

INTERMEDIATE EXAMINATION GROUP II (SYLLABUS 2012)

SUGGESTED ANSWERS TO QUESTIONS DECEMBER 2015

Paper-11: INDIRECT TAXATION

Time Allowed : 3 Hours

Full Marks : 100

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

All questions are compulsory. In question No. 1. All sub-questions are compulsory.

In question numbers 2 to 8, student may answer any two of the three sub-questions (a), (b) and (c).

1. Answer the following questions with suitable reasons: 1×20=20
- (a) What are the Constitutional provisions under which service tax is levied?
 - (b) A manufacturer availed Cenvat credit on 31.3.2014. What is the time limit within which he must utilise that Cenvat credit, otherwise it lapses?
 - (c) Is supply to buyer in Nepal considered as 'export' under Central Excise, if payment is received in Indian rupees from Nepalese buyer?
 - (d) Who is required to file Annual Financial Statement under Central Excise?
 - (e) A manufacturer is manufacturing steel patta which is an item covered under Compounded Levy Scheme of Central Excise. He does not want to avail that scheme. He intends to pay excise duty under normal scheme of payment of excise duty. Advise him.
 - (f) State distinction between 'transit goods' and 'transshipment of goods'.
 - (g) An importer imported goods on which the value declared by him was incorrect. He intends to approach Settlement Commission. The customs duty liability is ₹ 4.75 lakh. Advise if he can approach Settlement Commission.
 - (h) An importer has recently imported some machinery. He intends to import some more machinery. He has some doubt about eligibility of an exemption to his imports. He intends to approach Authority of Advance Ruling for getting firm ruling on this issue. Advise him.
 - (i) What is the validity period of duty credit scrip issued under reward scheme under Foreign Trade Policy?
 - (j) What is RCMC under Foreign Trade Policy?
 - (k) Determine point of taxation when date of completion of service is 10-6-2014, invoice was issued on 27-7-2014 and payment for service was received in advance on 30-5-2014.
 - (l) What are the fees payable to Government while applying for service tax registration?

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- (m) Indian institute of Management, Ahmedabad (IIM) had arranged campus recruitment of final passed students. Various companies participated in the campus recruitment. IIM collected charges of ₹ 30 lakhs from the companies. Is IIM liable to pay service tax?
- (n) Ganesh Transport Company provided goods transport service to ABC Pvt. Ltd. on 4.3.2014, and issued consignment note showing freight amount of ₹ 1,00,000. ABC Pvt. Ltd. paid the freight amount to Ganesh Transport Company on 5.11.2014. Calculate service tax payable by Ganesh Transport Company. Assume service tax rate of 12% plus education cess as applicable.
- (o) A landlord had given his commercial property on rent. He issued invoice for rent charging service tax @ 14%. The tenant stated that he is not liable to pay service tax in terms of rent agreement. The tenant paid only net amount to landlord. The landlord did not deposit service tax with Government stating that he is not liable to pay service tax as tenant has not paid service tax amount to him. He is only acting as collecting agent. Is his contention valid?
- (p) A manufacturer supplied goods for export to merchant exporter in India located in another State. The merchant exporter then exported the goods. State how the manufacturer can claim exemption from payment of Central Sales tax.
- (q) Goods are sold in Delhi Airport in duty free shops. Is State VAT (sales tax) payable on such sale?
- (r) A dealer made inter-state sale by charging CST @ 2% on assumption that buyer will issue C form. However, the buyer did not issue any C form. State implications.
- (s) LMN Investments has advanced loan of ₹ 30 crores to PQR Ltd. The book value of total assets of PQR Ltd. is ₹ 80 crores. Are LMN Investments and PQR Ltd. 'associated enterprises'?
- (t) Determining Arm's Length Price (ALP) is never easy. The task is particularly difficult in case of intangibles. Name any two of such intangibles.

Answer:

1.

- (a) Service tax is levied under entry 97 of List I of Seventh Schedule to Constitution of India.
- (b) Once Cenvat credit is availed, it can be utilised any time. There is no time limit.
- (c) Supply to buyer in Nepal is 'export' under Central Excise, even if the payment is received in Indian rupees.
- (d) Assessee paying duty of ₹ one crore or more per annum through PLA are required to submit Annual Financial Information Statement for each financial year by 30th November of succeeding year in prescribed form ER-4.
- (e) He can pay excise duty under normal scheme of payment of excise duty, as compounded levy scheme is optional.
- (f) Distinction between transit and transshipment is that in 'transit' goods continue to be on same vessel, while in transshipment, goods are transferred to another vessel / vehicle.
- In transit, there is continuity of records, while in transshipment, new records are prepared. Transit is covered u/s 53 while transshipment is covered u/s 54 of Customs Act.
- (g) An importer can approach Settlement Commission if duty involved exceeds ₹ 3 lakhs. Hence, he can approach Settlement Commission.

