

FINAL EXAMINATION GROUP – III

(SYLLABUS – 2008) SUGGESTED ANSWERS TO QUESTION DECEMBER 2013

Paper – 14 : INDIRECT & DIRECT – TAX MANAGEMENT

Time Allowed: 3 Hours

Full Marks: 100

*The figures in the margin on the right side indicate full marks.
Answer Question No. 1 (carrying 25 marks), which is compulsory and
any five from the rest.*

1. Fill up the blanks: 1x25
- (i) The rate of tax collected at source (TCS) applicable in respect of scrap is
(1%; 2%; 5%)
 - (ii) Advance income-tax payable by a resident, aged 61, deriving income of ₹ 9 lacs,
solely from house property, is ₹ (1,05,000/-; Nil; 90,000/-)
 - (iii) Mr. A has rendered free services to his close relative; an outsider would have charged
₹1,12,360 for such services. The value of taxable services is ₹ (1,00,000/-;
NIL; 1,12,360)
 - (iv) Exclusive Economic Zone extends to Nautical miles from the base line. (12; 200)
 - (v) In case of shipping business of non-residents, Previous year and Assessment year
..... be same. (will; will not)
 - (vi) Dividend received from company having only agricultural income an
Agricultural income for a shareholder, (is; is not)
 - (vii) Cost inflation index as notified by the Central Government for the financial year 2013-
14 is (882; 939)
 - (viii) A residential property which is let out for a period of 310 days in the previous year
..... treated as asset u/s 2 (ea) of the Wealth Tax Act. (is; is not)
 - (ix) Cenvat credit rules require input-output correlation to be established, (do;
do not)
 - (x) The Service Tax Registration certificate will be granted by superintendent of central
excise in seven days in Form No (F4; ST-2)
 - (xi) Certificate of registration under CST Act, shall be issued by the authority in Form
(A, B, D)
 - (xii) Any Sum received towards dues written off earlier, after the discontinuance of a
business is (taxable; not taxable)
 - (xiii) A Unit in SEZ is to be registered under Central Excise Laws. (required; not
required)
 - (xiv) In exercise of power under first proviso to section 47(2) of the Customs Act, 1962,
the Central Govt. specified that importers paying customs duty of ₹ crore or

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- more per bill of entry shall pay customs duty electronically. (one; ten)
- (xv) As per Section 47(2) of Customs Act, interest is payable if customs duty is not paid within days of return of Bill of Entry to importer. (two; seven)
- (xvi) The goods included in the Schedule of Central Excise Act are same as those on which excise duty is payable under section 4A of the Central Excise Act. (Second; Third)
- (xvii) Form 'C' is issued by the purchasing dealer to selling dealer every Basis. (monthly; quarterly)
- (xviii) A person responsible for paying any sum to any resident individual contractor for carrying out any work is liable to deduct tax at source under section 194C of income tax act @..... (1%; 2%)
- (xix) An assessee under Wealth Tax Act who concealed wealth is liable to pay maximum penalty of of wealth tax sought to be avoided. (300%; 500%)
- (xx) Landing charges of is to be added to CIF value for arriving at the assessable value under customs law. (3%; 1%)
- (xxi) Transaction of sale of goods for ₹ 7 crore, by a domestic company to a partnership firm in India, in which one of the directors of the company is a partner subject to transfer pricing provisions under the Income Tax Act. (is; is not)
- (xxii) Short-term capital gain on sale of shares listed in a recognized stock exchange on which security transaction tax is paid is liable to income tax at (15%; 10%)
- (xxiii) An order passed by the Commissioner under section 12AA of the Income Tax Act refusing to grant registration to a charitable trust can be contested in appeal before [Commissioner (Appeals); Income Tax Appellate Tribunal].
- (xxiv) A return for income tax assessment year 2011-12 filed on 1st April, 2013 is return, (valid; invalid)
- (xxv) Penalty for failure to furnish tax audit report on or before the due date is $1/2\%$ of the sales or whichever is less. (₹ 1,50,000; ₹ 1,00,000)

Answer :

1.

