

FINAL EXAMINATION

GROUP III

(SYLLABUS 2008)

SUGGESTED ANSWERS TO QUESTIONS

DECEMBER 2011

Paper- 14 : INDIRECT AND DIRECT TAX MANAGEMENT

Time Allowed : 3 Hours

Full Marks : 100

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

Wherever required, the candidates may make suitable assumptions and state them clearly in the answer.

Working notes should form part of the answer.

All sub-divisions of a question should be answered continuously.

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

Q. 1.(a) Fill up the blanks :

[1×5=5]

- (i) A certificate of CST registration issued by the concerned Authority shall be in Form _____ .
- (ii) Under the CST Act, 1956, one declaration in Form C can cover all the transactions of purchase in one _____ , irrespective of the total value of the transactions during the said period.
- (iii) A shipping bill or bill of entry filed through ICEGATE shall be digitally signed with digital signature issued by _____ .
- (iv) Duty drawback rate shall not exceed _____ percent of market price of export goods.
- (v) As per section 2 (ea) of the Wealth Tax Act, urban land is a land which is situated in any municipality, cantonment, town committee, etc., whose population exceeds _____ .

(b) Provide brief answers (*not exceeding three or four sentences*) for the following : [2×10=20]

- (i) State the type of goods and the situations in which packing, repacking, etc. constitutes deemed manufacture under the Central Excise Act, 1944.
- (ii) Briefly discuss about excise duty based on production capacity.
- (iii) Are inputs used for other purposes, like repair, maintenance, and/or installation of capital goods, entitled for CENVAT credit?
- (iv) Under Customs Law, state the initial steps to be undertaken by a person for carrying out export of goods (any two).

2 ♦ *Suggested Answers to Question — TXM*

- (v) In the context of anti-dumping duty, what is meant by “New Shipper Review”?
- (vi) When is e-filing of service tax return mandatory?
- (vii) Is it correct to say that all imports are free unless restricted or prohibited under the Foreign Trade Policy (FTP)?
- (viii) What is an oral trust and in whose hands will the income of such trust be assessed?
- (ix) During the assessment year 2010-11, an individual assessee had net agricultural loss of ₹ 34,000. During the assessment year 2011-12, he derived total income of ₹ 3,40,000 and net agricultural income of ₹ 84,000. What is the quantum of agricultural income which will be considered for rate purposes for computing the tax payable? (Actual computation of tax is **not required**).
- (x) Mr. Subramani transferred jewellery worth ₹ 12 lacs to Ms. Geeta, his son's fiancée on 21.1.2011. His son got married to Ms. Geeta on 12.3.2011. Can the value of the jewellery be clubbed in the hands of Mr. Subramani, for computing the net wealth as on 31.3.2011?

Answer 1. (a)

- (i) B
- (ii) quarter
- (iii) ICERT
- (iv) 33
- (v) 10,000

Answer 1. (b)

- (i) **Deemed Manufacture of products covered under MRP** – In respect of goods specified in third schedule to Central Excise Act, any process which involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alternation of retail sale price on the container or adoption of any other treatment on the goods to render the product marketable to consumer will be ‘manufacture’. [section 2(f)(iii) effective from 14-5-2003].
- (ii) **Duty based on production capacity** – Some products (e.g. pan masala, rolled steel products) are perceived to be prone to duty evasion. In case of such products, Central Government, by notification, can issue notification specifying that duty on such notified products will be levied and collected on the basis of production capacity of the factory [section 3A(1)]. When such notification is issued, annual capacity will be determined by Assistant Commissioner [section 3A(2)(a) of CEA]. Factors relevant to determine production capacity will be specified by rules issued by Central Government [section 3A(2)(b)(i)].
- (iii) **CENVAT credit on Inputs used in capital goods which are used captively** – Under Explanation 2 rule 2(k), goods used in the manufacture of capital goods which are further used in the factory of the manufacturer have also been brought under the definition of ‘input’.
- (iv) **Every exporter should take following initial steps –**
 - Obtain BIN (Business Identification Number) from DGFT. It is a PAN based number;
 - Open current account with designated bank for credit of duty drawback claims;
 - Register licenses/advance license/DEPB etc. at the customs station, if exports are under Export Promotion Schemes.

