REVISIONARY TEST PAPER

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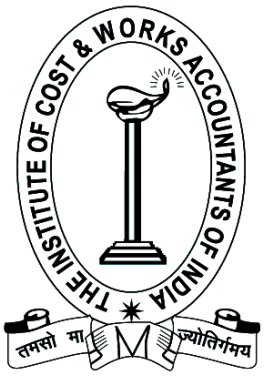
GROUP II



DIRECTORATE OF STUDIES

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GROUP - II

Paper-10 : APPLIED INDIRECT TAXATION

INTERMEDIATE EXAMINATION

(REVISED SYLLABUS - 2008)

GROUP - II

Paper-10 : APPLIED INDIRECT TAXATION

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

(i) Steamer agents can file application for entry outwards _____ days in advance.

(ii) Where security has been furnished to the central sales tax authority in the form of a surety bond, death of surety should be intimated within _____ days of such occurrence and fresh surety bond furnished within _____ days.

(iii) Where the Excise Tariff rate is 10% but as per exemption notification the excise duty is 8%, additional duty of customs payable is _____ .

(iv) Where excise duty has been paid on provisional basis, refund claim should be filed within _____ after duty has been adjusted in final assessment.

(v) Foreign visitors are permitted to bring articles upto Rs. _____ for making gifts, without payment of duty.

(vi) Ownership of raw materials is _____ for excise duty liability.

(vii) A sales or purchase of goods is deemed to be in the course of import, inter alia, if such sale or purchase _____ the import of such goods.

(viii) An EOU is required to execute a _____ bond.

(ix) Duty drawback on re-export is allowable if goods are re-exported within _____ years.

(x) _____ of customs duty which was paid while importing the goods is allowed as duty drawback u/s 74 of Customs Act.

Answer 1. (a)

(i) 14.

(ii) 30, 90.

(iii) 8%.

(iv) One year.

(v) Rs. 8,000/-

(vi) Not relevant.

(vii) Occasions.

(viii) B-17.

(ix) Two.

(x) 98%.

Q.1. (b) State with reasons, whether True or False :

(i) Sales Tax is leviable on sale of stocks, shares and securities traded by a dealer in shares.

(ii) A computer manufacturer purchases mouse and sells them to buyers of personal computers along with the computer. The value of the mouse does not form part of assessable value of the computer for excise duty purpose, chargeable to duty @ 10%.

(iii) Import report in case of a vehicle is to be submitted prior to the arrival at customs station.

(iv) A person who manufactures gold ornaments with the gold supplied by the customer is not a dealer under CST Act.

(v) In case of transactions of taxable service with an associate enterprises, service tax is required to be paid not on receipt basis but on receipt or date of credit/ debit entries in the books of account, whichever is earlier.

(vi) In exceptional circumstances, goods can be cleared from factory without payment of excise duty and stored in any other premises.

(vii) Importers can store imported goods without payment of duty in public warehouse or private warehouse.

(viii) Petrol is declared goods under the Central Sales Tax Act, 1956.

(ix) Trade discount is permissible as deduction from assessable value for Central Excise, only if it is given before removal from factory. Discount given later is not allowable as deduction.

(x) State Government cannot waive condition of submission of C form by issue of a notification.

Answer 1. (b)

(i) **False** — As per definition of goods under CST, the term does not include stocks, shares and securities**.**

(ii) **True** — Value of brought pout accessories supplied along with main articles should not be includible, as the supply is in 'relation to' sale but not ' in accordance' with sale. One can buy a computer without the mouse.

(iii) **False** — Person-in-charge of vessel, aircraft or vehicle has to submit Import Manifest/Report [also termed as IGM-Import Manifest]. In case of a vessel or aircraft, it is called import manifest, while in case of vehicle, it is called import report. The import manifest in case of vessel or aircraft is required to be submitted prior to arrival of a vessel or aircraft. Import report (in case of vehicle) has to be submitted within 12 hours of arrival at the customs station.

(iv) **True** — Where the assessee is an ornament maker with the gold supplied by the customer, he is not a dealer but only a contractor for work and labour.

(v) **True** — Service tax is required to be paid on transaction with associated enterprises either on receipt of payment or making credit/ debit entries in the books of accounts, whichever is earlier. "Associated enterprises" will have the same meaning as defined under Section 92A of the Income Tax Act, 1961.

(vi) **True** — Normally goods can be cleared from factory only after payment of duty or to another warehouse without payment of duty (in cases where warehousing is permitted). However, in exceptional cases, having regard to nature of goods and shortage of storage premises of the manufacturer where goods are manufactured, Commissioner can permit storage of goods in any other premises outside the factory without payment of duty. Commissioner can specify conditions while giving such permission. Normally, a bond may be asked to secure the duty liability.

(vii) **True** — Warehouses are of two types : (a) Public warehouses appointed by Asst. Commissioner of Customs under section 57 of Customs Act. (b) Private warehouses licensed by Asst. Commissioner of Customs. As the name suggests, goods can be stored in Public Warehouse by any importer, while goods can be stored in private warehouse only by person who has been licensed.

(viii) **False** — Petrol does not find a place in the list of goods specified as declared goods under the CST Act, 1956.

(ix) **False** — Discount can be given at any time. Hence, discount given after removal is also allowable as deduction.

(x) **True** — Such power is available only to Central Government, and not to the State Government.

Cannons of Taxation – Indirect Taxes

Q. 2. Distinguish between Direct Tax and Indirect Tax?

Answer 2.

Taxes can broadly be classified into two categories :

(a) **Direct Taxes :** Direct Tax means a tax on property in respect of ownership, possession, or enjoyment of property. Direct taxes are those, which the taxpayer pays directly from his income/ wealth etc. (e.g. Income Tax/ Wealth Tax).

(b) **Indirect Taxes :** It is a tax on goods and services, the incidence of which is borne by the consumers who ultimately consume the goods and services. The major source of indirect taxes are excise duty, customs duty, sales tax, service tax, etc.

Difference between Direct Taxes and Indirect Taxes :

No.	Direct Taxes	Indirect Taxes
(i)	They are imposed on persons	They are imposed on goods and services
(ii)	Amount of tax is determined directly on the basis of taxable income/ wealth of assessee	The amount of tax is determined indirectly
(iii)	There is no shifting of tax burden. Hence, they are directly borne by the taxpayer	Tax burden is shifted to the subsequent user
(iv)	Tax collection is difficult	Tax collection is relatively easier

Central Excise

Q. 3. (a) Explain the concept of taxable event and the significance of date of removal of goods in the context of levy and collection of Central Excise Duty?

(b) Explain whether waste and scrap will be liable to duty of excise.

(c) What is captive consumption? How are intermediate products liable to excise duty?

Answer 3. (a)

Taxable event : Taxable event is the event the happening of which attracts the liability to pay tax. The taxable event in Central Excise is production or manufacture of excisable goods.

Relevant date for rate of duty and tariff valuation [Rule 4 and 5 of Central Excise Rules, 2002] : Rule 4 states that duty is payable at the time of removal of goods from the factory or warehouse. Rule 5 states that the relevant date for determining the rate of duty and tariff valuation shall be the date of actual removal of goods from the factory or warehouse.

Accordingly, though the taxable event for the purpose of Central Excise is manufacture or production of excisable goods but a person shall be liable to pay excise duty at the rate prevalent at the time of clearance of excisable goods from the factory / warehouse and not at the rate prevalent at the time of manufacture.

Hence, whether duty is payable or not shall be determined as follows :

Rate of duty prevalent at the time of manufacture	**Rate of duty prevalent at the time of removal of goods**	**Whether duty payable (Yes/No)**
Non-excisable	16%	No, as the goods were non-excisable goods at the time of manufacture.
Exempted	Exemption withdrawn	Yes, as the goods were excisable goods at the time of manufacture.
'Nil' rate of duty	16%	Yes, as the goods were excisable goods at the time of manufacture.
Goods were not liable to special duty	Goods were made liable to special duty levy by Finance Act	No, as there was no levy of special duty on goods at time of manufacture.

Answer 3. (b)

Earlier there was a lot of controversy regarding dutiability of waste and scrap. The manufacturers contended that they did not manufacture waste and scrap and it arises incidentally during the course of manufacture of the main product. They argued that, as they did not intentionally produce the waste, they should not be unnecessarily burdened with excise duty on the same.

The new tariff has put an end to all such controversies by incorporating individual headings in relation to such process waste and scrap in numerous chapters in order to levy duty on waste and scrap.

Thus, if waste and scrap is –

(i) Manufactured product
(ii) Movable
(iii) Commercially marketable and
(iv) Listed in the tariff,

Then, it will be liable to duty of excise.

Waste, parings and scrap arising in the course of manufacture of exempted goods (i.e. goods chargeable to "NIL" rate of duty or goods exempted from whole of excise duty, other than goods exempted under SSI-exemption) and falling within the Schedule to the Central Excise Tariff Act, 1985 are exempt from the whole of the duty of excise leviable thereon. However, this exemption shall not be available to waste, parings and scrap cleared from a factory in which any other excisable goods other than exempted goods are also manufactured.

Answer 3. (c)

Captive consumption means consumption of goods manufactured by one division or unit and consumed by another division or unit of same organization or related undertaking for manufacturing another product (s). For example yarn produced from fibre is consumed within the factory of production for production of fabric then such type of consumption is known as captive consumption.