- (i) 1%
- (ii) Nil
- (iii) Nil
- (iv) 200
- (v) Will
- (vi) Is not
- (vii) 939
- (viii) Is not
- (ix) Do not
- (x) ST – 2
- (xi) B
- (xii) Taxable
- (xiii) Not required
- (xiv) One
- (xv) Two
- (xvi) Third
- (xvii) Quarterly
- (xviii) 1%
- (xix) 500%
- (xx) 1%
- (xxi) Is
- (xxii) 15%
- (xxiii) Income Tax Appellate Tribunal
- (xxiv) Invalid
- (xxv) ₹ 1,50,000

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2. (a) Victory Polymers is launching a new product in the market. To penetrate the market, for fourteen months, the company wishes to have a competitive price, which would be below its cost. The Managing Director wishes to know whether the said price, which is below its cost price, will be accepted by the Excise Department as transaction value. He fears that the Department might contend that as the extra commercial consideration was involved in this case an additional consideration should be added to the price for the purpose of duty and hence the Department might invoke Best Judgment Assessment, fixing the price at manufacturing and selling costs plus reasonable margin. As the Cost Accountant of the company, give your views. 5

- (b) The following details of import of a machinery made on 21.3.2013 are furnished:

Price paid for imported machinery (FOB value)	\$ 45,000
Packing charges	\$ 300
Service commission paid to MMTC, the Canalising Agent	\$ 1,200
Inspection charges paid to an independent agency	\$ 200
Ocean Freight	\$ 1,000

Subsequent to the import, there was a price increase in the international market; the price of the machinery, rose to 48,000 USD.

The import contract does not specify for certification by an independent agency. Ascertain the assessable value for customs duty purposes. Conversion rate is 1 \$= ₹ 60

5

- (c) Mr. Anirudh has recently obtained VAT registration and has devised the following proforma of VAT invoice to be issued by him. Provide the corrections to be made in the format, if any. 5

Anirudh Dealer in computers Fairlands, Salem 636 016			
TIN: 012345678901			Sl. No.
Name and address of buyer :			Date:
Description of goods	Qty.	Rate per unit	Amount
VAT Payable			
Total Amount			
(Being computer generated invoice, no signature is required)			

Answer :

2. (a) **Selling below cost price for market penetration**

In **CCEx., Mumbai vs. Fiat India Pvt. Ltd. 2012 (283) E.L.T. 161 (S.C.)**, a similar situation arose. Fiat India Pvt. Ltd. (Fiat) was the manufacturer of motor cars. They were selling Fiat UNO model cars below cost and were making losses in wholesale trade. The purpose was to penetrate the market and competing with other manufacturers of similar goods. The prices were not based on manufacturing cost and profit. This was happening over the period of five years. The Assistant Commissioner directed for the provisional assessment of the cars at a price which would include cost of production, selling expenses including transportation and landing charges, wherever necessary and profit margin, on the ground that the cars were not ordinarily sold in the course of wholesale trade as the cost of production is much more than their wholesale price, but were sold at loss for a consideration.

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The Supreme Court held that the duty has to be paid on the "transaction value". Section 4(1)(a) of the Central Excise Act, 1944 defines transaction value as under "in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value.

If any of the ingredients in the above definition is missing, then the price shall not be considered as the sole consideration as transaction value.

Supreme Court opined that this is a case of extra commercial consideration in fixing of price and artificially depressing it. Full commercial cost of manufacturing and selling was not reflected in the price as it was deliberately kept below the cost of production. Thus, price could not be considered as the sole consideration for sale. No prudent business person would continuously suffer huge loss only to penetrate market; they are expected to act with discretion to seek reasonable income, preserve capital and, in general, avoid speculative investments. It is immaterial that the cars were not sold to related persons.

In view of the above resorting to best judgment assessment was held to be proper.

As Cost accountant, I will point out this decision of the Apex Court and caution the MD to adopt a different approach.

