

## Paper 11: Indirect Taxation

### Question 1.

Answer the following questions:

- (a) Discuss whether the excise duty is attracted on excisable goods manufactured by or on behalf of the Government.
- (b) State the manner of inter-unit transfer of Cenvat credit of additional duty of customs leviable under section 3(5) of the Customs Tariff Act, 1975.
- (c) Compute the value of taxable service of Mr. A where services of organisation of a business exhibition held outside India for ₹ 20,00,000.
- (d) Define Cross-Border Transaction in the context of International transactions.
- (e) State whether the following items should be included/ excluded from the assessable value in case of excise:
  - (i) Loading and Handling charges within the factory;
  - (ii) Advertising/Publicity Expenditure by Brand Name/Copyright Owner.

### Answer:

- (a) Excise duty shall be levied and collected on all excisable goods other than salt which are produced or manufactured in India by, or on behalf of Government, as it applies in respect of goods which are produced or manufactured by non- government manufacturers. Thus excise duty is payable on goods manufactured by, or on behalf of, the Government also.
- (b) The manner of inter-unit transfer of Cenvat credit of additional duty of customs leviable under section 3(5) of the Customs Tariff Act, 1975: Such transfer shall be made by —
  - (i) Making an entry for such transfer in the documents maintained under rule 9 of the Cenvat Credit Rules, 2004;
  - (ii) Issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit and receiving such credit, the amount of credit transferred and the particulars of such entry mentioned in (i) above.
- (c) In computation of the value of taxable service of Mr. A where services of organisation of a business exhibition held outside India for ₹ 20,00,000 is exempted under mega exemption (notification no. 25/2012).
- (d) Cross-Border Transaction: A transaction is considered as cross-border transaction if it originates in one country and gets concluded in another country. Thus, it is not necessary that every international transaction within the meaning of section 92B of the Income-tax Act is a cross-border transaction or vice-versa.
- (e) To determine the assessable value in case of excise —
  - i. loading and handling charges within the factory: It will be included in the Assessable Value
  - ii. Advertising/Publicity Expenditure by Brand Name/Copyright Owner: The expenditure incurred by brand name/copyright owner on advertisement and publicity charges, in respect of goods will not be added to assessable value, as such expenditure is not incurred on behalf of the manufacturer-assessee.

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### Question 2.

- (a) Compute the VAT liability of Prasad for the month of March, 2014 using the invoice method of computation of VAT - Purchases from the local market (including VAT @ 4%) – ₹ 65,000, Storage cost incurred – ₹ 750, Transport Cost – ₹ 1,750. Goods sold at a margin of 10% on the cost of such goods sold. VAT rate of sales is 4%.
- (b) Explain the effect on Cenvat credit in case of transfer/merger/shifting of undertaking.
- (c) State the object of introducing Transfer pricing?

### Answer:

- (a) Since VAT credit on purchases is available, VAT paid on purchases does not form cost of the product. Purchase price inclusive of VAT is ₹ 65,000. VAT rate is 4%. Hence, net purchase cost is ₹ 62,500 [(₹ 65,000 x 100)/104]. VAT @ 4% of ₹ 62,500 is ₹ 2,500.

Hence, total cost of goods is ₹ 65,000 (₹ 62,500 + ₹ 750 + ₹ 1,750). Add 10% margin of ₹ 6,500 (10% of ₹ 65,000). Thus, selling price is ₹ 71,500.

Vat payable on sale price of ₹ 71,500 @ 4% is ₹ 2,860. Vat credit available is ₹ 2,500. Hence, net Vat payable is ₹ 360 (₹ 2,860 - ₹ 2,500).

Note that Value added to product is ₹ 750 + ₹ 1,750 + ₹ 6,500 i.e. ₹ 9,000. 4% of this amount is ₹ 360. Thus, effectively, Vat is paid only on Value added.

- (b) If a manufacturer shifts his factory to another site or provider of output services shifts his business or a manufacturer/service provider transfers his factory/business on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of factory to a joint venture, the manufacturer/service provider can transfer unutilised Cenvat credit to the transferred/sold/merged/leased or amalgamated factory/business - Rule 10(1) and 10(2) of Cenvat Credit Rules.

The transfer of credit after transfer/merger/shifting is subject to following -

- (i) There should be specific provision for transfer of liabilities of such factory /business of service provider [rule 10(1) and 10(2)]
- (ii) The transfer is allowed only if stock of inputs as such or in process, or the capital goods are also transferred along with the factory/premises of service provider to the new site or ownership and the inputs or capital goods on which credit has been availed of are duly accounted for to the satisfaction of Assistant/Deputy Commissioner. [rule 10(3)]

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

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### Question 3.

- (a) State briefly with reasons whether credit under the CENVAT Rules, 2004 would be available in the following cases:
- (i) Inputs are pilfered from the store-room.
  - (ii) Final product is cleared in durable and returnable packing material.
  - (iii) An input becomes a waste and is sold as scrap.
  - (iv) Inputs used in trial runs
- (b) Describe how indirect taxes are administered in India.

### Answer:

- (a) The admissibility of CENVAT credit is discussed as under –
- (i) **Inputs are pilfered from the store-room:** No, since credit on inputs is available only for inputs used in the factory of manufacturer of final products. If the inputs are lost in the store-room without being used at all, credit of duty paid on such inputs will not be available.
  - (ii) **Final product is cleared in durable and returnable packing material:** Yes, The definition of 'input' covers all goods used in the factory of production by the manufacturer and such packing has relationship with the manufacture of the final products therefore, Cenvat credit will be available on durable and returnable packing material. Besides this, since the proportionate cost of durable container is included in assessable value of final product, they are eligible for Cenvat credit.
  - (iii) **An input becomes a waste and is sold as scrap:** Yes. If inputs becomes waste and sold as scrap, it cannot be said that input is cleared 'as such' [Rule 3(4) of the Cenvat Credit Rules 2004]. What is cleared is 'waste' and duty will be payable as if waste has been removed. In case the inputs have become waste during the manufacturing process, then the CENVAT credit shall be allowed on such waste, even if such waste is exempted or chargeable with nil rate of duty.
  - (iv) **Inputs used in trial runs:** Yes. Inputs used in trial runs during the production or commissioning of plant are eligible for CENVAT credit as they are used in the manufacture of final product. Since trial run/ production is a pre-requisite for manufacture of the final product, hence, they bear relationship with the manufacture of the final product. Hence, they are eligible as 'input'. - Fertiliser Corporation of India v. CCEX.
- (b) The Department of Revenue of the Ministry of Finance exercises control in respect of matters relating to the indirect taxes through a Statutory Boards, namely, the Central Board of Excise and Customs (CBEC). Matters relating to the levy and collection of all the indirect taxes (customs duties, central excise duties, service tax) fall within the purview of CBEC. The Board has been constituted under the Central Board of Revenue Act, 1963.

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

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

### Question 4.

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- (a) Explain abatements and composition schemes in the context of service tax. Also state the distinction between them.
- (b) What do you understand by Trade parlance Theory?
- (c) Write about the taxable event in case of imports in customs.

**Answer:**

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

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

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

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

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

**Distinction between abatement and composition scheme:** Practically, result of both abatement and composition scheme appears to be same. However, abatement is nothing but partial exemption from service tax payable, subject to prescribed conditions, while composition scheme is an easy mode of calculating value of service, where finding of value of taxable service is difficult. However, this distinction has not been fully followed. In case of some services, abatement is actually used as a composition scheme.

- (b) According to the trade parlance theory, if a product is not adequately classified in the Central Excise Tariff Act, 1985, it should be classified according to its popular meaning or meaning attached to it by those dealing with it, i.e., in commercial sense. However, where the tariff heading itself uses highly scientific or technical terms, goods should be classified in scientific or technical sense.

**(c) Taxable event in case of imports in customs:**

- (i) In case of goods cleared for home consumption: It implies that customs duty on imported goods has been paid and thus, goods can be removed by the importer for utilization or consumption within the country. Import of goods commences when they cross the territorial waters, but continues and is completed when they become part of the mass of goods within the country; the taxable event being reached at the time when the goods reach the customs barriers and bill of entry for home consumption is filed.

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- (ii) In case of goods cleared for warehousing: In case where the goods are not immediately cleared for home consumption, they may be deposited in a warehouse and cleared at a later point of time. In such a case, the collection of customs duty will be deferred till such goods are cleared from warehouse for home consumption. In case of warehoused goods, the goods continue to be in customs bond. Hence, import takes place when the goods are cleared from the warehouse. The customs barriers would be crossed when they are sought to be taken out of the customs and brought to the mass of goods in the country.

### Question 5.

(a) Disha Enterprises, a dealer in Rajasthan dealing in consumer goods, submits the following information pertaining to the month of March, 2014:

- (i) Exempt goods 'X' purchased for ₹ 1,75,000 and sold for ₹ 3,50,000.
- (ii) Goods 'Y' purchased for ₹ 2,25,000 (including VAT) and sold at a margin of 20% profit on purchases (VAT rate for purchases and sales is 12.5%)
- (iii) Goods 'Z' purchased for ₹ 2,00,000 (excluding VAT) and sold for ₹ 2,50,000 (VAT rate for purchases and sales is 4%);
- (iv) His unutilized balance of input VAT credit on 01.03.2014 was ₹ 3,000.