Earlier there was a controversy regarding the duty liability of intermediate product. The rate of excise is to be determined at the time of removal of goods from factory as provided in Rule 5 of Central Excise Rules, 2002. The manufacturers' contention was that since intermediate products are not removed from the factory, they should not be liable to pay excise duty. This contention of the assessee was upheld in J K Cotton & Spinning Mills Co. Ltd. v UOI. However, Rules 9 and 49 of the erstwhile Central Excise Rules 1944 were retrospectively amended to provide that in case the goods are captively consumed such consumption shall be treated as deemed removal.

An intermediate product is goods by itself and as per Rule 4 of the Central Excise Rules, 2002, if it is used in the captive consumption for manufacture of other products it becomes chargeable to duty as soon as it is removed from the place of manufacture or production or from the storage or store room where it is kept after coming into existence.

However, all the intermediate products, which are captively consumed, are not dutiable. The captive consumption of only those articles is dutiable which are 'goods' and qualify the test of marketability and are excisable commodities. Rule 4 of Central Excise Rules, 2002 is to be reasonably applied and it is not that at every stage of manufacture duty is leviable. Therefore, articles captively consumed can be charged to duty only when they have reached the stage where they can be identified as 'goods'.

However, currently there are exemption notification in force exempting intermediate products from duty of excise, if the final products are chargeable with duty.

Q. 4. (a) When will the assessable value be the transaction value?

(b) What do you understand by Normal Transaction Value?

(c) Explain how will the various types of packing charges be dealt with in case of valuation under the Central Excise Act, 1944.

Answer 4. (a)

As per section 4 of the Central Excise Act, 1944 the ad valorem duties are payable on the basis of 'Transaction Value' in case all the following conditions are satisfied :

(i) The excisable goods must be sold by the assessee;

(ii) The excisable goods must be sold by the assessee for delivery at the time and place of removal;

(iii) The assessee and the buyer of the goods must not be related persons; and

(iv) The price must be the sole consideration for sale.

The above ingredients are to be satisfied in respect of each removal of excisable goods.

In case any of the above requirements is not satisfied then the value will be determined in accordance with the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

Answer 4. (b)

"Normal Transaction Value" means the transaction value of the goods sold in the greatest aggregate quantity. The term greatest aggreagate quantity has not been defined in the Central Excise Act, 1944 or the Central Excise Rules, 2002 but it has been taken from GATT valuation code, which has been adopted in the Custom Valuation Rules, 1988.

On interpreting Custom Valuation Rules, 1988 we find that the term "unit/ price at which the goods are sold in the greatest aggregate quantity" means the price at which the greatest number or units is sold in sales to persons who are not related to the manufacturer.

Seen in this context, the transaction value of the "greatest aggregate quantity" would refer to the price at which the largest quantity of the identical goods is sold on a particular day, irrespective of the number of buyers at the time. The term is used for valuation in case of depot transfer under Rule 7 and sale to related person under Rule 9 of the Central Excise Valuation Rules, 2000.

The Department has clarified that the time period should be taken as the "whole day" and the transaction value of the "greatest aggregate quantity" would refer to the price at which the largest quantity of identical goods is sold on a particular day, irrespective of the number of buyers.

Answer 4. (c)

The packing charges shall be dealt with as follows :

(i) **Primary and Secondary packing :** Section 4 of the Central Excise Act, 1944, does not make any specific reference to packing charges. In normal commercial transactions the price of goods charged includes

the cost of packing charges. The charges that are recovered on account of packing are obviously the charges in relation to sale of goods under assessment and will form the part of transaction value. Whatever be the nature of packing that is whether the packing is primary or secondary or special, the cost of such packing shall be includible.

(ii) **Durable and Returnable packing :** The durability of packing depends upon repeated use. For example, oxygen cylinders, bottles for aerated water etc. are durable packing materials. When the packing refers to packing being of a durable nature, the durability must be of such a nature that packing is capable of being reused by the manufacturer.

As regards the returnable packing, the courts have interpreted this to mean a contractual agreement between seller and buyer for return of packing from buyer of excisable goods to the seller.

Normally the cost of reusable containers (glass bottles, crates etc.) is amortised and included in the cost of the product itself. Therefore the question of adding any further amount towards this account does not arise, except where the audit of accounts reveals that the cost of the reusable container has not been amortised and included in the value of the product.

In case of rental charges or maintenance of reusable containers, if the amount has been charged in connection with the sale of goods, this amount will be added to the transaction value.

However, in Grasim Industries v. CCEs. [2004], the Tribunal has held that packing or rental charges paid by the buyer in respect of durable or returnable packing will not be included in the assessable value as such rental charges are not paid by the buyer by reason of , or in connection with, the sale because sale of goods and sale of durable and returnable packing are separate transactions.

Q. 5. (a) How will the value be determined in case the excisable goods are sold at a place other than the place of removal?

(b) Briefly describe whether "Assembly" would tantamount to "Manufacture" under the Central Excise Act, 1944.

(c) Explain briefly with reference to the provisions of the Central Excise Act the term "Deemed Manufacture".

Answer 5. (a)

In case all the requirements of Section 4(1)(a) are satisfied except one, that is, if the excisable goods are sold for delivery at the place other than the place of removal, then the value shall be determined as per Rule 5 of the Central Excise Valuation Rules, 2000. Accordingly, in such circumstances, the value of such excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of removal upto the place of delivery of such excisable goods.

The term, cost of transportation includes :

(i) The actual cost of transportation; and

(ii) In case where freight is averaged, the cost of transportation calculated in accordance with generally accepted principles of costing.

Thus, exclusion shall be available not only on account of actual cost of transportation but also on average freight or equalised freight from the place of removal to the place of delivery, provided the same is computed as per the principles of costing. Moreover, cost of transportation is excludible from the transaction value irrespective of whether the same is separately shown in the invoice or not.

However, the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded from the assessable value of goods.

Thus, where the goods are sold from a depot, premises of consignment agent or any other place or premises from where the goods are sold after the clearance from the factory, the cost of transportation form the factory to the point of depot or any other place from where the goods are sold shall be included in the transaction value.

Answer 5. (b)

Assembly of various parts and components may amount to manufacture if new product emerges, which is movable and marketable.

In Triveni Engineering v. CCE, it was held that combining steam engine turbine and alternators by fixing them on platform and aligning them is manufacture as new product, turbo alternator, comes into existence which has a distinctive name and use different from its components.

Assembling of computers from duty paid bought out parts amounts to manufacture.

However, in Bholanath Sreemany v. ACCT, it was held that assembly of spectacle frame and individual glasses as per medical prescription is not ' manufacture'. Assembly of piston rings, circle, gudgeon pins and rubber ring to make 'Liner Piston Set' is not manufacture.

Assembly of components of air-conditioner in car does not amount to manufacture as the parts are fitted at various places and at no point of time a car air-conditioner as a separate and distinct commodity comes into existence. Similarly, fitting of air-conditioner kit in a car does not amount to manufacture.

Answer 5. (c)

Section 2(f), which defines 'Manufacture' has two deeming provisions.

Deemed manufacture is of two types :

(i) CETA specifies some processes as 'amounting to manufacture'. If any of these processes are carried out, goods will be said to be manufactured, even if as per Court decisions, the process may not amount to 'manufacture'.

(ii) In respect of goods specified in Third Schedule of Central Excise Act, repacking, re-labelling, putting or altering retail sale price etc. will be 'manufacture'. The goods included in Third Schedule of Central Excise Act are same as those on which excise duty is payable.

Thus, the process may not amount to manufacture as per principles evolved by Courts, but these will be liable to excise duty if it is defined as amounting to manufacture under CETA, or if the product is included in Third Schedule to Act and any of specified process (like re-packing, re-labelling, alteration of retail sale price etc.) are carried out. This is called 'deeming provision' or a 'legal fiction', e.g. process like labeling, re-labelling, re-packing is not 'manufacture' as no new product emerges. However, it will be 'deemed manufacture' and duty will be payable if the process is specified in Central Excise Tariff as 'amounting to manufacture' in relation to any goods. This amounts to charging excise duty on product which is not really manufactured as defined by Courts.

Even if process is 'deemed manufacture' the test of marketability is still to be satisfied. Unless goods are marketable after that process, duty cannot be levied.

Q. 6. (a) The CENVAT credit of the duty paid on inputs "used in or in relation to " the manufacture of final product is allowed. Elucidate this statement.

(b) Discuss the admissibility or otherwise of the CENVAT credit in following cases :

(i) Inputs contained in final products lying in stock, which were exempted but subsequently became excisable. Whether the same principle will be applicable in case of capital goods.

(ii) Inputs or capital goods used in the manufacture of intermediate products, which are exempt from duty, but the final product is dutiable.

(iii) Input originally entitled to CENVAT, subsequently became ineligible for CENVAT.

(iv) If supplier gives reduction in price after clearance.

Answer 6. (a)

The CENVAT credit is allowed of the duty paid on inputs, which are used in the manufacture of final products, as well as the inputs used in relation to the manufacture of final product.

In Union Carbide India Ltd. v. CCEx. The Tribunal held that the expression 'in relation to manufacture' have been used to widen and expand the scope, meaning and content of the expression 'inputs' so as to also attract goods which do not enter directly or indirectly into finished product but are used in the activity concerned with, or pertaining, to the manufacture of finished goods. Input need not be physically present in the final products nor should it be completely consumed in order to qualify for the CENVAT credit. The term 'in relation to' has a wider connotation and is not restricted to physical presence of input in final product nor it should be confined to usage only in manufacturing process prior to emergence of final product. It includes inputs used posterior to emergence of final product but before marketing at factory gate.

