

INTERMEDIATE EXAMINATION

GROUP II

(SYLLABUS 2008)

SUGGESTED ANSWERS TO QUESTIONS

JUNE 2012

Paper-10 : APPLIED INDIRECT TAXATION

Time Allowed : 3 Hours

Full Marks : 100

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

Answer Question No. 1 (carrying 25 marks) and answer any five (each carrying 15 marks) from the rest.

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

All questions relate to the assessment year 2012-13 unless stated otherwise in the questions.

Please : (1) Answer all bits of a question at one place.

(2) Open a new page for answer to a new question.

Working notes should form part of the answer.

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

[1×9=9]

- (i) Goods manufactured in SEZ are _____ goods.
- (ii) An Assessee can claim refund of Excise Duty within _____ from relevant date in Form R.
- (iii) Landing charge is _____ % of CIF value. It is a _____ charge.
- (iv) In case import is through post, label/declaration on postal article is treated as _____ .
- (v) In case of Captive consumption, valuation is done on the basis of cost of production plus _____. Cost of production is calculated as per _____ of the Institute of Cost and Works Accountants of India.
- (vi) Central Government can grant general or total exemption from Service Tax but it can not grant with _____ effect.
- (vii) RNR (Revenue Neutral Rate) is _____ % for most of the commodities.
- (viii) Appeal to commissioner (Appeals) should be filed within _____ days from the order of Officer Lower in rank than commissioner.
- (ix) Remand means sending the case back to _____ authorities for decision.

2 ♦ Suggested Answers to Question — AIT

(b) State with reasons, whether the following statements are *true* or *false*. (Answers without reasoning will not receive any credit) : [2×5=10]

- (i) Unbranded Software is service.
- (ii) No anti-dumping duty is payable by EOUs under the Customs Act, 1962, even where the goods imported are used for manufacture of goods sold in India.
- (iii) If goods are pilfered in port before clearance, customs duty is still payable by the importer.
- (iv) Specific duty leviable under the Central Excise Act is based on the value of article/goods being assessed.
- (v) Insurance company which takes possession of damaged goods for which it has paid, sells the damaged goods. The insurance company is a dealer under the Central Sales Tax Act.

(c) In each of the cases given below, one out of four alternatives is correct. Indicate the correct answer (= 1 mark) and give workings/reasons briefly in support of your answer (= 1 mark). [2×3=6]

- (i) ALIANCE & CO. a dealer in Delhi dealing in consumer goods, had purchased goods of ₹ 2,16,000 (exclusive VAT) and after adding for expenses of ₹ 24,000 and of Profit ₹ 60,000 had sold out the same. If the rate of VAT on purchase and sales is 12.5% what would be the amount of tax payable (Net) under VAT?
 - (A) ₹ 10,500
 - (B) ₹ 9,000
 - (C) ₹ 3,000
 - (D) None of the above
- (ii) MR. SMITH a consulting engineer, raised a bill of ₹ 2,48,175 (Including Service Tax) on his client for Consultancy Services rendered by him on January 15, 2012. If a partial payment of ₹ 1,93,025 is received by Mr. Smith on February 5, 2012, what would be the amount of Service Tax payable by him for the quarter ending March 31, 2012.
 - (A) ₹ 23,175
 - (B) ₹ 1,75,000
 - (C) ₹ 15,150
 - (D) Insufficient data
- (iii) The selling price of VINTEX LTD. inclusive of basic Excise duty @ 8%, education cess @ 2%, SAHEC @ 1 % and CST @ 2% is ₹ 3,600. What would be the assessable value of the product per unit under the Central Excise Act?
 - (A) ₹ 3325.94
 - (B) ₹ 3260.87
 - (C) ₹ 3065.10
 - (D) None of (A), (B) & (C)

Answer 1. (a)

- (i) Excluded
- (ii) One year
- (iii) 1%. Statutory
- (iv) Entry
- (v) 10%. CAS-4
- (vi) Retrospective
- (vii) 12.5%
- (viii) 60
- (ix) Lower.