Compute the turnover, Input VAT, Output VAT and Net VAT payable by Disha Enterprises

(b) There are different forms of Bonds available under Central Excise. Write briefly about those Bonds which are very common in Excise.

Answer:

(a)

| Goods | Purchases [A] | Input VAT rate [B] | Input VAT credit [C] = [A] x [B] | Sales (Turnover) [D] | Output VAT rate [E] | Output VAT [F] = [C] x [D] |
|-------|---------------|--------------------|----------------------------------|----------------------|---------------------|----------------------------|
|       | ₹             | %                  | ₹                                | ₹                    | %                   | ₹                          |
| X     | 1,75,000      | —                  | —                                | 3,50,000             | —                   | —                          |
| Y     | 2,00,000      | 12.5               | 25,000                           | 2,40,000             | 12.5                | 30,000                     |
| Z     | 2,00,000      | 4                  | 8,000                            | 2,50,000             | 4                   | 10,000                     |
| Total | 5,75,000      |                    | 33,000                           | 8,40,000             |                     | 40,000                     |

### Computation of Net VAT payable by Disha Enterprises

|  | ₹      |
|--|--------|
| Opening balance of input VAT credit              | 3,000  |
| Add: Input VAT credit for march, 2014 [C]        | 33,000 |
| Total Input VAT credit available                 | 36,000 |
| Less: Output VAT payable on taxable turnover [F] | 40,000 |
| Net VAT payable                                  | 4,000  |

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### (b) Forms of Bonds in Excise:

Bonds are of different nature and for various purposes. Forms of bond etc. have been standardised. The main bonds are as follows:

- **B-1 general bond**- The bond is for due dispatch of excisable goods removed for export without payment of duty. The bond can be with surety or security.
- **B-2 Bond** - This is a General Bond for provisional assessment. It can be with security or surety.
- **B-5A Bond** - It is for due arrival and re-warehousing of excisable goods removed from a warehouse in India to a factory in SEEPZ (Santacruz Electronics Export Processing Zone).
- **B-8 Bond** - This bond is for obtaining goods at Nil or concessional rate of duty under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules.
- **B-11 Bond** - Often, goods are seized by excise officer, if there is reason to believe that goods are liable to confiscation. The goods are actually confiscated only after these are confiscated after adjudication. This may take a long time. Hence, the assessee can get the seized goods released after execution of bond in form B-11. The bond is for provisional release of seized goods. It can be only security bond.
- **B-17 Bond** - This is a general surety/security bond to be executed by EOU/EHTP/STP/BTP units. It is for provisional assessment of goods for export of goods to foreign countries without payment of duty and for disposal of excisable goods procured without payment of duty.

### Question 6.

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

(b) Mr. Balan is a qualified Cost Accountant and has been rendering taxable services for the past several years. His value of taxable services in 2012 -13 were ₹ 55 lakhs. He furnishes the following details pertaining to the quarter ended 30<sup>th</sup> September, 2013 (in Rupees) - (i) Services rendered to Reserve Bank of India - ₹ 6,18,000 (ii) For preparation of accounting statements for Charitable trusts - ₹ 2,00,000 (iii) For preparation of accounting statements for other clients - ₹ 7,00,000 (iv) Advance received from AB Ltd. for tax consultancy - ₹ 3,09,000. The assessee ultimately did not render any service to AB Ltd. and by mutual consent ₹ 2 lacs was returned to AB Ltd. on 10<sup>th</sup> March, 2014. (v) Fees received for appearing before first appellate authority in income tax - ₹ 4,12,000 (vi) Fees received from World Health Organisation - ₹ 6,00,000. All the above figures are gross amounts of bills and wherever required, service tax was billed separately and the same was also received from all the clients, in addition to bill amounts. You are required to compute the value of taxable services rendered by Mr. Balan for the above quarter.

### Answer:

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

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

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

Duty leviable on such damaged or deteriorated goods

$$= \frac{\text{Duty chargeable on the goods before the damage or deterioration}}{\text{V value of the goods before damage or deterioration}} \times \text{V value of the damaged or deteriorated goods}$$

Abatement of duty on damaged or deteriorated goods

$$= \text{Duty leviable on the goods before damage} - \text{Duty leviable on the goods after damage}$$

- (b)** Service tax is payable on all the above except fees received from WHO. Hence, service tax is payable on ₹ 22.39 lakhs [₹ (6.18 + 2.00 + 7.00 + 3.09 + 4.12) lakhs]. Service tax @ 12.36% would be ₹ 2,76,740.40. In respect of advance of ₹ 2 lakhs refunded on 10-03-2014, Mr. Balan can adjust the excess service tax on ₹ 2 lakhs in subsequent period, if he refunds corresponding amount of service tax also.

### Question 7.

- (a) Point out the differences between Duty based on Annual Production Capacity and Compounded Levy Scheme in excise.**
- (b) Answer the following questions with reference to the Section 14 of the Customs Act, 1962 & relevant Rules regarding the valuation of goods:**
- (i) What shall be the value if there is price rise between the date of contract and the date of actual importation?
  - (ii) Whether the payment for post-importation process is includible, if the same is related to imported goods and is a condition of the sale of the imported goods?
  - (iii) Bill of Entry was filed on 27.10.2013. Will you apply the Exchange Rate notified by the CBEC on 25.9.2013 or notified on 25.10.2013?

**Answer:**

**(a)**

| Basis of Difference    | Duty based on Annual Production Capacity | Compounded Levy Scheme                                       |
|------------------------|--|--|
| 1. Governing Provision | Sec. 3A of Central Excise Act            | Rule 15 of Central Excise Rules, 2002                        |
| 2. Nature              | Mandatory                                | Optional   |
| 3. Notified Goods      | Pan Masala and Gutkha                    | Cold Rolled Stainless Steel Patties/Pattas, Aluminum Circles |
| 4. Basis               | Annual Production                        | Production Capacity  |

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|                  |  |   |
|------------------|--|---|
| 5. Intention     | To ensure no loss of revenue to Government.    | To facilitate payment by Assessee at concessional rate. |
| 6. Determination | Annual Production is determined by Department. | It is based on declaration by the assessee.             |

**(b) The situation-wise treatments will be as follows:**

| Situation  | Treatment  |
|--|--|
| 1. Price Rise between date of contract and date of actual importation. | The <b>escalated</b> price is the value for the purpose of Customs, if the contract <b>contains an Escalation Clause</b> .   |
| 2. Payment for Post-Importation process.                               | Rule 10 of Customs Valuation Rules provides that any payment as <b>Condition of Sale</b> of Imported goods is included in the Transaction Value. Hence, the value of post-importation process is <b>includible</b> . |
| 3. Relevant exchange rate.   | Exchange Rate applicable for a month is the rate notified by CBEC on 25th of previous month. Hence, Exchange Rate notified on 25/09/2013 is applicable.  |

**Question 8.**

- (a) Madhuri Textile Ltd (MTL) imported nylon polyester cloth from Taiwan. MTL declared US \$ 27,800 as the value of the goods. The same value was reflected in the Invoice and the Bill of Entry. However, the Customs Department assessed the import duty on the basis of the Insurance Value of US \$ 45,600. The Customs Officials claimed that MTL had undervalued the goods, and therefore the Insurance Value should be adopted for the purpose of valuation. Can Insurance Value be regarded as the Assessable Value without making any deductions therefrom? Discuss.**
- (b) State the cases where goods move from one state to another but do not amount to interstate sales.**
- (c) What is Resale Price Method (RPM) in computation of Arm's Length Price? State the adjustments required in the case of Resale Price Method where it is not possible to compare the transactions even by comparing with the transactions entered by the third party and that the differences have a material effect on price?**

**Answer:**

**(a)**

- Principle:** Insurance Value will not form part of valuation because it takes into account not only the CIF Value, but also duties and taxes payable on that goods involving transfer from Seller's premises to Buyer's premises. [Nina Chaka Pvt. Ltd. (2004) 163 ELT 464 (Tri.-Del)]
- Conclusion:** In view of Sec. 14(1) of the Customs Act read with Rules thereunder, Transaction Value as per invoice US \$ 27,800 shall be taken as Assessable Value, subject to permissible additions under the Rules. Value for insurance purposes is not relevant.

- (b)** The following are the cases where goods move from one state to another but do not amount to interstate sales:

- (i) A movement of goods from one state to another will not amount to interstate sales unless the seller had the responsibility to deliver the goods outside that state or the movement was as a result of a covenant or incident of contract of sale;
- (ii) Stock transfer between head office & branch office will not amount to interstate sales as the basic elements of sale i.e., the presence of a buyer & seller; consideration & transfer of ownership etc. are not present;
- (iii) Sale or purchase in the course of Export/ Import does not attract levy of CST since these have been specifically covered u/s 5 of the CST Act, 1956;
- (iv) Sale through commission agent / on account sales will not amount to interstate sales as the agent only acts on behalf of the seller and he does not acquire any ownership of the goods. The agent is only entitled to receive commission on the sales effected by him and will also get re-imburement of the expenses incurred by him.