- (v) **New Shipper Review** – After imposing of anti-dumping duty, a new exporter may want to export same goods to India. As per rule 22, if he had not exported earlier, he can ask for review of anti-dumping duty. During the period of review, Government may resort to provisional assessment and may allow imports on submission of guarantee, pending review. If anti-dumping duty is determined, it will be payable retrospectively from date of initiation of review. Such review is termed as 'new Shipper Review'.
- (vi) **E-filing of service tax return** – An assessee shall deposit the service tax liable to be paid by him **electronically through internet banking** and also **e-file the service tax return**, if he has **paid total service tax of Rs. 10 lakhs or more (including the amount of service tax paid by utilization of CENVAT credit)** in the preceding financial year.
- (vii) **Import free, unless restricted or prohibited** – Para 2.1 of FTP states that exports and imports shall be free, except in cases where these are regulated by provisions of FTP or any other law for the time being in force. The item-wise export and import policy shall be as specified in ITS (HS) [Import Trade Classification (Harmonised System)] published and notified by DGFT, as amended from time to time. All items, except restricted, prohibited and importable through State Trading Enterprises (earlier termed as canalised items) can be freely imported [items which could be freely imported were earlier termed as 'OGL' i.e. 'Open General Licence'].
- (viii) **Oral trust** – An oral trust means a trust which is not declared by a duly executed instrument in writing [including any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913] and which is not deemed under Explanation 1 to be a trust declared by a duly executed instrument in writing. The trustees of such trust is assessable on such income as representative assessee [Section 160(v)].
- (ix) **Computation of agricultural income** – Agricultural income has to be computed as laid down in the Finance Act of each year. The same will be considered for rate purposes where the total income as per the I.T. Act, 1961 exceeds the basic exemption limit; this condition is satisfied. Any agricultural loss suffered in earlier four years can be set off in the current year. Accordingly Rs. 34,000 will be set off and the balance of Rs. 50,000 has to be considered for rate purposes for the Asst. Year 2011-12.
- (x) **Clubbing of assets transferred** – For the impugned asset to be clubbed, the same must, inter alia, have been transferred by an individual, to his son's wife, otherwise than for adequate consideration. The relationship should subsist as on the date of transfer; otherwise, clubbing provisions will not apply. Since as on the date of transfer, the marriage of son had not taken place, the value of jewellery cannot be clubbed in the hands of Mr. Subramani, for computing the net wealth as on 31-3-2011.
- Q. 2. (a)** In the context of business auxiliary services in service tax, when is job work liable for service tax? State the exemptions/exclusions available in this regard. [4]
- (b)** Name the goods which have been specifically excluded from the definition of 'input' under Cenvat Credit Rules. [2]
- (c)** State two situations in which motor cars are not treated as asset under the Wealth Tax Act. [2]

4 ♦ Suggested Answers to Question — TXM

(d) The following details are available relating to Mr. Harivallabh, who always files the return of income within the time stipulated under section 139(1) of the Income Tax Act, 1961:

	(` in lacs)
(i) Assessment year 2010-11 Long-term capital loss	3.2
(ii) Assessment year 2011-12 Long-term capital gain	5.3

The LTCG during the assessment year 2011-12 is from sale of shares in a recognised stock exchange. The Assessing Officer contends that brought forward LTCG loss of ` 3.2 lacs should be set off against above LTCG of ` 5.3 lacs for the current year and hence there is no LTCG loss of assessment year 2010-11 which can be further carried forward. Is the same justified? 5

(e) While ascertaining the assessable value for customs duty purposes, specify any two charges to be excluded under rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. [2]

Answer 2. (a)

Business auxiliary services : Job work

Job work is liable to service tax, but job work done under Cenvat provision is exempt.

Job work not taxable, if it amounts to 'manufacture'.

Job work is exempt if the goods after processing are returned back to client (raw material supplier) for use in or in relation to manufacture of 'other goods' by the client. The 'other goods' should be such that appropriate duty should be payable on such goods — Notification No. 8/2005-ST dated 1-3-2005.

Answer 2. (b)

Goods excluded from "inputs"

Light Diesel Oil, High speed Diesel Oil and petrol are specifically excluded [After Budget 2011, in addition to LDO, HSD and petrol, goods used for construction of a building, capital goods except when used as component parts, motor vehicles and goods for personal use or consumption of employee have been specifically excluded].

Answer 2. (c)

Motor car, when not an asset

(a) Motor cars used by the assessee in the business of running them on hire.

(b) Motor cars treated as stock-in-trade.

Answer 2. (d)

Set off of brought forward LTCG loss against exempt LTCG

(i) Under the scheme of the Act, income which does not form part of the total income as per Chapter-III does not enter the computation of total income at all.

