

# FINAL EXAMINATION

## GROUP III

(SYLLABUS 2008)

### SUGGESTED ANSWERS TO QUESTIONS

#### DECEMBER 2012

#### Paper- 14 : INDIRECT AND DIRECT TAX MANAGEMENT

Time Allowed : 3 Hours

Full Marks : 100

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

*Answer Question No. 1 (carrying 25 marks), which is compulsory and any five from the rest.*

**Q. 1. Fill in the blanks :**

[1×25]

- (i) Central Excise and Service Tax Appellate Tribunal may pass an order for rectification of a mistake apparent from the record within \_\_\_\_\_ (six month / one year) from passing of order to be rectified.
- (ii) As per Rule 8A of Customs Central Excise Duties and Service Tax. Draw Back Rules, drawback rate shall not exceed \_\_\_\_\_ (33% / 50%) of market price of export goods.
- (iii) Beyond \_\_\_\_\_ (200/12) nautical miles, the area is the "High Sea" where all countries have equal rights.
- (iv) Tax payers Identification Number (TIN) given to each dealer under Value Added Tax Act is consists of \_\_\_\_\_ (11112) digit.
- (v) The amount of Tax Credit under section 115JAA of income tax act shall be carried forward and set off against tax payable computed under normal provisions of income tax act within a period of \_\_\_\_\_ (7/10) years.
- (vi) Where the input are sent under Cenvat provision or under notification No. 214/86-CE, dated 25.03.1986 \_\_\_\_\_ (raw material supplier/job worker) will be liable for excise duty under central excise law.
- (vii) Recording of sound or other phenomena on audio or video tapes shall amount to \_\_\_\_\_ (Manufacture/deemed manufacture).
- (viii) In case of delay in payment of service tax, interest @ \_\_\_\_\_ (15% / 18%) per annum is payable for delayed period.
- (ix) If there is a sale from a factory gate, equalized freight is \_\_\_\_\_ (allowable/not allowable) as deduction to arrive at Transaction Value.

2 ♦ *Suggested Answers to Question — TXM*

- (x) Input Service Distributor has to file half yearly return in prescribed format ST-3 within \_\_\_\_\_ (One month/25 days) from the end of the half year under rule 9(10) of the cenvat credit rules 2004.
- (xi) An assessee paying 1% / 2% excise duty and not manufacturing any other goods, is required under rule 12 (2A) of central excise rules to file return of annual installed capacity statement in prescribed format \_\_\_\_\_ (ER-5/ER-7) by 30th April for the previous year.
- (xii) Goods can be cleared from DTA (Domestic Tariff Area) to EOU/SEZ without payment of excise duty and the DTA unit has to file \_\_\_\_\_ (bill of export/Invoice).
- (xiii) A refund claim under section 11B of the Central Excise Act has to be filed within \_\_\_\_\_ (one year/two years) from relevant date.
- (xiv) If there was fraud, suppression, wilful misstatement but transactions were recorded in specified record then penalty will be equal to \_\_\_\_\_ (50%/ 25%) of duty will be imposed under section 11 (AC)1(B) of Central Excise Act.
- (xv) \_\_\_\_\_ (White/Green) bill of entry is used when goods cleared for home consumption.
- (xvi) Section 74 of the customs act 1962 provided for duty draw back if the goods imported within \_\_\_\_\_ (two/three) years on payment of duty are re-exported as such or after use.
- (xvii) Rate of income tax deductible at source u/s 194I of income tax act for use of any Machinery, Plant or Equipment is \_\_\_\_\_ (2% / 10%).
- (xviii) Annual Advance Authorization will be granted up to \_\_\_\_\_ (300% / 200%) of FOB value of physical exports in preceeding financial year and/or FOB value of deemed export of preceeding year or Rs. one crore whichever is higher.
- (xix) Under Section 22D(4A) of Wealth Tax Act, Settlement Commission shall pass an order in respect of an application filed on or after 01.06.2010 within \_\_\_\_\_ (eighteen/twelve) months from the end of the month in which application was made.
- (xx) When an immovable property being land or building is received by an individual or HUF \_\_\_\_\_ (without consideration/inadequate consideration) the value of said property shall be treated as income in the hands of the recipient and liable for income tax.
- (xxi) Boat notes under Customs act are used for transferring small cargo from ship to shore, from shore to ship \_\_\_\_\_ (with/without) berthing the ship.
- (xxii) Notice under section 143(2) should be issued within a period of \_\_\_\_\_ (six months/one year) from the end of the financial year in which the return is furnished.
- (xxiii) Company which is required to furnish a report under section 92E of the income tax act, the due date of filing return u/s 139 is \_\_\_\_\_ (30th September/30th November) of the Assessment Year.
- (xxiv) The manufacturers who pay prescribed duty under compounded levy scheme is \_\_\_\_\_ (required/do not require) to follow procedures of excise under storage and clearance of goods.
- (xxv) Circular/Trade notices are \_\_\_\_\_ (binding/not binding) on quasi judicial authorities or courts.