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- (h) An importer can approach Advance Ruling Authority only in respect of proposed activity. Since he has already imported some machinery, he cannot now approach Authority for Advance Ruling.
- (i) Duty Credit Scrip is valid for 24 months. Revalidation of duty credit scrip shall be permitted only if it had expired when the goods were under the custody of customs. [Note - under new policy, the validity period has been reduced to 18 months]
- (j) Exporter has to obtain Registration Cum Membership Certificate (RCMC) from Export Promotion Council (EPC) or Commodity Board. Membership of EPC is compulsory, if an exporter intends to get export incentives or obtains authorization to import/export items, except restricted items. In other cases, membership is optional. RCMC means certificate of registration and membership granted by an Export Promotion Council/Commodity Board/ Development Authority or other competent authority as prescribed in Foreign Trade Policy or Handbook of Procedures.
- (k) Point of taxation is 30-5-2014 as advance was received.
- (l) No fees are payable while applying for service tax registration.
- (m) It is manpower recruitment service and IIM is liable to pay service tax.
- (n) Ganesh Transport Company is not liable to pay service tax and ABC Pvt. Ltd. is liable to pay service tax under reverse charge.
- (o) His contention is not correct. The landlord is liable even if the tenant does not pay service tax amount.
- (p) If the merchant exporter issues H form to the manufacturer, the manufacturer can claim exemption from payment of CST.
- (q) It is sale before goods cross customs frontier and hence sales tax (Vat) is not payable.,.
- (r) Central Sales Tax (CST) will be payable at the rate as applicable to those goods under State Vat provisions. Interest for delayed payment will also be payable.
- (s) Two enterprises become 'associated enterprises' if loan granted by one to another is at least 51% of total assets of another enterprise. In this case, the loan granted is less than 51%, the two enterprises are not 'associated enterprises'.
- (t) (I) Allocation of R&D expenditure (II) Rate of royalties for technical knowhow (III) Allocation of cost of development of market and brand (IV) Intellectual Property Rights (IPR) like patent, design, copyright, trade mark.

2. Answer any two of the three sub-questions (a), (b) and (c).

2×2=4

- (a) State provisions of works contract as contained in Constitution of India. 2**
- (b) State distinction between taxable event in Central Excise and State VAT (sales tax). 2**
- (c) State in brief provisions where Parliament can impose restrictions on rate of sales tax (VAT) which can be imposed by State Government on goods sold within the State. 2**

Answer:

- 2. (a) As per Article 366(29A)(b) of Constitution of India, 'Tax on the sale or purchase of goods' includes -a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made.
- 2. (b) In case of Central Excise, Excisable goods produced or manufactured in India is the taxable event. In case of State Vat, Sale or purchase of goods within the State is the taxable event.

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2. (c) Article 286(3)(a) of Constitution of India authorises Parliament to declare some goods as of 'special importance' and to impose restrictions and conditions in regard to power of States in regard to levy, rates and other incidence of tax on such goods. Parliament can restrict powers of State Government to tax such 'declared goods'.

3. Answer any two of the three sub-questions (a), (b) and (c).

8×2=16

(a) (i) Following information are available in respect of manufacture of an Engine which has been used for captive consumption within the factory. Calculate assessable value on which excise duty is payable. 6

Particulars	₹
Cost of direct materials (inclusive of excise duty of ₹ 1,545)	16,545
Cost of direct employees	12,300
Consumable stores and repairs	8,400
Quality Control Cost	4,300
Research and Development Cost	2,700
Production Overheads	3,000
Administrative Overheads	1,500
Selling and distribution cost	3,600
Scrap value realised	1,500

(ii) Explain distinction between 'goods' and 'excisable goods'.

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Answer:

3. (a) (i)

Particulars	₹
Cost of direct materials (net of excise duty) (₹ 16,545 – ₹ 1,545)	15,000
Cost of direct employees	12,300
Consumable stores and repairs	8,400
Quality Control Cost	4,300
Research and Development Cost	2,700
Production Overheads	3,000
Less - Scrap value realised	1,500
Cost of Production as per CAS-4	44,200
Add 10%	4,420
Assessable Value of Excisable goods	48,620

Note: It is assumed that administrative overhead not related to production activity.

Alternatively, it can be done by considering the administrative overhead as a part of production activity, as follows:

Particulars	₹
Cost of direct materials (net of excise duty) (₹ 16,545 – ₹ 1,545)	15,000
Cost of direct employees	12,300
Consumable stores and repairs	8,400
Quality Control Cost	4,300
Research and Development Cost	2,700
Production Overheads	3,000
Administrative Overheads	1,500

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Less – Scrap value realised	1,500
Cost of production as per CAS – 4	45,700
Add 10%	4,570
Assessable Value of Excisable goods	50,270

3. (a) (ii) Section 2(d) of Central Excise Act defines Excisable Goods as 'Goods specified in the First Schedule and Second Schedule to Central Excise Tariff Act, 1985 as being subject to a duty of excise and includes salt'.

Thus, unless the article is specified in the Central Excise Tariff Act as subject to duty, it will not be 'excisable goods' even if the article may be 'goods', as goods mean all articles, materials and commodities.

