will be each time when the payment received or the date when the invoice is issued by the provider of service, whichever is earlier. But as per Rule 8A, where date of invoice or date of payment is not available, the Central Excise Officer can conduct best judgment assessment to determine the point of taxation.
- (h) Section 113 of the Customs Act uses the words 'confiscation, of goods attempted to be improperly exported' and not 'goods exported'. The reason is that goods already exported are not available for confiscation. Hence goods already exported cannot be confiscated under Section 113.
- (i) Though Supreme Court has held that tailor made software is goods, Finance Bill, 2008 has imposed service tax on tailor made i.e. unbranded software. "Information technology software" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment. Specific software is tailored to the specific requirement of the customer and is known as customized software.
- (j) Labelling on packaged products is not manufacture as no new product emerges and since in the common market parlance a labeled and unlabelled product is treated as the same product and the distinction as such is made. In fact, these processes are adjunct to manufacture. Therefore, the labeling is a part of the manufacturing process. The principle was affirmed in the case of Pioneer Tools and Appliances Ltd. v UOI by the Bombay High Court.
- (k) No, the transaction cannot be regarded as service. Since unsecured debt is an actionable claim, a transaction only in such actionable claim is outside the ambit of service. However if a service fee or processing fee or any other charge is collected in the course of transfer or

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- assignment of a debt then the same would be chargeable to service tax.
- (l) Rule 7 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 specify that while considering selling price of imported goods in India, unit price at which greatest aggregate quantity of identical or similar goods are sold to unrelated persons in India should be the basis of valuation. Here the greatest aggregate quantity is 75 units which are sold @ ₹80 per unit, which will be the basis for valuation.
 - (m) Central Excise Revenue Audit is conducted by the Comptroller and Auditor General of India (C & A G). C & A G submits the report to the President of India, who causes these to be laid before each House of Parliament.
 - (n) Yes. S Ltd. and G Ltd are associated enterprises since in both the case more than 26% shares are hold.
 - (o) Yes. Y Ltd. shall be associated enterprises of X Ltd. as a result of direct participation.
 - (p) In case of individuals whose aggregate value of taxable services provided from one or more premises is ₹50 lakhs or less in the previous financial year, the service provider shall have the option to pay tax on taxable services provided or to be provided by him up to a total of ₹50 lakhs in the current financial year. In the present case, it is assumed that Mitali, an individual, had taxable service for less than ₹50 lakhs in the previous year. Hence Service Tax payable in this case will be: $(₹1,33,945 \div 1.1236) \times 0.1236 = ₹14,734$.
 - (q) Yes, the statement is true. The input tax credit system encourages traders to collect invoice which will lead to more transparency and shall allow several tax departments to apply 'cross checks'. Thus tax evasions can be controlled significantly.
 - (r) The services of Mr. X, a physiotherapist is called as a paramedic services which are exempt from service tax. Services by him in a clinical establishment either would be in the capacity of employee or in independent capacity are exempted from service tax.
 - (s) Article 246(1) of Constitution of India empowers Central Government to levy taxes in List I of Seventh Schedule?
 - (t) The Foreign Trade (Development and Regulation) Act, 1992 controls Foreign Trade Policy.

2. Answer any two:

2×2=4

- (a) State any two transactions which are both 'deemed sale of goods' for purpose of levy of State Vat and 'declared service' for levy of service tax. 2
- (b) Which entry in Seventh Schedule to Constitution of India is relevant for purpose of imposition of service tax? 2
- (c) State the 'taxable event' for purpose of levy of Central Excise Duty? 2

Answer:

- (a) (i) Works Contract
(ii) Hire purchase and financial leasing
(iii) Supply and service of food or any other article of human consumption or any drink (whether or not intoxicating).
- (b) Entry 97 i.e. Residual Powers in List I of Seventh Schedule, which reads as follows - 'Any other matter not included in List II or List III including any tax not mentioned in list II or list III'.
- (c) The 'taxable event' for the purpose of levy of Central Excise Duty is the manufacture or production in India of excisable goods and the goods should be movable and marketable but it excludes goods which are manufactured or produced in SEZ (Special Economic Zone) of India. Manufacture or production of excisable goods in India is the taxable event for levy of Central Excise Duty, as per entry 84 of List I of Seventh Schedule to constitution of India.