**Answer 1.**

- (i) six month
- (ii) 33%
- (iii) 200
- (iv) 11
- (v) 10
- (vi) raw material supplier
- (vii) deemed manufacture
- (viii) 18%
- (ix) allowable
- (x) One month
- (xi) ER-7
- (xii) bill of export
- (xiii) one year
- (xiv) 50%
- (xv) White
- (xvi) two
- (xvii) 2%
- (xviii) 300%
- (xix) eighteen
- (xx) without consideration
- (xxi) without
- (xxii) six months
- (xxiii) 30th November
- (xxiv) do not require
- (xxv) not binding

**Q. 2. (a)** Who are the persons not eligible for compounding of offence as per the provisions of the Central Excise Act, 1944? [4]

**(b)** Briefly outline the procedure for fixing anti-dumping duty. [3]

**(c)** For the year ended 31.03.2012, Gamma Ltd. has earned the following dividend income:

- |  |              |
|--|--------------|
| (1) From shares held in SUN Inc., a foreign company, in which it holds 20% of nominal value of equity share capital  | — ₹ 90,000   |
| (2) From shares held in MOON Inc., a foreign company, in which it holds 35% of nominal value of equity share capital | — ₹ 2,00,000 |
| (3) From shares held in Indian companies   | — ₹ 70,000   |

4 ♦ *Suggested Answers to Question — TXM*

The assessee-company has incurred expenditure of ₹ 30,000 for earning aforesaid dividend, the break up of which is as follows:

- (1) ₹ 8,000 (SUN Inc.)
- (2) ₹ 12,000 (MOON Inc.)
- (3) ₹ 10,000 (Indian Companies)

The business income of the assessee computed under the provisions of the Income-tax Act 1962 is ₹ 20 lakh. Compute the total income and tax liability of Gamma Ltd. for the AY 2012-13, ignoring MAT provisions. [8]

**Answer 2. (a)**

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

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

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

**Answer 2. (b)**

**Procedure for fixing anti dumping duty**

After the 'designated authority' satisfied about prima facie case, he will give notice to Governments of exporting countries. Opportunity to inspection of documents and making representations will be given to interested parties who are likely to be affected. Designated Authority will first give preliminary finding and then final finding within one year.

Provisional duty can be imposed on basis of preliminary finding which can continue upto 6 months, extendable to 9 months. Additional duty may be imposed on basis of the final finding.

As per rule 18 of Anti-Dumping Duty Rules, Central Government has to issue a notification fixing anti-dumping duty within three months from date of notification issued by designated authority.

**Answer 2. (c)**

**Computation of total income of Gamma Ltd., for the AY 2012-13**

Particulars	(₹)
Profits and gains of business or profession	20,00,000
Income from other sources (See Note below)	2,82,000
<b>Total income</b>	<b>22,82,000</b>

**Note - Dividend income taxable under "Income from other sources"**

Particulars	(₹)
From SUN Inc.- net dividend (i.e., ₹ 90,000 – ₹ 8,000) is taxable at normal rates	82,000
From MOON Inc.- gross dividend is taxable @ 15% u/s 115BBD No deduction is allowable in respect of any expenditure as per section 115BBD(2)	2,00,000
From shares in Indian companies ₹ 70,000 – exempt under section 10(34) since DDT would have been paid under section 115-0 [As per section 14A, no deduction is allowable in respect of expenditure incurred to earn exempt income]	Nil
Total amount of dividend chargeable as income from othersources	2,82,000

**Computation of tax liability of Gamma Ltd.**

Particulars	(₹)
Tax @ 15% under section 115BBD on ₹ 2,00,000 (gross dividend)	30,000
Tax @ 30% on balance income of ₹ 20,82,000	6,24,600
Add: Education cess @ 2% and Secondary and higher educationcess @ 1%	6,54,600
<b>Total tax liability under normal provisions of the Act</b>	<b>6,74,238</b>