Answer 1. (b)

- (i) **True** — Finance Bill, 2008 has imposed Service Tax on tailor made software, i.e. unbranded software.
- (ii) **False** — EOU, as such is exempt from antidumping duty. However, if the imported goods are sold as such or have been used for manufacture and sale of goods in India, then antidumping duty will become payable.
- (iii) **False** — Where goods have been pilfered in the port prior to their clearance, the importer is not liable. The port authorities will be responsible, for paying the Customs Duty.
- (iv) **False** — The specific duty is the duty payable on the basis of certain units like weight, lengths, volume, thickness etc. Example, duty on cigarettes is based on lengths of cigarettes, duty on sugar is based on its weight in Kg etc, whereas duty based on value is “Advalorem” duty.
- (v) **True** — The issue to be seen here is whether an Insurance Company is a dealer. Selling of goods is incidental or ancillary business of Insurance Company and hence, Insurance Company is a dealer.

Answer 1. (c)

(i) ₹ 1 0,500	₹
Sale Value (216000 + 24000 + 60000)	3,00,000
VAT on Sale Value : 300000 × 0.125	37,500 (A)
Purchase value (exclusive VAT)	2,16,000
VAT paid on purchase value (216000 × 0.125)	<u>27,000 (B)</u>
Net Tax payable under VAT (A – B)	<u>10,500</u>

- (ii) (A) — ₹ 23,175

Service Tax payable to the Government on the amount actually raised Bill (Invoice) towards the value of taxable services (w.e.f. 1.4.2011).

Hence Service Tax payable in this case will be : $(248175 \div 1.103) \times 0.103 = 23175$

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(iii) (B) — ₹ 3260.87

Assessable Value + E. Duty + EC + SAHEC : 1.0824

$1 + 0.08 + (0.08 \times 0.02) + (0.08 \times 0.01)$

Add : CST @ 2% : 0.0216

1.1040

Hence, Assessable Value : 3260.87

$(3600 \div 1.1040)$

Q. 2. (a) Discuss the essential requirements for application of transaction value for the determination of assessable value. [3]

(b) Does 'Renting of Lockers' by Bank amounts to sale? [2]

(c) Answer the following with reference to decided case laws as to how value shall be determined under Sec. 14 of the Customs Act, 1962 and the rules made thereunder. [2+2=4]

(i) There has been a price rise between the date of contract and the date of actual importation. The contract was over 6 months before the date of shipments.

(ii) The goods are purchased on High Seas.

(d) Answer the following with reference to the Finance Act, 1994 as amended relating to applicability of Service Tax. [2×3=6]

(i) Services in relation to production of alcoholic liquor on Job Work basis.

(ii) Services provided by a practicing Chartered Accountant representing a client before Income Tax Officer in Assessment proceeding.

(iii) Services provided by a Club or association to its non-members.

Answer 2. (a)

The essential condition for application of a Transaction value are :

(i) There should be sale of goods.

(ii) The goods sold should be for delivery at the time and place of removal.

(iii) The Assessee and the buyer of the goods should not be related persons.

(iv) The price should be the sole consideration for sale. (Sec 4 of Central Excise Act, 1944).

Answer 2. (b)

Bank Lockers being part and parcel of this attached and embedded in earth, are immovable property and not goods. Further, renting of lockers providing right to use locker can not be regarded as 'transfer of right to use goods' to be considered as deemed sale. Renting of lockers amounts to license to use lockers. The dominant aspect involved in the transaction is security. Therefore, the facility provided by Bank to keep valuables in a safe place is service and no element of sale is involved therein.

Answer 2. (c)

- (i) Where there is a price rise at the time when the goods are imported in comparison to the price when the contract was made, the price at the time of importation will be taken to be the value of the goods.

In *Raj Kumar Knitting Mills Pvt. Ltd. Vs Collector of customs*, the Supreme Court held that the contract price may have bearing while determining the value of the goods, but the value is to be determined at the time of importation of the goods.

- (ii) Where High Sea sales are made, the price charged by the importer from the assessee will be taken to be value of the goods.