2. (b)

Price paid for imported machinery (FOB value)	\$ 45,000
Packing charges	\$ 300
Service commission paid to MMTC, the Canalising Agent	\$ 1,200
Inspection charges paid to an independent agency	Nil
Ocean freight [No restriction for ocean freight]	\$ 1,000
CIF value	\$ 47,500
Add: 1% loading and unloading charges on CIF	\$ 475
Assessable value	\$ 47,975
Assessable value in INR [\$ 47,975 x 60] = ₹ 28,78,500	

Note :

1. Subsequent price increase in the international market; the price cannot go to increase the basis of valuation, when the price in question was firmly arrived at by the assessee with the importer [**CC vs. Aggarwal Industries Ltd. 2011 E.L.T. 641 (S. C.)**]
2. "Service Commission" paid to Canalising Agent (MMTC) not to be equated with "buying commission" under Rule 9(1)(a)(i) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 [**Hyderabad Industries Ltd. vs. UOI 2000 (115) ELT 593 (SC)**]
3. Inspection charges are not includible in the assessable value of the imported goods if contract does not specify for certification by an independent agency. [**Bombay Dyeing & Mfg. vs. CC 1997 (90) ELT 276 (SC)**]

2. (c) Defects in the proforma of VAT invoice are to be corrected as under: -

1. Complete address of the dealer is to be given. Door no, and street details are missing.
2. TIN of the selling dealer can consists only of 11 digits. Here there are 12 digits.
3. TIN of the buying dealer is to be mentioned. Space is to be provided for this.
4. The term "TAX INVOICE" should be prominently printed.

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5. VAT Invoice should be signed by the dealer or a person authorised by him. Hence there must be space for signature.
6. VAT rate is to be mentioned in the invoice. Space is to be provided for this.

3. (a) VKS Pipes Ltd. had claimed CENVAT credit on a machinery purchased on 12.03.2007. This machinery was destroyed by fire on 22.03.2013. As per the terms of the policy, the insurance company compensated to the assessee, an amount which was inclusive of excise duty. The Department wishes to reverse the CENVAT credit availed earlier. Is the same justified? 3

(b) Sekar & Co., a firm, furnishes the following details pertaining to the half year ended 31st October, 2012: 4

	(₹)
Service charges billed and received for recruiting labour for overseas projects	9,30,000
Advances received from clients, for which services were not rendered in this half year	2,00,000
Service charges billed and received for supply of farm labour	3,45,000
Receipts for services rendered to UNO	2,34,000
Service charges billed and received for supply of labour for State Govt. projects	6,12,000

All the receipts above are excluding service tax, wherever applicable. The assessee has provided taxable services of ₹ 34 lacs during the earlier year. Ascertain the value of taxable services rendered by the assessee during the half year ended 31st October, 2012.

(c) Mr. Subramani running an industrial undertaking, has purchased a new machinery on 12.07.2012 as per following details:

Particulars	₹
Basic price excluding excise duty	5,00,000
Excise duty charged by supplier	51,500
Installation expenses	8,500
Government subsidy received for buying above	1,20,000

He purchased another machinery, earlier used by another person, for ₹ 3,00,000 on 21.01.2013.

All these machines are entitled to depreciation at 15%.

Opening WDV of the block is ₹ 10,20,000.

Compute the depreciation allowable for the block, where the assessee has not availed Cenvat credit for the new machinery purchased. 5

(d) Mr. Rakesh Kumar, a resident Indian, holds 25% equity share capital in M/s A Ltd., a domestic company. M/s A Ltd., hires trucks owned by Mr. Rakesh Kumar's son and paid rent of ₹ 50 lakh during previous year 2012-13. Briefly explain the applicability of transfer pricing provisions under the Income-tax Act, 1961 in respect above transaction. 3

Answer:

3.(a) As per CENVAT Credit Rules, 2004, CENVAT credit taken irregularly stands cancelled and CENVAT credit utilized irregularly has to be paid for.

In the instant case, the Insurance Company, in terms of the policy, had compensated the assessee. Merely because the Insurance Company had paid the assessee the value of goods including the excise duty paid, it would not render the availment of the CENVAT credit wrong or irregular. It is a payment by insurance company for

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compensating VRS Pipes Ltd, for the loss it suffered due to fire in terms of the policy of insurance. It was not a case of double benefit as contended by the Department.

Reversal of cenvat credit is therefore not justified.

The Karnataka High Court has taken such a view in **CCE vs. Tata Advanced Materials Ltd. 2011 (271) E. L. T. 62 (Kar)**.