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3. Answer any two:

8×2=16

- (a) (i) A commodity is specified in the Central Excise Tariff (CET). It is wholly exempt, and the Stock was manufactured before the Union Budget. When the stock was cleared after the Budget, exemption had been withdrawn. Discuss the liability to and levy of Central Excise Duty. 2
- (ii) 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, 2
- 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. 6
- (b) (i) State the principles and periodicity of Excise Audit 2,000. 2+3=5
- (ii) The cum-duty price of the product is ₹ 10,62,024. It includes sales tax @ 2% and excise duty @ 4% (plus 3% Education Cess and SHEC) Find out the assessable value and excise duty and sales tax. 3
- (c) 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. 8

Answer:

- (a) (i) The commodity in question shall be subject to effective rate of duty prevalent at the time of removal, and would not be exempt from duty on the ground that it was manufactured during the period when there was an exemption. [Wallace Flour Mills Ltd. (1989) 44 ELT 598 (SC)]

(ii)

Particulars	Assessable Value (AV)	Rule/ Section	Reasoning
Sale to Related Person	₹ 110	Rule 9 of the Central Excise Valuation	Buyer and Seller are related. Therefore, Buyer's resale price to

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		(Determination of Price of Excisable Goods) Rules, 2000	unrelated person will be AV.
Sale to interconnected undertakings (ICU) and Independent Person	₹ 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 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.

- (b) (i) Principles of Excise Audit, 2000: The broad principles of Excise Audit, 2000 are –
- Audit will be conducted in a systematic and comprehensive manner.
 - Emphasis will be on the scrutiny of record maintained in the normal course of business.
 - Audit effort will be based on the materiality principle.
 - Recording of all findings.
 - Audit is clearly distinct from anti-evasion activity.

Periodicity and Duration of Excise Audit, 2000:

	Annual Total Duty payment (in Cash + CENVAT Credit)	Frequency of Audit	Duration of Audit (From Desk Review to Preparation of Audit Results)
(a)	Units paying below ₹50 lakhs	10% of units Every Year	5 working days
(b)	Units paying between ₹50 lakhs & ₹1 Crore	Once in every 5 Years	7 working days
(c)	Units paying between ₹1 Crore & ₹3 Crores	Once in every 2 Years	7 working days
(d)	Units paying more than ₹3 Crores	Every Year	7 working days

Notes:

- Every Audit shall cover the retrospective period upto the previous audit, or last 5 years, whichever is less.
- For calculation of risk analysis, Exempted Clearances (other than to EOUs [Export Oriented Units], EHTP [Electronic Hardware Technology Park] /STP [Software Technology Park] units and U.N. Organisations under Notification No. 108/95-C.E.) have been excluded.

- (ii) The relevant computations are -

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		(Amount in ₹)
Price inclusive of sales-tax and excise duty	[A]	10,62,024
Less: Sales Tax included in the above price	[B=10,62,024×2%÷102%]	20,824
Price inclusive of excise duty	[C = A – B]	10,41,200
Less: Excise Duty included in the above price	[D=10,41,200×4.12%÷104.12%]	41,200
Assessable Value	[E = C – D]	10,00,000

(c)

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, their 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 exceed ₹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.

4. Answer any two:

6×2=12

- (a) (i) Grid Energy Ltd. imported a lift from England at an invoice price of ₹20,00,000. The assessee had supplied raw material worth ₹5,00,000 to the supplier for manufacture of said lift. Due to safety reasons, the lift was not taken to the jetty in the port but was unloaded at outer anchorage. The charges incurred for such unloading amounted to ₹30,000 and the cost incurred on transport of the lift from outer anchorage to the jetty**