- (b) (i) **State eligibility of following purchases for availment of Cenvat credit of excise duty paid on those purchased goods:**

- (1) Raw material
- (2) Petrol
- (3) Office equipment
- (4) Capital goods used in mines away from the factory
- (5) Goods used in canteen for employees
- (6) Lubrication oil
- (7) Inputs used for making structure for support of capital goods
- (8) Spare parts used for maintenance of motor vehicle owned by company 4

- (ii) A manufacturer cleared some goods of assessable value of ₹ 10 lakhs, on payment of appropriate excise duty, which was 12% (ignore education cess and SAH education cess). The goods were rejected by customer and were returned to the manufacturer. The manufacturer carried out re-work. After re-work, he cleared the goods. At the time of sale, the applicable excise duty on that product was 14% (ignore education cess and SAH education cess). Discuss liability of the manufacturer in following situations: 4

- (1) The process of re-work was not 'manufacture'. He sold the goods from factory to another buyer for ₹ 11 lakhs.
- (2) The re-work carried out by the manufacturer was 'manufacture' within the provisions of Central Excise Act. He sold the goods from factory to another buyer for ₹ 9 lakhs.
- (3) He could not do re-work and the returned goods were sold as scrap for ₹ 30,000.

Answer:

3. (b) (i) (1) Eligible (2) not eligible (3) Not eligible (4) Not eligible (5) Not eligible (6) Eligible (7) Not eligible (8) Not eligible, as it is assumed to be used in office.

- (ii) The manufacturer can take Cenvat credit of ₹ 1,20,000 when rejected goods are returned, as excise duty paid by him was ₹ 1,20,000. (1) He is required to pay 'amount' of ₹ 1,20,000 while clearing goods from factory (2) He is required to pay excise duty @ 14% of ₹ 9 lakhs i.e. ₹ 1,26,000 (3) He is required to reverse the Cenvat credit of ₹ 1,20,000.

- (c) (i) **A manufacturer purchased 2000 units of Cenvatable raw material and availed Cenvat credit of ₹ 2,00,000. Out of the 2000 units, 1500 units were issued to production and were in shop floor. Balance 500 units were in stores. Due to**

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accidental fire, all 2000 units were destroyed. Discuss eligibility of Cenvat credit of duty paid on the raw material. 2

(ii) State issues under excise law, which can be decided by single member bench of Tribunal (CESTAT). 3

(iii) A manufacturer (not eligible for SSI exemption) cleared 100 pieces from his factory at Bangalore and sent to his Chennai depot on 1.1.2014. The net price of that product (excluding duties and taxes) on 1.1.2014 was as follows:

(1) Sale from factory ₹ 90 per piece

(2) Sale from Chennai Depot ₹ 100 per piece. The excise duty rate was 12% (ignore education cess and SAH education cess). The goods were sold from Chennai Depot on 5.3.2015. On that day the net prices were as follows:

(I) Sale from factory - ₹ 95 per piece

(II) Sale from Chennai Depot - ₹ 105 per piece.

The excise duty rate was 12.5% (ignore education cess and SAH education cess).

(A) Calculate excise duty payable.

(B) State the due date for payment of excise duty on this transaction. 2+1=3

Answer:

3. (c) (i) The manufacturer is required to reverse Cenvat credit of ₹ 50,000 as the inputs are not used in manufacturing process.

(ii) Vide section 35D(3) of Central Excise Act, President of CESTAT can authorise any member to hear case singly when the duty involved or difference of duty involved or the fine or penalty involved does not exceed ₹ 50,00,000 (fifty lakhs).

If duty involved is less than ₹ 50 lakhs but penalty exceeds ₹ 50 lakhs, hearing cannot be by single member bench.

This is called a 'Single member Bench' of Tribunal and legally, there is no difference between order passed by a single member bench and a multi-member bench, as both are equally binding.

However, if the dispute is in relation to classification or rate of duty or valuation, the matter cannot be decided by single member bench.

(iii) The excise duty payable in on basis of price at Chennai depot as on date of clearance from his factory. Thus assessable value = $100 \times ₹ 100 = ₹ 10,000$. Excise duty payable @ 12% = ₹ 1,200. Any subsequent change in duty rate of price at Chennai does not affect the excise duty payable. The excise duty is payable on 6-2-2014 [as all manufacturers are required to pay excise duty electronically].

4. Answer any two of the three sub-questions (a), (b) and (c). 6×2=12

(a) (i) Explain provisions relating to 'pilferage' in customs law. 2

(ii) What are 'coastal goods'? 2

(iii) Explain 'injury margin' in provisions relating to anti dumping duty. 2

Answer:

4. (a) (i) Section 13 of Customs Act provides that if imported goods are pilfered after unloading but before order for clearance is passed by Customs Officer for clearance for home consumption or deposit in a warehouse, no duty is payable on the goods, unless the pilfered goods are restored to importer.

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Under section 13, normally duty is not paid. However, if duty is paid before examination of goods, refund can be claimed if goods are found to be pilfered during examination but before order for clearance is made.

- (ii) 'Coastal goods' means goods, other than imported goods, transported in a vessel from one port in India to another port in India [section 2(7) of Customs Act].