3.(b)

Particulars	Amount (₹)
Service charges billed and received for recruiting labour for overseas projects: This is not covered by negative list u/s 66D	9,30,000
Advances received from clients, for which services were not rendered in this half year: As per Point of Taxation Rules, this is taxable. [₹ 2,00,000 x (1-12.36/112.36)]	1,78,000
Service charges billed and received for supply of farm labour : This is covered by negative list u/s 66D and hence not taxable	Nil
Receipts for services rendered to UNO : Exempt	Nil
Service charges billed and received for supply of labour for State Govt. projects : This is not covered by negative list u/s 66D	6,12,000
Value of taxable services	17,20,000

Note:

- 1) As clarified in the question service charges billed and received are excluding service tax, hence to be directly included in value of taxable service where applicable. However, in case of advance from clients of ₹2,00,000 since there is no billing done it will be taken as inclusive of service tax and net taxable value of service will have to be calculated by separating the service tax component by multiplying by $\frac{112.36 - 12.36}{112.36}$
- 2) Since assessee has provided taxable service exceeding ₹ 10 lakhs during the earlier year, the entire value of taxable services rendered by assessee will be liable to service tax without any basic exemption.

3.(c)

Particulars	₹	₹
Opening WDV of the block		10,20,000
Add: New machinery purchased (used for more than 180 days)		4,40,000
		14,60,000
Normal depreciation on above at 15%	2,19,000	
Additional depreciation at 20% of actual cost of new machinery	88,000	
Normal depreciation on second hand machine [Since used for less than 180 days, rate is 7.5%]	22,500	
Being second hand machine, additional depreciation not allowed		
Total depreciation allowable	3,29,500	

Note : Actual cost of new machinery

	₹
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Basic price excluding excise duty	5,00,000
Excise duty charged by supplier	51,500
[To be included as Cenvat credit has not been claimed]	
Installation Expenses	8,500
	5,60,000
Less: Government Subsidy received for buying above	1,20,000
Actual cost	4,40,000

- 3.(d)** Rental payment of ₹ 50 lakhs has been made to a related person referred to in section 40A(2)(b) i.e. relative (i.e. son) of Mr. Rakesh Kumar, who has substantial interest in the business of M/s A Ltd., since he is the beneficial owner of shares carrying not less than 20% voting power.

However, for applicability of Specified Domestic Transaction, the transaction should be between Associated Enterprise and one of the conditions of associated enterprise is one enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the other enterprise.

Hence, the transaction not fulfills the basic condition to qualify for Specified Domestic Transaction.

So transfer pricing provisions under the Income – tax Act, 1961 is not attracted.

- 4.(a)** A Limited has two units-one engaged in production of mobile handsets and the other engaged in production of music systems. The company has decided to sell its unit producing music systems as a going concern by way of slump sale for ₹ 500 lakhs to a new company, B Limited in which it holds 75% shares. The Balance Sheet of A Limited as on 31st March, 2013 is as follows:

	₹ in lakhs	
	Mobile Handset Unit	Music Systems Unit
Fixed Assets	100	200
Debtors	125	125
Inventories	70	40
Liabilities	40	70
Paid up share capital		₹ 350 lakhs
General Reserve		₹ 200 lakhs
Securities Premium		₹ 30 lakhs
Revaluation Reserve		₹ 140 lakhs

The company set up the music system unit on 1st April, 2007. The written down value of the block of assets for tax purpose as on 31st March, 2013 is ₹ 180 lacs of which ₹ 80 lakhs are attributable to music system unit.

- (i) Compute tax liability that would arise to A Limited from the slump sale. 8
- (ii) Would your answer change, if A Limited holds all the shares of B Limited? 2
- (b)** Mrs. And Mr. Akash visited USA and brought following goods while returning to India on 10th June, 2012. 5
- (i) Their personal effects like clothes valued at ₹ 70,000.
- (ii) A personal computer bought for ₹ 50,000
- (iii) A laptop computer bought for ₹ 1,00,000.
- (iv) Four liters of liquor bought for ₹ 4,000.
- (v) A new camera bought for ₹ 60,000.
- What is the amount of customs duty payable?

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Answer :

4.(a)

- (i) As per section 50B, any profits or gains arising from the slump sale in the previous year is chargeable to income tax as capital gain arising from the transfer of capital assets and shall be deemed to be income of the previous year in which the transfer takes place.

If the assessee owned and held the undertaking transferred under slump sale for more than 36 months before such sale, the capital gain shall be deemed to be long-term capital gain.