The phrase 'in or in relation to the manufacture' not merely includes the processes and inputs essential for or incidental or ancillary to the completion of manufacture (including deemed manufacture), but any item of process, which is essential for making the final product marketable. Therefore, any material or item which was normally so used and was, as a matter of commercial practice provided normally with the final product ready for delivery at the factory gate (and was not an optional accessory) would qualify as an input for the purpose of CENVAT.

Answer 6. (b)

The admissibility or otherwise of Cenvat Credit, in the aforesaid cases, has been discussed below :

(i) **Admissible :** Rule 3(2) of Cenvat Credit Rules, 2004 states that a manufacturer shall be allowed to avail CENVAT credit of the duty paid on inputs lying in stock or in process or inputs contained in the final products lying in stock on the date on which any goods cease to be exempted goods or any goods become excisable.

However, Cenvat credit will not be allowed in similar circumstances in respect of duty paid on Capital Goods lying in stock or used in final products lying in stock, which were exempted but subsequently became excisable.

In *Surya Roshni Ltd.* v. *CCEx*. It was held that eligibility of capital goods to Cenvat credit should be determined at the time when the goods are received by the manufacturer. Subsequent becoming of goods as dutiable or the manufacturer putting capital goods to other use could not revive the question of admissibility of Cenvat credit.

(ii) **Admissible :** It was held in *CCEx* v. *Hindustan Sanitary Ware* that Cenvat credit will be available in respect of duty paid on inputs even if intermediate product is exempt from duty but the final product is dutiable. Moreover, the Department has clarified vide Circular No. 665/56/2002, dated 25.09.2002 that Cenvat credit should not be denied on capital goods used in manufacturing of intermediate goods exempt from payment of duty which are used captively in the manufacture of finished goods chargeable to duty.

(iii) **Admissible :** It was held in *Dhar Cement Ltd.* v. *CCEx* that Cenvat credit lawfully earned on a commodity could be utilized even after withdrawal of Cenvat for that particular commodity. It was observed that, in absence of specific provisions for reversal of credit in such a situation, the assessee could not be deprived of benefit of the credit already earned.

(iv) **Admissible :** It was held in *MRF Ltd.* v. *CCEx* that any fluctuation or reduction in prices subsequent to clearance of goods on payment of duty, for any reason, has no relevance whatsoever to the liability for payment of Excise duty. Hence, even if supplier gives reduction in price after clearance, the credit of excise duty in respect thereof need not be reversed.

Q. 7. (a) Explain the provisions relating to sale of goods through depot/ godown under Central Excise Act, 1944.

(b) What is the procedure required to be followed for availment of CENVAT credit in respect of inputs and capital goods?

Answer 7. (a)

Section 4(3)(c)(iii) [amended w.e.f. 14-05-2003] provides that in case of sale at depot/ consignment agent, the depot/ place of consignment agent will be the 'place of removal'. As per section 4(3)(cc), in case of sale from depot/place of consignment agent, 'time of removal' shall be deemed to be the time at which the goods are cleared from factory.

In other words, in case of sale from depot/ place of consignment agent, duty will be payable on the price prevailing at the depot as on date of removal from factory. Price at which such goods are subsequently sold from the depot is not relevant for purpose of excise valuation.

As per Explanation 2 to rule 5 of Central Excise Valuation Rules, if factory is not the 'place of removal', cost of transportation from factory to place of removal shall not be excluded for purpose of determining value of excisable goods. In other words, cost of transportation and handling from factory upto depot will have to be added for purpose of valuation, as the depot is the 'place of removal'.

When goods are sold through depot, there is no 'sale' at the time of removal from factory. In such cases, price prevailing at depot (but at the time of removal from factory) shall be the basis of Assessable Value. The value should be 'normal transaction value' of such goods sold from the depot at the time of removal or at the nearest time of removal from factory.

For example, if an assessee transfers a consignment of paper to his depot from Kolkata to Durgapur on 05.04.2010, and that variety and quality of paper is normally being sold at the Durgapur on 05.04.2010 at transaction value of Rs. 10,000 per tonne to unrelated buyers, where price is the sole consideration for sale, the consignment cleared from the factory at Kolkata on 05.04.2010 shall be assesses to duty on the basis of Rs. 10,000 per tone as the assessable value. If assuming that on 05.04.2010 there were no sale of that variety from Durgapur depot but the sales were effected on 03.04.2010, then the normal transaction value on 03.04.2010 from the Durgapur depot to unrelated buyers, where price is the sole consideration shall be the basis of assessment.

Answer 7. (b)

The following procedure is to be followed for the availment of Cenvat credit in respect of inputs and capital goods :

(i) The manufacturer has to get himself registered with the Excise Authorities.

(ii) The Cenvat credit in respect of eligible inputs can be taken immediately on receipt of the inputs in the factory of the manufacturer.

(iii) The Cenvat credit in respect of capital goods received in a factory at any point of time in a given financial year shall be taken for an amount not exceeding 50% of the duty paid on such capital goods in the same financial year and the balance credit can be taken in any financial year subsequent to the financial year in which the capital goods were received.

(iv) Credit can be taken on the basis of valid duty paying documents such as invoice, bill of entry etc.

(v) The manufacturer has to maintain a proper Cenvat credit register for the receipt, disposal, consumption and inventory of inputs and capital goods in which the relevant information of the value, the duty paid, the person from whom the inputs or capital goods have been purchased is recorded.

(vi) The manufacturer or producer taking Cenvat credit on inputs or capital goods shall take all reasonable steps to ensure that the inputs or capital goods in respect of which he has taken the Cenvat credit are goods on which the appropriate duty of excise, as indicated in the documents accompanying the goods, has been paid.

(vii) The manufacturer of the final products shall submit within ten days from the close of each month to the Superintendent of Central Excise, a monthly return in the specified form in respect of such

Cenvat credit availment and utilization. However, in case of SSI units, instead of monthly returns, quarterly returns have to be furnished.

(viii) The burden of proof for the admissibility of the Cenvat credit is on the manufacturer.

Q. 8. (a) What are the documents on the basis of which CENVAT credit can be availed?

(b) State briefly the provisions relating to CENVAT credit on capital goods.

(c) Give some examples where Cenvat credit is not required to be reversed even if duty was not paid on final product.

Answer 8. (a)

According to Rule 9 of the Cenvat Credit Rules, 2004 the manufacturer/ provider of output service can take Cenvat Credit on the basis of the following documents :

(i) An invoice issued by manufacturer of inputs/ capital goods for clearance of inputs or capital goods from his factory/ depot / premises of consignment agent of the said manufacturer/ any other premises from where the goods are sold by or on behalf of the said manufacturer;

(ii) An invoice issued by a manufacturer for clearance of inputs / capital goods as such as per Rule 3 (5) of the Cenvat Credit Rules, 2004;

(iii) An invoice issued by an importer;

(iv) An invoice issued by an importer from his depot/ premises of consignment agent provided the said depot/ premises, as the case may be, is registered in terms of the provisions of the Central Excise Rules, 2002;

(v) An invoice issued by a First stage dealer or a Second stage dealer;

(vi) A supplementary invoice issued by the manufacturer of inputs/ capital goods in terms of Central Excise Rules, 2002 from his factory/ depot/ premises of consignment agent/ any other premises from where the goods are sold by or on behalf of the said manufacturer where such supplementary invoice is raised for any duty demand paid by the manufacturer or any duty deposited on account of price escalation;

Similarly, a supplementary invoice issued by the importer of inputs/ capital goods in terms of Central Excise Rules, 2002 from his factory/ depot/ premises of consignment agent/ any other premises from where the goods are sold by or on behalf of the said importer where such supplementary invoice is raised for any duty demand of additional duty of customs paid by the importer or any duty deposited on account of price escalation;

But Cenvat credit will not be allowed even if a supplementary invoice has been issued by the manufacturer/ importer on account of additional duty paid, where the additional duty is recoverable from the manufacturer/ importer on account of non-levy or short-levy by reasons of fraud, collusion or any willful mis-statement or suppression of facts or contravention of Acts/ Rules (both Central Excise and Customs) with the intent to evade payment of duty.

(vii) A bill of entry;

(viii) A certificate issued by an appraiser of customs in respect of the goods imported through foreign post office;

(ix) A challan evidencing payment of service tax by the person liable to pay service tax;

(x) An invoice/ bill/ challan issued by a provider of input service on or after 10.09.2004; or

(xi) An invoice / bill/ challan issued by an input service distributor under Service Tax Rules, 1994.

However, if the invoice or the supplementary invoice bears an indication to the effect that no credit of the additional duty of customs levied u/s 3(5) of the Customs Tariff Act, 1975 shall be admissible, then, credit of such additional duty of customs shall not be allowed.

Answer 8. (b)

Cenvat credit is available on capital goods used by manufacturer or service provider. The provisions are as follows :

(i) Only capital goods as defined in rule 2(a) of Cenvat Credit Rules are eligible for Cenvat Credit.

(ii) Capital goods should be used in the factory of manufacturer or for output service.

(iii) Capital goods does not include equipment or appliance used in an office of manufacturer (this restriction does not apply to service provider).