(c) The RPM is a direct method which comprises the gross margins (i.e. gross profit over sales) earned in transactions between related and unrelated parties for the determination of the arm's-length price. The RPM method requires high level of functional comparability and is mainly applicable where the controlled party is a distributor.

The required adjustment to Resale Price Method (RPM):

- (1) **Inventory adjustment:** An adjustment to operating income for ratios other than the ROA is necessary if a comparable company has a different relative level of inventory holding than the tested party. The inventory adjustment thus estimates the implicit capital cost of holding inventory.
- (2) **Accounts payable adjustment:** This adjustment eliminates the implicit interest in the price of goods purchased on other than a cash basis from suppliers. The purpose of this adjustment is to identify and eliminate from profit comparisons the effect of companies' decisions on how to finance purchases.
- (3) **Accounts receivable adjustment:** This adjustment eliminates the implicit interest in the price of goods or services sold on other than cash basis to customers. The purpose of this adjustment is to identify and eliminate the profit related to finance decisions of the seller. A company selling on cash basis would receive a lower price than a company selling the goods on terms, because selling on terms subjects the seller to a capital cost that will be reflected in the price.
- (4) **Contractual terms:** where the contractual terms includes the provisions like warranties, terms of credit, facilities for transportation and transshipment of goods, facilities related to quantity of purchase or sale of goods.
- (5) **The level of the market:** The adjustments also consider the level of the market, i.e. wholesale, retail, etc.
- (6) **Foreign currency adjustments:** In case of an export transaction, the foreign exchange loss because of depreciation of the USD is disadvantageous to the exporter and it results in lower margin. The comparable companies having domestic sale transactions will be having higher margin. If the tested party imports raw material from foreign company, being an associated enterprise, it will be exposed to foreign exchange risk. The comparable companies using raw material procured from India will not be exposed from this risk. If the comparable companies hedge, the forex risk

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using financial instruments adjustment for the same is required for the tested party which does not perform the hedging.

### Question 9.

(a) Gupta and Gupta is located in India and holding 51% of shares of Kate Ltd., a USA based company. Kate Ltd. provides Business Auxiliary Services to Gupta & Gupta Ltd. From the following details, determine the Point of Taxation of Gupta & Gupta Ltd.:

|   |                |
|---|----------------|
| Agreed consideration  | US \$ 1,00,000 |
| Date on which services are provided by Kate Ltd.            | 16 - 09 - 2013 |
| Date on which invoice is sent by Kate Ltd.                  | 19 - 09 - 2013 |
| Date of debit in the books of account of Gupta & Gupta Ltd. | 30 - 09 - 2013 |
| Date on which payment is made by Gupta & Gupta Ltd.         | 23 - 12 - 2013 |

(b) What are the basic conditions to be satisfied for levy of Excise Duty under Section 3 of the Central Excise Act, 1944?

### Answer:

(a) As per section 65B(13) of Finance Act, 1994, associated enterprises have the same meaning as assigned to in section 92A of the Income-tax Act, 1961. In terms of that provision, since Gupta and Gupta holds 51% of shares of Kate Ltd., USA, the two companies are "associated enterprises".

Therefore, in case of "associated enterprises" (viz. Gupta and Kate), where the person providing the service viz. Kate is located in USA (outside India), the Point of Taxation (PoT) shall be determined as per 2nd proviso to Rule 7 of the Point of Taxation Rules, 2011. Accordingly, PoT =

- Date of debit in the books of account of the person receiving the service (Date of debit in books of Gupta) i.e., 30-9-2013 ; or
- Date of making payment i.e., 23-12-2013, whichever is earlier.

Therefore, PoT = 30-9-2013.

(b) To attract excise duty, the following conditions must be fulfilled:

- (i) There should be movable goods;
- (ii) The goods must be excisable;
- (iii) The goods must be manufactured or produced; and
- (iv) The manufacture or production must be in India.

### Question 10.

(a) Sri Hari, a Registered Dealer at Mumbai, furnishes the following information:

|       |  | (₹)       |
|-------|--|-----------|
| (i)   | Inter-state sale of goods<br>This includes the following—        | 40,00,000 |
| (ii)  | Excise duty  | 42,000    |
| (iii) | Goods returned on 17/1/2014 [These goods were sold on 12/4/2013] | 1,05,000  |
| (iv)  | Cash discount shown in invoice and allowed according to          | 50,000    |

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|       |   |          |
|-------|---|----------|
|       | prevailing trade practice   |          |
| (v)   | Freight and transportation charges (of this ₹ 1,50,000 is on inclusive basis) | 4,50,000 |
| (vi)  | Insurance premium paid prior to delivery of goods                             | 70,000   |
| (vii) | Installation and commissioning charges levied separately in invoices          | 75,000   |

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

(b) State the role of Cost Accountant under VAT.

**Answer:**

(a) Computation of taxable turnover

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

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

(b) Cost Accountants have the following key role to play in proper implementation of VAT:

- (i) **Record keeping:** VAT requires proper record keeping and accounting. Systematic records of input credit and its proper utilization is necessary for the dealer to take input tax credit. No doubt, Cost Accountants are well equipped to perform these activities.
- (ii) **Tax planning:** Cost Accountant is competent to analyze various alternatives and its impact on dealer so as to minimize the tax impact.
- (iii) **Negotiations with suppliers to reduce price:** VAT credit alters cost structure of goods supplied as inputs. A Cost Accountant will ensure that the benefit of such cost reduction is passed on by the suppliers to his company.
- (iv) **Helping to departmental officers:** There will be audit wing in department and certain percentage of dealers will be taken up for audit every year on scientific basis. Cost Accountant can ensure proper record keeping so as to satisfy the departmental auditors.
- (v) **External audit of VAT records:** Under VAT system, self assessment has been brought into force. Cost Accountants can play a very vital role in ensuring tax compliance by audit of VAT accounts.

**Question 11.**

(a) Define 'Place of removal' as per section 4(3)(c) of the Central Excise Act.

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- (b) Compute taxable value and service tax from following sums received by M/s. ABC Medical Centre (exclusive of service tax) (Ignore small service provider's exemption) -
- (1) Testing (with Transmission of medical samples between laboratories): ₹ 6 lakh ;
  - (2) Medicines consumed as a part of health care services : ₹ 5 lakh ;
  - (3) Preventive health care services : ₹4 lakh ;
  - (4) Treatment along with Facilities provided such as TV, AC, room rent, meal to patient (as a part of package): ₹33 lakh ;
  - (5) Genetic affinity examination for determining biological father : ₹4 lakh ;
  - (6) Hair transplant services due to injury in a fire accident: ₹7 lakh ;
  - (7) Cosmetic surgery of a film star : ₹16 lakh ;
  - (8) Conducting medical examinations of individuals : ₹1 lakh

**Answer:**

(a) As per section 4(3)(c) of the Central Excise Act, 'Place of removal' means –

- (i) a factory or any other place or premises of production or manufacture of the excisable goods from where such goods are removed;
- (ii) A warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty from where such goods are removed;
- (iii) A depot, premises of a consignment agent or any other place or premises from where excisable goods are to be sold after their clearance from factory; from where such goods are removed.

**(b) Computation of service tax liability**

- (1) Testing (with Transmission of medical samples between laboratories) - Exempt;
  - (2) Medicines consumed as a part of health care services - Such medicine are never sold - Dominant nature is health care services, which is exempt - Fully exempt.
  - (3) Preventive health care services : ₹ 4 lakh - Exempt ("care" is also exempt);
  - (4) Treatment along with Facilities provided such as TV, AC, room rent, meal to patient (as a part of package): ₹ 33 lakh - Natural bundling in ordinary course of business - Essential character is "health care services", which is exempt - Fully exempt;
  - (5) Genetic affinity examination for determining biological father : ₹ 4 lakh - Not related to "diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy" - Not exempt - Taxable ;
  - (6) Hair transplant services due to injury in a fire accident : ₹ 7 lakhs – Exempt, as it has been done to restore damage due to fire accident;
  - (7) Cosmetic surgery of a film star : ₹ 16 lakhs – Not exempt – Taxable;
  - (8) Conducting medical examinations of individuals: ₹ 1 lakhs – Exempt;
- Taxable value = ₹ (4 + 16) lakhs = ₹ 20 lakhs and service tax thereon @ 12.36% = ₹ 2,47,200.

**Question 12.**

- (a) Give the consequences regarding excise duty liability if goods manufactured by EOU (Export Oriented unit) & brought to DTA (Domestic tariff Area).
- (b) List the characteristics of Indirect Taxes.

**Answer:**

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- (a)** Goods manufactured by EOU (Export Oriented unit) & brought to DTA (Domestic tariff Area) will be liable to excise duty equal to customs duty [Proviso to section 3(1) of the Central Excise Act].

