

# INTERMEDIATE EXAMINATION

## GROUP II

(SYLLABUS 2008)

### SUGGESTED ANSWERS TO QUESTIONS

#### JUNE 2013

### Paper- 10 : APPLIED INDIRECT TAXATION

Time Allowed : 3 Hours

Full Marks : 100

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

Answer Question No. 1 which is compulsory and any five from the rest.  
Wherever required, the candidate may make suitable assumptions and state them clearly in the answers.

All questions relate to the assessment year 2013-14 unless stated otherwise in the question.

1. (a) Fill in the blanks :

1 x 15=15

- (i) For non-corporate assessees, e-filing of service tax return is \_\_\_\_\_.
- (ii) Yellow Bill of Entry is required for \_\_\_\_\_.
- (iii) The effective rate of Service Tax at present is \_\_\_\_\_.
- (iv) SSI units are required to submit \_\_\_\_\_ return in Form No. ER-3.
- (v) In Customs and Excise law, the commitment of offence beyond reasonable doubt has to be proved by \_\_\_\_\_.
- (vi) The time limit for filing appeal to CESTAT is \_\_\_\_\_.
- (vii) The Central Sales Tax applicable to goods exempt from State Sales Tax is \_\_\_\_\_.
- (viii) Assessable Value in case of Captive Consumption is the Cost of Production plus \_\_\_\_\_.
- (ix) The Fifteen Digit PAN based registration number is Called \_\_\_\_\_ Under the Indirect Tax.
- (x) The Finance Act, 2012 introduced \_\_\_\_\_ Number of Services on which no tax has been levied.
- (xi) Exclusive Economic Zone extends to \_\_\_Nautical Miles from the base line of the coast.
- (xii) MRP Provisions are not applicable for packaged commodities meant for \_\_\_\_\_.
- (xiii) Post Shipment Charges \_\_\_\_\_ considered for Assessable Value under the Customs Act.
- (xiv) VAT \_\_\_\_\_ be imposed on the value of Service.
- (xv) The unutilized Cenvat Credit can be carried forward up to \_\_\_\_\_ number of years.

(b) State with reasons, whether the following are True or False:

2x5=10

- (i) Stock transfer is to be treated as Inter State Sale under the CST Act, 1956.
- (ii) Transfer by way of mortgage are liable to CST.
- (iii) "Service provider providing taxable service under brand name of others"-liable to pay service tax.
- (iv) Captive consumption goods need certification.
- (v) Buying Commission is always includible in Customs Value.

**Answer: 1. (a)**

- i. Mandatory
- ii. Warehousing
- iii. 12.36%
- iv. Quarterly.
- v. Department.
- vi. 3 Months/90 days.
- vii. Zero/ Nil
- viii. 10%
- ix. ECC/STC
- x. 17
- xi. 200
- xii. Industrial or institutional Consumers.
- xiii. Will not be.
- xiv. Cannot
- xv. Any.

**b.**

- i. False . Stock transfer from head office to branch office will not amount to interstate sale as basic elements of sale i.e. presence of buyer & seller, consideration & transfer of ownership are missing in this type of transaction.
- ii. False. Sec. 2 (g) of CST Act, 1956 deals with the definition of sale. It specifically excluded mortgage, hypothecation, charge or pledge on goods. So CST cannot be charged in case there is transfer by way of mortgage.
- iii. True. Service provider providing taxable services under the Brand name of other is not eligible for claiming exemption limit of ₹ 10 Lakh & hence liable to pay service tax irrespective of the turnover.
- iv. True. In case of captively consumed goods valuation will be done as per CAS-4(Cost of Production +10%). This cost of production is definitely certified by the Cost Accountant.
- v. False. Commission & Brokerage except Buying Commission is includable. Buying Commission means fees paid by the importer to his agent for the service of representing him abroad in purchase of goods.

**2. (a) Explain briefly how the valuation of an excisable goods will be done when the same is sold to both related and unrelated buyers? 5**

**(b) Briefly explain "Prohibited Goods" under the Customs Act, 1962. What is the purpose of the interpretation rules regarding Custom Tariff? 3+2=5**

**(c) Write a brief note on the deficiencies of the VAT system. 5**

**Answer 2.**

(a) If sale is made solely through 'related person', price relevant for valuation will be normal transaction value at which the related buyer sales to unrelated buyer, as per rules 9 and 10 of valuation Rules.