(iv) Motor vehicle is capital goods only in respect of specified service providers.

(v) Capital goods should be used in factory. They can be sent outside for jobwork but should be brought back within 180 days.

(vi) Moulds, dies, jigs and fixtures can be sent outside.

(vii) Capital goods used exclusively for manufacture of exempted goods are not eligible for Cenvat credit.

(viii) Capital goods obtained on hire purchase/ lease/ loan are eligible.

(ix) Duty paying documents eligible are same for Cenvat on inputs.

(x) Depreciation under section 32 of Income Tax Act should not be claimed on the excise portion of the Capital Goods.

(xi) Cenvat credit on capital goods is required to be availed in more than one year, viz. upto 50% credit can be availed when these are received and balance in any subsequent financial year. The condition for taking balance credit is that the capital goods should be in possession of manufacturer of final products in subsequent years.

(xii) If capital goods on which Cenvat was availed removed as scrap, an 'amount' equal to duty on scrap value is payable. If capital goods are removed 'as such', an 'amount' equal to Cenvat credit availed on the capital goods is payable. If capital goods are cleared after use as second hand capital goods, 'amount' payable at reduced rate by reducing credit taken @ 2.5% per quarter.

Answer 8. (c)

In following cases, Cenvat credit is not required to be reversed :

(i) No reversal in case of export/ deemed export of final product – Cenvat credit is not required to be reversed, if final product is exported or supplied to UN Agencies, or to EOU/ STP/ EHTP. Supplies to SEZ are 'exports'.

(ii) No reversal if intermediate product supplied and final product exported – If intermediate product is cleared without payment of duty under bond for manufacturer of final product which is to be exported. Cenvat on inputs used in manufacture of intermediate product is not required to be reversed.

Q. 9. (a) Simultaneous availment of Cenvat and SSI exemption permissible when SSI manufacturing with other's brand name but not in other cases.

(b) Write short note on – Refund of Cenvat credit in cash.

(c) Briefly explain the procedure of removal of goods at concessional rate of duty for manufacture of excisable goods.

Answer 9. (a)

Para 2(iii) of SSI exemption notification provides that the manufacturer shall not avail Cenvat credit of duty paid on inputs used in manufacture of specified goods cleared for home consumption, till turnover reaches the exemption limit.

As per proviso to para 2(iii), this restriction will not apply to inputs used to specified goods bearing brand name or trade name of another person, which are not eligible for grant of SSI exemption i.e. SSI unit can avail Cenvat Credit in such cases.

If an SSI unit is manufacturing branded (with other's brand) as well as unbranded/ self branded goods, it can avail exemption in respect of unbranded goods. He is required to pay duty on goods bearing brand name of others. So far, the SSI unit was not eligible to avail Cenvat credit even in respect of inputs used in branded goods on which he is liable to pay excise duty. Now, the will be able to do so.

Answer 9. (b)

If the credit of inputs used in exported final products cannot be used for payment of duty on any payment of duty on any other final goods or service tax on other services, manufacturer or service provider can get cash refund of the same, if final products or output services were exported without payment of duty (either under bond or after giving Letter of undertaking). Refund is not admissible if exporter has availed duty drawback or has claimed rebate of duty in respect of such duties or has claimed rebate of service tax under export of service rules. This provision is only for physical exports and not for deemed exports or home clearances.

Application should be submitted in Form 'A' to Assistant / Deputy Commissioner. Application can be submitted every quarter. However in following cases, refund can be claimed on monthly basis – i) persons whose average export clearances are more than 50% of total clearances, (b) EOU units.

Refund of input service credit will be restricted to the extent of ratio of export turnover to the total turnover for the given period e.g. if total credit of input services is Rs. 200, total turnover is Rs. 1000 and export turnover is Rs. 500, refund of input service tax credit will be only Rs. 100 (i.e. 50%, since export turnover is 50% of total turnover). This restriction applies only for credit of service tax paid on input services and not in respect of refund of excise duty.

Answer 9. (c)

Rule 3 of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 provides that the manufacturer who intends to receive subject goods for specified use at concessional rate of duty has to :

(i) Make an application in quadruplicate to the Asst. Commissioner or Deputy Commissioner of Central Excise. A separate application is to be made in respect of each supplier of goods.

(ii) Execute a general bond to cover the duty liability estimated to be involved at a given point of time.

After execution of such bond the Asst/ Deputy Commissioner of Central Excise shall counter sign the copies of application, which shall then be distributed as follows :

- One copy to the Range Superintendent of the manufacturer of subject goods.
- Two copies to the manufacturer receiving subject goods.(Out of these one copy shall be forwarded to the manufacturer of subject goods).
- One copy shall be retained by Asst./ Deputy Commissioner of Central Excise for his own records.

'Subject Goods' refers to those excisable goods, which are exempted from payment of duty under a notification issued under section 5A of the Central Excise Act, 1944 provided such goods are used for the purpose specified in that notification.

The manufacturer of subject goods shall on the basis of the copy of the application forwarded to him, avail the benefit of the exemption notification. He shall then remove the goods at concessional rate of duty and shall record on the application the removal details such as number and date of invoice, description, quantity and value of subject goods, amount of duty paid at concessional rate.

The manufacturer receiving subject goods has to give information to the concerned authorities and has to maintain proper records relating to such goods and submit a monthly return to the Asst./ Deputy Commissioner by 10th of the following month.

CUSTOMS LAWS

Q. 10. (a) Write short notes on – Indian Customs Waters under the Customs Act, 1962.

(b) What is taxable event under customs ? What is the date for determination of rate of duty and tariff valuation in case of imported goods as well as export goods?

Answer 10. (a)

As per Section 2 (28) of Customs Act, 'Indian Customs Waters' means the waters extending into the sea upto the limit of contiguous zone of India under section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and includes any bay, gulf, harbor, creek or tidal river. As per provisions of that Act, contiguous zone of India comes immediately after territorial waters. The outer limit of contiguous zone is 24 nautical miles from the nearest point of base line. Thus, area beyond 12 nautical miles and upto 24 nautical miles is 'contiguous zone of India'. The Central Government has powers to take measures in this area for security of India and immigration, sanitation, customs and other fiscal matters.

Thus, 'Indian Customs Waters' extend upto 12 nautical miles beyond territorial waters.

Significance of definition of 'Indian Customers Waters' is as follows :

(i) Customs officer has powers to arrest a person in India or within Indian Customs Waters.

(ii) Customs officer has powers to stop and search any vessel in India or within the Indian Customs Waters. If such vessel does not stop, it can be fired upon. If a vessel does not stop, it can be confiscated.

(iii) A vessel which is within Indian Customs Waters or which has been in Indian Customs Waters can be confiscated which is constructed or fitted in any manner for purpose of concealing goods.

Answer 10. (b)

Section 12 of Customs Act, 1962, which is the charging section, lays down the following propositions :

(i) Duties of customs shall be levied on goods.

(ii) The goods should be imported into or exported from India.

(iii) The duty shall be at such rate as is specified in the Customs Tariff Act, 1975 or any other law for the time being in force.

(iv) Government goods shall be treated at par with the non-government goods for the purpose of levy of customs duty.

(v) Such levy shall be subject to the other provisions of the Customs Act, 1962, or any other law for the time being in force.

Taxable Event : The taxable event in customs is importation of goods into India or exportation of goods from India.

(i) I**n 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.

In *Kiran Spinning Mills* v. *CC*, it was held that, the taxable event occurs when the customs barrier is crossed and not on the date when the goods had landed in India or had entered the territorial waters. In case of goods, which are deposited in the warehouse, the customs barriers would be crossed when they are sought to be taken out of the warehouse and brought to the mass of goods in the country.

(ii) **In case of exportation :** Exportation commences when the shipping bill in respect of such goods is filed but the taxable event is completed when the goods cross the territorial waters of India.

Date for determination of the rate of duty and tariff valuation :

Types of goods	section	Relevant date
In case of imported goods (other than baggage and goods imported by post)		
(a) Goods entered for home consumption u/s 46	15(1)(a)	The date of presentation of bill of entry or entry inwards, whichever is later.
(b) Goods cleared from a warehouse u/s 68	15(1)(b)	The date of presentation of the Ex-bond Bill of Entry for home consumption under that section.
(c) For any other goods	15(1)(c)	On the date of payment of duty.
In case of export goods (other than baggage and goods exported by post)		
(a) Goods entered for export u/s 50	16(1)(a)	On the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51.
(b) For any other goods	16(1)(b)	On the date of payment of duty.

Q. 11. (a) Explain the provisions of Customs Act, 1963 relating to the determination of duty where imported goods consist of articles liable to different rates of duty.

(b) Write a short note on Import and Export through courier.

(c) Explain the meaning of baggage, bona fide baggage and unaccompanied baggage. What is the relevant date for determination of rate of duty and tariff valuation in case of a baggage?

Answer 11. (a)

Determination of duty where imported goods consist of articles liable to different rates of duty :

In case the imported goods consist of a set of articles, the calculation of duty shall be in the manner given below :

(i) In case of articles on which duty is leviable with reference to quantity, the duty shall be so charged;

(ii) When the set consist of articles which are liable to duty with reference to value, they shall be chargeable to duty as under –

- In case they are liable to duty at the same rate, then the duty shall be charged at that rate.
- If the articles in the set are liable to different rates of duty, they shall be chargeable to duty at the highest of such rates.

