

# INTERMEDIATE EXAMINATION

## GROUP II

(SYLLABUS 2008)

### SUGGESTED ANSWERS TO QUESTIONS

DECEMBER 2011

#### Paper-10 : APPLIED INDIRECT TAXATION

Time Allowed : 3 Hours

Full Marks : 100

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

*Answer Question No. 1, which is compulsory and any five from the rest.*

*Wherever required, the candidate may make suitable assumptions and state them clearly in the answers.*

*All questions relate to the assessment year 2011-12 unless stated otherwise in the questions.*

**Q. 1. (a) Fill in the blanks :**

[1×7=7]

- (i) Where goods are not \_\_\_\_\_ Excise Duty cannot be charged.
- (ii) As per Rule 6 of the Central Excise Rules, 2002, an Assessee is to make \_\_\_\_\_ of duty and pay the same.
- (iii) Under the Customs Act, where refund becomes due in the final assessment, interest will be payable if refund is not granted within \_\_\_\_\_ .
- (iv) A Dealer has made inter State sale of goods to a Buyer who has exported the goods. The Dealer is not liable to pay Central Sales Tax if the Buyer issues \_\_\_\_\_ Form to the Dealer.
- (v) An EOU Unit is required to execute \_\_\_\_\_ Bond.
- (vi) If Service Tax Return is filed late by one day, the late fee payable is Rs. \_\_\_\_\_ .
- (vii) In case of \_\_\_\_\_ Excise Duty is payable by Procurer (Buyer) of the manufactured goods.

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- (b) State with reasons, whether the following statements are True or False. (Answers without reasoning will not receive any credit) : [2×5=10]
- (i) CEA, Customs Act, S. T. Act etc. have to be consistent with Constitution of India.
  - (ii) There is no provision under the Customs Act for remission of Customs Duty on goods lost, damaged or pilfered.
  - (iii) Commission received by distributors for distribution of Mutual Fund units are not liable to Service Tax.
  - (iv) Excise Department cannot challenge the reasonability of MRP printed on the package.
  - (v) Lottery ticket is not goods under the CST Act.
- (c)
- (i) State briefly the basic distinction between Sales tax and Excise. [2]
  - (ii) What are non-Vat goods? [2]
  - (iii) Goods already exported cannot be confiscated under Customs Act. — Explain. [2]
  - (iv) A, an individual has not provided any service in the half year period of April to September. Should he file any return for the period? Give your opinion. [1]
  - (v) Can Sales tax be levied if furniture is hired for one day for marriage function and returned after the function is over? [1]

**Answer 1. (a)**

- (i) Movable and Marketable
- (ii) Self Assessment
- (iii) 3 months
- (iv) H Form
- (v) B-17
- (vi) ` 500
- (vii) Molasses produced in Khandsari Sugar factory

**Answer 1. (b)**

- (i) **TRUE** — Constitution of India is foundation of all laws. Any Act inconsistent with Constitution of India will be ultra-vires. Hence CEA, Customs Act and S.T Act etc have to be consistent with Constitution of India.
- (ii) **FALSE** — Customs Act provides for remission of duty on goods lost/damaged/pilfered before clearance. These provisions have been specifically made because pilferage of goods in ports is very heavy—particularly of small and costly items.
- (iii) **FALSE** — The services provided by Distributors for distribution of mutual fund units are liable to Service Tax under business auxillary service. Services provided by such distributors are in the nature of commission agent and are thus liable to Service Tax under business auxillary service.
- (iv) **TRUE** — The Central Excise Department can not challenge the reasonability of MRP printed on the package. It can only satisfy itself that there is a declaration of MRP in prescribed form (I.T.C Ltd. v CCEX).

- (v) **TRUE** — Lottery Ticket is actionable claim. Actionable claims has been excluded from definitions of goods. (Sunrise Associates v Government of N.C.T of Delhi). Hence lottery ticket is not goods.