Rules 9 and 10 of central excise valuations Rules make it clear that these rules apply only in cases where assessee sales goods exclusively to or through related person. Thus, there is no provision in rules when assessee partly sales to related persons and partly to unrelated persons.

Even if negligible quantity is sold to unrelated buyer, Rules 9 and 10 become inapplicable. Valuation can not be done on the basis of transaction value of assessee to buyer as that is prohibited u/s 4 (i) (a).

In such case, the only alternative seems to be residual method, i.e. rule 11 of Valuation Rules, which states that if value can not be determined under any of the applicable rules, value shall be determined using reasonable means consistent with the principles and general provisions of Sec 4 and Valuation Rules.

- (b) As per Section 2(33) of the Custom Act, 1962, prohibited goods means any goods the import or export of which is subject to any prohibition under the Customs Act or any other law for the time being in force but doesn't include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

In some cases, conditions are to be fulfilled after importation of goods. Unless those conditions are fulfilled, the goods continue to be 'prohibited goods'.

The purpose of Interpretation Rules of Customs Tariff is:

- (i) to give clear direction as to how the nomenclature in the schedule is to be interpreted and
- (ii) to give statutory force to the Interpretation Rules and the general explanatory notes.

**(c) Deficiencies of the VAT System :**

1. Differential Rates of Tax: The merits accrue in full measure only under a situation where there is only one rate of VAT and VAT applies to all commodities without any question of exemptions whatsoever. Concessions like differential rates of VAT, composition schemes, exemptions schemes, exempted category of goods, etc. distort the systems.
2. Disintegration: If Central VAT is not integrated with the State VAT, it will be difficult to put the Purchases from other States at par with the State Purchases. Hence, advantage of neutrality will be confined only for purchases within State.
3. Accounting Costs (RTP): Compliance with the VAT provisions required better accounting and records maintenance which will cost more. Such incremental cost may not reflect any incremental benefits to small traders.
4. Increasing Working Capital Requirements: Since the tax is to be imposed or paid at various stages and not on last stage, it would increase the working capital requirements and the interest burden on the same.
5. Inequality of Taxation: VAT is a form of Consumption Tax. Since, the proportion of income spent on consumption is larger for the poor than for the rich, VAT tends to be regressive.
6. Increase in Administration Costs (RTP): As a result of introduction of VAT, the administration cost to the State can increase significantly as the number of Dealers to be administered will also go up significantly.
7. Non-Coverage of both goods and services: State VAT is characterized by non-inclusion of services which reduces its effectiveness as a comprehensive system.
8. Higher Base Rate: The Base Rate of 12.5% is considered as relatively high. This rate is fixed so as to ensure collection of equal revenues under the VAT system as compared to Sales Tax System. However, as the rate is uniform in all the States, revenue neutrality may be difficult to achieve.
9. Floor Rate: Floor Rates refer to the rates which have to be uniformly applied by all States. However there is no flexibility available for States to tinker with Floor Rates. This is contrary to the actual concept of Floor Rates.
10. Treatment of Exempted Goods: A major deficiency is observed with regard to treatment of exempted category of goods. No VAT is leviable on such goods, but no credit will be provided for taxes paid on their purchase.
11. Huge Volume of Exemptions: The basic structure of VAT does not allow many exemptions, and it is to be fairly comprehensive, which has to lead to periodic elimination of exemptions. However, in practice, due to continuous pressure from industrial and social sectors, exemptions are on the rise, which can lead to administrative problems.

12. Need for Extensive definitions: As there is scope for interpretations, there is a need for defining even a simple term to avoid any confusion as to the rate and also the category in which it falls, i.e., whether capital or revenue.
13. Arbitrary classification of goods: The basis adopted for classification of goods under capital and revenue category seems to be arbitrary, which can lead to confusion and inequity with regard to application of taxes on goods.
14. Concessional Rates based on End Usage: VAT system is based on the principle that the customer's end use (industrial use or exports or domestic use) should not affect the levy of taxes on goods except under special circumstances. However, several concessions being given for industrial inputs which contravenes this principle.
15. Revenue loss: Due to concessional rates, revenue losses from undeclared sales of finished goods increase.