(iii) Even if some of the articles are not liable to duty, duty shall be charged at the highest of the rates specified in (ii) above.

However, if the importer produces to the satisfaction of the proper officer documents regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.

Also, the Accessories (Condition) Rules, 1963 provides that if the accessories of article and spare parts and maintenance implements for the article are imported along with that article, they shall be charged at the same rate of duty as that article provided the proper officer is satisfied that in the ordinary course of trade such accessories, parts and implements are compulsorily supplied with that article and no separate charge is made for such supply, their price being included in the price of that article.

Answer 11. (b)

Imports and exports can be made through "authorized couriers" as per the Courier Imports and Exports (Clearance) Regulations, 1998. The duty, where leviable, is paid by such courier company on behalf of

importers/ exporters before taking delivery of the parcels. The weight limit for courier / express material (individual packages) for imports and exports is fixed at 70 kg.

(i) **Import through courier :** All goods are allowed to be imported through the courier mode except – 1)animals and plants; 2) perishables; 3) publications containing maps depicting incorrect boundaries of India; and 4) precious and semi precious stones, gold or silver in any form.

Categories into which the goods imported through courier have been divided : For facilitating customs clearance, the goods imported by courier have been divided into three categories, viz.

(1) **Documents :** Documents include any message, information or data recorded on paper, cards or photographs having no commercial value, and which do not attract any duty or are not subject to any prohibition/ restriction on their import or export.

(2) **Samples and free gifts :** This category covers those goods which are not subject to any prohibition or restriction on their import or export and which do not involve transfer of foreign exchange. Samples mean any bona fide commercial samples and prototypes of goods supplied free of charge, of a value not exceeding Rs. 50,000/- for exports and Rs. 10,000/- for imports. Free gifts means any bonafide gifts of articles for personal use of a value not exceeding Rs. 25,000/- for a consignment in case of exports and Rs. 10,000/- for imports.

(3) Dutiable or commercial goods.

(ii) **Export through courier :** All goods are allowed to be exported through courier except – 1) goods which attract any duty on exports, or 2) goods exported under export promotion schemes, such as Drawback, DEPB, DEEC, EPCG etc., or 3) goods where the value of the consignment is above Rs. 25,000/- and a foreign exchange transaction is involved. The limit of Rs. 25,000/- does not apply where the G.R. waiver or specific permission has been obtained from the Reserve Bank of India. There are certain other exception as well.

Answer 11. (c)

Baggage : "Baggage" includes unaccompanied baggage but does not include motor vehicles.

Bona fide baggage : The baggage declaration form issued by the CBEC under section 81 provides that "bona fide baggage" includes wearing apparel, personal and household effects provided that the articles are meant for the personal use of the passenger or for the members of his family travelling with him and that they are not intended for transfer to other persons either by sale or gift.

Jewellery (including articles made wholly or mainly of gold) in reasonable quantity according to the status of the person will also be considered as personal effects. The term 'personal effects' includes a list of certain articles like watch, camera, travelling rugs, bedding etc., which are entitled to exemption when imported in specified quantities.

Unaccompanied baggage : Baggage that is not accompanied with the passenger is "Unaccompanied Baggage". In other words, where the baggage of the passenger is bound to arrive earlier or later than the passenger, it is termed as 'unaccompanied baggage'.

Relevant date for determination of rate of duty and tariff valuation : The rate of duty and tariff valuation leviable on the baggage shall be the rate of duty and tariff valuation in force on the date on which the owner of the baggage makes a declaration under Section 77 to the proper officer.

Relevant date in case of unaccompanied baggage : Even if an advance information about the later arrival of the unaccompanied baggage has been made at the time of the arrival of the passenger at an earlier date, a declaration for the purpose of Section 77 can be deemed to have been made only when the contents of the unaccompanied baggage arrive. Therefore, the rate of duty as in force on the date of arrival of the unaccompanied baggage would be leviable and not as in force on the date of advance information on the arrival of the passenger.

Q. 12. (a) Explain the cases where drawback claim is not admissible, or, where there are any restrictions imposed on the quantum thereof.

(b) When can the substitution of Bill of Entry be permitted? Explain the provisions of Customs Act, 1962 with respect to the substitution of Bill of Entry.

Answer 12. (a)

The cases where drawback claim is not admissible or where there are restrictions imposed on the quantum thereof are listed hereinbelow :

(i) Prohibition or Regulation of drawback (Section 76) : no drawback shall be allowed :

(1) If the market price of the goods is less than the amount of drawback determined thereon; and

(2) If the drawback in respect of any goods is less than Rs, 50/-.

Further, if the Central Government is of opinion that any goods, in respect of which drawback may be claimed, are likely to be smuggled back into India, it may direct that drawback shall not be allowed in respect thereof or may be allowed subject to the specified restrictions and conditions.

(ii) No duty drawback allowable in certain cases : No duty drawback will be allowed :

(1) If the goods, except tea chests used as packing material for export of blended tea, have been taken into use after manufacture;

(2) If the goods are produced or manufactured, using imported materials or excisable materials or input services in respect of which duties/ taxes have not been paid;

(iii) No amount or rate of drawback to be determined : No amount or rate of drawback is to be determined under these rules except where the amount of drawback exceeds Rs. 500/- or it is 1% or more of the FOB value of export. However, this condition is not applicable for export made by post or exports made in discharge of export obligation against an Advance License.

(iv) Upper limit of drawback money or rate : The drawback amount or rate determined under rule 3 (i.e. the all industry rate) shall not exceed 1/3rd of the market price of export product.

(v) Further, as per section 75, no drawback is allowable if minimum value addition is not achieved i.e. the export value of export goods is less than the value of imported materials by specified percentage.

Answer 12. (b)

The customs officer shall allow the substitution of the Bill of Entry for home consumption for a Bill of Entry for warehousing or vice versa only if he is satisfied that the interests of the revenue are not prejudicially affected and that there is no fraudulent intention. Such permission can be granted even in case of the advance noting of the Bill of Entry.

Substituted Bill of Entry to be in prescribed form : In case the importer seeks to substitute the Bill of Entry originally filed, he has to file a subsequent Bill of Entry in the prescribed form along with the application for substitution. It was held in Bharat Commerce & Industries Ltd. v. CC that the filing of Bill of Entry in prescribed form is not a procedural formality. For substitution of home consumption bill of entry, filed earlier, by a warehousing (into-bond) Bill of Entry, warehousing bill of entry in prescribed form must accompany the application seeking the permission for substitution. No order could be passed by the proper officer of customs on the mere application by treating it as a Bill of Entry for warehousing.

No substitution allowable in case it is prejudicial to the interests of the revenue : Another important point to be noted is that in case the proper officer feels that the interest of the revenue is prejudicially affected he may not grant the permission for such substitution. In Bharat Commerce & Industries v. CC the proper officer was held right in rejecting the application for substitution of the Bill of Entry for home consumption with the Bill of Entry for warehousing (into-bond) on the grounds that allowing it would have caused loss of revenue, as the request for substitution along with the substituted bill of entry duly filled in the prescribed form was received on a date when it was known that the rate of customs duty applicable was reduced.

Q. 13. (a) Explain the circumstances where anti-subsidy and anti-dumping duty cannot be levied.

(b) What do you understand by related persons? When shall the transaction value be accepted even if the buyer and seller are related persons?

Answer 13. (a)

Section 9B provides for non-imposition of countervailing duty or antidumping duty in following cases :

(i) Both countervailing duty and antidumping duty shall not be levied together on any article to compensate for the same situation of dumping or export subsidization.

(ii) The Central Government shall not levy any countervailing duty or antidumping duty on such or like articles that enjoy exemptions from duties or taxes or refund of such duties or taxes when meant for consumption in the country of origin or exportation.

(iii) The Central Government shall not levy any countervailing duty or antidumping duty on article imported from specified countries i.e. the member country of the World Trade Organisation or from a country with whom Government of India has a most favoured nation agreement, unless subsidy or dumping is proved as per the rules framed in that behalf.

(iv) The Central Government may not levy any countervailing duty under Section 9, at any time, upon receipt of satisfactory voluntary undertakings from the Government of the exporting country or territory agreeing to eliminate or limit the subsidy or take other measures concerning its effect, or the exporter agreeing to revise the price of the article and the Central Government is satisfied that the injurious effect of the subsidy is eliminated thereby.

(v) The Central Government may not levy any anti-dumping duty under section 9A, at any time, upon receipt of satisfactory voluntary undertaking from any exporter to revise its prices or to cease exports to the area in question at dumped price and if the Central Government is satisfied that the injurious effect of dumping is eliminated by such action.

Answer 13. (b)

Related persons : Persons shall be deemed to be 'related' only if :

(i) They are officers or directors of one another's businesses;

(ii) They are legally recognized partners in business;

(iii) They are employer and employee;

(iv) Any person directly or indirectly owns, controls or holds 5% or more of the outstanding voting stock or shares of both of them;

(v) One of them directly or indirectly controls the others;

(vi) Both of them are directly or indirectly controlled by a third person;

(vii) Together they directly or indirectly control a third person; or

(viii) They are members of the same family.

Person includes legal persons : The term "person" also includes legal persons.

Sole distributor or sole agent or sole concessionaire : A sole distributor or a sole agent or a sole concessionaire (by whatever name called) shall be deemed to be related only when he or it satisfies any of the above-mentioned criteria.