- Q. 3. (a)** The following details of bills raised [excepting where specifically stated otherwise; amounts are excluding service tax] pertaining to a taxable service rendered by *M/S Bhattacharya & Co.* for the quarter ending 30.06.2011 are furnished to you: [4]

Sl. No.	Particulars	Amount (₹)
(i)	Services rendered to foreign consular staff posted in India, for their personal use.	14,00,000
(ii)	Plant erection consultancy given to PQR & Co., an associated enterprise. No invoice has been raised. Value of the same as recorded in the books of PQR & Co. is	22,50,000
(iii)	Technical assistance provided in Indian territorial waters	8,80,000
(iv)	Receipt for services rendered few years earlier, when the services were not taxable. The amount was in dispute and the same has been received now after Court decree.	3,20,000

Wherever the invoice has been raised and the service is taxable, the clients have paid the service tax due. Compute the value of taxable services rendered by *M/s. Bhattacharya & Co.*, a partnership firm, for the above quarter. [5]

- (b)** Is it correct to say that the cenvat credit of input services used for repair or renovation of factory is available? [2]

(c) What is meant by “reverse charge” in the context of VAT? [3]

(d) Vimala Constructions Ltd., engaged in construction business activities, furnishes the following particulars of its wealth for the valuation date as on 31.03.2012: [5]

	₹ in lacs
1. Land in urban area (held as stock in trade since Jan. 2001)	72
2. Motor cars (including one imported car worth ₹ 38 lacs used in business of hire)	58
3. 125 acres of land acquired at Jodhpur on 11.04.2009 for construction of commercial complex.	130
4. Residential flats of 950 sq. feet each provided to 3 employees (salary of one employee exceeds ₹5 lacs per annum)	33
5. Farm house situated at a remote village	9
6. Cash in hand as per cash book	6
Liabilities:	
Loan for purchase of land at urbaq area	55
Loan for purchase of land at Jodhpur	80

Compute the net wealth of the assessee-company as on valuation date 31.03.2012.

**Answer 3. (a)**

**COMPUTATION OF SERVICE TAX PAYABLE BY BHATTACHARYA & CO.  
FOR THE QUARTER ENDED 31-12-2011**

Sl. No.	Particulars	Amount of taxable service (₹)
(i)	Services rendered to foreign consular staff posted in India, for their personal use are exempt (₹ 14,00,000)	Nil
(ii)	Plant erection Consultancy given to PQR & Co., an associated enterprise. This is chargeable to service tax. It is immaterial that no invoice has been raised. However this will be deemed to include service tax also. Hence taxable services will be 22.5 lacs × 100 /110.3	20,39,891
(iii)	Technical assistance provided in Indian territorial waters. The same is chargeable to service tax and there is no exemption therefor.	8,80,000
(iv)	Receipt for services rendered few years earlier, when the services were not taxable. The amount was in dispute and the same has been received now after arbitration proceedings (₹ 3,20,000). This is not chargeable to service tax.	Nil
	Total value of taxable services	29,19,891

**Answer 3. (b)**

The statement is absolutely correct.

Circular No. 943/04/2011 clarifies that such services are eligible for cenvat credit, since they have specifically been included in the definition of “input services”.

**Answer 3. (c)**

“Reverse charge” in the context of VAT.

Though White Paper makes no mention of purchase tax, some States like Kerala and Andhra Pradesh have made provision for imposition of purchase tax when purchase is from unregistered dealers. Its credit will be available where vat credit on purchases is available. Thus, in effect, in respect of purchases where VAT credit is not available, purchase tax will be payable.

This is termed as ‘reverse charge’.