**3. (a) Discuss about the eligibility of cenvat credit in each of the following situations :**

- (i) 2.0 Metric Tonnes of Raw Materials on which Central Excise Duty paid was ₹20,000.00 which were destroyed by accidental fire after the same are issued to the shop floor for production of Finished Goods. 2+1+2=5
- (ii) 1.0 metric Tonne of Raw materials on which Central Excise Duty paid was ₹10,000.00 were used in manufacture of the Finished Goods for which Central Excise Duty was payable ₹8,000.00.
- (iii) The original copy of the Central Excise Invoice for 1000 units of Raw Materials purchased was missing; however, duplicate for transporter copy of the same Invoice is available, which also shows that the Central Excise Duty of ₹10,000.00 had been paid on Raw Materials. 2+1+2=5

(b) A Trader supplied to consignments of goods in a single carriage to his two different buyers, (i) Reserve Bank of India and (ii) a unit located within Special Economic Zone. The amounts of freights were ₹3,000.00 and ₹4,000.00 respectively. In the first case, the freight was paid by the consignee and in the second case the freight by the consignor. Assess the Service Tax liabilities of the freight payers. Discuss whether exemption from payment of Service Tax is available in these cases or not. 1+2+2=5

(c) Illustrate with an example, whether inter-state purchases liable to Central Sales Tax are eligible for Input Tax Credit or not. 5

**Answer 3.**

(a)

- i. Goods must be used within factory of production and must have some relation with manufacture so as to qualify as 'input' under Rule 2(k). Since input had been issued for production, hence, they may be regarded as "used" within factory and handling losses are a part of manufacturing process. Hence credit can not be denied. [CCEX vs. Indchem Electronics (SC)]
- ii. Full Cenvat credit is available even though duty on the Finished Goods is less. Such excess credit can be adjusted against duty payable on the Finished Goods.
- iii. The Cenvat Credit Rule states that credit can be availed on the basis of invoice issued by the manufacturer. Duplicate for Transporter copy of Invoice is also an invoice issued by the manufacturer. Hence, credit is available on the basis of such document.

(b) In both these two cases exemption from payment of service Tax for the freight payers shall be available. In the first case, the amount of freight of ₹3000.00 was paid by the Reserve Bank of India, the consignee. Against the item Sr. No. b) of the Negative List declared by the Government of India under Section 66 D of the Finance Act, 1994, the Reserve Bank of India have been granted exemption from payment of Service Tax both- as a Service Provider as well as a Service Recipient.

In the second case, the freight was paid by the consignor, the trader. Supply of goods to a unit located within Special Economic Zone is considered as export. Therefore, if the consignor supplies the goods to a unit in Special Economic Zone by observing the provisions laid down under Notification No. 31/2012 ST. dated 20.06.2012, he can enjoy exemption from payment of Service Tax on the amount of freight he paid.

(c) The inter-state purchases liable to Central Sales Tax are not eligible for Input Tax Credit. As an example it is stated that if a dealer from the State of West Bengal purchases goods from another dealer in the State of Karnataka, the dealer from the state of Karnataka charges CST @ 2% in his invoice against Form 'C' issued on him by the dealer from the State of West Bengal. The tax is deposited in the state of Karnataka and the Central Government does not get any share of this since it is considered as revenue of the selling state. The dealer from the state of West Bengal sells the said goods within West Bengal on payment of appropriate amount of VAT and is not eligible for set off of the amount of CST he paid at purchase point. West Bengal would not allow set off of a tax paid in Karnataka against the tax levied by it, as it would result in revenue loss for West Bengal. This is the reason why CST is not vatable.