(ii) Sec. 70(3) which provides that long-term capital gains shall be set off against long-term capital loss does not apply because the exempt capital gains do not enter the computation of total income at all and the question of aggregating them under Chapter VI and setting them off under section 70(3) does not arise. Consequently, the right of carry forward the loss under section 74(1) is unaffected;

- (iii) S. 10(38) was inserted with the object to grant exemption to LTCG as tax has already been levied on a different footing (STT). The Revenue's contention that long term capital loss should be adjusted against exempt LTCG will be contrary to the intention, object and purpose of enacting S. 10(38). Further, the Assessing Officer's view will result in absurdity if the facts are reversed because then LTCG earned before 1.10.2004 (which is taxable) will be eligible for set off against (exempt) long term capital loss suffered after 1.10.2004. This will result in a loss from an exempt source being set off against taxable gain which is contrary to law.
- (iv) Consequently, the long term capital loss is not liable to be set off against exempt income long term capital gains. The said loss of the assessment year 2010-11 is eligible for being carried forward.

Answer 2. (e)

Exclusions from Assessable Value

Interpretative Note to rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 provide that following charges shall be excluded :

- (a) Charges for construction, erection, assembly, maintenance or technical assistance undertaken after importation of plant, machinery or equipment
- (b) Cost of transport after importation
- (c) Duties and taxes in India.

Q. 3. (a) Does delayed payment of service tax attract any interest? If so, what is the rate of interest payable with effect from 1.4.2011? [2]

(b) Anantha, the assessee sold certain goods to Govinda Co. Ltd. for ₹ 17,000 on 29.02.2011. The buyer is a related person as defined under section 4(3)(b) of the Central Excise Act, 1944. The buyer did not sell the goods but used it as intermediary product. The cost of production of the goods was ₹ 16,000. What should be the assessable value?

What should be the assessable value, if the goods were sold to an unrelated person for ₹ 20,000, who also used it as intermediary product?

You may assume that the price charged from the buyer is excluding excise duty and other taxes. [4]

(c) Name any four Duty Credit Schemes which are being used as export promotional measure. [4]

(d) In a revision petition filed by the assessee under section 264 of the Income-tax Act, 1961, the CIT accepted the plea of the assessee that the power subsidy was a capital receipt and allowed the relief prayed for by the assessee. The CIT considered the decisions then available on the issue involved and accepted the stand of the assessee. Later on, within a period of four years, the Supreme Court, in a case involving subsidy which was linked to production, held in favour of the Revenue. Based on this decision of the Apex Court, through rectification proceedings under section 154, the CIT seeks to rectify the earlier order passed by him under section 264. Is the rectification under section 154 permissible? [5]

Answer 3. (a)

Delayed payment of service tax

Delayed payment of service tax attracts interest u/s 75 of the Finance Act, 1994.

The rate of interest w.e.f. is 18% vide notification no. 15/2011 dt. 01-03-2011.

Answer 3. (b)

Excise valuation of goods sold to related persons

The proviso to rule 9 of the Central Excise Valuation (Determination of Excisable Goods) Rules, 2000 lays down that in a case where the related person does not sell the goods but uses or consumes such goods in the production or manufacture of articles, the value thereof shall be determined in the manner specified in rule 8.

Rule 8 provides that where the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value shall be one hundred and ten per cent of the cost of production or manufacture of such goods.

Therefore, when the goods are sold to a related person, the assessable value shall be 110% of Rs. 16,000 (Rs. 16,000 + Rs. 1,600) i.e., Rs. 17,600.

However, when the goods are sold to unrelated buyer, the assessable value will be Rs. 20,000.

Answer 3. (c)

Four promotional schemes

- Focus Product Scheme (FPS),
- Market Linked Focus Products Scrip (MLFPS),
- Focus Market Scheme (FMS),
- Served From India Scrip (SFIS), Vishes Krishi and Gram Udyog Yojana (VKGUY),
- Agriculture Infrastructure Incentive Scrip (AIIS) and status Holders Incentive Scrip (SHIS).

Answer 3. (d)

Rectification under section 154 based on later decision of the Apex Court

On identical facts, the Supreme Court has held in the case of Meppco Industries Ltd. vs. CIT 319 ITR 208, 215(SC) that rectification under section 154 cannot be done in such a situation.

The error sought to be rectified should be an obvious and patent mistake and not one which can be established by a long drawn process of reasoning.

Subsidies are granted by the Government for several reasons. The nature of the subsidy should be carefully analysed to determine whether it is a capital receipt or revenue receipt.

The latter decision of the Supreme Court was one concerned with subsidy linked to production, and hence held to be a revenue receipt. The ratio of this decision cannot be *ipso facto* applied to assessee's case, since the subsidy received by the assessee was for a different reason. Rectification proceeding is not the correct forum for analysing the correct nature of the subsidy received, as deep investigation of the subsidy scheme is required and the same is not permissible in a rectification proceeding.