**Answer 3. (d)****Computation of net wealth of Bentac Constructions Ltd. as on valuation date 31.03.2012**

	Particulars	₹ in lacs
1.	Assets [as per the definition of assests under section2(ea)]	72
2.	Land in urban area (held as stock in trade since 2001 — taxable since it is held as stock-in-trade for more than 10 years.	20
3.	Motor cars (excluding imported car not being an asset since it is used for hiring) [58 lacs- 38 lacs]	Nil
4.	Land at Jodhpur — Since the assessee is engaged in construction business, land and building will form part of his stock-in-trade. Hence, not taxable.	33
5.	Residential flat provided to an employee drawing salary exceeding ₹ 5 lacs per annum is an asset	Nil
6.	Farm house at a remote village is not an asset assuming it is not situated within 25km of any municipality	Nil
	Cash in hand as per cash book is not an asset since it represents cash recorded in the books.	
		<b>125</b>
	<b>Less: Liabilities</b>	
1.	Loan for purchase of land in urban area — deductible since it is incurred to relation to land in urban area, which is an asset chargeable to wealth-tax.	55
2.	Loan for purchase of land at Jodhpur — not deductiblesince the land, being stock-in-trade, is not an asset under section 2(ea).	Nil
	Gross Wealth	<b>70</b>
	<b>Less: Basic exemption</b>	30
	<b>Net wealth chargeable to tax</b>	<b>40</b>

- Q. 4. (a)** Is it correct to say that if the amount charged includes value of goods and materials sold, service tax will not be payable on value of goods and materials sold by the service provider? [5]
- (b)** In the course of a group discussion, the issue as to what is the taxable event for the purposes of levy of customs duty relating to importation of goods has cropped up. The CEO opines that the same takes place when the goods land in India. The Accounts Manager however feels that the same takes place when the goods have entered the Indian territorial waters. You are required to resolve the controversy and also educate them as to when the taxable event arises under the customs law. [5]
- (c)** Do you agree with the statement that liability under the Central Excise Act is the first charge on the property of the defaulter? [5]

**Answer 4. (a)**

**Exclusion of value of materials supplied**

The given statement is correct.

Notification No. 12/2003-ST dated 20-6-2003 provides that if the amount charged includes value of goods and materials sold, service tax will not be payable on value of goods and materials sold. There should be documentary evidence showing value of goods and materials sold. This exemption is available only if Cenvat credit of such material is not taken. If such credit was taken, assessee should pay amount equal to the credit. Such payment should be before sale of such goods and materials.

Many exemption notifications provide that exclusion under notification 12/2003-ST is allowable only when the service tax is paid at full rate and any abatement under any other exemption notification is not claimed. Hence, in such cases, notification No. 12/2003-ST is of no use.

In **Bharat Sanchar Nigam Ltd. v. UOI** (2006) 3 SCC 1245 (SC), it has been clearly held by the Apex Court that price of goods cannot be included in value of services.

**Answer 4. (b)**

**Taxable event under the Customs Act**

Section 12 of Customs Act, 1962, often called *charging section*, provides that duties of customs shall be levied at such rates as may be specified under 'The Customs Tariff Act, 1975', or any other law for the time being in force, **on goods imported into, or exported from, India**. The levy of customs duty takes place only when a taxable event takes place.

**Taxable Event in case of Importation :** Import of goods will commence when they cross the territorial waters of India but is completed when it becomes part of the mass of the goods within the country. Taxable event is reached when the goods reach the customs barrier and the bill of entry for home consumption is filed.

The Supreme Court in the case of **Garden Silk Mills Ltd.** 1999 (113) ELT 358 (SC) has held that the "import of goods into India would commence when the same cross into the territorial waters but continues and is completed when the goods become part of the mass of goods within the country; the taxable event being reached at the time when the goods reach the Customs barriers and the bill of entry for home consumption is filed". The Supreme Court in **Kiran Spinning Mills** case 1999 (113) ELT 753, has also decided the question relating to 'taxable event'; it has been held by the Supreme Court that "the taxable event is the import of goods within the Customs barriers. In other words, the taxable event occurs when the Customs barrier is crossed".



In view of above, both the Managing Director and the Finance Manager are wrong. The taxable event occurs when the customs barrier is crossed.

In case of warehoused *goods*, the goods continue to be in customs bond. Hence, 'import' takes place only when goods are cleared from the warehouse - confirmed in **UOI v. Apar P Ltd.** 112 ELT 3 (SC).- followed in **Kiran Spinning Mills v. CC** 1999 (supra).

#### Answer 4. (c)

Yes. I fully agree with the statement that liability under the Central excise Act is the first charge on the property of the defaulter.

#### Liability under Central Excise Act to be first charge- Section 11E

Newly inserted section 11E ( Effective from April 08, 2011) enjoins that notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest, or any other sum payable by an assessee or any other person under this Act or the rules made thereunder shall, save as otherwise provided in section 529A of the Companies Act, 1956, the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002, be the first charge on the property of the assessee or the person, as the case may be.