'Control' – Interpretative notes : One person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

Transaction value acceptable even if goods sold to related person : Even if goods are sold to related persons, the value under Rule 3(1) shall be accepted in the following two different cases :

(i) If the examination of circumstances surrounding the sale reflects that relationship did not influence the price; or

(ii) Where the importer demonstrates that the declared value of the goods being valued closely approximates to the following values ascertained at or about the same time :

1. Transaction value of the identical or similar goods, in sales to unrelated buyers in India;
2. The deductive value of identical or similar goods; or
3. The computed value of identical or similar goods.

However, in applying values used for comparison, due account shall be taken of the demonstrated difference in commercial levels, quantity levels, adjustments in accordance with Rule 10 and cost incurred by the seller in sales in which he and the buyer are not related.

SERVICE TAX

Q. 14. (a) What do you understand by Advance Ruling under service tax? State briefly the questions on which an "Advance Ruling" can be sought?

(b) Explain the provisions relating to exemptions available to small service providers.

Answer 14. (a)

As per section 96A(a), "Advance Ruling" means the determination, by Authority for Advance Rulings (Central Excise, Customs and Service Tax), of a question of law or fact specified in the application, regarding the liability to pay service tax in relation to a service proposed to be provided, by applicant.

Questions on which 'advance ruling' can be sought : The questions on which Advance Ruling may be sought shall be in respect of :

(i) Classification of service under Chapter V of Finance Act, 1944;
(ii) The valuation of taxable services for charging service tax;
(iii) The principles to be adopted for the purposes of determination of value of the taxable service under the provisions of Chapter;
(iv) Applicability of notifications issued under Chapter V;
(v) Admissibility of credit of service tax; and
(vi) Determination of liability to pay service tax on a taxable service under the provisions of Chapter V.

The definition of 'applicant' and other procedural provisions relating to advance rulings are similar to those applicable under Central Excise.

Answer 14. (b)

Exemption to small service providers : 100% exemption from service tax has been granted to a provider of taxable service when aggregate value of taxable services rendered by him from one or more premises, does not exceed Rs. 8 lakhs in the preceding financial year. Exemption shall be operative only for 'aggregate value not exceeding Rs. 8 lakhs' in any financial year. If the aggregate value in any financial year, for which exemption has been claimed, exceeds Rs. 8 lakhs, then such excess over Rs. 8 lakhs shall be chargeable to service tax.

Exemption not to apply : This exemption shall not apply to :

(i) Taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; or
(ii) Such value of taxable services in respect of which person liable to pay service tax is specified under section 68(2) (i.e. in cases where the person liable to pay service tax is the person other than the service provider).

Conditions to be fulfilled : This exemption shall apply subject to the following conditions :

(i) The service provider has the option not to avail the exemption and pay service tax on the taxable services provided by him and such option, once exercised in a financial year, shall not be withdrawn during the remaining part of such financial year;

(ii) The provider of taxable service shall not avail the Cenvat credit of service tax paid on any input services, under the Cenvat Credit Rules, 2004, used for providing the said taxable service, for which this exemption from payment of service tax is availed of ;

(iii) The provider of taxable service shall not avail the Cenvat credit on capital goods received in the premises of provider of such taxable service during the period in which the service provider avails this exemption from payment of service tax;

(iv) The provider of taxable service shall avail the Cenvat credit only on such inputs or input services received, on or after the date on which the service provider starts paying service tax, and used for the provision of taxable services for which service tax is payable;

(v) The provider of taxable service who starts availing this exemption shall be required to pay an amount equivalent to the Cenvat credit taken by him, if any, in respect of such inputs lying in stock or in process on the date on which the provider of taxable service starts availing this exemption;

(vi) The balance of Cenvat credit lying unutilized in the account of the taxable service provider after deducting the amount referred to in (v) above, if any, shall not be utilized and shall lapse on the day such service provider starts availing this exemption;

(vii) Where a taxable service provider provides one or more taxable services from one or more premises, this exemption shall apply to the aggregate value of all such taxable services and from all such premises and not separately for each premises or each services.

Q. 15. (a) Write a short note on rectification of mistake.

(b) Explain the concept of charge of service tax on services received from outside India.

Answer 15. (a)

Section 74 provides that if there is any mistake apparent from the record in an order, the Central Excise Officer, who passed such order, may, within two years of the date on which such order was passed, amend the order by passing a rectified order in writing.

The amendment can be made by the Central Excise officer concerned – (i) of his own motion; or (ii) on application of the assessee; or (iii) if mistake is brought to his notice by Commissioner/ Commissioner (Appeals) of Central Excise.

In case any matter has been considered and decided in any proceeding by way of appeal or revision Central Excise officer passing such order may amend the order in relation to any other matter, which has been so considered and decided.

Every amendment, which enhances liability of assessee or reduces his refund, shall be made only after giving the assessee concerned, a reasonable opportunity of being heard.

Where such amendment reduces liability of assessee or enhances refund, the Central Excise officer shall make any refund due to such assessee. However, if such amendment enhances liability or reduces refund, then, such officer shall make an order demanding the sum payable by the assessee.

Answer 15. (b)

Taxable services imported into India are liable to service tax as per the provisions of section 66A. Accordingly, where any taxable service is :

(i) Provided or to be provided by a person who :

1. Has established a business or
2. Has a fixed establishment from which the service is provided or to be provided or
3. Has his permanent address or usual place of residence,

In a country other than India, and

(ii) Received by a person who has his place of business, fixed establishment, permanent address or usual place of residence, in India,

Then, such service shall be taxable service, and such taxable service shall be treated as if the recipient had himself provided the service in India, and all the service tax provisions shall apply accordingly.

Thus, import of services shall be taxed as if the importer-recipient had himself provided such service in India. Thus, in this case, the recipient of service shall be the person liable to pay service tax.

However, where the recipient of the service is an individual and such service received by him is otherwise than for the purpose of use in any business or commerce, then, the same shall not be liable to tax under this section.

Where the provider of service has his business establishment both in that country and elsewhere, then, the country where the establishment of the provider or service directly concerned with the provision of service is located, shall be treated as the country from which the service is provided or to be provided.

Where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishment shall be treated as separate persons for the purposes of this section.

Explanations :

(i) A person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country.

(ii) Usual place of residence, in relation to a body corporate, means the place where it is incorporated or otherwise legally constituted.

Q. 16. (a) Explain the provisions of Registration under the Service Tax Law.

(b) Write short note on – Adjustment of excess payment of service tax.

Answer 16. (a)

Section 69 of the Act lays down the provisions for registration, which are as under :

(i) **Application :** Every person liable to pay service tax must mandatorily make an application (in the Form ST-1) for registration to the designated Superintendent of Central Excise.

(ii) **Time period for application :** The application shall be made :

1. Within 30 days from the date on which the levy of service tax is brought into force in respect of the relevant services; or
2. Where the service has already been levied, within 30 days of the commencement of business of providing such service.

(iii) **Registration of specified category of persons :** The following persons shall also make an application (in Form ST-1) for service tax registration :

1. An input service distributor; and
2. Any provider of taxable service whose aggregate value of taxable service in a financial year exceeds Rs 7 lakhs.

(iv) If the assessee provides more than one taxable service, a single application will suffice, mentioning therein all the taxable services.

(v) In case assesses providing taxable service from more than one premises/ offices :

1. Centralized registration, if centralized billing / accounting system exists : If the assessee (including the service receiver, where such receiver is the person liable to pay service tax) has centralized billing/ accounting system, in respect of such service, in one or more premises/ offices, then, he

may opt to register such premises or offices from where such centralized billing/ accounting systems are located. Centralized registration shall be granted by jurisdictional Commissioner of Central Excise and Service Tax.

2. Separate registration, if no centralized billing/ accounting system exists : If the assessee does not have any centralized billing/ accounting systems, he shall make separate applications for registration in respect of each of such premises or offices to jurisdictional Superintendent of Central Excise.

(vi) **Certificate :** The Superintendent of Central Excise shall, after due verification, issue a certificate in Form ST-2 within 7 days of the receipt of the application. In case of failure of the Superintendent in granting the same, the registration applied for shall be deemed to have been granted.

(vii) **Change of information :** Where there is a change in any information/ details furnished by assessee in Form ST-1 at the time of obtaining registration or he intends to furnish any additional information or detail, such change in information or details shall be intimated in Form ST-1 to the jurisdictional Asst./Deputy Commissioner within a period of 30 days of such change. The amended certificate of registration shall be granted within 7 days of receipt of duly completed intimation.

(viii) In case of transfer of business, a fresh registration must be obtained by transferee, for which the application is to be made within 30 days from the date of transfer.

(ix) **Cancellation of certificate :** In case the registered assessee ceases to provide the taxable service for which he is registered, he must surrender the registration certificate immediately to the Superintendent of Central Excise. In that case, the Superintendent of Central Excise shall ensure that the assessee has paid all monies due to the Central Government under the provisions of the Act, and the rules and the notifications issued thereunder, and thereupon cancel the registration certificate.

Answer 16. (b)

Where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month/ quarter, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month/ quarter, subject to the following conditions :

(i) Excess amount paid is on account of reasons not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification.

(ii) Excess amount paid by an assessee having Centralised Registration, on account of delayed receipt of details of payments towards taxable services may be adjusted without monetary limit.