First the CIT had held that the subsidy received was a capital receipt, based on decisions rendered on the subject. Later on, after the decision of the Apex Court, he took the view that it was a revenue receipt. This is a classic situation involving mere change in opinion, and the same is not permissible in a rectification proceeding.

As a consequence, the rectification proceedings initiated by the CIT under section 264 deserve to be quashed.

- Q. 4. (a)** Johar Engineering Industries are selling a component for gross price of ₹ 80 per unit. The price includes packing charges of ₹ 2, loading charges within the factory of ₹ 1, excise duty @ 10%, education cess as applicable and State Vat @ 5%. Calculate excise duty and Vat payable per unit. [5]
- (b)** New Era Manufacturing Co. Ltd. had placed an order for supply of textile manufacturing plant for ₹ 76 crores. The period of delivery agreed was 6 months. It was stipulated that in case of delay in supply of machinery beyond six months, the supplier would pay liquidated damages to New Era Manufacturing Co. Ltd. The supplier did not supply the machinery in time and as per the stipulated condition, he paid liquidated damages of ₹ 6.75 lakhs to New Era Manufacturing Co. Ltd. Advise New Era Manufacturing Co. Ltd. how the amount received should be treated for income tax purposes. You may take help of decided case law, if any. [2]
- (c)** Is it true that where a person draws from his own stock-in-trade for personal use, the profit computed by considering the market value of such stock should be offered for income-tax? [2]
- (d)** M/s. Pioneer Consulting Ltd., provided Consulting Engineering Services to a client at USA for value of ₹ 50 lakhs during the financial year 2010-11. No service tax was paid during the year. The company availed input services and procured inputs capital goods which were used in relation to providing such services. Total eligible input tax credit was ₹ 50,000/-. M/s. Pioneer Consulting Services Ltd. claimed rebate for such input tax complying to the procedures enumerated under service tax legislation/rules and notifications there-under. The jurisdictional Assessing Officer rejected the claim of rebate on the ground that the export of services are exported against which no rebate would be available. As a tax consultant, you are required to clarify,—
- Should Consulting Engineering Services provided by M/s. Pioneer Consulting Services Ltd. be treated as an exempted service?
 - What are the alternatives available to M/s. Pioneer Consulting Services Ltd. on payment of service tax and claim of refund of input tax credit?
 - Has M/s. Pioneer Consulting Services Ltd. rightly exported without payment of service tax? [6]

Answer 4. (a)

Assume that Assessable Value 'Y'.

Deduction of packing cost and loading charges within the factory is not available.

Assessable value = Y

Excise duty @ 10.30% = $0.103 \times Y$

Sub-Total = $1.103 \times Y$

Add : State Vat @ 5% = $0.05515 \times Y$

Total price (i.e., inclusive of excise duty and sales tax) = $1.15815 \times Y$

Now :

$1.15815 \times Y = ₹ 80$

Hence, 'Y' = $₹ 80 / 1.15815$

i.e., Y = ₹ 69.07

8 ♦ *Suggested Answers to Question — TXM*

Excise Duty @ 10.3% of Y	=	₹ 7.12
Sub-Total	=	₹ 76.19
Vat @ 5% of ₹ 76.19	=	₹ 3.81
Total sale price	=	₹ 80

Answer 4. (b)

Taxability of liquidated damages

The issue is similar to the issue in case of *CIT v. Saurashtra Cement Ltd.* (2010) 325 ITR 422 (SC).

In this case, the Supreme Court pointed out that it is clear that the liquidated damages received are directly and intimately linked with procurement of capital assets. The delay lead to result in delay of profit of making apparatus. The receipt was not in course of profit earning process. The receipt was not in ordinary course of business. It was compensation of loss for delay in supply of machinery relating to profit earning source. Hence, it is a capital receipt at the hands of New Era Manufacturing Co. Ltd. It is not a revenue receipt.

The liquidated damages received is not chargeable to tax.

Answer 4. (c)

Taxability of goods taken for personal use

No this statement is not true.

The Supreme Court in *CIT v. Kikabhai Premchand* (1953) 24 ITR 506 held that when a person draws from his own stock-in-trade for personal use, there can be no taxable profit as in this case the vendor and the vendee are not different. To constitute a sale there should be one buyer and seller. The buyer and seller has to be different entity to constitute a proper sale.

Answer 4. (d)

Export of services

- (i) M/s Pioneer Consulting Services Ltd. provided Consulting Engineering Services which is taxable u/s 65(105) of the Finance Act 1994 can be **exported without payment of service tax**. Export without payment of service tax is **not an exempted service**.
- (ii) M/s Pioneer Consulting Services Ltd being an exporter has three options :
 - (a) Export without payment of service tax and utilize Cenvat credit for payment of service tax on other services (rule-5 of Cenvat Credit Rules).
 - (b) Export without payment of service tax and claim rebate of service tax paid on input service and excise duty paid on input goods.
 - (c) Pay service tax on exported services after utilization of cenvat credit and claim rebate.
- (iii) Following above rule M/s Pioneer Consulting Services Ltd. exported the service by way of providing to their client at without payment of service tax. The goods exported are zero rated goods. Hence the action of the assessee is justified.