Thus, coastal goods means goods taken by ship from one Indian port to another. No export or import is involved, but control is necessary to ensure that coastal goods are not diverted illegally for export.

- (iii) '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 anti-dumping duty enough to remove injury to domestic industry can be levied. The anti-dumping duty will be dumping margin or injury margin, whichever is lower.

For example, if normal value in exporting country is ₹ 11 and export price is ₹ 8, dumping margin is ₹ 3. If landed cost is ₹ 9 and fair selling price of domestic industry is ₹ 10, then injury margin is ₹ 1. Hence, anti-dumping duty of only ₹ 1 can be imposed.

- (b) (i) State in brief provisions relating to refund of special CVD of 4% paid while importing goods. 3**

- (ii) ABC Ltd. imported machinery which was kept in warehouse on 1.4.2014. Ex-bond Bill of Entry for home consumption was presented on 1.11.2014. It was assessed and returned to ABC Ltd. on 3.11.2014. ABC Ltd. paid customs duty payable ₹ 5,00,000 on 14.11.2014 and cleared the goods from the warehouse. Calculate the interest payable by ABC Ltd. 3**

Answer:

4. (b) (i) Traders selling imported goods in India after charging sales tax/Vat can claim refund of special CVD from customs department - Notification No. 102/2007-Cus dated 14-9-2007. The dealer (trader) (if he is registered with Central Excise and is issuing Cenvatable Invoice) selling such imported goods must mention in his invoice that the buyer will not be able to avail Cenvat credit of such duty.

This is required if he is claiming refund of the special CVD. If he is not claiming refund, obviously, such remark is not required.

The first stage dealer purchasing goods from registered importer (importer registered under Central Excise Act to issue Cenvatable invoice) and second stage dealer purchasing goods from such first stage dealer is also required to make similar remark in his invoice -proviso to rule 11(7) of Central Excise Rules.

Refund will be subject to doctrine of unjust enrichment. Refund claim is to be filed within one year from payment of customs duty. For one Bill of Entry, only one claim can be filed. Only one claim should be filed every month with original documents of payment of Vat/CST.

- (ii) Imported goods can be kept in customs bonded warehouse for 90 days. Interest is payable under section 61(2) of Customs Act for delay beyond 90 days. Interest should be payable upto and including the date of payment of duty.

The 90 day period got over on 30-6-2015 [29 days in April, 31 days in May and 30 days in June]. Thus, delay is - July -31, August -31, September - 30, October - 31 and November -14 i.e. total 137 days. Hence, interest @ 15% = [₹ 5,00,000 × 15 × 137/(100 × 365)] = ₹ 28,150.68.

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(c) Sathanarayana Pvt. Ltd., a manufacturer imported his raw material in a vessel. The assessable value of machinery as per section 14 of Customs Act is ₹ 24,70,000. The Bill of Entry was filed on 28.2.2015 when customs duty payable was 12%! The vessel was granted entry inwards on 4.03.2015, when customs duty rate was 14%. The importer paid customs duty on 12.03.2015, when customs duty rate was 10%. Calculate customs duty payable. Rate of CVD may be taken as 14%. Education cess and SAH Education cess was not payable on CVD.

Calculate customs duty payable. How much Cenvat credit is available to Sathanarayana Pvt. Ltd. 6

Answer:

4. (c) The customs duty rate to be taken is 14%.

Ser No.	Description	Duty %	Amount (₹)	Total Customs Duty (₹)
(A)	Assessable Value		24,70,000	
(B)	Basic Customs Duty	14	3,45,800	3,45,800
(C)	Sub- Total for calculating CVD '(A +B)'		28,15,800	
(D)	CVD 'C' x excise duty rate	14	3,94,212	3,94,212
(E)	Sub – total for edu cess on customs 'B + D'		7,40,012	
(F)	Edu Cess of Customs – 2% of 'E'	2	14,800	14,800
(G)	SAH Education Cess of Customs – 1% of 'E'	1	7,400	7,400
(H)	Sub- total for Spl CVD 'C+D+F+G		32,32,212	
(I)	Special CVD under section 3 (5) – 4% of 'H'	4	1,29,288	1,29,288
(J)	Total Customs duty			8,91,500

Sathanarayana Pvt. Ltd. can avail Cenvat credit of 14% CVD of ₹ 3,94,212 and 4% special CVD of ₹ 1,29,288.

Note: The relevant date for rate of duty for customs valuation will be —

1. The date on which bill of entry is presented, or
2. The date of entry inwards of the vessel, whichever is later.

5. Answer any two of the three sub-questions (a), (b) and (c). 4×2=8

(a) State similarities and distinctions between Advance Authorisation and DFIA (Duty Free Import Authorisation). 4

Answer:

5. (a) Similarity is that DFIA (Duty Free Import Authorisation) and Advance Authorisation issued to allow duty free import of inputs, fuel, oil, energy sources, catalyst required for export products.

Distinctions are as follows -

'Advance Authorisation' is not transferable, while DFIA is transferable after export obligation fulfilled.

Material imported under DFIA will be transferable after fulfillment of export obligation.