(iii) In cases other than specified in (ii) above, the excess amount paid may be adjusted with a monetary limit of rupees fifty thousand for a relevant month/ quarter.

(iv) The details and reasons for such adjustment shall be intimated to jurisdictional Superintendent of Central Excise within a period of 15 days from the date of such adjustment.

Q. 17. (a) What do you mean by export of services in the context of service tax law?

(b) Write a short note on procedures and facilities for large taxpayer.

Answer 17. (a)

The Export of Service Rules, 2005 have been framed to define the term ' export of services'. Separate categories have been assigned to different services as follows :

Category	Services	
A	Such taxable services as are provided in relation to an immovable property, which is situated outside India.	
B	Such services as are performed outside India. However, if such a taxable service is partly performed outside India, it shall be considered to have been performed outside India.	
C	Case -	Export means -
	When service is provided in relation to business or commerce.	Provision of such services to a recipient located outside India **
	When service is provided otherwise	Provision of such services to a recipient located outside India at the time of provision of such service **
	** Where such recipient has commercial establishment or any office relating thereto, in India, such taxable services provided shall be treated as export of service only when order for provision of such service is made from any of his commercial establishment or office located outside India.	

Additional conditions applicable for categories A, B and C : The provision of any taxable service under categories A, B and C shall be treated as export of service when the following conditions are satisfied :

(i) Such service is provided from India and used outside India; and

(ii) Payment for such service provided outside India is received by the service provider in convertible foreign exchange.

Rebate in respect of taxable services exported out of India : Any taxable service can be exported without payment of service tax. Further, the Central Government may grant rebate of :

(i) Service tax and cess payable on exported services and

(ii) Service tax/ duty and cess paid on input services and inputs used in providing such taxable service.

Answer 17. (b)

A large taxpayer means a service provider who has paid service tax of Rs. 5 crores or more during the preceding financial year. The procedure and facilities of a large tax payer is as under :

(i) He shall submit the returns for each of the registered premise. However if a large taxpayer has obtained a centralised registration, he shall submit a consolidated return for all such premises.

(ii) A large taxpayer, on demand, may be required to make available the financial, stores and Cenvat credit records in electronic media, such as, compact disc or tape for the purposes of carrying out any scrutiny and certification, as may be necessary.

(iii) A large taxpayer may, with intimation of at least thirty days in advance, opt out to be a large taxpayer from the first day of the following financial year.

(iv) Any notice issued but not adjudged by any of the Central Excise officer administering the Act or rules made thereunder immediately before the date of grant of acceptance by the Chief Commissioner of Central Excise, Large Taxpayer Unit, shall be deemed to have been issued by Central Excise officers of the said unit.

CST ACT & VAT ACT

Q. 18. (a) Examine whether the following are "Inter-state-Sales" :

i. B comes to Kolkata and purchases goods from A. Then, B books from Kolkata to Maharashtra in his own name.

ii. A in Karnataka enters into an agreement to sell his goods to B in Orissa. A sends the goods from Karnataka to Orissa by booking the goods in the name of B.

(b) Write short Note on – Penultimate sale for export under Central Sales Tax Act, 1956.

(c) How is turnover determined under the Central Sales Tax Act, 1956?

Answer 18. (a)

To be an inter-state-sale, there should be a sale which occasions the movement of goods from one state to another. The movement of goods from one state to another must be in pursuance of sales.

In the case of (i), it is a completed sale within Kolkata between A and B; this is not an inter-state sale. The movement of goods from Kolkata is not as per agreement between A and B, incident of sale and movement are not inter linked. The buyer B sends goods in his own. Hence, this movement of goods from Kolkata to Maharashtra is not an inter-state sale as per Section 3.

As regards (ii), the sale is preceded by movement of goods and the movement is in pursuance of contract. This is obviously ' Inter-State sale".

Answer 18. (b)

Penultimate sale is the last sale immediately prior to the original export.

According to Section 5(3) of the CST Act, the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export if the following conditions are satisfied :

(i) There must have been pre-existing agreement or order to sell the specific goods to a foreign buyer.

(ii) The last purchase as referred above, must have taken place after that agreement with the foreign buyer was entered into.

(iii) The last purchase must have been made for the purpose of complying with the pre-existing agreement or order.

(iv) The same goods, which are purchased in the penultimate sale, must be exported.

(v) The dealer should obtain proof of export from the original exporter.

(vi) The original exporter should give Form H to the dealer and only on that basis the dealer can claim exemption of deemed export.

Answer 18. (c)

The following deductions are permitted from the aggregate of sale prices, in determining the turnover :

(i) The amount arrived at by applying the following formula :

$$\frac{\text{Rate of Tax} \times \text{Aggregate of Sale Price}}{100 + \text{Rate of Tax}}$$

No deduction on the basis of the above formula shall be made if the amount by way of tax collected by a registered dealer has been otherwise deducted from the aggregate of sale prices.

Where the turnover of a dealer is taxable at different rates, the aforesaid formula shall be applied separately in respect of each part of the turnover liable to a different rate of tax.

(ii) The sale price of all goods returned to the dealer by the purchasers of such goods within a period of 6 months from the date of delivery of the goods.

Q. 19. (a) Write short note on – Use of C, F and H form under Central Sales Tax Act, 1956.

(b) Write short note on – Dealer under the Central Sales Act, 1956.

(c) Briefly describe the offences that attract the penal provisions of section 10 of the Central Sales Act, 1956.

Answer 19. (a)

These forms are issued under CST Act.

"C" Form is issued by buyer who is registered dealer. If the buyer issues "C" form, he can purchase goods at concessional rates in the inter-state sale. C Form can be issued only by a registered dealer to another registered dealer. It can be issued, generally, only in respect of raw materials, packing materials goods covered by the certificate of registration of the issuing dealer.

"F" form is evidence to provide that goods are sent in stock transfer basis and not on sale. The consignment agent/ branch receiving is required to issue "F" form to the selling dealer.

"H" Form is issued when the buyer buys the goods for export. If buyer issue "H" form, the selling dealer is not required to charge or pay any CST on the transaction.

Answer 19. (b)

Section 2(b) of the CST Act, 1956, defines that a dealer means any person who carries on, whether regularly or otherwise the business of buying, selling, supplying or distribution of goods, directly or indirectly for cash or for deferred payment, or for valuable consideration and includes :

(i) A local authority, a body corporate, a company, any cooperative society, club, firm or HUF or other AOP which carries on such business.

(ii) A factor, broker, commission agent, del credere agent or any other mercantile agent by whatever name called and whether the same description as herein before mentioned or not, who carries on the business of buying, selling, supplying or distribution of goods belonging to any principal whether disclosed or not.

(iii) An auctioneer who carries on the business of selling or auctioning goods, belonging to any principal, whether disclosed or not, and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal.

Answer 19. (c)

Section 10 of the CST Act, 1956 provides that punishment upto 6 months of simple imprisonment or with fine, or with, both can be imposed for the following offences :

(i) Knowingly giving a declaration in Form C, E-I, E-II, F or H which the declarant knows or has reason to believe to be false.

(ii) Not getting registered under the CST Act, when it is required to be registered.

(ii) False representation by a registered dealer that the goods being purchased are covered under his certificate of registration for a concessional rate of tax.

(iv) Falsely representing himself to be Registered Dealer.

(v) Misusing or using for a unathorised purpose, the goods under Form C at a concessional rate.

(vi) Collection by an unregistered dealer any amount as CST in contravention of the Act.

(vii) Possessing Form C not obtained as per provisions of the CST Act, 1956.

(viii) Other offences as provided in the general Sales Tax laws applicable to offences committed by dealers in the respective state.

Q. 20. (a) What are the essential elements of a valid sale under the Central Sales Tax Act, 1956?

(b) What is a stock transfer/ branch transfer ? Is it considered as a sale under Central Sales Tax Act, 1956?

Answer 20. (a)

According to Section 4 of the CST Act, 1956 where under a contract of sale their property in the goods is transferred from a seller to a buyer for a price, the contract is called a sale. If the transfer is to take place a at a future time or subject to fulfillment of certain conditions, it is an agreement for sale. The essential conditions of a valid sale are :

(i) There must be a transfer of goods.

(ii) There must be two parties, i.e. the buyer and the seller.

(iii) The general property in the goods should be transferred from the sellers to buyers.

(iv) A consideration must be paid or agreed to be paid.

Answer 20. (b)

One of the basic and obvious conditions of Inter — State sale is that there should be a sale. If a manufacturer sends goods to his branch in other State, it is not a 'sale' as you cannot sell to yourself. Similarly, if a dealer sends goods to his agent in other state who stocks goods on behalf of the dealer it is not a sale. Such agent is usually called 'Consignment Agent'. Goods are dispatched to another state on consignment basis and the person dispatching goods retains ownership of goods. Since no sale is involved, there is no 'Inter-State Sale'.

In *Good Year India Ltd.* v. *State of Haryana* — (1990) 76 STC 71 (SC) (page 98), it was held that mere consignment of goods by a manufacturer to his own branches outside the State does not amount to sale or disposal as such; the consignment of goods is neither sale nor a purchase.

This is called 'stock transfer'. Here, movement of goods takes place from one state to another, but it is not an inter- state sale.

Consignment Agent — Goods dispatched to Consignment Agent by Principal – Goods remain property of the principal. Agent sells goods on behalf of Principal. Consignment Agent collects sales proceeds and remits the same to Principal. The Consignment Agent can recover his commission, godown charges, etc. Despatch to Consignment Agent is not a sale as property in goods is not transferred and hence no CST is payable.