**Answer 1. (c)**

- (i) The Sales Tax is a tax on sale and hence can be imposed only when there is a sale. On the otherhand, excise duty is a duty on manufacture and the duty liability is fastened immediately after goods are manufactured, whether these are sold or not is immaterial.
- (ii) Petrol, diesel, ATF, other motor spirit liquor are 'Non-Vat' goods in the sense that the Input Tax Credit (ITC) is not available of sales tax/Vat paid on purchase of these goods. Thus, these goods are outside the Vat chain and hence can be termed as 'Non-Vat' goods.
- (iii) Sec 113 uses the words 'confiscation, of goods attempted to be improperly exported' and not 'goods exported'. The reason is that goods already exported are not available for confiscation. Hence goods already exported can not be confiscated under Sec 113.
- (iv) Assessee has to file a NIL Return within the prescribed time limit even if no service has been provided during a half year.
- (v) Yes. Sales tax is leviable as it is deemed sale of goods under transfer of right to use goods.

**Q. 2. Write brief notes on following :**

[5×3=15]

- (a) Refund of Cenvat credit in cash.  
(b) Indian Customs Waters under the Customs Act, 1962.  
(c) Tax payer's identification number (State level VAT).

**Answer 2. (a)**

If the credit of inputs used in exported final products cannot be used for payment of duty on any other final goods or service tax on other services, manufacturer or service provider can get cash refund of the same, if final products or output services were exported without payment of duty (either under bond or after giving letter of undertaking). Refund is not admissible if exporter has availed duty drawback or has claimed rebate of duty in respect of such duties or has claimed rebate of service tax under export of service rules. This provision is only for physical exports and not for deemed exports or home clearances.

Application should be submitted in Form 'A' to Assistant / Deputy Commissioner. Application can be submitted every quarter. However in following cases, refund can be claimed on monthly basis- (a) persons whose average export clearances are more than 50% of total clearances, (b) EOU units.

Refund of input service credit will be restricted to the extent of ratio of export turnover to the total turnover for the given period e.g. if total credit of input services is ₹ 200, total turnover is ₹ 1,000 and export turnover is ₹ 500, refund of input service tax credit will be only ₹ 100 (i.e. 50%, since export turnover is 50% of total turnover). This restriction applies only for credit of service tax paid on input services and not in respect of refund of excise duty.

**Answer 2. (b)**

As per Section 2 (28) of Customs Act, 'Indian Customs Waters' means the waters extending into the sea up to the limit of contiguous zone of India under section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and includes any bay, gulf, harbour, creek or tidal

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river. As per provisions of that Act, contiguous zone of India comes immediately after territorial waters. The outer limit of contiguous zone is 24 nautical miles from the nearest point of base line. Thus, area beyond 12 nautical miles and up to 24 nautical miles is 'contiguous zone of India'. The Central Government has powers to take measures in this area for security of India and immigration, sanitation, customs and other fiscal matters.

Thus, 'Indian Customs Waters' extend up to 12 nautical miles beyond territorial waters. Significance of definition of 'Indian Customs Waters' is as follows :

- (i) Customs officer has powers to arrest a person in India or within Indian Customs Waters.
- (ii) Customs officer has powers to stop and search any vessel in India or within the Indian Customs Waters (Sec 106). If such vessel does not stop, it can be fired upon. If a vessel does not stop, it can be confiscated. [Sec 115(1)(c)]
- (iii) A vessel which is within Indian Customs Waters or which has been in Indian Customs Waters can be confiscated which is constructed or fitted in any manner for purpose of concealing goods.
- (iv) Customs officer has power to search any person who is on board any vessel within customs water, if he has reason to believe that goods liable to confiscation are secreted about his person. [Section 100(2)(a)]
- (v) Any goods brought within customs waters contrary to any prohibition for import are liable to confiscation [Section 111(d)].

Thus, powers of customs officers extend upto 12 nautical miles beyond territorial waters.

**Answer 2. (c)**

TIN is a 11- digit numerical code allotted to every dealer obtaining registration under the VAT - law . It is the registration number , which is intended to identify a tax payer. The 11- digit numerical code shall be made as follows :

- (i) First 2- digits : State code as used by the Union Ministry of Home affairs.
- (ii) Next 9 digits : Code allotted by each state to the registrant.

TIN will facilitate computer applications, such as detecting stop filers and delinquent accounts. TIN is required to be stated on each invoice, hence, TIN will help cross- check information on tax payer compliance, for example, the selective cross- checking of sales and purchases among VAT taxpayers.

**Q. 3. (a)** BMK Services, a partnership firm, gives the following particulars relating to the services provided to various clients by them for the half-year ended on 30-09-2010.