**4. (a) A manufacturer having Central Excise Registration Certificate imports an equipment from abroad. Compute the duty payable under Customs Act, 1962 for such import on the following information :**

- (i) Assessable Value of the imported equipment is US\$ 15,500.
  - (ii) Date of Bill of Entry is 19.03.2012. Basic Custom Duty on this date was 12% and exchange rate notified by the Central Board of Excise and Customs is US \$1 = ₹55.00.
  - (iii) Date of Entry inwards is 14.03.2012. Basic Custom Duty on that was 10% and exchange rate notified by the Central Board of Excise and Customs is US \$1 = ₹58.00.
  - (iv) Additional Duty payable@ 12% under Section 3(1) & (2) of the Custom Tariff Act, 1975.
  - (v) Additional Duty under Section 3(5) of the Custom Tariff Act, 1975@ 4%.
  - (vi) Education Cess and Secondary and Higher Education Cess @ 2% and 1% respectively.
- State which exchange rate and the rate of Custom Duty shall be the applicable rates in this case.

Which amount shall be eligible for availment of Cenvat Credit for the manufacturer (Importer)? 5+1+1=7

(b) (i) Explain briefly the Compulsory Registration and Voluntary Registration under the VAT Act.

(ii) Mr. W, a manufacturer sells goods to Mr. X a distributor for ₹5,000.00 (excluding of VAT). Mr. X, sells the goods to Mr. Y, a wholesale dealer for ₹6,000.00. Mr. Y, the wholesale dealer sells the goods to a retailer for ₹7,500.00, who ultimately sells to the consumers for ₹9,200.00. Compute the tax liability, Input Tax credit availed and tax payable by the manufacturer, distributor, wholesale dealer and retailer under Invoice method assuming the rate of VAT as 13.5%. 2+2+4=8

**Answer: 4.**

(a) Computation of Custom Duty payable

Particulars	Amount (₹)
Assessable Value (15,500 x ₹ 55.00)	8,52,500.00
Add: Basic Custom Duty 12%	1,02,300.00
Total	9,54,800.00
Add: Countervailing Duty u/s 3(1) @ 12% (excluding EC & SHEC due to exemption)	1,14,576.00
Total	10,69,376.00
Add: Education Cess (₹ 1,02,300 + 1,14,576) @3%	6,506.28
Total	10,75,882.28
Additional Duty under Section 3(5)@ 4%	43,035.29
Total Custom Duty payable (1,02,300 + 1,14,576 + 6,506.28 +43,035.29)	2,66,417.57

Exchange rate declared by CBEC and the rate of Custom Duty prevalent on the date of filing of Bill of Entry i.e. 19th March, 2012 shall be applicable in this case.

The manufacture (importer) is eligible to avail cenvat credit of ₹ 1,14,576.00 + 43,035.29 = 1,57,611.29

**i) Compulsory Registration:**

If an assess fails to obtain registration under the applicable VAT act, he may be registered compulsorily by the commissioner. The Commissioner may assess the tax due from such person on the basis of evidence available with him and thereafter the concerned assessee is bound to pay such amount of tax. Further, failure to get registered shall result in attracting default penalty and forfeiture of eligibility to set off all Input Tax Credit related to the period prior to the compulsory registration.

**Voluntary registration:**

A dealer who is not eligible for registration under VAT may also obtain registration if the commissioner is satisfied that the business of the applicant requires registration under VAT. At the time of granting voluntary registration, the Commissioner may impose certain terms or conditions if he thinks it necessary to do so.

ii)

Particulars	Invoice value	Output VAT	Input tax Credit	Net pay-able (VAT)
Sale by W To X (Distributor)	5000.00	675.00	.....	675.00
Sale by X to Y (whole sale dealer)	6000.00	810.00	675.00	135.00
Sale by Y to Z (Retailer)	7500.00	1013.00	810.00	203.00
Sale by Z to Consumers	9200.00	1242.00	1013.00	229.00

**5. (a) X Ltd. imported goods from Switzerland 400 units@ 110. Following further information is also needs to be considered:**

- (i) Freight (Vessel) -\$ 5000
- (ii) Demurrage (Part & Parcel) -\$ 1000
- (iii) Insurance-\$ 50
- (iv) Landing Charges- ₹1,50,000
- (v) Royalty for use of Patent -\$ 10
- (vi) Royalty as a condition of Sale-\$ 20000

The Rate of Duty is 10.3%. Assuming exchange rate is ₹ 30.00. Find the duty payable. 6