#### Implication of the amendment

This section creates a first charge on the property of a defaulter for recovery of the Central Excise dues subject to the provisions of the Companies Act, Recovery of Debt due to Bank and Financial Institution Act and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act. This implies that after the dues, if any, owing under the provisions Of these Acts, dues under the Central Excise Act shall have a first charge.

**Q. 5. (a)** From the following chain of sales made at various stages, you are required to calculate the net VAT payable to the State Government:

Manufacturer sells the goods to C & F agent for	₹ 40,000
C & F agent sells the goods to wholesaler for	₹ 45,000
Wholesaler sells the goods to a retailer for	₹ 47,000
Retailer sells the goods to consumer for	₹ 50,000

Invoice method is to be used. Assume that VAT is charged at the rate of 4% separately during first two stages and 10% during the last two stages. [5]

**(b)** As a Tax Consultant how would you advise your client on the following issues on allowability or disallowability of expenses in the computation of income for filing of return under income tax act related to the financial year 2011-12 (Asst. Year 2012-13) [2×4=8]

- (i) Union Bank of India after considering the financial health of the company waived ₹ 5,00,000 of unpaid interest for the financial year 2010-11. The said amount was taken as expenses during the financial year 2010-11 now credited to PIL during financial year 2011- 12.
- (ii) A company was generating electricity privately for its factory. Later, as it incurred expense for electric lines which were laid from the trunk road to the factory. It paid ₹ 50 lakhs to the State Electricity Board as its contribution for this purpose. The ownership of the power-line was to vest with the State Electricity Board.

- (iii) Profit and loss account for the financial year 2011-12, debited with an amount of ₹ 75,000 as interest on the unpaid purchase price of an asset which was put to use from 1st September, 2011. This interest is pertaining to the period September, 2011 to March 2012.
- (iv) An amount of ₹ 2,50,000 of debtor has been written off as Bad debt in the books of accounts and claimed deductions u/s 36(i)(vii) in the said return of income filed u/s 139. The Assessing Officer made disallowances for deductions of bad debts on the ground that the debt has not been established to have become irrecoverable and bad in the previous year 2011-12.
- (c) Input cleared as such to a job worker on dt. 1st September 2011, was not returned by 1st March, 2012. How you will deal with such transaction under central excise provisions. Is it different if tools & jigs cleared to job worker in place of Inputs? [2]

**Answer 5. (a)****Computation of VAT Liability under Invoice Method**

Particulars	VAT liability	Less: VAT Input Tax Credit	Net VAT payable to Govt.
Manufacturer sells the goods to C & F agent. ₹40,000 @ 4%	1,600	Nil	1,600
C & F agent sells the goods to wholesaler. ₹45,000 @ 4%	1,800	1,600	200
Wholesaler sells the goods to a retailer. ₹47,000 @ 10%	4,700	1,800	2,900
Retailer sells the goods to consumer. ₹ 50,00,000 @ 10%	5,000	4,700	300
Total Net VAT collection of State Govt.			5,000

**Answer 5. (b)**

- (i) Interest related to financial year 2010-11 waived by Union Bank of India would not have allowed as expenditure previously under section 43 B which resulted increase in taxable income to that extent. Interest waived is credited to profit and loss account following the accounting principle. But such Interest waiver credited to profit and loss account requires exclusion from the Net profit while computing business income.
- (ii) The new electric power lines were laid to run the factory efficiently but the ownership of the power lines was vested with the State Electricity Board for which benefit of depreciation u/s 32 can not be taken. So contribution of ₹ 50 lakhs paid to the State Electricity Board shall be allowable as revenue expenditure under section 37(1).
- (iii) Interest of Rs.75,000/- on unpaid purchase price in respect of capital asset which was put to use from 1st Sept 2011 that is for the period after the asset put to use. It is deductible u/ s 36 or 37 of income tax act. Since the amount debited to profit and loss account, it does not require any adjustment.
- (iv) Due to amendment made after 1st April 1989, it is not necessary for the assessee to establish that debt, in fact has become irrecoverable. It is enough if bad debt is written off as irrecoverable in the accounts of the assessee. It is correctly treated in the return. (TRF Ltd. V.CIT (2010) 190 Taxman 391(SC).

**Answer 5. (c)**

Inputs removed to job worker must come back within 180 days. If inputs are not returned within 180 days, actual cenvat credit availed on inputs is immediately payable.

In this situation if job work is not completed within 180 days, it is advisable to bring back the materials & send it again to job worker. This provision is not applicable to tools & jigs sent to job worker.