Q. 5. (a) Mr. Prakash Kumar based at Mumbai, is a retailer, having turnover of ₹ 59,70,000/- for the financial year 2010-11. His income from the said business as per the books of account is computed at ₹ 4,96,000/-. He is having unabsorbed depreciation of ₹ 40,000/- related to the assessment year

2010-11 eligible for set off. Retail trade is the only source of income for Mr. Prakash Kumar. There is no depreciable asset in this year. He approaches you to advise him on the following queries for the assessment year 2011-12:

- (i) Is Mr. Prakash Kumar eligible to opt for presumptive determination of his business income chargeable to tax?
- (ii) If so, what will be his income from retail trade as per the applicable presumptive provision? Is it beneficial to him? Support your answer with reasoning.
- (iii) Explain whether provisions of payment of advance tax are applicable to him, when he opts for the presumptive taxation and when he does not opt.
- (iv) What is the due date for filing his return of income when he opts for the presumptive taxation and when he does not opt?

Please explain with reference to the provisions of the Income-tax Act, 1961. [7]

- (b) Briefly explain the provisions relating to provisional assessment of customs duty. [4]
- (c) What are the purposes for which Advance Authorisation can be issued? [2]
- (d) In respect of stock/branch transfers, can input tax credit be claimed under State VAT laws? [2]

Answer 5. (a)

- (i) Yes; since total turnover of Mr. Prakash Kumar for the Financial Year 2010-11 is below ₹ 60 lakhs, he is eligible to opt for presumptive taxation scheme under section 44 AD in respect of his wholesale trade business.

(ii) **Income under presumptive scheme under u/s 44 AD :**

While calculating income under presumptive scheme it is presumed that all deductions under section 30 to 38 including depreciation, unabsorbed depreciation is deemed to be part of current depreciation as per section 32(2). Since depreciation is deemed to have been already allowed and no further deduction is to be made, this income from retail trade, applying the presumptive tax deductions under section 44 AD, would be

Turnover ₹ 59,70,000 @ 8% ₹ 4,77,600

Total income under Normal Provisions Of Income-tax Act :

Income as per books of account	₹ 4,96,000
Less : Unabsorbed Depreciation adjustment	₹ 40,000
Taxable Income	₹ 4,56,000

Since income as per books of accounts computed is ₹ 3,16,000 as above after set off of unabsorbed depreciation brought forward from earlier year for ₹ 40,000 the total income under normal provisions of income tax is lower than income arrived under presumptive tax provision and the same is beneficial to him.

The tax payable is ₹ 30,488 (income tax ₹ 29,600 plus education cess ₹ 888)

- (iii) It is obligatory to pay advance tax in case where the advance tax payable is ₹ 10,000 or more on income computed under normal provisions of income tax act. But if Mr. Prakash Kumar opting for scheme of presumptive determination of income under section 44 AD of income tax act, he shall be exempted from payment of advance tax related to such business.

10 ♦ *Suggested Answers to Question — TXM*

Where he opts for normal provisions, the tax payable is more than ₹ 10,000. So the provisions of payment of advance tax are applicable.

- (iv) In case he opts for the presumptive taxation scheme under section 44 AD, the due date would be 31st July, 2011.

In case he does not opt for the presumptive taxation scheme and claims that his income is ₹ 4,96,000 as per books of account, he need not get his books of account audited under section 44 AB (since he is showing higher income as compared to presumptive income), in which case the due date for filing the return would be 31st July, 2011.

Answer 5. (b)

Provisional Assessment of Customs Duty

Section 18 of the Customs Duty Act, 1962 deals with the same.

Notwithstanding anything contained in the Act, but without prejudice to the provisions contained in section 46 —

- (a) where the proper officer is satisfied that an importer or exporter is unable to produce any document or furnish any information necessary for the assessment of duty on the imported goods or the export goods, as the case may be; or
- (b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test for the purpose of assessment of duty thereon; or
- (c) where the importer or the exporter has produced all the necessary documents and furnished full information for the assessment of duty but the proper officer deems it necessary to make further enquiry for assessing the duty, the proper officer may direct that the duty leviable on such goods may, pending the production of such documents or furnishing of such information or completion of such test or enquiry, be assessed provisionally, if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty finally assessed and the duty provisionally assessed.