- (i) Total bills raised for ` 14,90,000 (inclusive of service tax). This amount includes a bill for ` 30,000 was raised on an United Nations Organisation. Further, payments of bills for ` 2,00,000 were not received till 30-09-2010.
- (ii) Amount of ` 1,00,000 was received as an advance from Gupta Business Services Ltd. on 25-09-2010 to whom the services were to be provided in October, 2010.

You are required to work out :

- (1) taxable value of services;
- (2) amount of service tax payable. Service tax rate is 10.30%.

[4]

- (b) Dealers whose turnover is below specified limits are eligible for simplified composition scheme under VAT. What is the turnover limit as specified in White Paper on VAT? State which dealers are not eligible for composition scheme under State VAT even if their annual turnover is below specified limit. [4]
- (c) Explain provisions of 'rectification of order' under service tax. [5]
- (d) Define exempted goods with reference to the provisions of Cenvat Credit Rules, 2004. [5]

**Answer 3. (a)**

Tax is payable on amount actually received upto 30-9-2010. There is general exemption to services provided to UN organizations. However, service tax is payable on advance received even if service is provided later. Thus, service tax is payable on ₹ 12.60 lakhs plus advance received ₹ 1.00 lakhs. Thus, service tax is payable on ₹ 13.60 lakhs. Since the amount is inclusive of service tax, we have to make back calculations, as follows :  
Value of service =  $(\text{₹ } 13,60,000 \times 100) / 110.30 = \text{₹ } 12,33,000.91$ . Service tax on this amount @ 10.30% is ₹ 1,26,999.09. [We may check that value of service plus service tax = ₹ 13.60 lakhs]

**Answer 3. (b)**

Dealers whose annual turnover is less than ₹ 50 lakhs are eligible for the composition. However, following dealers are not eligible for composition scheme —

- (a) Dealers who make inter-state purchases
- (b) Dealers who make inter-state sales
- (c) Dealers who import the goods and then sale in India
- (d) Dealers who stock transfer goods outside the State
- (e) Dealers who export the goods
- (f) Dealers who want to show Vat in their Invoice
- (g) Dealers whose turnover is more than ₹ 50 lakhs per annum.

**Answer 3. (c)**

The Central Excise Officer who has passed order (of assessment or demand or penalty) can rectify any mistake apparent from the record, within two years of the date on which the order was passed. The mistake must be 'apparent from the records' [section 74(1) of Finance Act, 1994] [The provisions are similar to section 154 of Income Tax Act].

(Till 13th May 2005, these powers were only with Assistant/Deputy Commissioner. Now, these can be exercised by any Central Excise Officer who had passed the original order).

The rectification can be made by 'central excise officer' *suo motu*, or when it is brought to his notice by assessee, Commissioner or Commissioner (Appeals). [section 74(3) of Finance Act, 1994].

Where any matter has been considered and decided in any proceeding by way of appeal or revision, Central Excise Officer cannot amend that portion of the order, but he can amend remaining portion of the order, which has not been decided in the appeal. [section 74(2)]. The order of amendment which has effect of increasing the liability of assessee or reducing the refund cannot be made without issuing notice and allowing a reasonable opportunity of being heard [section 74(4)]. Quantum of tax payable should be specified in the order.

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Power of revision does not extend to substituting original order of assessment in the garb of testing legality or propriety of order.

**Answer 3. (d)**

As per Rule 2(d) of the Cenvat Credit Rules, 2004 "Exempted goods means goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to "NIL" rate of duty.

**Q. 4. (a)** Calculate the VAT liability for the month and input tax credit from following details: [4]

- (i) Input tax rate 5% and output tax rate is 15% in the State.
- (ii) Inputs purchased in the month from within the State ` 30,00,000.
- (iii) Output sold to buyers within the state during the month ` 20,00,000.
- (iv) Output sold during the month to buyers as inter-state sales ` 4,00,000 (CST rate 2% against C form).
- (v) Inputs purchased from other states as inter-state purchases against C form @ 2% ` 1,00,000.

**(b)** Compute the amount of Service Tax in the following cases assuming the applicable rate of service tax to be 10.3% : [4]

- (i) A goods carriage carrying 10 (ten) consignments (All Belonging to different persons) at fare of ` 500 each.
- (ii) A goods carriage carrying 5 (five) consignments (Booked by five different persons but addressed to the same consignee) at fare of ` 300 each.