**Q. 6. (a)** Mr. Ramesh is engaged in profession, filed his return of income for assessment year 2011-12 on 15th November, 2011. He disclosed an income of ₹ 4,00,000 in the return. In February, 2012 he discovered that he did not claim certain expenses and filed a revised return on 3rd February, 2012 showing an income of ₹ 1,80,000 and claiming those expenses. Is the revised return filed by Mr. Ramesh acceptable? [3]

**(b)** M/S White Cement Ltd. is a manufacturer of white cement. They repaired their worn-out machineries/parts of the cement manufacturing plant at its workshop such as damaged rollers, shaft etc with the help of the welding electrodes, mild steel cutting tools, Ms Angle, Ms Chenel, Ms Beam etc. In this process of repair, Ms Scrap & Iron Scarps were generated. M/S White Cement Ltd. cleared their metal scrap and waste, without paying any excise duty the department has issued a show cause notice demanding duty on said waste contending that the process of generation of scrap and waste amount to manufacture in terms of section 2(f) of Central Excise Act. M/s White Cement Ltd. approached you for an opinion on sustainability of the show cause notice under Central Excise Law. Pl Advise. [4]

**(c)** M/S Akash Industries Ltd. furnished following information related to imports made during last quarter of 2011-12. Compute the

(i) Assessable Value; [3]

(ii) Customs Duty Liability. [2]

as per the provisions of the Customs Act 1962 Make suitable assumptions and indicate the same in your answer :

Total FOB value of the goods-	US\$ 74000
Quantity imported	100 MTS
Ocean freight	US\$ 10000
Insurance	US\$ 740
Landing charges	1% of CIF value
Exchange Rate	1US\$ = ₹ 45
Date of presentation of Bill of Entry	28.02.2008
Date of Entry Inwards of the vessel	03.03.2008

**Customs duty rates:**

Type of custom duty	As on 28.02.2012	As on 28.02.2012
Basic Customs Duty	5%	10%
Additional duty under section 3(1)	14%	8%
Additional duty under section 3(5)	Nil	Nil

(d) State briefly, whether the following persons are liable to apply for registration under the Finance Act, 1994 and the Service Tax (Registration of Special Category of Persons) Rules, 2005 and if so, from which date: 1½+1½

- (i) An input service distributor who starts his business with effect from 1st January, 2012;
- (ii) A provider of taxable service under an unregistered brand name of another person. Aggregate value of taxable services was Rs. 8,00,000 up to 31.03.2012.

**Answer 6. (a)**

Mr. Ramesh is engaged in profession. The due date for filing income tax return for assessment year 2011-12 as per section 139(1) of the Income-tax Act is 30th September, 2011 if his accounts are required to be audited under any law. The due date is 31st July, 2011 if the accounts are not required to be audited under any law. The return was filed beyond the due date prescribed in section 139(1). The return so filed is covered by section 139(4) and the time limit is one year from the end of the relevant assessment year. The Apex court in *Kumar Jagadish Chandra Sinha v. CIT 220 ITR 67 (SC)* has held that a return filed under section 139(4) is not eligible for revision and hence a revised return cannot be filed.

Hence, the return filed by Mr. Ramesh is not valid as the original return was not filed before the due date mentioned in section 139(1).

**Answer 6. (b)**

In the present case of M/S White Cement Ltd, the show cause notice was issued by Central Excise Department is not sustainable in law. As per Section 2(f) of Central Excise Act which includes any process incidental or ancillary to the completion of the manufactured product. Any process can be a process in manufacture or process in relation to manufacture of the end product which involves bringing some kind of change to the raw material at various stages by different operations. The process in relation to manufacture means process which is so integrally connected to the manufacturing of the end product without which the manufacture of end product would be impossible commercially.

In the present case of repair of machines where MS Scrap & Iron Scrap arise has no contribution or effect on manufacturing process of the end product that is cement. So it can not be called as a part of manufacturing activity in relation to end product. MS Scrap & Iron Scrap can not be said to be by product of the final product & does not amount to manufacturing. A similar issue was decided by Hon'ble Apex Court in case of *Grasim Industries Ltd. V Union of India 2011(273) ELT 10(SC)*.

**Answer 6. (c)**

As per Section 15(1)(a), the rate and valuation in force applicable to the imported goods shall be the rate as prevalent on the date of presentation of bill of entry or entry inwards, whichever is later. In this case, the date of entry inwards being later, the relevant date will be 03.03.2012.