Computation of capital gain

	₹
Slump sale consideration	5,00,00,000
Less: Cost of acquisition (net worth)	1,75,00,000
Long – term capital gain	3,25,00,000

Therefore,

<u>Computation of tax liability</u>	₹
Tax @20% = ₹ 3,25,00,000 x 20%	= 65,00,000
Add: Surcharge @5%	<u>= 3,25,000</u>
	68,25,000
Add: ED@ 2%	1,36,500
S&HEC @1%	<u>68,250</u>
Total Tax liabilities	<u>70,29,750</u>

Working Note:

Net worth of music system unit

	₹
WDV of block of assets	80,00,000
Debtors	1,25,00,000
Inventories	40,00,000
	<u>2,45,00,000</u>
Less: Liabilities	70,00,000
Net Worth	1,75,00,000

Note: Indexation benefit is not allowed in case of slump sale under section 50B.

- (ii) Transfer of capital asset from a holding company to its wholly-owned subsidiary company is exempt from tax under section 47(iv), provided the transferee company is an Indian company. Therefore, the entire capital gain from slump sale shall be exempted from tax in the hands of A Limited.

4.(b)

	Computation of Customs Duty payable	Mr. Akash ₹ (A)	Mrs. Akash ₹ (B)
i)	Personal effects, clothes	Exempt	Exempt
ii)	Personal computer	50,000	-
iii)	A laptop computer	Exempt	Exempt
iv)	Four liters of liquor (in different containers) (Liquor more than 2 litres is to be considered separately. Liquor upto 2 litres forms	2,000	2,000

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	part of bona fide baggage and is eligible for GFA)		
v)	A new Camera	-	60,000
		52,000	62,000
	Less : General Free Allowance	35,000	35,000
		17,000	27,000
	Customs Duty @ 35%	5,950	9,450
	Total Cess @ 3%	179	284
	Total customs duty payable by each passenger	6,129	9,734

Total Amount of customs Duty payable (A + B) = ₹ 15,863/-

Note: The items have been divided between the two individually to minimize duty. A different combination is possible and to be considered. The only condition is that a single item cannot be split between two persons. Each individual has to declare items separately. If the four litres of liquor are in two or more containers, then each passenger can claim benefit for two litres at the lower rate of duty. If the liquor brought is in a single container, then for the balance 2 litres, higher rate of duty is charged, depending upon whether it is whisky or others.

5.(a) What are the activities that are not considered as manufacture as per Central Excise Act?

10

(b) Mr. Ravi executed a "will" during his life time. His friend, Mr. Kini was appointed as executor under the "will". Mr. Ravi died on 15th June, 2012. The executor could complete the distribution of assets after the valuation date 31st March, 2013.

The records of wealth tax of Mr. Ravi reveal that (a) the return of net wealth for the valuation date 31 st March, 2012 was not filed; (b) wealth tax demand for the assessment year 2009-10 is still payable.

Advise Mr. Kini on his obligations under the Wealth Tax Act.

5

Answer:

5.(a) The following are not manufacture as per central Excise act :

- i) Natural activity, even if carried otherwise, eg: Drying yarn in natural sun
- ii) Processing of duty paid goods
- iii) Purchasing various item and putting into a container and selling them.
- iv) obtaining of natural products
- v) testing / quality control of items manufactured by others
- vi) cutting and polishing of diamond.
- vii) upgradation of computer system
- viii) printing on glass bottles
- ix) affixing brand name and
- x) crushing of boulders into small stones

5.(b) Mr. Kini was appointed as an executor of the "will" by the deceased Mr. Ravi. As per section 19 of the Wealth Tax Act, the tax liability of the deceased is payable by the legal representative in the following situations:

- i) Where the assessment has been completed on the deceased but tax is still payable [Section 19(1)]
- ii) Where the deceased has not furnished a return or the return furnished by him is incorrect or incomplete [Section 19(2)]

Therefore, Mr. Kini is responsible for filing of the pending return of net wealth of the

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deceased for the assessment year 2012-13 and making payment of the wealth tax demand for assessment year 2009-10 out of estate of the deceased.

Further, under section 19A, the executor of a "will" is responsible for the assessment in respect of the estate of the deceased for the period from the date of death of the deceased till the completion of the distribution of assets among legatees.