Similar view was expressed by the Tribunal in *Godavari Fertilizers Vs C.C. Ex.*

Answer 2. (d)

- (i) As per finance Act, 1994, the definition of business auxiliary Services under Sec. 65(19) excludes any activity that amounts to manufacture of excisable goods. Therefore services provided in relation to manufacture of alcoholic liquor, which is not excisable for or on behalf of the client shall attract Service Tax.
- (ii) With effect from 1.5.11, the services provided or to be provided by a practicing Chartered Accountant in his professional capacity to a client, relating to representing the client before any statutory Authority in the course of proceedings initiated under any law by way of issue of notice, have been made taxable. The earlier exemption has been withdrawn.
- (iii) Services provided to non-members will be taxable under the heading Club or Association services. Further, services provided to members of other affiliated club will also be taxable under the heading Club or Associations Services with effect from 1.5.11.

Q. 3. (a) Briefly state the provision of the Central Excise Act, 1944 relating to 'payment of duty under protest'. [3]

(b) When can VAT registration be cancelled? [2]

(c) What is meant by : [2]

- (i) Margin of Dumping and (ii) 'Injury Margin'.

(d) VARUN & CO. is a dealer in an electronic product, chargeable to CST at 2%. For the year ended March 31, 2012, the dealer has shown total Turnover (including CST) is ₹ 39,27,000.

In the above, the dealer has treated the following amounts thus :

- | | |
|--|------------|
| (i) Dharmada collected from buyers, shown separately in invoices | ₹ 28,000 |
| (ii) Weighment charges incidental to sale | ₹ 14,000 |
| (iii) Central excise duty collected (including cess) | ₹ 2,06,000 |

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The dealer has recorded the following amounts in separate folios in the ledger :

(i) Packing charges (These have been collected separately from buyers through Debit notes)	₹ 45,000
(ii) Cash discounts allowed to buyer	₹ 18,000
(iii) Indemnity/Guarantee charges collected from buyers to cover loss during transit.	₹ 12,000
(iv) Marine Insurance premium for transporting goods to the premises of buyers, collected from buyers.	₹ 32,000

Required:

Determine the total and Taxable Turnover under the Central Sales Tax Act 1956 for the financial year 2011-12. (You are required to show the treatment of each and every items distinctly). [8]

Answer 3. (a)

Some times it happens that the classification of goods done by Excise Authorities, Assessable value determined by the Excise Authorities in adjudication proceedings etc. are not agreeable or acceptable to the Assessee. In such cases, the Assessee can file an appeal and in the meanwhile he can pay duty under protest. (If stay is obtained from Appellate Authorities)

Answer 3. (b)

VAT Registration can be cancelled on :

- (i) discontinuance of business; or
- (ii) disposal of business; or
- (iii) transfer of business to a new location; or
- (iv) annual turnover of a manufacturer or a trader dealing in designated goods or services falling below the specified amount.

Answer 3. (c)

“Margin of dumping”, in relation to an article, means the difference between its normal value and its export price [Section 9A(1)(a) of Customs Act]

“Normal value”, in relation to an article, means the comparable price, in the ordinary course of trade.

“Export price”, in relation to an article, means the price of the article exported from the exporting country or territory.

“Injury Margin” means difference between fair selling price of domestic industry and landed cost of imported products. The landed cost will include landing charges of 1% and basic customs duty.

Answer 3. (d)**VARUN & CO.****Determination of Total and Taxable Turnover :**

	₹
Turnover including CST as per books.	39,27,000
Dharmada : Any amount received by a dealer as consideration for the sale of any goods has to be included in the turnover of the dealer. The valuable consideration which moves from the purchaser to dealer for the purchase of goods in the lump sum amount which he actually pays to the dealer in consideration. Therefore, charity or Dharmada collected by the dealer will form part of the sale price since so far as the purchaser is concerned he has to pay the whole amount for purchasing the goods.	—
Weighment charges : If the services of weighing are in respect of the goods and incidental to their being sold, the dues charged are to be included in the sale proceeds.	—
Central Excise Duty : Excise duty paid by a dealer in respect of the goods which he sells will not liable to be deducted from his turnover.	—
	39,27,000
Less : CST included in ₹ 39,27,000 × $\frac{0.02}{1.02}$	77,000
Turnover as per books excluding CST ...	38,50,000
Packing charges : Packing charges are charged for the service rendered in packing the goods. The Supreme Court in Rai Bharat Das and brothers -VS-CST (1988) 71 STC 227 held that packing charges realised by the dealer was an integral part of the sale price to be added.	45,000
Cash Discount : Discount according to trade practice. It will not form part of the 'Sale price'.	—
Indemnity/Guarantee charges : Indemnity/Guarantee- charges recovered from the same buyers to cover loss during transit at buyers' request do not form part of sale price.	—
Marine Insurance : Freight and Insurance charges incurred by the assessee prior to the delivery of the goods at their places of business to their customers form part of turnover.	32,000
Taxable Turnover :	39,27,000
Add : CST at 2%	78,540
Total Turnover	40,05,540