Any excisable goods -

- (i) manufactured by a 100% Export Oriented Units (EOU) and
- (ii) brought to any other place in India (termed, "Domestic Tariff Area" or DTA) are also liable to excise duty.

However, Excise duty = Aggregate of customs duties which would be leviable under Customs Act, 1962, or any other law on like goods produced/manufactured outside India if imported into India.

For this purpose -

- (i) Valuation as per Customs law : The value of such goods shall be determined in accordance with the provisions of the Customs Act, 1962 and the Customs Tariff Act, 1975 ; and
- (ii) Highest rate to be taken in case of different rates: Where in respect of any such like goods, any duty of customs is leviable at different rates, then, the highest of those rates shall be taken.

- (b)** The following are the characteristics of Indirect Taxes:

- (1) Meaning: Indirect Tax is a tax where incidence and impact fall on two different person.
- (2) Nature of tax: Indirect Taxes are regressive in nature.
- (3) Taxable Event: Purchase / Sale / Manufacture of goods and provision of services.
- (4) Levy & Collection: Indirect taxes are levied & collected from the consumer but paid / deposited to the Exchequer by the Assessee / Dealer.
- (5) Shifting of Burden: Tax burden is shifted on the subsequent / ultimate user.
- (6) Collection: Indirect Taxes are collected at the time of sale or purchases or rendering of services.

### Question 13.

- (a)** What are the specified services where the place of provision is the location of the service provider?
- (b)** Describe the procedures to be followed in clearance of goods imported by post.
- (c)** Your client company is a subsidiary of a foreign company, having its registered office in India. This company has transaction of imports of raw materials and components and also exports of its manufacture components from & to holding company in Finland and also other group companies in South East Asian countries. What are income tax regulations governing such international transactions?

**Answer:**

- (a)** Following are the specified services where the place of provision is the location of the service provider:-
- i) Services provided by a banking company, or a financial company, or a non-banking financial company to account holders;

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- ii) Online information and database access or retrieval services;
- iii) Intermediary services;
- iv) Service consisting of hiring of means of transport, up to a period of one month.

### (b) The procedures to be followed in clearance of goods imported by post:

- (1) **Procedure on receipt of parcel mail:** Post master has to handover details regarding parcels received along with parcel bills to the Appraiser.
- (2) **Scrutiny & Detention of dutiable/prohibited articles:** The parcels are scrutinised and those suspected to contain dutiable or prohibited articles are detained and presented to customs appraiser.
- (3) **Segregation:** Parcels are segregated into: (1) Assessable on basis of label; (2) Assessable after opening of packet; and (3) Assessable only after further inquiry.
- (4) **Assessment:** The parcels shall be assessed based on label or based on examination or after calling requisite information. The rate of duty, value, etc. shall be determined. Such duty is recovered by the postal authorities from the addressee at the time of delivery and sum is credited to Customs Department.
- (5) **Evasion/Prohibition cases:** In case of mis-declared, undervalued or prohibited goods, the parcel/packet is detained and not allowed to be cleared, except with order of the Customs] Officer.

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

- (1) Income to be computed as per ALP: Any income arising from an international transaction shall be computed having regard to the arm's length price.  
Expense or interest also to be determined at ALP: The allowance for any expense or interest arising from an international transaction shall also be determined having regard to the arm's length price (ALP).
- (2) Allocation/apportionment of common costs shall be done having regard to the ALP: Where in an international transaction or specified domestic transaction, two or more associated enterprises enter into a mutual agreement or arrangement for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises, the cost or expense allocated or apportioned to, or, as the case may be, contributed by, any such enterprise shall be determined having regard to the arm's length price of such benefit, service or facility, as the case may be.
- (3) Any allowance for an expenditure or interest or allocation of any cost or expense or any income in relation to the specified domestic transaction shall be computed having regard to the arm's length price.
  - (4) Provisions of ALP not to apply if it results in reduction of income/increase of losses: The provisions shall not apply in a case where the computation of income or the determination of the allowance for any expense or interest or the determination of any cost or expense allocated or apportioned, or, as the case may be, contributed, has the effect of reducing the income chargeable to tax or increasing the loss, as the case may be, computed on the basis of entries made in the books of account in respect of the

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previous year in which the international transaction or specified domestic transaction was entered into.

### Question 14.

- (a) After visiting USA, Mrs. & Mr. B brought to India a lap top computer valued at ₹85,000, personal effects valued at ₹90,000 and a personal computer for ₹52,000. What is the customs duty payable?
- (b) Distinguish between a Sale for Export and Sale in the Course of Export in the context of Central Sales Tax.

Answer:

(a)

- Exemption:** Personal Effects and One Laptop are exempt from duty.
- General Free Allowance:** The General Free Allowance for the Passenger's of Age  $\geq 10$  years, and returning after stay abroad of  $> 3$  days is ₹ 35,000. [Rule 3 of Baggage Rules, 1998]
- Rate:** Rate of Duty applicable for Baggage = 35% + EC @ 2% + SHEC @ 1% = 36.05%
- Duty:** Duty payable on Baggage = ₹ (52,000 - 35,000)  $\times$  36.05% = ₹ 6,129

### (b) Distinctions between a Sale for Export and Sale in the Course of Export

| Sale for Export   | Sale in the Course of Export  |
|---|---|
| i. A sale effected by the dealer (seller) and he is not connected with the export of the goods which actually takes place subsequently. | Seller has an express between the sale and the export.                |
| ii. Seller may or may not have the knowledge that the buyer intends to export the goods purchased.                                      | The seller who purchases goods in India subsequently exports as such. |
| iii. Seller does not know the ultimate destination of the goods he has sold.  | Seller has clear address for ultimate destination of his goods.       |
| iv. Seller has no intention for export.   | Seller has clear intention to export.                                 |
| v. This sale may be called as penultimate sale.   | This sale is called as export sale.                                   |
| vi. Sale exempted from CST provided Form 'H' received from his buyer.   | Sale exempted from CST automatically.                                 |
| vii. This sale is covered under Section 5(3) of the CST Act, 1956.  | This sale is covered under Section 5(1) of the CST Act, 1956.         |

### Question 15.

- (a) Define Similar Goods as per Rule 2(1)(f) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
- (b) List the salient features of Anti-Dumping Duty.

Answer:

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- (a) Rule 2(1)(f) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 define 'similar goods' as (a) alike in all respects, have like characteristics and like components and perform same functions. These should be commercially inter-changeable with goods being valued as regards quality, reputation and trade mark. (b) the goods should have been produced in the same country in which the goods being valued were produced. (c) they should be produced by same manufacturer who has manufactured goods undervaluation - if price of such goods are not available, price of goods produced by another manufacturer in the same country can be considered.

However, if engineering, development work, art work, design work, plan or sketch undertaken in India were completed by the buyer on these imported goods free of charge or at reduced rate for use in connection with the production and sale for export of these imported goods, these will not be 'similar goods'.

**(b) The salient features of Anti-Dumping Duty:**

- i. It is an instrument for ensuring fair trade and is not a measure of protection per se for the domestic industry
- ii. It provides relief to the domestic industry against the injury caused by dumping and gives domestic industry a level playing field.
- iii. The duty is imposed as a deterrent effect to discourage dumped imports, so that users can buy material from domestic industry from whom they were not buying earlier on account of availability of cheap dumped imports.
- iv. The idea is to levy and collect extra tax, rather to take the landed value of imports to a level where domestic industry can fairly compete with imports and sell the product in the domestic market.

**Question 16.**

- (a) State with reasons whether service tax will be levied or not on the interest in relation to overdraft, cash credit, bill discount or exchange in the region of Banking and financial services.
- (b) Define Coastal Goods and Customs Area as per Customs Act.
- (c) Describe the benefits in case of supply to EOUs (Export Oriented units) from DTA (Domestic tariff Area) units?

**Answer:**

- (a) In the context of Banking and other financial instructions, the Hon'ble Tribunal in State Bank of Indore v. CCE 2011 (23) STR 346 (Tri) held that interest in relation to overdraft, cash credit, bill discount or exchange was exempted under Notification No. 29/2004-ST, dated 22.09.2004. The mere fact that the bank did not show separately in the invoice the interest is not very factual to avail the exemption in view of the fact that the assessee, the banking company was regulated by RBI guidelines and public norm requires disclosure of bank's earning, Therefore, the Tribunal held that subject to the appellant adducing evidence as required by the Notification, the matter should stand remanded to the adjudicating authority for passing appropriate order.

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- (b) Coastal Goods [Section 2(7) of the Customs Act]: The term coastal goods means goods, other than imported goods, transported in a vessel from one port in India to another.

Under section 7(1)(d) of the Customs Act, 1962, the Central Board of Excise and Customs (CBE&C), may by notification in the Official Gazette, appoint the ports which alone shall be coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports in India.

Customs Area [Section 2(11) of the Customs Act]: Customs area means the area of a customs station and includes any area in which imported goods or exported goods are ordinarily kept before clearance by Customs Authorities.