Answer 5. (c)

Advance Authorisation

Advance Authorisation can be issued to a manufacturer exporter or merchant exporter tied to a supporting manufacturer for

- (1) Physical export;
- (2) Intermediate supplies;
- (3) Main contractor for supply of goods under deemed export (except for export under advance authorisation and marine freight containers);
- (4) Supply of stores on board of foreign going vessel/aircraft, and
- (5) Supply of UNO or under aid programme of UN.

Answer 5. (d)

Stock/branch transfer under VAT law

Stock /branch transfers i.e. transfer of stock from head office to the branch of vice-versa (viz. Inter-State transfers) do not involve sale. However, if —

- (i) Inputs are used in the manufacture of finished goods, which are stock/branch transferred; or
 (ii) Goods purchased for re-sale are stock/branch transferred,

Then, tax paid on such inputs/goods will be available as input tax credit subject to retention of 2% out of such tax by the State Governments.

Q. 6. (a) Mr. Natarajan provides the following particulars and asks you to work out the net wealth as on 31.3.2011 to be declared by him in the wealth tax return:

Value of a Motor car	₹ 8,00,000
Value of a Motor Cycle	₹ 50,000

A house of which ground floor is used by him for his business purposes and first floor as self-occupied residence having value of ₹ 50,00,000

Jewellery worth ₹ 42 lacs purchased on 30.3.2011 by his wife out of funds given by him of ₹ 25 lacs and by his son of ₹ 17 lacs.

Shares of various companies worth ₹ 2,00,000 purchased by him in the name of his daughter-in-law. [4]

(b) From the data given below relating to import of printing machinery, compute the assessable value for customs duty purposes :

	(in USD)	
FOB value of printing machinery	1,00,000	
Air Freight	22,000	
Expenses incurred by seller for improving the design, at buyer-importer's request	4,000	
Transit insurance	3,000	
Exchange rate 1 USD = ₹ 50		
Basic duty may be taken as 30%		[4]

(c) State the excise duty exemption conferred to SSI units. [7]

Answer 6. (a)

Particulars	Amount (₹)
Value of a Motor Car : asset u/s 2(ea)	8,00,000
Value of a Motor Cycle : Not an asset u/s 2(ea)	Nil
A house of which ground floor is used by him for his business purposes [Note an asset u/s 2(ea)] and first floor for self residence (Any one house exempt u/s 5(vi))	Nil
Jewellery purchased by his wife on 31-3-2011 out of cash gift received from the assessee. To be clubbed in the hands of the assessee. (Assumed to be the value as per Schedule III)	25,00,000
Shares of various companies worth Rs. 2,00,000 purchased by him in the name of his daughter-in-law : Not to be clubbed, since share is not an asset	Nil
Net wealth	33,00,000

Answer 6. (b)**Computation of Assessable Value for Customs Duty Purposes**

	(USD)
FOB value of machine	1,00,000
<i>Add</i> : Expenditure for improvement of design incurred at buyer's request	4,000
Air freight [To be restricted to 20% of FOB value as per Rule 9(2)]	20,000
Insurance @ 1.125% of FOB value [Rule 9(2)(i)(iii)]	1,125
Total CIF value	1,25,125
<i>Add</i> : Landing charges @ 1% of CIF value	1,251
Assessable value in USD	1,26,376
Assessable value in INR @ ₹ 50	₹ 63,18,800

Answer 6. (c)**Exemption to SSI under the CE Act**

- SSI are eligible for exemption from duty under Notification No. 8/2003-CE dated 1-3-2003. The SSI unit need not be registered with any authority.
- Broadly, items generally manufactured by SSI (except in tobacco, matches and textile sector) are eligible for SSI exemption. Some items like pan masala, matches, watches, tobacco products, Power driven pumps for water not conforming to BIS, products covered under compounded levy scheme etc. are specially excluded, even when these can be manufactured by SSI. Some items like automobiles, primary iron and steel etc. are not eligible for SSI exemption, but anyway, these are beyond capacity of SSI unit to manufacture.
- Unit whose turnover was less than ₹ 4 crores in previous year are entitled to full exemption upto ₹ 150 lakhs in current financial year.
- SSI units manufacturing goods with brand name of others are not eligible for exemption, unless the goods are manufactured in rural area.
- Turnover of all units belonging to a manufacturer will be clubbed for calculating SSI exemption limit.
- Clubbing is also possible if two units are sham or bogus or if there is unity of interest and practically they are one. While calculating limit of ₹ 400/150 lakhs
- Turnover of Exports, deemed exports turnover of non-excisable goods, goods manufactured with other's brand name and cleared on full payment of duty, job work done under notification No. 214/86-CE, 83/94-CE and 84/94-CE, processing not amounting to manufacture, strips of plastics used within factory is to be excluded.
- Value of intermediate products (when final product is exempt under notification other than SSI exemption notification), branded goods manufactured in rural area and cleared without payment of duty, export to Nepal and Bhutan and goods cleared on payment to duty is to be included.
- Value of turnover of goods exempted under notification (other than SSI exemption notification or job work exemption notification) is to be included for purpose of limit of ₹ 400 lakhs, but excluded for limit of ₹ 150 lakhs.