Q. 4. (a) From the following information provided by S. K. compute the amount of VAT payable for the month of July, 2011.

Input worth ₹ 2,00,000 were purchased within the state, ₹ 4,00,000 worth of finished goods were sold within the state and ₹ 2,00,000 worth of goods were sold in the course of inter state trade. VAT paid on procurement of Capital goods worth ₹ 2,00,000 during the month was at 12.5%. If the input and output tax rate in the state are 12.5% and 4% respectively and the Central Sales Tax rate is 2%, show the total tax liability under the state VAT law and under the Central Sales Tax Act. [5]

(b) M/s. Rama Traders placed orders for import of sugar from various exporters abroad. All import documents were in the name of M/s. Rama Traders. After import, M/s. Rama Traders allotted the imported sugar to various buyer in India. No Sales Tax was charged as the sales were treated as “in the course of import”. Is this in order? Discuss. [3]

(c) Does a Civil Courts have jurisdiction to hear matters of Indirect Taxes? [2]

(d) VENTEX LTD, sold a machinery to TEXMECO on 28th September, 2011 and the price of the machinery when it was removed from the factory at Hyderabad on the date of Sale was ₹ 4 lakh. The rate of excise duty applicable is 10.3% (inclusive of EC & SAHEC) on the date of removal. TEXMECO LTD however, refused to take delivery of the machinery when it reached their destination. Subsequently VENTEX LTD. increased the prices of similar type of machinery to ₹ 4.50 lakh with effect from 1st October 2011. The machinery as refused by TEXMECO LTD. has been sold on 3rd October 2011 to Voith Ltd. at the revised price of ₹ 4.50 lakh.

Required:

(i) What is the value to be taken as assessable value? Explain with reasons.

(ii) What is the duty payable on above transaction? [5]

Answer 4. (a)

Computation of Tax Liability for the month of July, 2011 :

Particulars	₹
Input purchased in the month (12.5% VAT)	2,00,000
Output sold in the month (within the state)	4,00,000
Inter State Sales	2,00,000
Input Credit (Including Capital goods ₹ 25,000 + ₹ 25,000)	50,000
Output Tax	16,000
CST for inter state sale @ 2%	4,000
State VAT liability (16,000 – 50,000)	Nil
Excess Credit carried forward to subsequent month	34,000
Central Sales Tax to be paid (₹ 4,000 – 34,000)	Nil
Excess Credit carried forward to subsequent period	30,000

Answer 4. (b)

If the contract between the foreign suppliers and importer on one hand and importer and Indian buyer on the other hand, are independent of each other, the sale within India cannot be termed as 'sale in the course of Import'.

In the present case, M/s. Rama Traders has first imported the goods independently in its own name. The said import order is independent of subsequent sale to Indian buyers and cannot be termed as 'sale in the course of Import'. Hence, sales tax is payable on the sale to Indian buyers.

Answer 4. (c)

Section 11B(3) of CEA makes it clear that any refund will be granted only as per provisions of Section 11B(2) of CEA. Thus these provisions effectively bar the jurisdiction of Civil Court in excise matters, except in cases where the law is claimed or declared as invalid.