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

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

**Question 17.**

(a) Write a note on Green Channel and Red Channel in customs.

- (b) M/s. TBK Ltd., sold machinery to Mr. Roy at a price of ₹ 5 lakhs on 15th June, 2013 and the same was removed from the factory at Kolkata. The rate of excise duty applicable is 12.36% on the date of removal. Mr. Roy refused to take delivery of the machine when it reached his destination. In the meantime, M/s. TBK Ltd. increased the prices of the similar type of machinery to ₹ 6 lakhs with effect from 16th June, 2013. The machinery as refused by Mr. Roy has been sold on 20th June 2013 to Mr. Sen at the revised price of ₹ 6 lakhs. The excise duty including Education Cess is 12.36% applicable with effect from 10th June, 2013.

Explain the following with reasons:

- (i) What is the value to be taken as assessable value?
- (ii) What is the rate of excise duty applicable and duty payable on above transaction?
- (iii) The Central Excise Officer is demanding duty on the price of ₹ 6 lakhs at the time of sale to Mr. Sen. Is he right in his approach?
- (iv) Does cost of production have any bearing on the assessable value?

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**Answer:**

**(a)** Section 77 of Customs Act provides that owner of any baggage has to make declaration of its contents to Customs Officer. Rate of duty and tariff valuation shall be the rate and valuation in force on the date of declaration.

**Green Channel** - It is impractical to ask every traveller to declare contents of his baggage. Hence, customs have provided two channels at airports. If a person does not have any dutiable goods, he can go through green channel.

Going through green channel is in effect declaring that the person is not carrying any dutiable goods. It is not necessary that declaration has to be in writing. It is not duty of Customs Officer to accost individual passenger. A person going through green channel carrying dutiable goods can be penalised for 'false declaration'.

**Red Channel** - Person carrying dutiable goods should pass through red channel and should submit declaration. The declaration of goods and value as given by passenger in disembarkation card is generally accepted, but baggage can be inspected by Customs Officer.

**(b)** (i) The price prevailing at the time of removal from factory (i.e. ₹ 5 lacs on 15th June 2013 is the assessable value.

(ii) The applicable rate of duty is @12.36% and duty amount is ₹ 61,800 (i.e. ₹ 5 lacs x 12.36/100).

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

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

**Question 18.**

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

|                                       |               |
|---------------------------------------|---------------|
| <b>Direct material</b>                | <b>11,648</b> |
| <b>Direct wages &amp; salaries</b>    | <b>8,400</b>  |
| <b>Works overheads</b>                | <b>6,200</b>  |
| <b>Quality control costs</b>          | <b>3,500</b>  |
| <b>Research and development costs</b> | <b>2,400</b>  |
| <b>Administrative overheads</b>       | <b>4,100</b>  |
| <b>Selling and distribution costs</b> | <b>1,600</b>  |
| <b>Realizable value of scrap</b>      | <b>1,200</b>  |

**The Administrative Overheads are in relation to production activities.**

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Material cost includes Excise duty ₹ 1,648.

(b) Write a short note on Tax Identification Number in VAT.

Answer:

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

|  |      |        |
|--|------|--------|
| Direct material (11,648 – 1,648 = 10,000)                          | WN 1 | 10,000 |
| Direct wages & salaries  |      | 8,400  |
| Works overheads  |      | 6,200  |
| Quality control costs  | WN 2 | 3,500  |
| Research and development costs                                     | WN 2 | 2,400  |
| Administrative overheads   | WN 2 | 4,100  |
| Selling and distribution costs                                     | WN 3 | -      |
| Total  |      | 34,600 |
| Less : Realisable Value of scrap                                   | WN 4 | 1,200  |
| Cost of production   |      | 33,400 |
| Value of excisable goods under Rule 8 @ 110% of cost of production |      | 36,740 |

Working notes:

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

(b) **Tax Identification Number:** Salient features of Tax Identification Number are as follows —

- i. TIN consist of 11 digits
- ii. First two characters represent the state code which is allotted by the Central Government which is common for all the dealer of a state and balance nine characters will be, however, different in different States.
- iii. TIN is useful to the department of commercial tax in case of computer applications, for detecting stop filers and delinquent accounts

TIN also help full to the department for cross checking of sales and purchases across the state VAT dealers.

**Question 19.**

(a) What are the essential ingredients of a sale under CST Act?

(b) Describe Doctrine of Unjust Enrichment?

(c) List out the powers of the DGFT (Director General of Foreign Trade).

Answer:

(a) **Essential ingredients of a sale under CST Act:**

- i. There must be two parties to the contract of sale (i.e.) the buyer & the seller.
- ii. There must be valid consent of both the above parties.
- iii. There must be an actual transfer of property in goods (i.e. agreement to sell is not a sale).

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- iv. There must be a consideration in cash or in deferred payment or any other valuable consideration in money or money's worth.
- v. Sale includes deemed sales but it does not include a mortgage or hypothecation of or a charge or pledge on goods.

**(b) Doctrine of Unjust Enrichment:** The doctrine of unjust enrichment means no person can be unjustly enriched at expense of another person. In indirect taxes, the duty/tax burden passes on to the person who ultimately consumes goods or services. Since the law authorises recovery of indirect taxes (excise duty, customs, sales/purchases tax) from buyer, therefore, it is always presumed that incidence of duty has been passed. Therefore, if any refund becomes due to the manufacturer, then, since manufacturer has recovered the duty from the buyer, thus, to be fair, refund should be made to consumer. However, it is not possible to locate individual buyers and pay refund to them. Also without authority of law Government cannot retain the excess duty. Therefore, Section 11B has been introduced which provides that any refund due to an assessee shall be transferred to Consumer Welfare Refund and will be used for the purpose of protection and welfare of the consumers. The refund shall be granted to the assessee only when he proves that incidence of duty has not been passed to any other person or in certain other specified cases..

**(c) The powers of the DGFT (Director General of Foreign Trade):**

1. **Interpretation of Policy:** If any question or doubt arises in respect of interpretation of any provision, said question or doubt shall be referred to DGFT, whose decision thereon shall be final and binding.
2. **Procedure:** DGFT may specify the procedure to be followed by an Exporter or Importer or by any licencing or any other Competent Authority for the purpose of implementing provisions of Foreign Trade Act, the Rules and the Orders made thereunder and FTP. Such procedures shall be published in Hand Book of Procedures by means of a Public Notice, and may, in like manner, be amended from time to time.
3. **Exemption from Policy/Procedure:** DGFT may pass such orders or grant such relaxation or relief, as he may deem fit and proper, on grounds of genuine hardship and adverse impact on trade. DGFT may, in public interest, exempt any person or class or category of persons from any provision of FTP or any procedure and may, while granting such exemption, impose such conditions as he may deem fit.
4. **Scope of Restriction:** DGFT may, through a Notification, adopt and enforce any measure necessary for -
  - a. Protection of -
    - (i) Public morals.
    - (ii) Human, animal or plant life or health.
    - (iii) Patents, Trademarks and Copyrights and the prevention of deceptive practices.
    - (iv) National treasures of artistic, historic or archaeological value.
    - (v) Trade of fissionable material or material from which they are derived.
  - b. Prevention of traffic in arms, ammunition and implements of war and use of prison labour.
  - c. Conservation of exhaustible natural resources.
5. **Importer-Exporter Code (IEC):** DGFT is empowered to issue IEC. IEC is a unique 10 digit code issued by DGFT to Indian Companies. IEC is mandatory to export any goods out of India or to import any goods into India unless specifically exempt. Permanent Account

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Number (PAN) is pre-requisite for grant of an IEC. Only one IEC can be issued against a single PAN.

An application for IEC is to be made to the nearest RA of DGFT in the 'Aayaat Niryaat Form-ANF2A' and shall be accompanied by the prescribed documents. In case of STPI/ EHTP/ BTP units, the Regional Offices of the DGFT having jurisdiction over the district in which the Registered/ Head Office of the STPI unit is located, shall issue or amend the IECs.

### Question 20.

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

| Sl. No. | Particulars   | Amount (₹)  |
|---------|---|-------------|
| (i)     | Total contract price (excluding VAT @12.5%)   | 1,80,00,000 |
| (ii)    | Materials purchased and used for the contract taxable at 12.5% VAT (inclusive of VAT) | 33,75,000   |
| (iii)   | Labour charges paid for execution of the contract (VAT @12.5%)                        | 40,00,000   |
| (iv)    | Other service charges paid for the execution of the contract (VAT @12.5%)             | 20,00,000   |
| (v)     | Cost of consumables used not involving transfer of property in goods (VAT @12.5%)     | 10,00,000   |

Elby Constructions also purchased a plant for use in the contract for ₹ 20,80,000 (inclusive of VAT). In the VAT invoice relating to the same VAT was charged at 4% separately.

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

(b) Write a short note on Central Excise Revenue Audit.

(c) Specify the scope of international transaction. Also mention the elements which are included in the Intangible property.