**(c)** The goods manufactured by P Q & Co. have been used for the purpose of further manufacture of some other goods. The cost of production of goods so used captively is ` 1,00,000. Compute the assessable value of the captively used goods and duty chargeable thereon at 14% plus 3% education cess.

**(d)** Ramesh, a Registered Dealer in the state of Orissa furnishes the following data : [4]

Total Inter-State sales (C.S.T. not shown separately) during October to December, 2010	72,50,000
Included in the above sales: Excise Duty	7,00,000
Freight (Out of which ` 30,000 is not shown separately in invoice)	70,000
Insurance charges incurred prior to delivery of goods	20,000
Installation and commissioning charges shown separately in invoice	9,500
Incentive on sales received from manufacturer	12,500

Calculate turnover and C.S.T. payable assuming that all transactions were covered by valid 'C' forms.

**Answer 4. (a)**

Input Tax Credit (set off) = ₹ 1,50,000 (5% of ₹ 30 lakhs).  
No credit is available on inter-State purchase.

**Output Tax Payable :**

(a) Sale within state :	= ₹ 3,00,000	(15% of ₹ 20,00,000)
(b) Inter-State Sale :	= ₹ 8,000	(2% of ₹ 4,00,000)
Total output tax payable	<u>= ₹ 3,08,000.</u>	
Tax Payable	= ₹ 3,08,000	
(-) Input Tax Credit	= ₹ 1,50,000	
Net Tax payable :	<u>= ₹ 1,58,000</u>	

**Answer 4. (b)**

- While the gross amount charged exceeds ₹ 1,500, it appears that the consignments are addressed to different consignee. Since the gross amount charged in respect of individual consignment does not exceed ₹ 750, therefore, the same shall be exempt from Service Tax.
- Even if all the consignments are addressed to a single consignee, since the gross amount charged for all consignment does not exceed ₹ 1,500, therefore the same shall be exempt from Tax.

**Answer 4. (c)**

As per Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules 2000, the Value of Captive Consumed goods is taken at 110% of cost of production.

Hence, assessable value = 110% of ₹ 1,00,000 = ₹ 1,10,000.

Excise duty = ₹ 1,10,000 × 14.42% = ₹ 15,862

**Answer 4. (d)****Calculation of Turnover and Central Sales Tax Payable**

Total Inter-state sales		72,50,00
Less: Excise duty (not to be deducted)		—
Freight not shown separately (not to be deducted)		—
Freight shown separately	40,000	
Insurance charges incurred prior to delivery of goods (not to be included)	—	
Installation and commissioning charges shown separately in invoice	9,500	
Incentive on sales received from manufacturer (not to be deducted)	—	
		49,500
	Aggregate Sale price	72,00,500
Central Sales Tax :		
( 72,00,500 × 2 ÷ 102)		1,41,186
	Sales turnover	70,59,314

- Q. 5. (a)** What is anti-dumping duty? Explain meaning 'margin of dumping', normal value and injury margin. [5]
- (b)** State the situations in which the proper officer is authorised to issue show-cause notice under section 28 of the Customs Act, 1962 and also the time limit. [4]
- (c)** Enumerate various categories of sale of goods, indicating when State VAT is payable, when Central Sales Tax is payable and when no VAT/CST is payable. Also indicate relevant entries in the constitution under which the State VAT/CST is levied. [4+2]

**Answer 5. (a)**

Often, large manufacturer from abroad may export goods at very low prices compared to prices normally prevalent in export market. Such dumping may be with intention to cripple domestic industry or to dispose of their excess stock. This is called 'dumping' and is an unfair trade practice. In order to avoid such dumping and to protect domestic industry, Central Government can impose, under section 9A of Customs Tariff Act, anti-dumping duty, if the goods are being sold at less than its normal value. Anti-dumping action can be taken only when there is an Indian industry producing 'like articles'.

The anti-dumping duty will be dumping margin or injury margin, whichever is lower.

'Margin of dumping' means the difference between normal value and export price (i.e. the price at which these goods are exported). [section 9A(1)(a)].