Answer 4. (d)

- (i) Excise Duty is payable on the basis of transaction value. Section 4(3) (d) of the Central Excise Duty Act, 1944 defines "transaction value" — means the price actually paid or payable for the goods when sold. But the transaction value would be subject to the charging provisions contained in section 3 of the Act as also Section 4(1). Section 4(1) states that transaction value shall be Assessable value when the goods are sold by the assessee for delivery at the time and place of removal. As per section 4(3)(CC), the time of removal shall be deemed to be the - time at which the goods are cleared from factory. So the price of machinery prevailing at the time of removal from factory i.e. ₹ 4 Lakh on 28th September, 2011 is the Assessable value. Goods are to be assessed at the time of removal from the assessee's factory. Hence, the Assessable value of the machine is ₹ 4.00 Lakhs.
- (ii) Price is relevant at the time of removal from the factory at Hyderabad was ₹ 4.00 Lakhs that is on 28th September, 2011. The duty payable is ₹ 4 Lakhs × 0.103 = 41200.
The duty is payable on 28th September, 2011 when the machinery was removed from the factory of VENTEX LTD.

Q. 5. (a) "Every manufacture is production; every production is not manufacture"-Explain the Statement (Under Central Excise Act). [3]

(b) Discuss the following :

- (i) Who is responsible to pay Service Tax when the recipient of sponsorship services is located out side India?
- (ii) Who is liable to pay e-payment of Service Tax? [2×2=4]

(c) ANURIM MACHINE LTD, a manufacturer, has agreed to supply a machine on the following terms and conditions :

- | | |
|--|--|
| (i) Price of Machine | : ₹ 4,08,000 (Exclusive of taxes and duties) |
| (ii) Machine erection expenses | : ₹ 31,000 |
| (iii) Packing for transportation of Machine | : ₹ 5,000 |
| (iv) Design and drawing relating to manufacture of machine | : ₹ 36,000 (exclusive of taxes and duties) |

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- (v) Central Sales Tax : 2%
- (vi) Central Excise duty : 16% plus education cess and SAH education cess as applicable.
- (vii) Cash discount of ₹ 6,000 will be offered if full payment is received before despatch of goods.

Additional information is available :

- (a) The buyer made all payment before delivery of machine.
- (b) The manufacturer incurred a cost of ₹ 1,200 in loading the machine in truck in his factory.

These are not charged separately to buyer.

Required :

Determine the Assessable Value and Excise Duty payable. [8]

Answer 5. (a)

Under excise, the taxable event is manufacture or production. Production is a natural process by which a product is brought into existence. e.g. production of tobacco, iron ore, jute etc. Manufacture on the other hand, involves some artificial process which adds some more utility to the product. E.g. tobacco is produced and cigarettes are manufactured; similarly sugar cane is produced & sugar is manufactured.

Thus we can conclude that every manufacture is production but every production is not manufacture.

Under Central excise, manufacture is more relevant than production, since many items of production are either not excisable or are exempted from duty.

Answer 5. (b)

(i) Person responsible to Service Tax :

In relation to Sponsorship Service provided to any Body Corporate or firm located in India, the body corporate or, as the case may be the firm who receives such Sponsorship Service, is liable for paying Service Tax [rule 2(1)(d)(vii)]. However, where the recipient of Sponsorship Services (assuming the recipient of service to be a body corporate or firm) is located outside India, the service provider will be responsible to pay Service Tax.

(ii) e-Payment :

With effect from October, 2007, it has become mandatory to make e-payment of Service Tax, in case of assessee who had paid Service Tax of ₹ 50 lakh or more in the preceding financial year or have already paid Service tax of ₹ 50 lakh during the current financial year.

Answer 5. (c)

ANURIM MACHINE LTD.
Determination of Assessable Value (AV)

Price of Machine (Exclusive of Taxes & duties)	4,08,000
Packing for transportation of machine	5,000
Design and drawing relating to manufacture of machine	36,000
	4,49,000
Less : Cash Discount	6,000
Assessable Value (A.V)	4,43,000
Excise Duty @ 16% on 4,43,000	70,880
Education Cess : @ 2% on ₹ 70,880	1,418
SAH education Cess @ 1% on ₹ 70,880	709
Total (Excise) Duty Payable :	73,007

Note :

1. Erection Expenses are not includable in A.V.
2. The Cost of ₹ 1,200 is already included in the Selling price of Machine (as it is not charged separately) and hence is not to be added again.