The executor holds the status of the deceased during the period of distribution of assets among the beneficiaries under the "will" and accordingly, a separate assessment will be made under section 19A in the hands of the executor in respect of the net wealth of the deceased as on the valuation date viz. 31st March, 2013 for AY 2013-14.

6. (a) A Big Ship carrying merchandize and stores enters the territorial waters of India but it cannot enter the port. In order to unload the merchandize lighter ships are employed. Stores are consumed on board the ship as well as by the small ships. Examine whether such consumption of stores attracts customs duty. Quote relevant section and case law if any. Stores are supplied to the above ships. Will such supplies be treated as exports and be entitled to draw back? 4
- (b) Who are the persons deemed to be related as per Central Excise Act? 4
- (c) M/s Pravat Ltd., supplies raw material to M/s Akash Ltd. a job worker. After completing the job work, the finished product of 5000 packets are returned to M/s Pravat Ltd. putting of the retail sale price as ₹20/- on each packet. The product of the packet is covered under MRP provisions and 40% abatement is available on it. Determine the excisable value under Central Excise Law from the following details. 3

Particulars	Amount in ₹
Cost of Raw material supplied to M/s Akash Ltd.	30,000
Job workers charges including profit	10,000
Transportation charges for sending raw material to M/s Akash Ltd. job worker	3,000
Transportation charges for returning the finished packets to M/s Pravat Ltd.	3,000

- (d) Mrs. Priyanka, an Interior Designer based in Kolkata provides her service to an Indian Hotel Chain (which has business establishment in Mumbai) for its newly acquired property in London. On the basis of Place of Provision of Service Rules, 2012, state whether the service would be taxable in India. 4

Answer :

- 6.(a) 'Stores' means goods for use in a vessel and includes diesel and spare parts and other articles and equipments. Bringing of 'stores' is treated as import. However, there is special provision for stores under section 87. Imported stores consumed on board an ocean going vessel are exempt from import duty under Section 87.

Since the ship is ocean going, stores consumed on board will not attract customs duty. Regarding the smaller ships which are employed to unload the cargo from the mother ship, they are termed as "Transhippers". These are also treated as ocean going vessels as was decided in UOI Vs. V M Salgaoncar AIR 1998 SC1367:99 ELT 3 (SC).

Hence stores consumed by small vessels would also be exempt from customs duty. Stores supplied to the vessel will be treated as export as per Section 89 of Customs Act and hence will be eligible for duty drawback.

- 6.(b) As per Section 4(3)(b) of Central Excise Act persons shall be deemed to be related if —
- They are inter connected undertakings
 - They are relatives
 - Amongst them, buyer is a relative and a distributor of assessee, or a sub-distributor of such distributor or

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(iv) They are so associated that they have interest directly or indirectly in the business of each other.

- 6.(c)** Section 4A of the Central Excise Law is having overriding effect over Section 4. Any goods which are falling under section 4A are manufactured on job work basis, the value shall be computed as per section 4A of the Central Excise Act only.

The Assessable value under Central Excise Law is computed as below.

	Nos.	Per piece ₹	Amt in ₹
5000 packets @ MRP ₹ 20/- per packet (Actual sale price is not relevant)	5,000	20	1,00,000
Less: Abatement @ 40%		8	40,000
Assessable value under Section 4A of Central Excise Act		12	60,000

- 6.(d)** As per Rule 5 (property rule) of Place of Provision of Service Rules, 2012, the place of provision would be the location of the property i.e. London which is in outside the taxable territory. So the service would not be taxable in India.

As per Rule 8 of Place of Provision of Service Rules, 2012, both the provider and the receiver of service are located in taxable territory, the place of provision would be the location of the service receiver i.e. Mumbai. Place of provision being in the taxable territory, the service would be taxable in India.

Rule 14 state that the latter rule prevails over earlier rule. So by application of Rule 14 of Place of Provision of Service Rules, 2012, the later of the Rules i.e. Rule 8 would be applied to determine the place for provision. Hence the Place of provision being in the taxable territory (Mumbai), the service would be taxable in India.