Q. 7. (a) Who are the persons not eligible for compounding of offence as per the provisions of the Central Excise Act, 1944? [4]

(b) Mr. Nathan is a qualified Cost Accountant and has been rendering taxable services for the past several years. He furnishes the following details pertaining to the quarter ended 30th June, 2010:

	(₹)
(i) Services rendered to Reserve Bank of India	6,18,000
(ii) For preparation of accounting statements for Charitable trusts	2,00,000
Other clients	7,00,000
(iii) Advance received from LMN Ltd. for tax consultancy	3,09,000
(iv) Fees received for appearing before first appellate authority in income tax	4,12,000
(v) Fees received from World Health Organisation	6,00,000

The assessee ultimately did not render any service to LMN Ltd. and by mutual consent, ₹ 2 lacs was returned to LMN Ltd. on 10th March, 2011.

All the above figures are gross amounts of receipts and wherever required, service tax was billed separately and the same was also received separately from all the clients.

You are required to compute the value of taxable services rendered by Mr. Nathan for the above quarter (assume that service tax is chargeable on receipt basis). [7]

(c) In the context of VAT law, explain the difference between exempt sale and zero rated sale. [4]

Answer 7. (a)

Persons not eligible for compounding under section 9A(2)

The following mentioned persons shall not be eligible for compounding under section 9A(2) :

1. Person who has been allowed to compound once in respect of any of the offences under the provisions of clause (a), (b), (bb), (bbb), (bbbb) or (c) of section 9(1).
2. A person who has been accused of committing an offence under this Act which is also an offence under the Narcotic Drugs and Psychotropic Substances Act, 1985.
3. A person who has been allowed to compound once in respect of any offences under this Chapter for goods of value exceeding rupees one crore.
4. A person who has been convicted by the court under this Act on or after 30.12.2005.

Answer 7. (b)**Computation of Taxable Services Rendered by Mr. Nathan**

For the quarter ended 30.06.2010

Sl. No.	Particulars	Amount (₹)
(i)	Services rendered to Reserve Bank of India Rs. 6,18,000, exempt	Nil
(ii)	For preparation of accounting statements for charitable trusts	2,00,000
	For preparation of accounting statements for other clients	7,00,000
(iii)	Advance received from LMN Ltd.	3,09,000
	Note : It is immaterial that no services were rendered in the current quarter and the advance was partially returned in the subsequently year.	
(iv)	Fees received for appearing before first appellate authority in income-tax Rs. 4,12,000 in not includible in taxable services, vide Notification No. 25/2006 ST dt. 13-7-2006	Nil
(v)	Fees received for services rendered to W.H.O. is exempt	Nil
	Total taxable services	12,09,000

Answer 7. (c)**Distinction between 'Zero rated sale' and 'Exempt sale'.**

Certain sales are 'zero rated' i.e. tax is not payable on final product in certain specified circumstances. In such cases, credit will be available on the inputs i.e. credit will not have to be reversed. Distinction between 'zero rated sale' and 'exempted sale' is that in case of 'zero rated sale', credit is available on tax paid on inputs, while in case of exempt goods, credit of tax paid on inputs is not available.

As per para 2.5 of White Paper on State-Level VAT, export sales are zero rated, i.e. though sales tax is not payable on exports sales, credit will be available of tax paid on inputs.

In respect of sale to EOU/SEZ, there will be either exemption of input tax or tax paid will be refunded to them within three months. If supplies to EOU/SEZ are exempt from sales tax, then the question will arise whether these are 'zero rated' or 'exempt goods'.

In case of stock transfer to another State, CST is not payable, but input credit will have to be reversed to the extent of 3%. Thus, stock transfer of goods to another State is 'exempt' and not 'zero rated'.

It is not clear what will be the policy after CST is reduced to zero. As per basic concept of VAT, inter-state transactions should be 'zero rated' and not 'exempt'.