In case of Advance Authorisation, 15% value addition is sufficient, while in case of DFIA, 20% value addition is required.

DFIA scheme is not available to gem and jewellery sector - para 4.40 of FTP 2015-2020.

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DFIA cannot be issued where SION (Standard Input Output Norms) prescribes actual user condition.

DFIA can be issued only if SION has been fixed for that product.

(b) An exporter has imported certain machinery on full payment of customs duty. Later, he manufactured goods utilising that machinery and exported the goods. He wishes to know whether he can get any benefit of rebate of customs duty he had paid on the machinery.

Advise the manufacturer explaining the relevant provisions.

4

Answer:

5. (b) This is termed as 'post export EPCG scheme'.

In this case, the capital goods are imported on full payment of duty. Later, duty remission is granted in proportion to export obligation fulfilled.

Post Export EPCG Duty Credit Scrip (s) shall be available to exporters who intend to import capital goods on full payment of applicable duties in cash and choose to opt for this scheme. Basic Customs duty paid on Capital Goods shall be remitted in the form of freely transferable duty credit scrip(s), similar to those issued under Chapter 3 of FTP. Specific EO under this Scheme shall be 85% of the applicable specific EO. Average Export Obligation continues to remain unchanged - para 5.12 of FTP 2015-2020 and para 5.28 of HBP 2015-2020.

Application shall be submitted electronically to Regional Authority in form ANF 5A - para 5.28 of HBP 2015-2020.

Duty remission shall be in proportion to the Export Obligation fulfilled. These Duty Credit Scrip(s) can be used for payment of applicable custom duties for imports and applicable excise duties for domestic procurement. All provisions of the existing EPCG Scheme shall apply insofar as they are not inconsistent with this scheme.

The advantage of the scheme is that the exporter does not have any specific export obligation when he imports capital goods on payment of full customs duty. Later, he gets remission on the basis of exports made by him.

(c) State import policy in respect of (i) second hand goods (ii) Free samples.

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Answer:

5. (c) Import of second hand PC, laptop, air conditioner, DG set, photocopier will require authorization. Import of re-conditioned, refurbished spares of capital goods will be allowed subject to certification of Chartered Engineer that it has at least 80% of residual life of original spares. Other Second hand capital goods including refurbished/reconditioned spares are freely permitted. Other second hand goods (other than capital goods) are restricted, i.e. can be imported against authorization only.

Authorisation for import of samples is required only in case of vegetable seeds, bees and new drugs. Samples of tea upto ₹ 2,000 (CIF) per consignment will be allowed without authorization.

In other cases, authorisation is not required for import of bona fide technical and trade samples. Samples upto ₹ 3,00,000 can be imported by all exporters without duty.

6. Answer any two of the three sub-questions (a), (b) and (c).

10×2=20

(a) (i) What is the rate of interest payable if there is delay in payment of service tax? 2

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- (ii) John & Co, a proprietary firm, is providing maintenance and repair services. The firm is registered under service tax provisions. The net value of services (excluding service tax) provided by the firm are as follows:

(1) 2011-12— ₹ 12 lakhs, (2) 2012-13— ₹ 14 lakhs, (3) 2013-14— ₹ 8 lakhs (4) 2014-15— ₹ 12 lakhs.

Calculate the service tax payable by the firm for the year 2014-15. Assume service tax rate of 14%. Ignore education cess and SAHE cess. 2

- (iii) Bristi Ltd. is engaged in business of renting of immovable properties owned by it. During the year 2014-15, it has collected following amounts:

I	Vacant land used for agriculture	₹ 10 lakhs
II	Building let out to RBI	₹ 12 lakhs
III	Building let out to company for office	₹ 9 lakhs
IV	Temple hall let out for religious purposes	₹ 0.25 lakh
V	Building located in USA let out to T (who is in Kolkata) for use as hotel	₹ 30 lakhs
VI	House let out to students for residential purposes	₹ 6 lakhs
VII	Building rented to Zap Secondary School (recognised by Government)	₹ 24 lakhs
VIII	Rent from guest house (per day rent ₹ 500)	₹ 1.5 lakhs

Calculate service tax payable by considering service tax rate @14%. Ignore education cess and SAH education cess. 6

Answer:

6. (a) (i) The interest payable under section 75 of Finance Act, 1994 will be as follows w.e.f. 1-10-2014 - (I) if delay upto 6 months - 18% p.a. for first six months (II) if delay is more than 6 months and upto one year - 18% p.a. for first six months and 24% p.a. for delay beyond six months (III) if delay more than one year - 18% p.a. for first six months and 24% p.a. for next 6 months and 30% p.a. for any delay beyond one year - Notification No. 12/2014-ST dated 11-7-2014.

In case of small service providers whose value of taxable service did not exceed ₹ 60 lakhs during any of the financial year, covered by the notice or during the last financial year, the rate of interest shall be reduced by 3% per annum [proviso to section 75 of Finance Act].

Thus, in case of small service providers, interest rate will be 15% p.a., 21% p.a. and 27% p.a. respectively.