'Normal Value' means comparable price in ordinary course of trade, for like article, when destined for consumption in the exporting country or territory. If such price is not available or not comparable (a) comparable representative price of like article exported from exporting country or territory to appropriate third country or (b) cost of production plus reasonable profit, can be considered [section 9A(1)(c) of Customs Tariff Act]. The 'normal value' is to be determined as per rules.

'Injury margin' means difference between fair selling price of domestic industry and landed cost of imported product. The Landed cost will include landing charges of 1% and basic customs duty. Thus, only antidumping duty enough to remove injury to domestic industry can be levied.

**Answer 5. (b)**

As per section 28 of the Customs Act, 1962, the proper officer authorised issue show cause notice in the following situations :

- (i) when duty has not been levied
- (ii) when duty has been short-levied
- (iii) when duty has been erroneously refunded
- (iv) when interest payable has not been paid
- (v) when interest payable has been part-paid
- (vi) when interest has been erroneously refunded

Time Limit for issue of show-cause notice

- (a) In case of any import made by an individual for his personal use or by the Government or by any educational, research or charitable institution or hospital — within one year from the relevant date
- (b) In any other case — within six months from the relevant date (Note — This time limit has been increased to one year w.e.f. 8-4-2011).
- (c) In the case of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter, the time period shall be extended to 5 years.

Relevant date is defined in sub-section (3) of section 28 of the Customs Act, 1962.

**Answer 5. (c)**

Sale of goods can be broadly classified in following categories.

- (a) Inter-State Sale (levied by Union Government under CST Act — powers under Entry 92A of List I i.e. Union List)
- (b) Sale in course of import (No sales tax is payable, but import duty is payable)
- (c) Sale in course of export (No sales tax is payable but export duty has been imposed on some commodities)
- (d) Intra-State (i.e. within the State) sale (levied by State Government under State VAT Act — power to levy under Entry 54 of List II i.e. State List).

- Q. 6. (a)** Explain provisions relating to abatement of customs duty on damaged goods. [5]
- (b)** Mr. R. Venkata Rao, an Indian resident, had gone to UK for business purposes. He brought following goods while returning to India (i) His personal effects like cloth etc. valued at ` 73,000, (ii) Two liter of liquor of ` 4,200, (iii) New Camera of ` 38,500, (iv) One laptop of ` 58,000. What is the customs duty payable? [5]
- (c)** Explain provisions relating to ER-4 return. [5]

**Answer 6. (a)**

Section 22 of Customs Act provides for reduction in duty if goods are damaged or deteriorated in any of the following cases :

- (a) damaged before or during unloading in India
- (b) damaged by accident after unloading but before examination of goods for assessment by Customs Officer - provided that the accident is not due to wilful act, negligence or default of importer, his employee or agent
- (c) damaged by accident in warehouse before clearance of goods - provided that the accident is not due to wilful act, negligence or default of importer, his employee or agent.

**Amount of concession** – The customs duty chargeable will be in proportion to the value of damaged good to value of goods before damage or deterioration e.g. if value of goods is ` 10,000 and after damage, the value is ` 2,000, then 20% of the normal customs duty is payable. The value of damaged goods may be decided by Assistant Commissioner of Customs, or if the owner agrees, the damaged goods may be sold by auction and gross sale proceeds of the auction will be deemed to be the value of goods.

**Answer 6. (b)**

- (i) There is no duty on personal effects.
- (ii) One laptop can be imported without payment of customs duty. The total GFA is ` 25,000.
- (iii) Liquor upto 2 liter of ` 4,200 can be accommodated in General Free Allowance (GFA).
- (iv) Total dutiable goods imported are ` 42,700 [4,200 + 38,500]. After deducting General Free Allowance of ` 25,000; passenger has to pay duty on ` 17,700 (42,700 – 25,000).
- (v) The duty payable is 35%, plus education cess of 2% and SAH education cess of 1% of duty.
- (vi) Hence, duty payable is ` 6,195, education cess of ` 123.90 and SAH education cess of ` 61.95. Thus total duty payable is ` 6,380.85.

**Answer 6. (c)**

Assessee paying duty of ` one crore or more (either through PLA or Cenvat CREDIT or both together) per annum are required to submit Annual Financial Information Statement for each financial year by 30th November of succeeding year in prescribed form ER-4 [rule 12(2) of Central Excise Rules].

Return is to be filed electronically by all assessee required to file return - CBE&C circular No. 955/16/2011-CX dated 15-9-2011.