**(b) "Brand owners are not liable to pay excise duty". Is there any exception in this regard? Explain.** 4

**(c) Mr. Madhukar an "Interior Designer" received ₹ 2,00,000.00 as advance towards an account payee cheque while signing a contract. He received ₹ 4,00,000.00 through credit card while providing service and another ₹ 5,00,000.00 by a pay order after completion of service. All transactions took place during the Financial Year 2012-2013. Compute the value of taxable service and tax payable thereon.** 5

**Answer: 5 (a)**

Particulars	\$
Price	110
Add: Royalty for use the patent	10
Total	120
Total Price of units imported (400 x120)	48,000
Add: Royalty as a condition of sale	20,000
Add: Freight & Demurrage Charges	6,000
Add: Insurance	50
Total Cost of Goods imported	74,050
Cost of Goods in Indian Rupees (74,050 x 30 = ₹ 22,21,500)	22,21,500
Landing Charges @ 1% (₹)	22,215
Assessable value (₹)	22,43,715
Duty Liability @ 10.30% (₹)	2,31,102.64

(b) Generally Brand name Owner is not manufacturer. But there is an exception in this. In case of ready-made garments and made up articles of textiles manufactured on job work basis, liability to pay excise duty and comply with the provisions of the Act and rules lies on the merchant manufacturer or the raw material supplier on whose behalf the goods are manufactured by job workers.

(c) Computation of Taxable service of Mr. Madhukar for financial year 2012-2013.

Particulars	₹
Advance received by an account payee cheque	2,00,000.00
Amount Received through credit Card	4,00,000.00
Amount received by pay order	5,00,000.00
Value of taxable service	11,00,000.00

Service tax Payable: (11,00,000.00 x 12.36%) 1,35,960.00

Notes : Money includes any Cheque, Promissory note, letter of Credit, draft, pay order money order, postal remittance or other similar instruments.

**Alternative Solution :** It is assumed that the payments are inclusive of Service Tax

Particulars	Payments received (₹)	Service Tax (₹)	Value of Taxable Service (₹)
Advance received by an account payee cheque	2,00,000.00	22,000	1,78,000
Amount Received through credit Card	4,00,000.00	44,000	3,56,000
Amount received by pay order	5,00,000.00	55,000	4,45,000
Value of taxable service	11,00,000.00	1,21,000	9,79,000

Service Tax payable : ₹ 1,21,000

6. (a) Explain the validity of the Statements with reference to the provision of the Customs Act, 1962 with suitable reasons.

(i) Can warehouse goods be transferred from one warehouse to another warehouse under the Customs Act, 1962?

(ii) "Duty is required to paid on pilfered goods"-explain. 2+2=4

(b) Explain the validity of the Statements with reference to the provision of the Central Excise Act, 1944 with suitable reasons.

(i) Cenvat Credit of service tax paid can be claimed in a case where a manufacturer does not have registration under Service Tax Act.

(ii) Specific duty is payable by the assessee on excisable goods based on the value of goods. 2+2=4

**(c) Explain the validity of the Statements with reference to the provision of the Finance Act, 1994 with suitable reasons.**

**(i) Statutory services are also taxable service.**

**(ii) Speed Post Services provided by the Post Office are liable to service tax. 2+2=4**

**(d) Discuss the role of a Cost Accountant in the context of VAT. 3**

**Answer 6.**

(a) i) As per the section 67 of the Customs Act, the owner of any warehoused goods may, remove them from one warehouse to another, with the permission of the proper officer, subject to such conditions as may be prescribed for the arrival of the warehoused goods at the warehouse to which removal is permitted.

ii) Section 13 - Duty on pilfered goods. – If any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods except where such goods are restored to the importer after pilferage.

(b) i) Yes this statement is absolutely valid. Input Service Tax Credit can be allowed to a manufacturer against duty payable on finished goods, even though he may not have register as per the Service Tax provisions.

ii) The Statement is not valid. Specific duty is payable by the assessee on excisable goods based on the length or weight of the products not on value of goods.

(c) i) No this is not correct. Statutory services are when public Government Agencies use to perform the duties which are statutory in nature, it cannot be said under any circumstances that Government Agencies providing any service to any Individual for Consideration.

ii) This statement is absolutely correct. Speed post service rendered by the department of Indian Post is not covered in the negative list. Hence this service is fully taxable.