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- was ₹45,000. The importer was also required to pay ship demurrage charges ₹10,000. The lift was imported at actual cost of transport ₹45,000 and insurance charges ₹20,000. Compute its assessable value. 4
- (ii) State Non Injurious Price in Anti Dumping Duty? 2
- (b) 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
- (c) (i) A bill of entry was presented on 1st November, 2014. The vessel carrying goods arrived on 11th November, 2014. Entry inwards was granted on 12th November, 2014 and the bill of entry was assessed on that date and was also returned to the importer for payment of duty on that date. The duty amounting to ₹ 2,60,000 was paid by the importer on 20th November, 2014. Calculate the amount of interest payable under section 47(2) of the Customs Act, 1962, given that there were three holidays on 13th, 14th and 16th November, 2014. 4
- (ii) An Importer imported certain inputs for manufacture of Final Product. A small portion of the imported inputs were damaged in transit. An Exemption Notification was in force providing exemption in respect of specified Raw Materials imported into India for use in manufacture of specified goods which was applicable to the imports made by the Importer in the present case. Explain, whether the Importer could claim the benefit of the aforesaid notification in respect of the entire lot of the inputs imported, including those that were damaged in transit. 2

Answer:

- (a) (i) Computation of Assessable Value:

	₹
FoB price in Indian ₹	20,00,000.00
Add: Material supplied by assessee (free of charge) [Includible]	5,00,000.00
Add: Cost of transport comprising of -	
1. Barging and lighterage charges i.e. unloading at outer anchorage and transport to jetty viz. ₹30,000+₹45,000 = ₹75,000	75,000.00
2. Ship Demurrage Charges	10,000.00
3. Other costs on actual basis	45,000.00
Add: Insurance	20,000.00
CIF	26,50,000.00
Add: Loading, unloading and handling charges @ 1% of CIF	26,500.00
Assessable Value	26,76,500.00

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- (ii) 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.

(b)

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.

- (c) (i) Importer has to pay interest under section 47(2) @ 15% p.a. only if he fails pay duty within 2 working days (i.e., excluding holidays) from date of return of assessed bill of entry to him.

In this case, —

Date of return of assessed bill of entry	12th Nov 14
Add: Two working days 15th and 17th November [13th, 14th and 16th are holidays]	2 working days
Due date for payment of duty	17th Nov 14
Actual Date of Payment of Duty	20th Nov 14
Period of delay in payment of duty [Date of Payment — Due Date]	3
Duty payable	2,60,000
Rate of Interest	15.00%
Interest = 2,60,000 × 15% × 3 ÷ 365 days	320.55

- (ii) By a Notification u/s 25(1) of Customs Act, certain inputs imported for use in the manufacture of specific final products are exempt from payment of Duty. There was some shortage/leakage/damage of such inputs during transit. The benefit of the Notifications cannot be denied in respect of Goods which are intended for use for manufacture of the Final Product but cannot be so used due to shortage or leakage. [BPL Display Devices Ltd (2004) 174 ELT 5 (SC)]

The Importer can claim benefit of exemption in respect of the entire lot of inputs, including the ones damaged in transit.

"For use" can be construed as "intended for use".

5. Answer any two:

4×2=8

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- (a) State the procedures for duty drawback on Re-Export as per Sec. 74 of the Customs Act, 1962. 4
- (b) One of the methods for determining Arm's Length Price is Resale Price Method (RPM). State the applicability of RPM. 4
- (c) Mention few incentives which are being offered to SEZ units to attract investments in those areas. 4

Answer:

- (a) 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.

- (b) Resale Price Method (RPM) method is ideally suited to measure the value of the services performed by a buyer or seller of goods who generally acts as a distributor and does not add a significant value to goods sold. It is applicable even with differences in products, as long as the functions performed are similar. However, it is less useful where goods are further processed or in nature of raw material.

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

Applicability:

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

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- (c) 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.

6. Answer any two:

10×2=20

- (a) (i) 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

- (ii) 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.

6

- (b) (i) 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)

7

- (ii) Mention few agriculture related services which are covered in the negative list.

3

Answer to PTP_Intermediate_Syllabus2012_Dec2015_Set 3

(c) (i) “There may be various forms of rendition of services.....” — Give some examples of those forms of services. 5

(ii) Rungliot Company provides a service of rent-a-cab by providing chauffeur-driven cars for overseas visitors. It is a taxable service. The chauffeur is given a lump-sum amount to cover his overnight accommodation, food and other incidental expenses such as parking fees by Rungliot Company during the whole tour. After finishing the tour, the chauffeur returns the balance of the amount with a statement of his expenses and the relevant bills thereof. In the present case write about the consideration related to the services with the help of Service Tax (Determination of Value) Rules, 2006. 3

(iii) State the services which are provided by Govt. or local authority are excluded from negative list? 2

Answer:

(a) (i) 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)	Dol (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 Dol]
2	1 Nov 14	10 Nov 14	15 Nov 14	10 Nov 14 [Dol, 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 [Dol = DoP; Invoice issued within 30 days of DoS]

(ii) 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.