Q. 6. (a) DCK STOCK BROKERS LTD is a registered stockbroker on Mumbai Stock Exchange. DCK Stock Brokers Ltd furnishes you the following information for services provided by it during the year 2011-12.

- (i) Brokerage charged from investors for transaction (Sale/purchase of listed securities) on behalf of investors : ₹ 12 lakh (out of this certain transactions were entered into through sub-brokers and a brokerage of ₹ 1.80 lakh were paid during the year to various sub-brokers).
- (ii) Brokerage for transactions in listed securities for other brokers : ₹ 2.40 lakh;
- (iii) Commission/Brokerage for Arbitrage Transactions for other brokers : ₹ 3.00 lakh.
- (iv) Brokerage for purchase/sale of listed securities on Jaipur Stock Exchange through a Jaipur-based Broker : ₹ 6 lakh (out of this, brokerage of ₹ 2.40 lakh was paid to Jaipur broker).
- (v) Under writing Commission for underwriting issue of BPT Ltd : ₹ 30 lakh.
- (vi) Demat/Depository charges collected from various customers (on actual basis) and paid to the concerned Depository : ₹ 36 lakh.

You are required to compute value of Taxable Service under 'Stock Broking Services' and Net Service Tax payable thereon. [9]

(b) State with reason whether the following would amount to manufacture under the Central Excise Act, 1944 :

- (i) Printing of Colour Logo on glass bottle.
- (ii) Assembly and filling of different parts into one article. [2×2=4]

(c) How should "Value" be calculated for determining SSI for Central Excise purposes? [2]

Answer 6. (a)

DCK STOCK BROKERS LTD.
COMPUTATION OF VALUE TAXABLE SERVICE AND NET SERVICE TAX PAYABLE THEREON

Particulars	(Amount in ₹ Lakh)
Various Charges :	
Brokerage from Investors [Brokerage paid to Sub-brokers is an expenditure. Service tax is leviable on gross amounts charged from providing taxable service. Hence, service tax shall be payable on full amount. However, since services provided by sub-brokers are not liable to service tax, therefore can not be any question of any CENVAT Credit in respect thereof]	12.00
Brokerage from other brokers	2.40
Commission /Brokerage for Arbitrage Transactions	3.00
Brokerage for purchase/Sale of listed Securities on Jaipur Stock Exchange through a Jaipur-based broker	6.00
Underwriting Commission (not covered taxable under this service)	Not covered
Depository charges collected from various customers (on actual basis) (Amounts collected as per agent are not taxable Value-Rule 5(2) of Valuation Rules, 2006)	Not includible
Taxable value under Stock Broking Service	23.40
Service Tax there on @ 10.3% (10% + (2% + 1%) of 10%] i.e. (EC & SAHEC)	2.41020
Less : CENVAT Credit of tax paid on Services received from Jaipur broker (2.40 × 0.103)	0.24720
Net Service Tax Payable	2.16300

Answer 6. (b)

There is only inclusive definition of the term 'Manufacture' in section-2(f) of the Central Excise Act, 1944. As per Court decisions, a distinct or new product should emerge from the manufacturing process and the same should be commercially different. For excise purposes, the acts ropes in 'deemed manufacture' also.

Now the two instances are covered by 'deemed manufacture'.

(i) Printing of colour logo on Glass bottle :

Not manufacture, as a commercially new product does not emerge. Even before printing, glass bottle was a commercial commodity and could be sold without printing.

(ii) Assembly and filling of different parts into one article :

It is a manufacture; if new product comes into being. This will be the case in most situations. Only if no new commercial product emerges, there is no manufacture.

Answer 6. (c)

Value of SSI Exemption Limits :

For computing the value for SSI exemption limits, the 'assessable value' as per section-4 of the Central Excise Act, has to be taken.

However, where goods are assessed on the basis of MRP, 'Value' will be determined under section 4A of the C.E. Act.