(d) Cost Accountants have the following key role to play in implementing the VAT.

- Helps in proper record keeping and accounting.
- Is competent person to properly analyze and helps in Tax Planning.
- Vat credit alters the cost structure, thus Cost Accountant will ensure the benefit of cost reduction.
- He should properly ensure about the proper record keeping and satisfy the departmental office.
- He should properly ensure tax compliance by doing the audit.

**7. (a) Determine the assessable value for purpose of Excise Duty under the Central Excise Act, 1944 in the following cases:**

**(i) An assessee sells his excisable goods for ₹ 120 per piece and does not charge any duty of excise in his invoice. Subsequently, it was found that the goods were not exempted from excise duty, but were liable at 20% ad valorem.**

**(ii) Certain excisable goods were sold for ₹ 120 per piece and 20% ad valorem is the rate of excise duty. Subsequently, it was found that the price cum duty was in fact ₹ 140 per piece as the assessee had collected ₹ 20 per piece separately.**

**(iii) The cum duty price per piece 120 and the assessee had paid duty at 20% ad valorem. Subsequently, it was found that the rate of duty was 30% ad valorem and the assessee had not collected anything over and above 120 per piece. 6**

**(b) Mrs. & Mr. Kapoor visited Germany and brought following goods while returning to India:**

**(i) The personal effects like clothes, etc., valued at ₹35,000.**

**(ii) A personal computer bought for ₹46,000.**

**(iii) A laptop computer bought for ₹95,000.**



(iv) Two litres of liquor bought for ₹1600.

(v) A new camera bought for ₹47,400.

What is the amount of customs duty payable ?

5

(c) Compute the invoice value to be charged and amount of tax payable under VAT by a dealer who had purchased goods for ₹1,20,000 and after adding for expenses of ₹10,000 and of profit ₹15,000 had sold out the same. The rate of VAT on purchases and sales is 12.5%.

4

Answer 7.

a)

$$\text{i) } \frac{\text{Price cum duty}}{1 + \frac{\text{Rate of Excise duty}}{100}} = \frac{120}{1.2} = ₹100 \quad \text{Assessable Value}$$

$$\text{ii) } \frac{\text{Price cum duty}}{1 + \frac{\text{Rate of Excise duty}}{100}} = \frac{120 + 20}{1.2} = ₹116.67 \quad \text{Assessable Value}$$

[Note: additional consideration has to be added to price.]

$$\text{iii) } \frac{\text{Price cum duty}}{1 + \frac{\text{Rate of Excise duty}}{100}} = \frac{120}{1.3} = ₹92.30 \quad \text{Assessable value}$$

b) Computation of Customs Duty payable :

Personal effects like clothes etc.	Exempt
A Personal Computer	46,000
A Laptop Computer	Exempt
2 liters of liquor	1,600
A new camera	<u>47,400</u>
Total Value	95,000
Less : General Free Allowance for 2 persons (35,000 x 2)	<u>70,000</u>
Duty payable on	<u>25,000</u>
Customs Duty @ 36.05%	<u>9,012.50</u>

c)

Particulars	Invoice value to be charged
Purchase price of goods	1,20,000
Add: Expenses	10,000
Add: Profit margin	15,000
Amount to be billed	1,45,000
Add: VAT @ 12.5%	18,125
Total invoice value	1,63,125

VAT to be paid

VAT charged in the invoice	18,125
Less: VAT credit on input 12.5% of Total ₹1,20,000	15,000
Balance VAT payable	3,125

**Alternative Solution :** It is assumed that the purchase price is inclusive of VAT :

Purchase Price	1,20,000
Less : VAT included in the above (1,20,000 x 12.50/112.50)	<u>13,300</u>
Purchase price exclusive of VAT	1,06,667
Add: Expenses	10,000
Add: Profit margin	<u>15,000</u>
Amount to be billed	1,31,667
Add: VAT @12.5%	<u>16,458</u>
Total invoice value	<u>1,48,125</u>

VAT to be paid

VAT charged in the invoice	16,458
Less: VAT credit on input ₹1,20,000	<u>13,333</u>
Balance VAT payable	<u>3,125</u>