- (ii) John and Co. can avail exemption for first 10 lakhs in 2014-15 as their turnover was less than ₹ 10 lakhs in previous financial year.

Hence, service tax is payable on ₹ two lakhs @ 14% i.e. service tax payable is ₹ 28,000.

- (iii) The service tax payable is as follows -

I	Vacant land used for Agriculture	Nil	For agricultural purposes and hence in negative list
II	Building let out to RBI	₹ 12 lakhs	No exemption
III	Building let out to company for office	₹ 9 lakhs	No exemption
IV	Temple hall let out for religious purposes	Nil	It is exempt (under notification no. 25/2012-ST, dt. 20.06.2012)
V	Building located in USA let out to T (who is in Kolkata) for use as hotel	₹ 30 lakhs	As per rule 8 of Place of Provision of Service Rules, the

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			place of provision of service is India and hence taxable
VI	House let out to students for residential purposes	Nil	Renting for residential purposes is in negative list
VII	Building rented to Zap Secondary School (recognised by Government)	₹ 24 lakhs	No exemption
VIII	Rent from guest house (per day rent ₹ 500)	Nil	Exempted as per day tariff less than ₹ 1,000
	Total value of taxable service	₹ 75 lakhs	
	Service tax @ 14%	₹ 10.50 lakhs	

(b) (i) Mr. Hiyastab, a Cost Accountant, has provided following services during April 2014 to March 2015—

(1) Cost Audit fees received from Government companies ₹ 11 lakhs, (2) Stock audit fees received from Banks ₹ 7 lakhs, (3) Consultancy services provided to UN Organisation ₹ 8 lakhs, (4) Cost audit fees received from private companies ₹ 5 lakhs, (5) Fees for appearing before CESTAT (Tribunal) ₹ 9 lakhs. He had availed input services on which the service providers had charged service tax of ₹ 1 lakh. These input services are common to all the services provided by him. Calculate the net amount of service tax payable by Mr. Hiyastab, by considering service tax rate @ 14% ignore education cess and SAH education cess. 4

(ii) Mr. Ram was employed with XYZ Ltd. As per terms of the contract, he was required to give three months notice before leaving job. However, Mr. Ram requested for immediate release and offered to pay three months salary of ₹ 6 lakhs in lieu of notice. The company accepted his offer and released him from employment. Discuss implications relating to service tax. 2

(iii) A consulting engineer provided following services in a month—

(1) Free Professional advice to his friend [normal charges for such service would be ₹ 10,000], (2) Computer software services ₹ 10 lakhs, (3) Consultancy Services to Government of Gujarat ₹ 8 lakhs. Service tax was charged separately, wherever applicable. He has paid ₹ 50,000 as cess under Section 3 of the Research and Development Cess Act, 1986.

What is the amount of service tax payable by him? Assume service tax rate of 14%. Ignore education cess and SAHE cess. 4

Answer:

6. (b) (i) Service tax is payable on $11 + 7 + 5 + 9 = 32$ lakhs. Services provided to UN Organisation are exempt from service tax. Thus, service tax payable is ₹ 4,48,000. He has input tax credit (Cenvat Credit of ₹ 1 lakh. He is not required to pay service tax on services provided to UN Organisation. However, since common input services have been used for both exempted services and taxable services, payment of 6% 'amount' on ₹ 8 lakhs is required [Rule 6(3)(i) of Cenvat Credit Rules]. Thus, he has to pay service tax of ₹ 3,48,000 [₹ 4,48,000 - ₹ 1,00,000] plus an 'amount' of ₹ 48,000.

If Mr. Hiyastab files declaration under rule 6(3A)(a) of Cenvat Credit Rules, he has to pay 'amount' on proportional basis. In that case, the amount payable is as follows -

Total value of service = 32 lakhs (taxable) + 8 lakhs (exempt) = 40 lakhs. Total Cenvat credit = ₹ 1,00,000.

Hence, amount payable = ₹ 1,00,000 × [₹ 8,00,000 / (₹ 40,00,000)] = ₹ 20,000.

(ii) This activity is covered under 'tolerating an act or situation' which is a 'declared service'. Hence, XYZ Ltd. will be liable to pay service tax on ₹ 6 lakhs. If XYZ Ltd. does

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not recover service tax amount separately, service tax will be payable by making back calculations, considering ₹ 6 lakhs as inclusive of service tax.

- (iii) There is no service tax on free services. Service tax on ₹ 18 lakhs @ 14% is ₹ 2,52,000. R&D cess paid is ₹ 50,000, which is allowable as deduction. Hence, net service tax payable is ₹ 2,02,000.