Particulars	US \$
FOB value	74,000
Ocean freight	10,000
Insurance	740
Total CIF Value	84,740

Exchange rate 1\$ = ₹ 45	₹
CIF value in rupees (84,740 × 45)	38,13,300
Add: Landing charges @ 1% of CIF value	38,133
Total Assessable value	38,51,433
Add: Basic customs duty @ 10% (1)	3,85,143
Total for levy of section 3(1) duty	42,36,576
Add: Additional duty of customs under section 3(1) @ 8.24% (2)	3,49,094
Add: Education cess and SHEC @ 3% on [1+2] (3)	22,027
Total Customs duties (1+2+3) (rounded off)	756,264

**Answer 6. (d)**

- (i) Yes. As per rule 3(1) of the Service Tax (Registration of Special Category of Persons) Rules, 2005, an input service distributor is liable to apply for registration within a period of 30 days of the commencement of business. Thus, in the given case, the input service distributor should apply for registration by 31.01.2012.
- (ii) Yes. Basic exemption for small service provider is not available to a service provider who provides taxable service under a trade name or brand name, whether registered or not, of another person. So the provider of taxable service under a registered brand name of another person is liable to apply for registration within a period of 30 days of commencement of business of providing taxable service.

**Q. 7. (a)** M/s Aurobind Ltd. is a small scale Industrial Unit which is producing glass fibre an excisable Product. As per financial statement for the year 2011-12, it shows a gross sales turnover of ₹ 205.10 lakhs inclusive of excise Duty & VAT. There Product glass fibre attract Duty @ 12% and VAT @ 1%. It may be noted that for the year 2010-11, the taxable clearance of MisAurobind Ltd. SSI Unit was ₹ 160.00 lakhs. Please calculate the excise duty liability under Notification No. 8/ 2003 dt. 01.03.2003 as the gross sales turnover ₹ 205.10 lakhs is eligible for examination.

[5]

- (b)** (i) What do you mean by project import under customs Act? [2]  
(ii) Which projects are eligible for benefit of custom duty? [2]  
(iii) What to do to get such benefit? [2]

**(c)** Examine and state the applicability of provisions under Income Tax Act for deductions of Income Tax at source under Income Tax Act/rules on following cases for Asst. Year 2012-13.

- (i) Mr. K an employee of Central Government is due to receive arrear of salary for the earlier three previous years that are 2008-09 to 2010-11 during the previous year 2011-12. Whether such arrear salary is subject to deduction of tax during previous year 2011-12. [2]
- (ii) MIS X Ltd. enter into an agreement with MIS ABC Consultants for providing engineering services to the Company for a Consideration of ₹ 10,000 per month. MIS ABC Consultants requires MIS X Ltd. to deduct tax at source @2% u/s 194C. Finance department of the view that tax deduction should be 10% u/s 194J of Income Tax Act. [2]

**Answer 7. (a)**

Computation of the excise duty liability under Notification No. 8/2003 dt. 01 03 2003

Particulars	Amount in ( ₹)
Gross Sales turnover including ED@ 12% and & VAT@ 1%	2,05,10,000
Up to ₹ 150 lacs Clearance: Rate of Excise Duty	Nil
Up to ₹ 150 lacs Clearance: Rate of VAT	1%
VAT on First ₹ 150 lacs Clearance	1,50,000
VAT on Balance Sales (₹ 205.10 lakhs - ₹ 150 Lakhs- ₹ 1,50,000)	53,60,000
VAT (₹ 53,60,000 × 1/101) =	53,069
Balance Sales (₹ 53,60,000 - ₹ 53,069)	53,06,931
Excise Duty (₹ 53,06,931 × 12.36 / 112.36)	5,83,781
Total Duty payable including Surcharge and Education Cess	5,83,781

**Answer 7. (b)**

- (i) Project import means, import of machineries required for initial set up of project and also includes raw materials, consumables and spare parts, (10% value of machinery) is allowed to import at concessional or nil rate of duty. Heavy customs duty on imported machinery for project makes project cost very high and may become unviable. The goods are classified under heading 9801, so that the clearance of goods become faster.
- (ii) Project eligible are :
- Industrial plant
  - Irrigation Project
  - Power Project
  - Mining Project
  - Project for Oil and Mineral Exploration
  - Other Project specified by the Central Govt.
- (iii) To get benefit under Project Import, the Contract for import has to be registered with Customs. Application is required to be made before importation and contract must be registered before order for clearance of goods is made from Customs. The contract can be amended if required. After completion of Project and submission of documents assessment shall be finalized within 60 days. MF (DR) Circular No. 22/2011-CUS dt. 04 May, 2011.