It has been clarified that assessee who had paid duty less than Rs one crore are not required to file this return - CBE&C letter No. 209/03/1 1-CX-6 dated 15-2-2011.

The ER-4 requires information in respect of following \_ (a) Details of Value of Inputs (b) Details of major raw materials independently accounting for 10% or more of total value constituting 10% or more of total value of raw materials (c) Details of Expenditure under specified heads (d) Goods manufactured by assessee through job worker (e) Details of sales of major finished goods which independently account for 10% or more of total value of finished goods sold (f) Details of other income (g) Job work undertaken done for others.

- Q. 7. (a)** Prem Industries Ltd. manufactured components for a lathe. The component was supplied to J.M. Star Services, who were manufacturers of the lathe. J.M. Star Services supplied dies free of cost for manufacture of the component to Prem Industries Ltd. Cost of dies was ₹ 10,00,000. As per technical estimate, 20,000 components could be manufactured out of the tooling. In addition, Prem Industries Ltd. purchased tools on their own at ₹ 1,00,000 for manufacture of the components. Estimated life of the tool was 25,000 components. These tools were capitalized by Prem Industries Ltd. in their books of account. Prem Industries Ltd. supplied 5,000 components to J.M. Star Industries for ₹ 190 per piece exclusive of taxes and duties, during first year of production. In addition, they charged Dharmada (charity) of ₹ 10 per piece separately. This Dharmada amount was given by Prem Industries Ltd. for donation to a Charitable Organisation. Excise Duty rate was 10% and education cess was as applicable. Calculate the assessable value and the excise duty payable for the year. [5]
- (b)** JVK Electronics Ltd. imported parts of Colour Television (CTV). Components were imported in 94 consignments over a period of 22 months. The components imported were such that by assembly, a CTV could be manufactured, though all components were not imported in equal numbers. The components were independently usable as spares or sold in market. As per Rule 2(a) of GIR, any reference in a heading to goods shall be taken to include a reference to those goods complete or finished, removed, unassembled or disassembled. Customs Department clubbed all these consignments and by applying rule 2(a), claimed that assessee imported CTV in un-assembled condition and not components of CTV. Accordingly, show cause notice was issued to JVK Electronics Ltd. Advice JVK Electronics Ltd. You may take help of any decided case law. [5]
- (c)** An SSI unit is not eligible for exemption from excise duty if it manufactures goods with brand name belonging to other person. However, SSI exemption is available if the goods bearing brand name of other person are manufactured in a specified area. Explain provisions relating to that area. Is there any limit to the exemption? [5]

**Answer 7. (a)**

Amortised cost of dies supplied free by customer i.e. J M Star Services has to be added to the assessable value. The amortised cost is ₹ 50 per piece (10,00,000/20,000). Dharmada (Charity) has to be added to the assessable value.

Any cost of self-purchased tools is not required to be considered as that is already included in the selling price. Thus, assessable value is ₹ 250 per piece [190 + 10 + 50]. Hence, total assessable value is 5,000 × 250 = 12,50,000. Excise duty @ 10% is ₹ 1,25,000. Education cess is ₹ 2,500 and SAHE cess is ₹ 1,250. Thus, total excise duty payable is ₹ 1,28,750.

**Answer 7. (b)**

The issue is similar to the one decided in *CC v. Sony India* (2008) 231 ELT 385 (SC). The Supreme Court held that there was no finding that goods brought could make specified number of CTVs. Complicated process is to be undertaken for making the imported goods useable for assembling CTVs. Rule 2(a) applies only when all components intended to make a final product presented at the same time for clearance. The rule applies only when imported goods presented unassembled or disassembled can be put together by means of simple fixing device or by riveting or welding. Goods requiring complicated process to make final product cannot be considered as unfinished goods having essential character of complete articles. Thus, the imports were of components and not of CTV in unassembled condition.

**Answer 7. (c)**

Excise duty on goods manufactured under other's brand name will be exempt if the goods are manufactured in rural area. 'Rural area' means the area comprised in a village as defined in the land revenue records, excluding (i) Area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee or (ii) Any area that may be notified as an urban area by State Government or Central Government.