- 7.(a) Under the EXIM policy, various Input Duty Relief schemes have been devised to obtain inputs free from duty or to grant refund of the same. Briefly discuss about five schemes. 5**
- (b) Discuss how to determine whether a particular product to be classified as a "cosmetic" or "medicament" for excise tariff purpose. 5**
- (c) State the quantum of penalty that can be levied in each of the following cases: 1x5=5**
- (i) Failure to get books of account audited in response to the notice issued under section 142(2A) of the Income-tax Act.**
 - (ii) Failure to furnish audit report as required under section 92E of the Income Tax Act.**
 - (iii) Failure to deposit tax deducted at source.**
 - (iv) Failure to file return of Income before the end of the assessment year.**
 - (v) Failure to file return of income by a charitable institution registered under section 12AA of the IncomeTax Act.**

Answer :

7.(a) Input Duty Relief Schemes

Various schemes have been devised to obtain inputs free from duty or to grant refund of the same. In some schemes, the unit has to be isolated from domestic production units, while in some schemes, the units producing goods for domestic production are also entitled to get inputs free of cost,

A. Schemes where export production unit has to be isolated from domestic production units - There are schemes where units producing goods for export purposes have to be isolated from domestic units. The schemes are - EOU, STP, EHTP, BTP and SEZ. [BTP - Bio-Technology Park]

B. Schemes where domestic production unit can get inputs free from taxes – The schemes of EOU, SEZ, STP, BTP and EHTP are suitable where the unit is exclusively or at least predominantly for export purposes. There are other schemes where a unit producing goods for domestic purposes is also entitled to get inputs / capital goods without payment of customs duty / excise duty. These can be broadly classified as

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follows:

- (i) **Relief of excise duty on inputs** - (a) Cenvat credit of duty paid on inputs can be utilized for payment of excise duty on other final products. Alternatively, refund of duty paid on inputs can be obtained (b) Same result can be achieved by paying duty on final product and claiming rebate. In this case, additional benefit is that duty paid on capital goods will also get refunded indirectly. In first case, only duty paid on inputs is refundable (c) Obtaining inputs without payment of excise duty under notification No. 43/2001- CE(NT). This is advisable when there are one or two major identifiable inputs (d) Rebate of duty paid on inputs under notification No. 41/2001- CE (NT) (e) Excise portion of Duty drawback.
- (ii) **Relief of customs duty on inputs** - (a) Advance Authorisation (b) Duty Entitlement Pass Book scheme (DEPB) (c) DFIA (d) customs portion of duty drawback.
- (iii) **Capital goods at concessional rate** - Capital goods can also be obtained at concessional rate of customs duty under EPCG scheme.

7.(b) Factors influencing clarification for tariff purposes

In CCEx., Nagpur vs. Shree Baidyanath Ayurved Bhawan Ltd. 2009 (237) E.L.T. 225 (S. C), the question that arose for consideration before the Apex Court was in relation to classification of "Dant Manjan Lai" (DML) manufactured by M/s. Baidyanath Ayurved Bhawan Limited. While the assessee contended that the product DML was a medicament under Chapter sub-heading 3003 31 of the Central Excise Tariff Act, 1985, the stand of the Department was that the said product was a cosmetic/toiletry preparation/tooth powder classifiable under Chapter heading 3306.

The Apex Court observed that in order to determine whether a product is covered by 'cosmetics' or 'medicaments' or in other words whether a product falls under Chapter 30 or Chapter 33, common parlance test continues to be relevant. One should resort to the popular meaning and understanding attached to such products by those using the product and not to the scientific and technical meaning of the terms and expressions used. Hence, it is important to note how the consumer looks at a product and what is his perception in respect of such product.

The Supreme Court further ruled that merely because there is some change in the tariff entries, the product will not change its character. Something more is required for changing the classification especially when the product remains the same. Therefore, since there was no change in the nature, character and uses of DML, it had to be classified as a tooth powder as held earlier in case of the assessee itself in Shree Baidyanath Ayurved Bhawan Ltd. v/s Collector 1996 (83) E.L. T. 492 (S.C.). The Apex Court clarified that although, this case related to old Tariff period i.e. prior to enactment of new Tariff Act but since the product in its composition, character and uses continued to be the same, even after insertion of new sub heading 3301 30, change in classification was not justified as common parlance test continued to be relevant for classification.