- (c) (i) **A service provider charged excess service tax in his invoice dated 15-09-2014 by mistake. He paid the service tax for month of September 2014 on 5.10.2014. He filed ST-3 return for the period April 2014 to September 2014 on 24.10.2014.**

What is the last date for filing refund claim in respect of excess service tax paid by him? 2

- (ii) **A contractor provided service of erection and commissioning to John and Michael Pvt. Ltd., without any material. The contractor had charged service tax in his invoice. The company paid ₹ 26,00,000 to the contractor after deducting income tax (TDS of income tax) @ 10% under section 194 J of Income Tax Act, in full settlement of Bill. Find out the total bill amount of the contractor, assuming service tax rate of 14% (ignore education cess).** 5

- (iii) **Janak and Sons, a firm of advocates provided service to JLK Manufacturers Ltd. and issued invoice on 15.6.2015 for ₹ 1,00,000. JLK Manufacturers Ltd. paid the bill amount to Advocates on 20.12.2015. State person liable to pay service tax, service tax payable and due date of payment of service tax. Assume service tax rate of 14%. Ignore education cess.** 3

Answer:

6. (c) (i) As per section 11B of Central Excise Act, which has been made applicable to service tax, refund claim should be filed within one year from date of payment of tax. Since he paid service tax on 5-10-2014, he must file refund claim latest on 5-10-2015. Otherwise, the refund claim will become time barred.

- (ii) Income tax TDS is required to be deducted on net amount excluding service tax.

Assume that value of service = x. Hence, service tax on x = 0.14 x. Income tax TDS = 0.10 x (as TDS is on net amount excluding service tax).

Now, $x + 0.14x - 0.10x = 26,00,000$.

Thus, $1.04x = 26,00,000$.

Hence, $x = \text{value of service} = 26,00,000 / 1.04 = 25,00,000$.

Service tax @ 14% of ₹ 25,00,000 = 3,50,000.

Hence, Bill of contractor = ₹ 25,00,000 + service tax ₹ 3,50,000 = 28,50,000.

- (iii) Service tax of ₹ 14,000 is payable by JLK Manufacturers Ltd. under reverse charge. Service tax is payable on 6-10-2015, since as per rule 7 of Point of Taxation Rules, in case of reverse charge, service tax becomes payable after three months even if payment is not made to service provider (Advocates). Thus, payment of service tax is due on 15-9-2015. Hence, service tax can be paid on due date which is 6-10-2015.

7. Answer any two of the three sub-questions (a), (b) and (c).

6×2=12

- (a) (i) **A manufacturer sent his manufactured goods to his branch in another State. Which form is required to be issued and by whom, so that the manufacturer can claim exemption from Central Sales Tax? What would be the consequences, if that form is not issued?** 2

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- (ii) Anuradha & Co., a registered dealer in VAT, furnishes following details of purchases and sales for the month of March, 2015:

Particulars	Amount
Opening balance of VAT Input Tax Credit	25,000
Opening balance of stock of inputs	Nil
Purchase of goods from registered dealers within the State (including State VAT)	28,62,500
Purchases from outside State against issue of C form (including CST amount)	15,30,000
Net sales within State excluding State VAT	55,00,000
Closing stock of goods purchased within the State as on 31.03.2015 (inclusive of VAT paid on purchases)	1,14,500

VAT rate on both inputs and outputs is 14.5%. Determine VAT liability of dealer for the month of March, 2015. 4

Answer:

7. (a) (i) Form F is required to be issued by branch office/ consignment agent receiving the goods as branch/ stock transfer. If the form is not issued the transaction will be treated as sale for all purposes of the CST Act.

- (ii) Vat payable on sales - $[55,00,000 \times 14.5]/100 = ₹ 7,97,500$

Vat Credit available - Opening balance of Vat Credit - ₹ 25,000

Add - Vat paid on purchases - $[28,62,500 \times 14.5]/114.50 = ₹ 3,62,500$

Total Vat Credit available = $25,000 + 3,62,500 = ₹ 3,87,500$

Hence, net Vat payable = Vat payable on sales ₹ 7,97,500 - Vat credit available ₹ 3,87,500 = ₹ 4,10,000.

Input tax credit is available even if some goods are in stock. Input tax credit is not available on CST paid on purchased goods.

- (b) (i) Discuss the role of a Cost Accountant in successful implementation of VAT provisions in a business organisation. 2

- (ii) M/s Simple Traders have purchased goods @ ₹ 3,45,000 including VAT. He intends to earn gross margin of 10% on his net purchase cost. The VAT rate is 15% on both purchases and sales.

(1) Find his selling price and the net VAT payable by him on this transaction.

(2) Illustrate how the VAT is payable by Simple Traders only on his 'value added'.

2+2=4

Answer:

7. (b) (i) Cost Accountant can guide in developing systems for maintenance of proper records of Vat paid on all inputs and Vat payable on the sales. He can ensure that all Vat provisions are properly complied with and business organisation does not lose any input tax credit available.

In some States (Assam, Kerala, Orissa, Uttarakhand, Maharashtra etc.), audit can be done either by Practicing Cost Accountants or Chartered Accountants.

- (ii) The net purchase cost of Simple Traders is ₹ 3,00,000 $[(₹ 3,45,000 \times 100)/115]$. Since the trader intends to sale goods at gross margin of 10%, the margin is ₹ 30,000 [This is his 'value added']. Hence, selling price is ₹ 3,30,000.

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Vat payable on his sales of ₹ 3,30,000 @15% is ₹ 49,500. Total selling price = ₹ 3,30,000 + ₹ 49,500 = 3,79,500.