### Answer:

(a) The question states that -

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

The computations in this regard are as follows -

|  | Value (excl. VAT) (₹) | VAT Rate | VAT(₹) |
|--|-----------------------|----------|--------|
| Total Contract Price                                       | 1,80,00,000           |          |        |
| Less: Labour charges (assumed inclusive of normal profit)  | 40,00,000             |          |        |
| Other service charges (assumed inclusive of normal profit) | 20,00,000             |          |        |
| Cost of consumables (assumed inclusive of normal profit)   | 10,00,000             |          |        |

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| Value of goods involved in works contract   | 1,10,00,000 | 12.50% | 13,75,000       |
|---|-------------|--------|-----------------|
| Materials purchased and used for contract (eligible for credit) [Value excluding VAT= ₹ 33,75,000 X 100 + 112.5]  | 30,00,000   | 12.50% | 3,75,000        |
| Capital goods used for contract (eligible for credit; in fact, question itself states that capital goods are eligible for 100% credit) [Value excluding VAT= ₹ 20,80,000 X 100 + 104] | 20,00,000   | 4.00%  | 80,000          |
| <b>Net VAT payable in cash</b>  |             |        | <b>9,20,000</b> |

### (b) Central Excise Revenue Audit:

- (i) It is conducted by the Comptroller and Auditor General of India (C & A G) it is called Central Excise Revenue Audit (CERA).
- (ii) This is an audit of the Central Excise Department's functioning and is carried out at the office of the Central Excise Department.
- (iii) This is not an audit of the assessee.
- (iv) The audit focuses on ascertaining revenue leakage and is assessed on the basis of the periodical returns filed by the assessee, the execution of various bonds, and other relevant information such as cost audit reports, and income-tax audit reports of the assessee.
- (v) The CERA auditor has the right to visit the office of the assessee though the audit is not of the assessee.
- (vi) There is no defined frequency for the carrying out of this audit.
- (vii) C & A G submits the report to the President of India, who causes these to be laid before each House of Parliament.

### (c) Scope of international transaction:

"International transaction" shall include—

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

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income, losses or assets of such enterprises at the time of the transaction or at any future date;

"Intangible property" shall include -

- (i) marketing related intangible assets, such as, trademarks, trade names, brand names, logos;
- (ii) technology related intangible assets, such as, process patents, patent applications, technical documentation such as laboratory notebooks, technical know-how;
- (iii) artistic related intangible assets, such as, literary works and copyrights, musical compositions, copyrights, maps, engravings;
- (iv) data processing related intangible assets, such as, proprietary computer software, software copyrights, automated databases, and integrated circuit masks and masters;
- (v) engineering related intangible assets, such as, industrial design, product patents, trade secrets, engineering drawing and schematics, blueprints, proprietary documentation;
- (vi) customer related intangible assets, such as, customer lists, customer contracts, customer relationship, open purchase orders;
- (vii) contract related intangible assets, such as, favourable supplier, contracts, licence agreements, franchise agreements, non-compete agreements;
- (viii) human capital related intangible assets, such as, trained and organised work force, employment agreements, union contracts;
- (ix) location related intangible assets, such as, leasehold interest, mineral exploitation rights, easements, air rights, water rights;
- (x) goodwill related intangible assets, such as, institutional goodwill, professional practice goodwill, personal goodwill of professional, celebrity goodwill, general business going concern value;
- (xi) methods, programmes, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, or technical data;
- (xii) any other similar item that derives its value from its intellectual content rather than its physical attributes.

### Question 21.

**(a) PQR Ltd. has a manufacturing unit situated in Lucknow. In the financial year 2013-14, the total value of clearances from the unit was ₹450 lakhs.**

**The break up of clearances is as under :**

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

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Explain briefly, the treatment for various items and state, whether the unit will be eligible for the benefits of exemption under Notification No. 8/2003-CE dated 1-3-2003 as amended for the year 2014-15.

- (b) Explain distinguishing features between provisions of 'pilferage' and 'loss or destruction of goods' under Customs Act.

**Answer:**

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

For this purpose, the total value of clearances shall be calculated as follows –

|   | (₹ lakhs)  |
|---|------------|
| Total value of clearances   | 450        |
| <b>Less:</b>  |            |
| (i) Clearances of certain non-excisable goods manufactured by it  | 50         |
| (ii) Clearances exempted under specified job-work notification  | 50         |
| (iii) Exports clearances to USA   | 75         |
| (iv) Clearances of goods used captively to manufacture finished products, which are exempt under Notification other than SSI-exemption notification | Nil        |
| <b>Value of clearances</b>  | <b>275</b> |

**Unit eligible for exemption:** Since the aggregate value of clearances during the preceding financial year doesn't exceed ₹400 lakhs, therefore, the unit is eligible for SSI-exemption in the financial year 2014-15.

- (b) Difference in sections 13 and 23 (1) of the Customs Act, 1962 can be summarized as follows :

| Section 13 - Pilferage   | Section 23 – Loss or destruction of goods   |
|--|---|
| Pilferage means loss arising out of theft  | Such loss may arise by fire, natural calamity etc.  |
| Section 13 deals with pilferage  | Section 23 (1) deals with loss or destruction of goods, except pilferage.   |
| No duty is payable at all under section 13, but liability revives for duty if goods are restored.  | Duty is payable under section 23 (1), but it may be remitted by Asst. Comm. Of Customs. Thus, unless remitted, duty has to be paid under section 23 (1)   |
| Importer does not have to prove pilferage.   | Burden of proof is on importer to prove loss or destruction.  |
| Pilferage should be before order for clearance is made.  | Loss or destruction can be at any time before clearance.  |
| Loss must be only due to pilferage.  | Loss or destruction may be due to fire, accident etc., but not pilferage e.g., loss by leakage is covered under section 23.   |
| Under section 13, normally duty is not paid. However, if duty is paid before examination of goods, refund can be claimed if goods are found to be pilfered during examination but before order for clearance are made. | Under section 23 (1), if duty is paid, then refund can be obtained only if remission is granted by Customs Authorities. Thus, remission under section 23 (1) is at the discretion of Customs Authorities. [of |

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|  |   |
|--|---|
|  | course, the discretion has to be exercised judiciously].  |
| Section 13 is not applicable for warehoused goods. | Section 23 (1) is applicable for warehoused goods also [As goods transferred to warehouse are not 'cleared for home consumption']]. |

### Question 22.

**(a) A dispatches goods from Karnataka and raises invoice on B in Madhya Pradesh, A charges 2% CST and pays the same in Karnataka. During the course of movement of goods, B sells goods to C in West Bengal and C ultimately sells goods to D in Kolkata. D takes delivery of goods and the movement of goods comes to end. Sales from B to C and C to D are by transfer of lorry way bill receipts. Explain the forms to be issued so that the first and subsequent sales are exempt from central sales tax.**

**(b) Give the valuation aspects in relation to the central excise duty in the following cases —**  
**(i) trade mark and**  
**(ii) Consultancy/technical services**

### Answer:

**(a)** A will receive declaration in 'C' Form from B and will issue declaration in E-I Form to B.

Later, B will issue declaration in E-II Form to C and receive declaration in 'C' Form from 'C'

Finally, C will issue declaration in E-II Form to D and receive declaration in 'C' Form from D, which will complete the chain. Because, D has taken the possession of goods, thereby movement of goods from one state to another ends.

If the chain is broken, CST will be payable again. Otherwise, all subsequent sales will be exempt from sales tax.

**(b) (i) The value of trade mark and assessable value:**

Where a manufacturer is the owner of the brand name, the price including the value of the brand name, at which he sells the goods in the course of wholesale trade, would constitute the normal price. But where the goods are manufactured by other manufacturer and then sold to a dealer who owns the brand name, the value of the brand name cannot be considered for computing the assessable value, as the brand name owner cannot be construed as manufacturer and the price at which the brand name owner sells the goods cannot be taken as assessable value.

**(ii) Consultancy/technical services and assessable value:**

The costs towards drawing, designing and technical specifications are clearly elements of machinery costs and are to be included in the assessable value. However, the cost towards project report, plant layout, civil works and training which are in the nature of services are not includible in the assessable value.

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Question 23.

(a) Compute the customs duty payable from the following data:

|  |                |
|--|----------------|
| Machinery imported from USA by air   | US \$ 8,000    |
| Accessories compulsorily supplied with machine                               | US \$ 2,000    |
| Air freight  | US \$ 3,000    |
| Insurance  | US \$ 100      |
| Local agent's commission   | ₹ 4,500        |
| Exchange rate  | 1 US \$ = ₹ 40 |
| Customs duty on machine  | 10% ad valorem |
| Customs duty on accessory  | 20% ad valorem |
| Additional duty of customs 12%, but effective rate by exemption notification | 8%             |
| Additional duty of customs under section 3(5) of Customs Tariff Act, 1975    | 4%             |
| Education Cess + Secondary and Higher Education Cess                         | 2% + 1 %       |

(b) What do you mean by Margin of Dumping and Injury Margin in the context of Anti-dumping Duty?