- 7.(c) (i) Penalty under section 271 (1) for failure to get books of accounts audited in response to notice issued under section 142(2A) - ₹ 10,000 for each failure.
- (ii) Penalty under section 271 BA for failure to furnish audit report as required under section 92E- ₹1,00,000.
- (iii) Penalty under section 271C for failure to deposit tax deducted at source- sum equal to tax which has not been deposited.
- (iv) Penalty under section 271F for failure to file return of income before the end of the assessment year- ₹ 5,000.
- (v) Penalty under section 272A for failure to file return of income by a charitable

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institution - ₹ 100 per day of default.

8. (a) What are undisclosed sources of income under the Income Tax Act, 1961? 6
- (b) M/S AJANTA Ltd. a Service Provider, fails to pay service tax of ₹2.08 lakhs which is payable by 6th May, 2012. Compute the amount of penalty payable under section 76 of service tax act, if the amount deposited on 16th March, 2013. 4
- (c) (i) PQR Ltd. who is an exporter finds that, the amount of draw back refunded to it is less than what it is entitled to on the basis of the rates of drawback announced by the Central Government. Briefly discuss whether PQR Ltd. can claim the difference of draw back short refunded? If yes what is the procedure to be followed in this regard? 3
- (ii) XYZ Ltd. exported a consignment of manufactured goods. The company had paid import duty and Central Excise duty on the components used in the manufacture. A duty draw back rate has been fixed for these goods. The ship carrying the consignment runs into trouble and sinks in the Indian territorial waters. The custom department refused to grant draw back for the reason that the goods did not reach other destination. As a Consultant for M/s XYZ Ltd. you are required to prepare a brief note with reason whether the stand taken by the customs departments is correct in law? 2

Answer:

8. (a) Undisclosed sources of Income:

- 1) Unexplained cash credits U/s 68
- 2) Unexplained investments U/s 69
- 3) Unexplained money, bullion or jewellery or valuable article U/s 69A
- 4) Undisclosed investments U/s 69B
- 5) Unexplained expenditure U/s 69C
- 6) Amount borrowed or repaid on hundi other than by way of account payee cheque u/s 69D.

8. (b) The penalty payable under section 76 of Service Tax Act computed is as follows-

		Amount in ₹
1.	Service tax payable	2,08,000
2.	Due date of payment of service tax	6 th May 2012
3.	Date of actual payment	16 th March 2013
4.	Period of default from 6 th May 2012 to 15 th March 2013 days	314
5.	Limit: Penalty calculated @ ₹ 100 per day (314 days × ₹100)	31,400
6.	Limit: 1% Per Month of service tax (₹ 2,08,000*1%*9 months) + 2,08,000*1% x 10 days/31 days)	18,776
7.	Higher of the above two (5) and (6)	31,400
8.	Service tax payable (₹ 2,08,000) (50% of service tax payable)	1,04,000
9.	Penalty imposable u/s 76 - (7) or (8) whichever is lower	31,400

8. (c)(i) Yes, PQR Ltd. is eligible for claiming the difference of the draw back (that is on the basis of the amount calculated at the rate of draw back determined by Central Govt, of India for the goods and the actual amount refunded) by filing a supplementary claim in the prescribed form under rule 15 of the Customs Act & Central Excise Duties Draw back Rules 1995 within a period of 3 months.

This 3 months may be further extended for a period of nine months for filing supplementary claim under rule-15 by making an application accompanied with a fee of 1% of FoB value of exports or ₹ 1,000 whichever is less. Further the said period may be extended by six months by Commissioner of Customs/Commissioner of Customs/Central Excise on an application accompanied with a fee of 2% of the FoB value or ₹ 2000/- whichever is less.

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- (ii) The term "export" means "taking out of India to a place outside India". The term "taking out of India to a place outside India" would mean a place in high seas, if that place is beyond territorial waters of India. If goods cross territorial waters of India then it is an export and duty drawback cannot be denied.

In the given case the vessel sunk within territorial waters of India and therefore there is no export. Accordingly, no duty draw back shall be available to XYZ Ltd in this case. Hon'ble Supreme Court of India in case of UOI v. Rajindra Dyeing & Printing Mills Ltd. (2005) 180 ELT 433 (SC) has taken a similar view and denied for duty draw back.