Vat payable on sales is ₹ 49,500, while input tax credit available is ₹ 45,000. Thus, the net Vat payable by him is ₹ 4,500.

His 'value addition' is ₹ 30,000. He is paying Vat of ₹ 4,500 which is 15% of ₹ 30,000. Thus, in effect, he is paying Vat only on his value added.

(c) (i) What is distinction between 'exempted transaction' and 'zero rated transaction' in VAT? 2

(ii) Laxman & Co. furnishes to you the following information:

- (1) Inter-State sale of goods (it includes ₹ 10,00,000 being the value of goods transferred to Chennai Branch for which Chennai Branch had issued Form F) ₹ 69,00,000**
- (2) Dharmada (Charity) collected separately ₹ 25,000 [This was collected only from buyers who had voluntarily agreed for such charge]**
- (3) Weighment charge recovered separately from buyers 2,40,000**
- (4) Cash discount shown in invoice as per trade practice ₹ 60,000**
- (5) Transit Insurance charges recovered from buyers to cover transit loss based on their request ₹ 50,000.**

Calculate the turnover and CST payable, on the assumption that all the sales were made to registered dealers, who have issued C forms. Assume that the price is exclusive of CST. 4

Answer:

7. (c) (i) 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 transaction' and 'exempted transaction' is that in case of 'zero rated sale', credit is available on tax paid on inputs, while in case of exempt sale, credit of tax paid on inputs is not available. Exports are zero rated transaction.

(ii) CST is not payable on stock transfer. Hence, sales tax is payable on ₹ 59,00,000 plus weighment charges ₹ 2,40,000. Cash discount is allowable as deduction. Insurance charges are allowable as deduction. Dharmada is not includible if paid voluntarily by customers.

Thus, 'turnover' = ₹ 59,00,000 + ₹ 2,40,000 - ₹ 60,000 - ₹ 50,000 = ₹ 60,30,000

CST @ 2% on ₹ 60,30,000 = ₹ 1,20,600.

8. Answer any two of the three sub-questions (a), (b) and (c). 4×2=8

(a) What is advance pricing agreement (APA)? Who are eligible to enter into APA Agreement? 2+2=4

Answer:

8. (a) Advance Pricing Agreement (APA) is an agreement between taxpayer and taxing authority (CBDT), where transfer pricing methodology is fixed for specified fixed period of time in future - section 92CC of Income Tax Act.

The APA can be maximum for five years. It is binding only on assessee and CIT (Commissioner of Income Tax).

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After such agreement, there will be re-assessment as per provisions of section 92CD of Income Tax Act.

The procedural aspects are covered in rules 10F to 10T of Income Tax Rules.

- 8. (b) C Ltd., a resident Indian company, sold goods to its associated enterprise D Inc. of USA. D Inc. sold goods to its independent buyers at US dollars 15,000. D Inc. earned profit of 15% on purchase cost in that transaction.**

Calculate Arm's Length price in the hands of C Ltd.

State the effect on C Ltd., if C Ltd. sells the goods to D Inc. (i) above the Arm's Length Price, (ii) below the Arm's Length Price. 2+2=4

Answer:

8. (b) The purchase price of D Inc. is USD $[15,000 \times 100]/115 = \text{USD } 13,043.48$. Thus, Arm's Length Price (ALP) in hands of C Ltd. is USD 13,043.48.

If C Ltd. sales the goods at price higher than ALP, it means profit of C Ltd. will be higher. In that case, the income as declared by C Ltd. in income tax return will be accepted by Indian income tax authorities. However, if C Ltd. sales to D Inc. below the ALP, the difference between ALP and the price at which goods were sold by C Ltd. will be added to the income declared by C Ltd. in its income tax return.

- 8. (c) State purpose of Safe Harbour Rules. State provisions of 'safe harbour' in respect of software development service. 3+1=4**

Answer:

8. (c) Many transactions are coming within purview of section 92C of Income Tax Act in respect of transfer pricing. This raises lot of disputes. Hence, section 92CB of Income Tax Act empowers CBDT to formulate safe harbour rules.

'Safe Harbour' means circumstances in which income tax authorities shall accept the transfer price declared by assessee, without going into details of Arm's Length Price (ALP).

Assessee can opt to exercise Safe Harbour Rules by submitting form No. 3CEFA to assessing officer. If assessing officer does not take any action within two months from end of the month in which the option was filed, the Safe Harbour action will be considered to have been accepted.

The option will remain valid for five years. However, once the option is accepted, it cannot be changed and if assessee declares less margin in a particular year, the income will be calculated on basis of safe harbour rates or margins only [This is rather risky, as assessee binds himself for five years].

The transfer price will be accepted in transactions as specified in rule 10TD of Income Tax Rules.

Provision of software development service - In case of software development service, transfer price declared will be accepted if operating profit margin declared in international transaction in relation to operating expenses is not less than 20% if transactions are upto ₹ 500 crores in the previous year or not less than 22% if value of such transactions exceed ₹ 500 crores during the previous year.