**8. (a) Discuss with a brief note the distinction between the functioning of Inland Container Depots (ICD) and Container Freight Stations (CFS).** 3

**(b) Compute the VAT amount payable by R, who purchased goods from a manufacturer on payment of ₹ 6,30,000 (including VAT) and earned 20% profit on sale price. VAT rates both on purchase and sales is 5%.** 4

**(c) Explain briefly whether 'assembly' would tantamount to 'manufacture' under the Central Excise Act, 1944.** 3

**(d) Bharath Institute, a partnership firm, is running a coaching centre and has been paying service tax of more than ₹10,00,000 in the past several years. The details pertaining to the quarter ended 30.09.2012 are as under.**

Particulars	Amount (₹)
Value of free coaching rendered	3,90,000
Coaching fees collected from students (service Tax collected separately) on 16.08.2012	54,00,000
Advance received on 30.09.2012 from another coaching centre for coaching their students, on 30.09.2012	12,00,000

i) One student was refunded the total fee ₹ 40,000 plus service tax on 15.01.2013.

ii) Another student was refunded ₹ 10,000 (including Service tax) on 16.04.2013 due to deficient service.

**Determine the service tax liability for the quarter and indicate the date by which the service tax has to be remitted by the assessee.** 5

**Answer 8.**

a) The difference between the functioning of inland container depot (ICD) and container Freight station (CFS) are:

i) Meaning: an ICD is a place where containers are aggregated for onward movement to or from the ports whereas CFS is a place where containers are stuffed, unstuffed and segregation/aggregation of cargo takes place.

ii) Location: ICD's are normally located outside the port towns whereas no site restrictions apply to CFS.

iii) Attachment/ Extension: An ICD may have a CFS attached to it and CFS is treated as an extension of a port/ICD/air cargo complex.

## b) Computation of sale price and VAT liability

Particulars	₹
Purchase Value of Goods exclusive of VAT (6,30,000 ÷ 1.05)	6,00,000
Add: Profit 25% (see notes)	1,50,000
Sale value	7,50,000
VAT @ 5%	37,500
Total	7,87,500
VAT Payable	37,500
Less: Input VAT credit (₹6,00,000 x 5%)	30,000
Net VAT payable	7,500

Note: Suppose sale price	₹100
Profit @ 20% on sale price	₹20
Cost Price is	₹80

Hence profits on cost shall  $20/80 \times 100 = 25\%$

c) Assembly is a process of putting together a number of items or their parts to make a product. All cases of assembly may not amount to manufacture as an already manufactured item may also be assembled to put it in a readily usable form.

However, assembly of various parts and component may tantamount to manufacture if a new product which is movable and marketable emerges out of such assembly. Therefore, if an "immovable property" emerges such assembly, it will not be considered as manufacture. The Apex court in the case of name Tulaman manufactures Pvt. Ltd. Vs CCS 1988 (38) E.L.T. 566 (S.C) held that if the assembly results in new commercial to manufacture.

## d) Value of Taxable service

Particulars	₹
i) Free coaching rendered (Note : if the value of consideration is nil, then no service tax is levied)	NIL
ii) Coaching fee collected on 16.08.2012 (Note : It is taxable Service)	54,00,000
iii) Advance received from college for coaching their students (₹ 12,00,000 x 100 / 112.36) it is assumed that ₹ 12,00,000 which is received in advance is inclusive of Service tax . Note : Service Tax is payable on amount received in advance	10,67,996
Total value of taxable service	64,67,996
Service Tax	7,76,159
Add: EC & SHEC @3%	23,284
Service tax liability	7,99,443

The amount of service tax is to be remitted to the credit of government after the quarter ending September on or before 6.10.2012 as it has to be paid electronically because the service tax liability exceeded ₹ 10,00,000 is the last year.

i) ₹ 4,944 service tax refunded along with ₹ 40,000 can be adjusted while making the payment of service tax for the quarter ending 31.03.2013.

ii) ₹ 1100 (10,000 x 12.36/112.36) included in the refund of ₹ 10,000 can be adjusted while making the payment of service tax for the quarter ending 30.06.2013.