Q. 7. (a) Ascertain whether the refund of Service Tax paid on input services can be claimed in the following cases :

	₹	
Total credit of Service Tax on input services.	6,000	
Total Turnover of out put service.	40,000	
Output service exported.	30,000	[3]

(b) Write a brief note how the terms 'Warehouse', 'Warehouse goods' and 'Warehousing station' are defined in the Custom Act, 1962. [3]

(c) Which section is termed as 'charging section' under CEA. [1]

(d) COMFORT LTD, an importer, has imported a machine from USA at FOB Cost of \$ 10000.

(i) Freight from port in USA to Indian port was \$ 700

(ii) Insurance was paid to insurer in India ₹ 6000

(iii) Design and development charges of \$ 2000 were paid to a consultancy firm in USA.

(iv) The importer also spent an amount of ₹ 50,000 in India for development work connected with the machinery.

(v) ₹ 10,000 were spent in transporting the machinery from India port to the factory of Importer (POLSON LTD).

(vi) Rate of exchange as announced by RBI was : ₹ 44.70 = One US \$.

(vii) Rate of exchange as announced by CBE & C (Board) by notification under section 14(3)(a)(i) : ₹ 44.60 = One US \$.

(viii) Rate which bank recovered the amount from importer : ₹ 44.30 = One US \$.

- (ix) Foreign exporters have an agent in India. Commission is payable to the agent in Indian Rupees @ 5% of FOB price. Basic Custom Duty payable is 10%.

If similar goods produced in India, Excise duty payable would have been 16%. Special CVD is payable at 4%.

Required:

- (i) Find the customs duty payable.
(ii) How much CENVAT can be availed by Importer if he is a manufacturer. [8]

Answer 7. (a)

CENVAT Credit in respect of the input services used in providing output services which are exported shall be allowed to be utilized towards payment of Service Tax on taxable output services. However, where such adjustment is not possible, the refund of credit shall be allowed.

In this case the Service Tax Liability on Taxable Services of ₹ 10,000 (₹ 40,000 – ₹ 30,000) is 1030 @ 10.30%. Therefore, there is an excess credit of ₹ 4,970 (₹ 6,000 – ₹ 1,030) which can not be utilized. Thus, the refund of such credit can be claimed. However the refund will be restricted to the extent of ratio of export turnover to the total turnover for the given period i.e. ₹ 4,500 $[(6,000 \times (30,000/40,000))]$.

Answer 7. (b)

As per section 2(43) of the Customs Act, 1962, 'Warehouse' means a public warehouse appointed under section 57 or a private warehouse licensed under section 58.

Section 2(44) of the Customs Act, 1962 defines 'warehoused goods' to mean goods deposited in a warehouse.

As per section 2(45) of the Customs Act, 1962, "Warehousing station" means a place declared as a warehousing station under section 9.

Answer 7. (c)

Basic Excise duty is levied u/s 3(1) of Central Excise Act. The section is termed as 'Charging Section'.

Answer 7. (d)

COMFORT LTD.
COMPUTATION OF CUSTOMS DUTY PAYABLE

FOB Value		\$ 10,000	
Add : Design & development charges		\$ 2,000	
Add : Ocean freight		\$ 700	
Total C & F		\$ 12,700	
Total in ₹ @ ₹ 44.60		₹ 5,66,420	
Add : Insurance		6,000	
Add : Local Agency Commission \$ 500 @ ₹ 44.60		22,300	
Total CIF Price		₹ 5,94,720	
Add : Landing charges @ 1% of CIF		5,947	
Assessable Value		6,00,667	
	Duty	Amount	Total Duty
		(₹)	(₹)
(A) Assessable Value		6,00,667	
(B) Basic Customs duty	10%	60,067	60,067
(C) Sub-total for calculating CVD (A+B)		6,60,734	
(D) Excise duty	16%	1,05,717	1,05,717
(E) Education Cess 2% of D	2%	2,114	2,114
(F) SAHEC 1% of D	1%	1,057	1,057
(G) Sub-total of (B+D+E+F)		1,68,955	
(H) Education Cess of G	2%	3,379	3,379
(I) SAHEC 1% of G	1%	1,690	1,690
(J) Sub-total for Spl CVD (C+D+E+F+H+I)		7,74,691	
(K) Special CVD u/s 3(5) 4% of J	4%	30,988	30,988
(L) Total Duty			2,05,012