This exemption is only in respect of first turnover of ₹ 150 lakhs. Full duty is payable for subsequent clearances. Further, if turnover of the SSI manufacturer during previous year was over ₹ Four crores, he is not entitled to SSI exemption at all and full duty is payable on all clearances during the following financial year without availing exemption, even if goods are manufactured in rural area.

- Q. 8. (a)** CENVAT Credit is available only if the specified duty paying document is available with manufacturer or service provider availing the CENVAT Credit. List any six of the documents eligible for availing CENVAT Credit. [5]
- (b)** State the powers of Superintendent of Central Excise relating to adjudication and remission of Excise Duty. [3]
- (c)** CUM duty price of a product (Excluding Sales Tax) is ₹ 1000. The manufacturer is allowing trade discount of ₹ 50. The Excise Duty rate is 10% plus education cess as applicable. Calculate the Excise Duty payable per piece.
- (d)** Write brief note on All Industry Duty Drawback Rates. [3]
- (e)** (i) When does an advance ruling on service tax become void AB-Initio?  
(ii) Who has the powers to appoint public warehouse at places notified under the Customs Act, 1962? [2+1]

**Answer 8. (a)**

Rule 9(1) of Cenvat Credit Rules prescribes that Cenvat Credit can be taken on the basis of –

- Invoice of manufacturer from factory
- Invoice of manufacturer from his depot or premises of consignment agent
- Invoice issued by registered importer
- Invoice issued by importer from his premises or consignment registered with Central Excise
- Invoice issued by registered first stage or second stage dealer
- Supplementary Invoice by supplier-manufacturer or service provider, except where such payment was on account of fraud, suppression of facts etc
- Bill of Entry
- Certificate issued by an appraiser of customs in respect of goods imported through foreign post office
- TR-6 or GAR-7 Challan of payment of tax where service tax is payable by other than input service provider
- Invoice, bill or challan issued by provider of input service on or after 10-9-2004
- Invoice, Bill or Challan issued by input service distributor under rule 4A. of Service Tax Rules.

**Answer 8. (b)**

Superintendent of Central Excise can adjudicate cases where amount involved is upto than ` one lakh, *except* issues relating to classification and valuation and *except* where suppression of facts is alleged. He can adjudicate issues relating to Cenvat credit and penalties under rules 26 and 27 of CE Rules and rules 15 and 15A of Cenvat Credit rules.

He can grant remission of excise duty for loss of goods upto ` 10,000.

**Answer 8. (c)**

Trade discount is allowable as deduction. Hence, cum-duty price for excise purposes is ` 950. Total duty is 10.30% (Education Cess 2% plus SAHE cess 2%).

Thus, if assessable value is ` 100, total selling price including excise duty would be ` 110.30.

Hence, excise duty per component =  $(950 \times 10.30)/110.30 = ` 88.71$ .

Assessable value =  $(950 \times 100)/110.30 = 861.29$ . [We may check that  $861.29 + 88.71 = 950.00$ ].

**Answer 8. (d)**

All Industry Drawback rates are fixed by Directorate of Drawback, Dept of Revenue, Ministry of Finance, Govt. of India.

The All Industry Drawback Rate is fixed under rule 3 of Drawback Rules by considering average quantity and value of each class of inputs imported or manufactured in India. Average amount of excise/customs duties and service tax paid is considered. These rates are fixed for broad categories of products. The rates include drawback on packing materials. HSD/furnace oil is also on considered in duty drawback rate calculations.

Whenever specific rates are provided, drawback shall be payable only if amount is more than 1% of FOB value, except when the drawback claim per shipment exceeds ` 500.

The rates are periodically revised. Data from industry is collected for this purpose.

The all industry drawback rates are given in two ways — (a) when Cenvat facility has been availed and (b) when Cenvat facility not availed. The difference between the two is central excise portion of duty drawback if rate indicated in both is same, it means that it pertains on only customs portion and is available irrespective of whether exporter has availed Cenvat or not.

**Answer 8. (e)**

- (i) If the Authority of Advance Ruling finds, on a representation made to it by the Commissioner of Central Excise or otherwise that an advance ruling has been obtained by the applicant by fraud or misrepresentation of facts, it may by order, declare such ruling to be void-ab-initio. (Sec 98F of Finance Act, 1994).
- (ii) The Assistant/Deputy Commissioner of Customs to appoint public warehouse at places notified under the Customs Act, 1962 (Sec 57).