**Answer 7. (c)**

- (i) Arrear of salary for the previous year 2008-09 to 2010-11 are taxable in the previous year 2011-12 on receipt as not taxed earlier on accrual basis in the hands of Mr. K, an employee. The authorized person of the Central Govt. would be liable to deduct tax at source from such arrear. However Mr. K can claim relief u/s 89(1) of the Income Tax Act provided the employee would produce the details in the prescribed Form 10E to his employer to consider the relief u/s 89 while deducting tax at source.
- (ii) The definition of professional service on which tax is to be deductible under section 194J includes engineering services also. So fee of ₹ 10,000 per month paid M/S ABC Consultant represent fee for

professional Services & the income tax deduction at source on payment is to be made @ 10% under such section that is 194J. M/S ABC Consultants requirement for deduction of tax at source @2% u/s 194C is not correct.

- Q. 8. (a)** Koteeswara Power Projects is a power generating unit on 01.04.2010, it purchased a plant of ₹ 50,00,000 eligible for depreciation @ 15% on SLM Compute balancing charge or terminal depreciation assuming the plant is sold on 21.4.2012 for: [5]

₹

- (i) 8,50,000 [3]  
 (ii) 32,00,000  
 (iii) 45,00,000  
 (iv) 52,00,000

- (b)** Find out the amount of Advance Tax payable by Mr. A on specified dates under the Income Tax Act, 1961 for the previous year 2012: [10]

₹

VBusiness Income	3,75,000
Long term Capital Gain on 31.07.2011	1,60,000
Winning from Lotteries 12.09.2011	50,000
Bank Interest	10,000
Other Income	5,000
Investment in PPF	1,25,000
Tax Deducted at source	20,000

**Answer 8. (a)**

Computation of Terminal depreciation or balancing Charge, Capital Gain :

Particulars	A	B	C	D
WDV as on 1.4.2012	35,00,000	35,00,000	35,00,000	35,00,000
Less : Sale proceeds	8,50,000	32,00,000	45,00,000	52,00,000
Balance	26,50,000	3,00,000	Nil	Nil
Terminal Depreciation	26,50,000	3,00,000	Nil	Nil
Balancing Charge	Nil	Nil	10,00,000	15,00,000
Short term capital Gain	Nil	Nil	Nil	2,00,000

**Computation of Depreciation :**

Original Cost	50,00,000
Less : Depreciation	<u>7,50,000</u>
WDV as on 1.4.2011	42,50,000
Less : Depreciation	
For the year 2011-12	<u>7,50,000</u>
WDV as on 1.4.2012	<u>35,00,000</u>

**Answer 8. (b)****Computation of Total Income of WVA for the Assessment Year 2012-13**

Profits and Gains of Business	3,75,000
<b>Capital Gains</b> : Long term Capital Gain	1,60,000
<b>Income from others Sources</b> :	
Winning from Lotteries	50,000
Bank Interest	10,000
Other income	5,000
Gross Total Income	<u>65,000</u>
	6,00,000
Less : Deduction u/s 802 :	
Deposit in PPF Restricted to	<u>1,00,000</u>
Total Income	<u>5,00,000</u>

**Answer 8. (c)****Computation of Tax Liability of WVA for the previous year 2011-12****Income :**

		₹
Long term Capital Gain	₹ 1,60,000 @ 20%	32,000
Winning from Lotteries	₹ 50,000 @ 30%	15,000
Balance Income	₹ (2,90,000 – 18,00,000)	
	1,10,000 × @ 10%	<u>11,000</u>
		58,000
Add : Education Less & SHEC		<u>1,740</u>
		59,740
Less : Tax Deduction at Source		<u>20,000</u>
Total Tax Payable		<u>39,740</u>



**Advance Tax Payable :**

Due Date	Tax Liability (₹)	(₹) Amount of Installment
15-9-2011	30% of 39740 = 11922	11922
15-12-2011	60% of 39740 = 23844	23844 – 11922 = 11922
15-3-2012	100% of 39740 = 39740	39740 – 11922 11922 = 15896