- (i) Customs duty payable ₹ 2,05,012
- (ii) Importer who is manufacturer, is eligible to avail CENVAT Credit of D, E, F and K
i.e ₹ 1,05,717 + 2,114 + 1,057 + 30,988 = 1,39,876

Q. 8. (a) ZEESLINA LTD cleared various manufactured final Products during September, 2011. The duty payable for September 2011 on his final products was as follows :

Basic: ₹ 2,50,000,
Education cesses as applicable

During the month, he received various inputs on which total duty paid by suppliers of inputs was as follows :

Basic duty : ₹ 60,000
Education cess : ₹ 1,200 and
SAH education cess: ₹ 600

Excise duty paid on capital goods received during the month was as follows :

Basic duty : ₹ 18,000
Education cess: ₹ 360
SAH education cess : ₹ 180

Service Tax paid on input services was as follows :

Service Tax: ₹ 15,000
Education Cess: ₹ 300
SAHE Cess: ₹ 150

Required :

How much duty ZEESLINA LTD (Assessee) will be required to pay by GAR-7 challan for the month of September 2011, if there was no opening Balance in his PLA Account? [7]

(b) Name two situations where excise duty liability is not of the actual manufacturer but of the person who has supplied the Raw material to the manufacturer. [2]

(c) Write Short Notes on :

(i) Place of Business under the Central Sales Tax Act 1956.

(ii) Reverse Charge in VAT and Service Tax. [2×3=6]

Answer 8. (a)

ZEESLINA LTD.

The CENVAT Credit available for the month of September 2011, is as follows :

Description	Basic Duty (₹)	Service Tax (₹)	Education Cess (₹)	SAH Education Cess (₹)
Inputs	60,000	–	1,200	600
Capital Goods (50% will be eligible and Balance next year)	9,000	–	180	90
Input Service	–	15,000	300	150
Total	69,000	15,000	1,680	840

Education Cess payable in final product is ₹ 5,000 (2% of ₹ 2,50,000). SAH education Cess payable is ₹ 2,500 (1% of ₹ 2,50,000).

- Credit of ₹ 84,000 (69,000 + 15,000) can be utilized for Basic duty.
- Credit of ₹ 1,680 for Education Cess and ₹ 840 for SAH Education Cess can be utilized for payment of Education Cess and SAH Education Cess of final product only.

Hence, Duty payable through GAR-7 Challan for the month of September is as follows :

Description (₹)	Basic Duty (₹)	Education Cess (₹)	SAH Education Cess
(A) Duty Payable	2,50,000	5,000	2,500
(B) Cenvat Credit	84,000	1,680	840
Net Amount Payable (A – B)	1,66,000	3,320	1,660

Answer 8. (b)

In the following cases, duty liability is of raw material supplier :

- When raw material is sent under CENVAT Provisions.
- When raw material is sent under Notification No. 214/86-CE after submitting necessary declaration.

Answer 8. (c)

- Place of business under Central Sales Tax Act :

Section 2(dd) of CST Act defines that “Place of Business” includes :

- Place of business of agent where dealer carries on business through an agent;
- Warehouse, godown or other place where a dealer stores his goods.
- Place where a dealer keeps his books of account.

This is an inclusive definition i.e. other places of Business e.g. where the dealer has a shop or factory is obviously covered. A dealer can have more than one “place of Business” within one state or even within one city.

- Reverse charge in VAT and Service Tax :**

Normally VAT is payable by the Seller of goods. However, in some cases, the liability is cast on purchase of goods. This is called ‘Reverse charge’.

Some states have made provision for imposing Purchase Tax when purchase is from unregistered dealers. This is effective in respect of purchase where VAT credit is not available, purchase Tax will be then payable.

The concept is used in Service Tax also. The liability to pay service tax is normally on the service provider, but in some situations is cast on the service receiver. Here receiver becomes liable to pay the Service Tax. He pays tax on services received by him, (An example is where there is import of services into India, used in India). He can avail CENVAT credit of Tax paid by him since the service is actually his ‘input service’.