Answer to PTP_Intermediate_Syllabus2012_Dec2015_Set 3

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

- (b) (i) 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

- (ii) The services relating to agriculture or agricultural produce by way of —
- (1) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;
 - (2) supply of farm labour;
 - (3) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
 - (4) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
 - (5) loading, unloading, packing, storage or warehousing of agricultural produce;
 - (6) agricultural extension services;

Answer to PTP_Intermediate_Syllabus2012_Dec2015_Set 3

- (7) services by any Agricultural Produce Marketing Committee or Board or
(8) services provided by a commission agent for sale or purchase of agricultural produce, are covered within the negative list and shall not be liable to service tax.
- (c) (i) There are various forms of rendition of services, some of which are as follows:
- (1) Services could be rendered by actually deploying people on a project, say repairing a machine, installing a machine at the location of the person availing services (onsite services).
 - (2) Services can be rendered at the location of the services provider by actually deploying people for say repairing a machine, etc
 - (3) Services can be rendered by preparing at the location of service provider a written report or an advice
 - (4) Services can be rendered by giving advice in a physical meeting
 - (5) Services can be rendered by giving advice through video-conferencing
 - (6) Services can be rendered by giving advice on a telephone.
- (ii) In the instant case, Rungliot Company should charges the amount (lump-sum amount to cover chauffeur's overnight accommodation, food and other incidental expenses) from the recipient of services. The cost incurred by the chauffeur and billed to the recipient of service constitutes part of gross amount charged for the provision of services by the Rungliot Company. Where the expenses incurred are necessary for providing services, therefore it will form part of the value of taxable services.

Sub-rule (2) of Rule 5 of Service Tax (Determination of Value) Rules, 2006 contains whereby certain expenditure or costs that a service provider incurs as a pure agent of the client shall be excluded from the value of service subject to fulfillment of certain conditions.

Sub-rule (2) also lists certain conditions where such agency will be inferred. The sum and substance is that the service user must have the primary liability to pay or incur such costs or expenses, but for the sake of convenience he authorises the service provider to incur such expenses on his behalf and account duly for the same.

- (iii) The following services provided by Govt. or local authority are excluded from negative list:
- (1) Speed post, Express Parcel post, Life insurance and agency services carried out on payment of commission
 - (2) Services in relation to vessel or an aircraft
 - (3) Transport of goods and passengers
 - (4) Support services.

7. Answer any two:

6×2=12

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

Particulars	(₹ in Lakhs)
Total Contract Price (excluding VAT)	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

Answer to PTP_Intermediate_Syllabus2012_Dec2015_Set 3

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

(ii) Is transfer of property in goods without consideration chargeable to CST? Discuss. 2

(b) A manufacturer sold goods to distributor for ₹ 20,000. The distributor sold the goods to the wholesaler for ₹ 24,000. The wholesaler sold the goods to the retailer for ₹ 30,000. The retailer sold the goods to the final consumer for ₹ 40,000. The VAT rate is 12.5 per cent which is charged separately. Compute VAT liability under invoice method. 6

(c) Define 'Dealer' as per CST Act. Name the persons who are included in the definition of 'Dealer'. 3+3=6

Answer:

(a) (i) 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

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

(b)

Details	Manufacturer	Distributor	Wholesaler	Retailer
Turnover (Net Sale Price)	20,000	24,000	30,000	40,000
VAT @ 12.5%	2,500	3,000	3,750	5,000
Sales Price	22,500	27,000	33,750	45,000
Less - Input Tax Credit	Nil	2,500	3,000	3,750
Net Tax paid	2,500	500	750	1,250

Thus, total tax paid is ₹ 2,500 + ₹ 500 + ₹ 750 + ₹ 1,250 = ₹ 5,000.

(c) 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.