Answer:

(a) Computation of Customs duty payable

|  |      |             |
|--|------|-------------|
| Cost of machinery inclusive of accessory (FOB) (See Note)                                  | US\$ | 10,000      |
| Add : Cost of insurance  | US\$ | 100         |
| Add: Air freight (restricted to 20% of FOB)  | US\$ | 2,000       |
| Total  | US\$ | 12,100      |
| Total (In Indian ₹) US\$ 12,100 x ₹ 40 (being the exchange rate)                           | ₹    | 4,84,000.00 |
| Add : Agency commission  | ₹    | 4,500.00    |
| CIF Value  | ₹    | 4,88,500.00 |
| Add : Landing charges (@ 1% of CIF value)  | ₹    | 4,885.00    |
| Assessable value   | ₹    | 4,93,385.00 |
| Add : Basic Customs Duty (10% of assessable value) [A]                                     | ₹    | 49,338.50   |
| Total for Additional duty of Customs leviable under section 3(1) Customs Tariff Act        | ₹    | 5,42,723.50 |
| Add : Additional duty of Customs u/s 3(1) Customs Tariff Act equal to excise duty @ 8% [B] | ₹    | 43,417.88   |
| Add : Education cess and SHEC @ 3% of [A] + [B] [C]  | ₹    | 2,782.69    |
| Total for Additional duty of Customs u/s 3(5) Customs Tariff Act                           | ₹    | 5,88,924.07 |
| Add : Additional duty of Customs u/s 3(5) Customs Tariff Act @ 4% [D]                      | ₹    | 23,556.96   |
| Total imported cost (rounded off)  | ₹    | 6,12,481    |
| Total customs duty payable = [A] + [B] + [C] + [D] (rounded off)                           | ₹    | 1,19,096    |

Working notes:

- As per Accessories (Conditions) Rules, 1963, accessories and spare parts compulsory supplied with main implements are chargeable at the same rate as applicable to main machine. Therefore, such accessories shall also be chargeable with duty at the applicable to the machinery i.e. @ 10% ad valorem.
- Though actual air freight is US \$ 3,000, it is limited to 20% of FOB value of goods as per Rule 10(2) of Customs Valuation Rules.
- Agency Commission, which is incurred in India, is not regarded as buying Commission and therefore will be added to determine the CIF value.

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- (b) Margin of dumping is the difference between normal value (i.e. his sale price in his country) and export price (price at which he is exporting the goods).

'Injury Margin' means difference between fair selling price of domestic industry and landed cost of imported products. Dumping duty will be lower of dumping margin or injury margin.

### Question 24.

- (a) Compute the assessable value under the Central Excise Act, 1944 in the following case:

|                    |   |  |
|--------------------|---|--|
| Production         | : | 2,000 units on 01.01.2014                            |
| Quantity sold      | : | 450 units @ ₹ 200 per unit                           |
|                    |   | 650 units @ ₹ 190 per unit                           |
| Samples clearances | : | 50 units   |
| Balance in stock   | : | 850 units (at the end of factory day for 01.01.2014) |

Assume that the rate per unit is exclusive of Central Excise duty.

- (b) Write down the provisions of section 72 in relation to the best judgment assessment under the service tax law?

### Answer:

- (a) Computation of assessable value of the goods (amount in ₹)

|  |          |
|--|----------|
| Clearances of 450 units @ ₹ 200 per unit             | 90,000   |
| Clearances of 650 units @ ₹ 190 per unit             | 1,23,500 |
| Samples clearances of 50 units @ ₹ 190 per unit [WN] | 9,500    |
| Transaction Value                                    | 2,23,000 |

Working note:

CBEC Circular No. 813/10/2005-CX, dated 25.04.2005 has clarified that Sample are to be valued as per provisions of Rule 4 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 i.e. on the basis of value of goods cleared at or around the same time.

However, since the information relating to value of goods sold at the time nearest to the time of removal of samples is not available, valuation may be done on the basis of Rule 11 read with Rule 4. Therefore, normal transaction value of goods sold at or about the time nearest to the time of removal of samples will be the assessable value of the samples. Normal transaction value is the value at which the greatest aggregate quantity of goods is sold. Since, in the given case, the greatest aggregate quantity viz., 650 units are sold at ₹ 190, the normal transaction value would be ₹ 190.

- (b) Best judgment assessment [Section 72 of Finance Act, 1994] [Circumstance when best judgment assessment can be made]: Section 72 provides that best judgment assessment can be done by the Central Excise Officer if, —
- (i) the assessee fails to furnish the return under section 70;

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- (ii) the assessee having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder.

**Manner of making best judgment assessment:** For making best judgment assessment, the Central Excise Office may require the assessee to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material, the Central Excise Officer shall make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by, or refundable to, the assessee. He shall pass the order in writing, after giving an opportunity of being heard to the assessee.

### Question 25.

- (a) Determine the Point of Taxation in each of following independent cases in accordance with point of Taxation Rules, 2011.

| S. No. | Date of actual provision of service | Time [date] of Invoice, Bill or Challan as the case may be | Date on which payment received               |
|--------|-------------------------------------|--|--|
| 1      | 10.04.2013                          | 30.04.2013   | 06.04.2013 (part) and 16.04.2013 (remaining) |
| 2.     | 10.04.2013                          | 12.05.2013   | 30.04.2013                                   |
| 3.     | 10.04.2013                          | 12.05.2013   | 05.04.2013 (part) and 25.04.2013 (remaining) |
| 4.     | 10.04.2013                          | 22.05.2013   | 12.06.2013                                   |

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

- (c) Compute the 'arm length price' (ALP) in the following cases :

- (i) Medical Instruments Ltd. is a 100% Indian subsidiary of a US company. The parent company sells one of its products to the Indian subsidiary at a price of US\$ 100 per unit. The same product is sold to unrelated buyers at a price of US\$ 125 per unit.
- (ii) The US parent company sells the same product to an unrelated company in India @ US\$ 80 per unit.

**Answer:**

- (a) Point of Taxation for the different cases:

| S. No. | Date of completion of service | Time [date] of Invoice, Bill or Challan as the case may be | Date on which payment received               | Point of Taxation                                    | Remarks  |
|--------|-------------------------------|--|--|--|--|
| 1.     | 10.04.2013                    | 30.04.2013   | 06.04.2013 (part) and 16.04.2013 (remaining) | 06.04.2013 and 16.04.2013 for the respective amounts | Invoice issued within 30 days. Part payment (in the form of advance received before issue of invoice and remaining payment received after completion of service) |

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|    |            |            |  |  |  |
|----|------------|------------|--|--|--|
| 2. | 10.04.2013 | 12.05.2013 | 30.04.2013                                   | 10.04.2013   | Invoice not issued within 30 days and payment received after completion of service   |
| 3. | 10.04.2013 | 12.05.2013 | 05.04.2013 (part) and 25.04.2013 (remaining) | 05.04.2013 and 10.04.2013 for the respective amounts | Invoice not issued within 30 days. Part payment received as advance before completion of service and remaining payment received subsequently |
| 4. | 10.04.2013 | 22.05.2013 | 12.06.2013                                   | 10.04.2013   | Invoice not issued within 30 days and entire payment received after completion of service  |

**(b)** 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.

**(c) Computation of 'arm length price (ALP) is as follows –**

- (i) Though the ALP is ₹ 125 per unit; however, since the adoption of ALP will result in decrease in total income of Indian subsidiary (the cost of purchase being higher), therefore, the price of US\$ 100 per unit shall be admissible.
- (ii) However, in this case, the ALP = Price to unrelated buyers = US\$ 80 per unit; and since its adoption increases taxable income in India, hence, the same shall be adopted.

**Question 26.**

**(a) Specify the relevant dates for warehouse goods in the following cases:**

- (i) Rate of exchange, when goods are removed for home consumption;**
- (ii) Rate of duty, when goods are removed for home consumption;**
- (iii) Goods deemed to be improperly removed u/s 72 of the Customs Act, or, Rate of duty if the goods are not removed from warehouse within the permissible period.**

**(b) Describe the taxability of 'bundled services'.**

**Answer:**

**(a) The relevant dates for warehoused goods in the following cases will be:**

| Warehoused goods<br>(Case)                                       | Relevant date  |
|--|--|
| 1. Rate of exchange, when goods are removed for home consumption | <b>Date of presentation of bill of entry for warehousing</b> : As per section 14 of the Customs Act, rate of exchange shall be rate in force on the date on which bill of entry for warehousing is presented u/s 46 of the Customs Act, shall be applicable. |

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|   |   |
|---|---|
| 2. Rate of duty, when goods are removed for home consumption  | <b>Date of presentation of bill of entry for home consumption:</b> As per section 15(1)(b) of the Customs Act, the rate of duty in force on the date on which ex-bond bill of entry for home consumption (removal of goods from warehouse for home consumption) is filed under section 68, shall be applicable.   |
| 3. Goods deemed to be improperly removed u/s 72, or, Rate of duty if the goods are not removed from warehouse within the permissible period | <b>Date on which goods are deemed to be improperly removed, or, date of expiry of warehousing period:</b> In case of goods deemed to be improperly removed u/s 72 of the Customs Act, the relevant date for determination of rate duty shall be the date of such deemed removal i.e., the date on which any of the events listed in section 72 occurs. For example, in case goods continue to remain in warehouse after expiry of period u/s 61, then, rate of duty in force on date of expiry of such period shall be applied. Section 15(1)(b) cannot apply, as it applies only when goods are removed u/s 68 properly. - <b>SBEC Sugar Ltd. v. UOI[2011 (264) E.L.T. 492 (S.C.)]</b> |

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

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

### Question 27.

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

- (i) Services provided to a company located in Colombo in relation to organization of a sport event in Colombo : ₹ 12 lakhs
- (ii) Services provided to a company located in Srinagar in relation to festival celebration on Srinagar : ₹ 3 lakhs
- (iii) Services provided to a company located in Jaipur in relation to fashion show in Dubai : ₹ 12 lakhs
- (iv) Services of online database access and retrieval services provided from its website : ₹ 15 lakhs (out of this, ₹ 10 lakhs was provided to recipients located outside India)

- (b) Are Lease Transactions subjected to levy of Value Added Tax under VAT Legislations? State with reasons.