Q. 8. (a) What is 'Importer Exporter Code Number' (IEC)? State the manner in which IEC has to be applied for. In what export/import documents should the same be stated? [4]

(b) Vivitha Logistics Ltd., engaged in the business of logistics support and infrastructural activities (started on 12.5.2008), has set up a cold chain facility during the current year. The particulars of investment relating to this cold chain facility business are as under :

	(` in lacs)
Land	40
Building	100
Machinery	200
Non-compete fee paid to machinery manufacturer	60
Profit from cold chain facility (covered by section 35AD) before depreciation	120

The assessee has earned profits of ` 150 lacs from the business of infrastructural activity (covered by section 35AD of the Income-tax Act, 1961), ` 40 lacs from the logistics support business and ` 2 lacs as income from other sources.

Determine the total income of the assessee and the loss, if any, to be carried forward, as per normal provisions. *Notes on treatment of each item above, should form part of your answer.* Logistics support business is not covered by section 35AD.

Where the return of income is being filed on 3rd December, 2011, will the right of carry forward of loss be affected? [7]

- (c) Achdha Castings Ltd. is manufacturing a product (which is captively consumed) to produce a final product, which is exempt from the payment of excise duty. The intermediary product is having a distinct market of its own. The company is of the view that since the final product is exempt, no duty liability arises on the intermediary product also. The Department objected to the view of the assessee.

Discuss, with reference to a decided case law, if any, whether the view of company is justified. [4]

Answer 8. (a)

Importer/Exporter Code Number :

Every importer and exporter must obtain a 'Importer Exporter Code Number' (IEC) from DGFT (Director General of Foreign Trade) or officer authorised by him, by applying in prescribed Form (section 7 of FT (D&R) Act.)

Import and export without IEC number is not permitted, unless specifically exempted [para 2.12. of FTP].

Application for IEC number – Application for IEC number has to be made to DGFT in prescribed form ANF 2A, with fees of 250 (It was 1,000 upto 11-4-2008).

Format of bank certificate is given in Appendix 18A of HBP Vol 1. Profile of importer/exporter should be given in form ANF 1.

Declaration of IEC number on import/export documents – IEC number will be declared on Bill of Entry, Shipping Bill and other documents relating to customs [Rule 13 Foreign Trade (Regulation) Rules, 1993].

Answer 8. (b)

Computation of loss from specified business

As per section 35AD of the Income-tax Act, 1961,

- (a) the assessee can set off the entire capital expenditure against the profits from this business. However, investment in land and goodwill will not be considered.

16 ♦ *Suggested Answers to Question — TXM*

- (b) Deduction will not be available under any other provision. This means that depreciation will not be available.

The assessee can set off the income from “specified business” against income from any other “specified business” but not against other business profit.

Such unabsorbed business loss has to be carried forward under section 73A.

The problem clearly states that the cold chain facility business and infrastructure facility business run by the assessee are covered by the term “specified business” of section 35AD.

In the light of above, total income computed is as under :

Profits and gains of business or profession	(` in lacs)
(i) Logistics support business	40
(ii) Specified business covered by sec 35AD	
(a) From infrastructural activities	150
(b) From cold chain facility set off	(-) 150
Income from specified business	Nil
(Balance ` 90 lacs is carried forward u/s 73A)	
Chargeable income under this head	40
Income from other sources	
Interest from bank deposit	<u>2</u>
Total income	<u>42</u>

Working Note :

Income from cold chain business covered by sec 35AD

Profit from business	120
<i>Less</i> : Capital expenditure deductible in full	
Building	100
Machinery	200
Non-compete fee paid to machinery manufacturer	<u>60</u>
Total	<u>360</u>
Loss from cold chain facility business	<u>240</u>

Carry forward of loss u/s 73A

The need for filling of return within the time stipulated u/s 139(1) enjoined by sec 139(3) is for the purpose of carrying forward losses under sections 72(1), 73(2), 74(3) or 74A(3). Loss under section 73A is not covered.

Hence filling the return of income on 3rd December, 2011 will not affect the right of carry forward of loss as per section 73A.

Answer 8. (c)

The duty of excise is a duty on manufactured goods which are movable and marketable. If any manufactured good satisfies the movability and marketability conditions, it would become dutiable even if it is an intermediate product and the final product is not dutiable. Therefore, in the given case the intermediate product would be dutiable even though it is captively consumed and the final product is not dutiable as it has a distinct market of its own and is marketable.

The Supreme Court's view in the case of **White Machine vs. CCE 2008 (224) ELT 347** was also the same. In the above case, the assessee manufactured C.I. Castings which were captively consumed for production of C.I. Chilled Rolls. These Chilled Rolls were exempt from duty. The Apex Court opined that since the final product was exempt, the C.I. Castings would become dutiable if they satisfied the marketability condition. Therefore, the company's view is not justified and the Department's view is acceptable.