Answer to PTP_Intermediate_Syllabus2012_Dec2015_Set 3

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
- (iii) 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.

8. Answer any two:

4×2=8

(a) Sony Japan and Z Ltd., an Indian company are associated enterprises. Z Ltd. manufactures Mobile phones and sells them to Sony Japan and L.G. Korea. During the year, Z Ltd. supplied 1,20,000 Mobile phones to Sony Japan at a price of ₹2,000 per unit and 20,000 units to L.G. Korea at a price of ₹3,200 per unit. The transactions of Z Ltd. with Sony and L.G. are comparable subject to the following differences:

- (I) While sales to Sony is on FOB basis, sales to L.G. are CIF basis. The freight and insurance paid by Sony for each unit is ₹300.**
- (II) The sales to L.G. are under a free warranty for 1 year whereas sales to Sony are without such warranty. The estimated cost of executing such warranty may be taken at ₹350.**
- (III) Sony placed large order and as such Z Ltd. offered a quantity discount of ₹50 per unit to Sony.**

Compute the arm's length price and the amount of increase in the total income of Z Ltd, if any, due to such arm's length price. **4**

(b) Describe the term "reasonably accurate comparability adjustments" in the context of the transfer pricing. **4**

(c) Khan Ltd is an Indian Company engaged in the business of developing and manufacturing Industrial components. Its Bangkok Subsidiary Techpro Inc. supplies technical information and offers technical support to Khan for manufacturing goods, for a consideration of Euro 3,00,000 per year. Income of Khan Ltd is ₹ 270 Lakhs. Determine the Taxable Income of Khan Ltd if Techpro charges Euro 3,50,000 per year to other entities in India. What will be the answer if Techpro charges Euro 1,80,000 per year to other entitles. (Rate per Euro may be taken at ₹ 80). **4**

Answer:

(a) In the above case, we shall start with the price at which these Mobile phones have been sold to L.G. which may taken as price of uncontrolled transaction. Thereafter we shall make the adjustment on account of above difference as under:

	₹	₹
Sale price of Mobile phones sold to L.G.		3,200
Less: Adjustment of differences on account of :		
(i) freight and insurance charges	300	

Answer to PTP_Intermediate_Syllabus2012_Dec2015_Set 3

(ii) estimated cost of warranty	350	
(iii) bulk quantity discount	50	700
Arm's Length Price for Mobile phones sold to Sony Japan		2,500
Arm's Length Price for 1,20,000 phones (1,20,000 x 2,500)		30,00,00,000
Price charged from Sony Japan (1,20,000 units x 2,000)		24,00,00,000
Therefore, the total income of Z Ltd. shall be increased by		6,00,00,000

(b) Like many other countries, Indian transfer pricing regulations provide for "reasonably accurate comparability adjustments". The onus to prove "reasonably accurate comparability adjustment" is on the taxpayer. The experience of Indian transfer pricing administration indicates that it is possible to address the issue of accounting difference and difference in capacity utilization and intensities of working capital by making comparability adjustments. However, Indian transfer pricing administration finds it extremely difficult to make risk adjustments in absence of any reliable and robust and internationally agreed methodology to provide risk adjustment. In some cases taxpayers have used Capital Asset Pricing Method (CAPM).

(c)

Computation of Total Income of Khan Ltd.

Particulars	₹	₹
When Price Charged for Comparable Uncontrolled Transaction	3,00,000	1,80,000
Price actually paid by Khan Ltd. [€ 3,00,000 x 80]	2,40,00,000	2,40,00,000
Less: Price charged in ₹ (under Arm's Length Price [ALP])		
[€ 3,50,000 x 80]	2,80,00,000	
[€ 1,80,000 x 80]		1,44,00,000
Incremental Profit on adopting ALP [A]	(40,00,000)	96,00,000
Total income before adjusting for differences due to Arm's Length Price	2,70,00,000	2,70,00,000
Add: Difference on account of adopting Arm's Length Price [if (A) is positive]	NIL	96,00,000
Total Income of Khan Ltd.	2,70,00,000	3,66,00,000

Note: - Taxable Income cannot be reduced on applying ALP. Therefore, difference on account of ALP which reduces the Taxable Income is ignored.