**Answer:**

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

|       |   |           |
|-------|---|-----------|
| (i)   | Services provided to a company located in Colombo in relation to organization of a sport event in Colombo: As per Rule 6 of the Place of Provisions Rules, 2012, in case of services provided in relation to organization of events, the services shall be taxable at the place of location of event. Since event is held in non-taxable territory, it is not liable to service tax   | Nil       |
| (ii)  | Services provided to a company located in Srinagar in relation to organization of a sport event in Srinagar: As per Rule 6 of the Place of Provisions Rules, 2012, in case of services provided in relation to organization of events, the services shall be taxable at the place of location of event. Since event is held in non-taxable territory, it is not liable to service tax   | Nil       |
| (iii) | Services provided to a company located in Jaipur in relation to fashion show in Dubai: Since services are in relation to event held in Dubai, hence, as per Rule 6, they are not taxable. But, since the services are provided to a recipient located in taxable territory (Jaipur) and both service provider and recipient are located in taxable territory, hence, as per Rule 8, these services are liable to service tax. | 12,00,000 |
| (iv)  | Services of online database access and retrieval services provided from its website: As per Rule 9, the place of provision is the place of location of service provider. Since, service provider ZBL Ltd. is located in Mumbai (taxable territory), hence, these services will be taxable in full irrespective of location of the service recipient.  | 15,00,000 |
|       | Total Taxable Value   | 27,00,000 |
|       | Service tax @ 12.36%  | 3,33,720  |

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

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

**Taxable Turnover:**

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

**Input Tax Credit:**

**(i) Lessor's Books:**

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

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against any VAT Liability. Some other States provide an option to carry forward the excess credit.

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

### Question 28.

(a) An importer, having received 100 casks of whisky from Scotland by a vessel, warehouses them in a bonded place. Each cask is reported to contain 1000 litres. At the time of removal of goods, it is found that 50 cases contained only 980 litres each. The importer claims that there has been a loss in storage and hence no duty can be levied on the shortage. Explain the relevant provisions of the Customs Act, 1962 regarding shortage of volatile goods and state, with reasons, how would you decide the case.

(b) Is transfer of property in goods without consideration chargeable to CST?

### Answer:

(a) The duty payable on 20 litres per case found deficient will be remitted u/s 70, as whisky (wine/beer) is notified goods u/s 70, the loss is found at the time of delivery from warehouse and loss of mere 2% per cask appears to be a natural loss.

(b) 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.

### Question 29.

(a) Why indirect taxes are called regressive in nature as against direct taxes?

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

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

### Answer:

(a) Direct taxes depend on paying capacity. Rich person is taxed more compared to poor person. But Indirect taxes do not depend on paying capacity. Since the indirect tax is

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uniform, the tax payable on commodity is same, whether it is purchased by a poor man or a rich person. Hence, the indirect taxes are termed as 'regressive'.

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

**(b) Computation of service tax liability:**

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

Taxable Value = 5+3+4 + 6 = ₹18 lakh; and service tax thereon @ 12.36% = ₹ 2,22,480.

**Question 30.**

**(a) Pradhan Hotels Pvt. Ltd has given the following information for period Oct. 2013 to March, 2014. Compute value of taxable services and tax thereon:**

- (1) Reception room and vehicle parking space were let out for a film shooting for 3 months. The charges received for this ₹ 5 lacs.
- (2) Conference hall was let out to a Gujarati Samaj Trust for a week for a music competition for ₹ 50,000.
- (3) The hotel was booked by a customer for 3 days for a marriage function. The room booking charges were received in advance (excluding service tax) in the said period of ₹ 50,000. The electricity charges separately billed ₹ 20,000, hire charges including catering charges (including food) for 3 days billed of ₹ 3,25,000 after deducting the advance.
- (4) During the year, the conference hall was let out to Pk Ltd. The charges received were as under :  
Hall rent ₹ 4 Lacs, computer & projector systems charges ₹ 25,000, electricity charges ₹ 30,000. Hall rent includes charges for snacks and cold drinks ₹ 50,000.
- (5) The hotel garden was let out to a political party for 2 days for a meeting. Charges received ₹ 25,000. The hotel charges 10% service charges which are later distributed as tips to employees. The above charges are excluding service tax.

**(b) What is ACES (Automation of Central Excise and Service Tax)? State the usefulness of ACES.**

**(c) State the objectives of the Foreign Trade Policy? Write down its features also.**

**Answer:**

**(a) Computation of value of taxable service including tax thereon (ignoring small service provider exemption) -**

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[Service charges form part of gross amount charged: 10% services charges are assumed to have been charged in addition to aforesaid sums and since they are a consideration for provision of service, they are liable to included in gross amount charged.]

|    | Particulars  | ₹         |
|----|--|-----------|
| 1. | Reception room and vehicle parking space were let out for a film shooting for 3 months - It is renting of immovable property service - Since it is not meant for residential or lodging purposes, hence, no abatement allowed - Taxable [₹ 5 lakh + 10% Service Charges]                 | 5,50,000  |
| 2. | Conference hall was let out to a Gujarati Samaj Trust for a week for a music competition -Taxable; it is renting of immovable property [₹ 50,000 + 10% service charges]  | 55,000    |
| 3. | Bundled service of provision food including renting of premises is eligible for abatement under Notification No. 26/2012-ST @ 30%. Total amount = ₹ 50,000 + ₹ 20,000 + ₹ 3,25,000 = ₹ 3,95,000 + 10% service charges = ₹ 4,34,500. Taxable Value @ 70% of ₹ 4,34,500 will be -          | 3,04,150  |
| 4. | Bundled service of provision food/beverages including renting of premises is eligible for abatement under Notification No. 26/2012-ST @ 30%. Total amount = ₹ 4,00,000 + ₹ 25,000 + ₹ 30,000 = ₹ 4,55,000 + 10% service charges = ₹ 5,00,500. Taxable Value @ 70% of ₹ 5,00,500 will be- | 3,50,350  |
| 5. | Hotel garden was let out to a political party - It is renting of immovable property - Taxable [₹ 25,000 + 10% service charges]   | 27,500    |
|    | Taxable Value  | 12,87,000 |
|    | Service Tax @ 12.36%   | 1,59,073  |

(b) The Central Board of Excise & Customs (CBE & C) has developed a new software application called *Automation of Central Excise and Service Tax (ACES)*, which aims at improving tax-payer services, transparency, accountability and efficiency in indirect tax administration.

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

ACES can be used for:

- Online registration and amendment of registration details
- Electronic filing of documents such as Returns, Claims, Intimations and permissions
- Online tracking of the status of applications, claims and permissions
- Online facility to view documents like Registration Certificate, Returns, Show Cause Notice, Order- In-Original etc.

(c) **Objective:** The FTP, in general, aims at developing export potential, improving export performance, encouraging foreign trade and creating favorable balance of payments position. The earlier trade policies were based on the objectives of self-reliance and self-sufficiency.

### Features of Foreign Trade Policy:

- (i) Export-Import is free unless specifically regulated by the Policy or any other law for the time being in force.
- (ii) There are restrictions on exports and imports for various strategic, health, and other reasons. If the goods are not banned, the Government can give a permission/license for specific reasons.
- (iii) Exports are promoted through various promotional schemes.
- (iv) There should be no taxes on exports and hence, the taxes are either exempted or adjusted or refunded on both outputs and inputs, through schemes of Duty Exemption, Duty Refund (Drawbacks and Rebates).
- (v) Even Capital Goods can be imported at NIL duty for the purpose of exports under the scheme of EPCG.
- (vi) For units undertaking to export all their production, there are special schemes so that they can avoid taxes at every stage under the scheme of EOU.
- (vii) In certain cases, imports get duty exemption/concession for certain special purposes. In such cases, to enable domestic suppliers compete with the international suppliers, the supplies of domestic suppliers are treated as deemed exports.