Branch Transfer — Here, the Principal has his own branch/ depot in another State where goods are sent. These are stocked at depot in the branch and sold. There is no transfer of property when goods are dispatched to branch and hence there is no liability of CST. This is often called 'stock transfer' or 'branch transfer' or 'depot transfer'.

Q. 21. (a) Write short note on – Document of title to goods.

(b) What is deemed sale under CST Act, 1956?

(c) What is meant by 'place of business' under the Central Sales Tax Act, 1956? What should a dealer do towards registration, if he has more than one place of business?

Answer 21. (a)

Document of title to goods means a document which evidence that the person holding the document has title to goods represented by the document. Handing over the document is as good as handing over the goods which the document represents. Such handing over can be by simple delivery. However, normally, it is transferred by endorsement as evidence that person in possession of the document has obtained it by legal means. Such document is usually a transport document or godown receipt.

When the goods are handed over to the carrier, he hands over a receipt to the seller. The seller sends the receipt to buyer. The buyer gets delivery of goods on submission of the receipt to the carrier at other end. The receipt of carrier is 'document of title of goods'. The words 'document of title' is defined under section 2(4) of Sale of Goods Act.

Such document is usually called –

(i) Lorry Receipt – LR in case of transport by Road.

(ii) Railway Receipt – RR in case of transport by rail.

(iii) Bill of Lading – BL in case of transport by sea.

(iv) Air Way Bill – AWB in case of transport by air.

It is called 'document of title' as one who submits the same is entitled to get delivery of goods, if document is in his name or endorsed in his name.

Answer 21. (b)

There are some transactions which are defined as 'sales' under CST Act. Strictly, they may not amount to 'sales', as per Sale of Goods Act. However, these are 'deemed sales'. Definition of 'tax on sale or purchase of goods' as contained in Article 366(29A) does make provision for taxing these 'deemed sales'.

These include compulsory sale, hire purchase, transfer of right to use goods (hire), goods involved in works contract, sale of food articles and sale among members of unincorporated bodies. Some of these are discussed below :

- **Compulsory sale is taxable** –Transfer of property, otherwise than in pursuance of a contract, for cash, deferred payment or valuable consideration is 'sale'. Thus, any transfer of property for valuable consideration will be taxable, even if there is no contract.
- **Goods involved in works contract** – 'Sale' includes a transfer of property in goods (whether as goods or in some other form) involved in execution of a works contract is taxable. Thus, Central Sales Tax can be levied on goods involved in works contract.
- **Hire purchases is 'sale'** – 'Sale' includes a delivery of goods on hire-purchase or any system of payment by installments. [It was 'sale' under CST Act even prior to amendment of definition of 'sale' w.e.f. 11/05/2002].
- **Sale to member of unincorporated association or body or persons** – 'Sale' includes supply of goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.
- **Transfer of right to use** – 'Sale' includes a transfer of right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration – In common parlance, this transaction is termed as 'leasing' or 'hire'.
- **Sale of food articles** – 'Sale' includes supply, by way of or as part of any service or in any other manner whatsoever of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration.

Answer 21. (c)

Section 2(dd) of CST Act defines that 'Place of Business' includes –

(i) Place of business of agent where dealer carries on business through an agent.

(ii) Warehouse, godown or other place where a dealer stores his goods.

(iii) Place where a dealer keeps his books of account.

This is an 'inclusive definition' i.e. other places of business e.g. where 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.

If a dealer has more than one place of business in one State, he has to make a single application in respect of all the places. One of the places should be specified as 'principal place of business'. This place should be same as declared by him under general tax law of the State.

If a dealer has 'place of business' in different States, he will have to register in each such state.

CASE STUDIES AND PRACTICAL PROBLEMS

Q. 22. (a) M/s. Fine Pipes Ltd., is engaged in the manufacture of m.s.galvanised pipes. The excise department has required the assessee to include the cost of galvanization in the assessable value of the m.s. galvanized pipes for the purpose of determination of excise duty. The assessee claims that as the process of galvanization does not amount to manufacture, the cost of galvanization is not includible in the assessable value of the said pipes made from H.R. Coils. Briefly discuss whether the stand taken by the assessee is correct with reference to the provisions of the Central Excise Act, 1944.

(b) Explain whether profits made by dealer on transportation/insurance by charging more than the amount spent on actual transport/ insurance is includible in the assessable value for the purpose of Section 4 of the Central Excise Act, 1944.

Answer 22. (a)

The facts of the case are similar to that in *Siddhartha Tubes Ltd.* v. *CCEx* [2006] 193 ELT 6 (SC), wherein it was held that even if a process doesn't amount to manufacture, still cost thereof is includible in assessable value of the product if it adds to the intrinsic value of such product. Whereas the levy of excise duty u/s 3 is on manufacture of goods, the measure of levy depends on the assessable value of the goods under section 4. The concept of 'manufacture' is different from the concept of 'valuation'.

Though the process of galvanization didn't amount to manufacture, but is had undoubtedly given value addition to m.s. pipes. The process of galvanization was incidental to the manufacture of m.s. galvanized pipes and it had added to intrinsic value of the product to make up full commercial value which was charged by the assessee. Further, the process of galvanization was taken up before the product was cleared from the 'place of removal'. Hence, the cost of galvanization was includible in the assessable value of the m.s. galvanized pipes.

Answer 22. (b)

It was held in *Baroda Electric Meters Ltd.* v. *CCEx* [1997] 94 ELT 13 (SC) that where freight actually paid is less than the amount collected by way of freight and transportation charges, the differential amount will not be includible in the assessable value, since it is a profit made by dealer on transportation/ insurance by charging more than the amount spent on actual transport/ insurance will not be includible in the assessable value.

This judgment is applicable even now. Rule 5 provided for the deduction of average or equalized freight, which is computed as per principles of costing taking into account historical data. If average freight system is prevalent, the assessee would charge average freight from the buyer and get deduction therefore from the transaction value. However, the amount of average freight charged from buyer may exceed actual cost of transport incurred by the assessee. Thus, such excess charged form buyer i.e. profit made on transportation, shall not be includible in the assessable value.

Q. 23. Based on the following information, determine the CENVAT Credit available for use in the current year under the Cenvat Credit Rules, 2004 :

Goods	Excise Duty paid at the time of purchase of goods (Rs.)
i. Pollution Control Equipments	30,000
ii. Spares for pollution control equipments	3000
iii. Equipments used in office	13,000
iv. Storage tank	8,000
v. Paints used for painting machinery used	7,000
vi. Packing material	5,000
vii. Lubricating oils	9,000
viii. High speed diesel oil	5,000

Answer 23.

(i) Pollution control equipments fall within the ambit of 'Capital Goods'. In case of capital goods credit not exceeding 50% of the duty paid is allowed in the year of acquisition and balance in subsequent years. Hence credit of Rs. 15,000 (50% of excise duty paid) will be allowed in the year of acquisition.

(ii) Spares for pollution control equipments also come within the purview of 'Capital Goods'. Consequently credit not exceeding 50% of the Excise Duty paid will be allowed in the year of acquisition and balance in subsequent years. Hence credit of Rs. 1,500/- (i.e. 50% of the Excise duty paid) will be allowed in the year of acquisition.

(iii) Duty paid on 'Equipment used in the office' will not be eligible for Cenvat Credit. This is so because the definition of capital goods as given in the Cenvat Credit Rules, 2004 specifically excludes 'Equipments used in office' from the ambit of capital goods.

(iv) Storage Tank is specifically included in the definition of 'Capital Goods' as given in Cenvat Credit Rules, 2004 and therefore 50% of the duty paid on storage tank i.e. Rs. 5,000/- will be allowed in the year of acquisition and balance in subsequent years.

(v) Paints used for painting machinery used will be eligible for Cenvat Credit as they are inputs used in or in relation to the manufacture of final products.

(vi) Packing material used in or in relation to the manufacture of the final product is included in the definition of 'Inputs' as given in Cenvat Credit Rules, 2004 and therefore is eligible for Cenvat Credit of 100% of the Excise duty paid i.e. Rs. 5,000/- at the time of receipt of goods.

(vii) Lubricating oils used in or in relation to the manufacture of the final product is included in the definition of 'Inputs' as given in Cenvat Credit Rules, 2004 and therefore is eligible for Cenvat Credit of 100% of the Excise duty paid i.e. Rs. 9,000/- at the time of receipt of goods.

(viii) High speed diesel oil is specifically excluded from the definition of 'Inputs' as given in Cenvat Credit Rules, 2004 and is therefore not eligible for Cenvat credit.

Q. 24. (a) An SSI unit has effected clearances of goods of the value of Rs. 475 lacs during the financial Year 2009-2010. The said clearances include the following : i) Clearance of excisable goods without payment of excise duty to a 100% EOU unit- Rs. 120 lacs, Ii) Job work in terms of notification no. 214/86 CE, which is exempt from duty – Rs. 75 lacs, iii) Export to Nepal and Bhutan – Rs. 50 lacs, iv) Goods manufactured in rural area with the brand name of the others – Rs. 90 lacs. Examine

with reference to the notification governing SSI, under the Central Excise Act whether the benefit of exemption would be available to the unit for the Financial Year 2010-2011.

(b) A ship carrying the goods for M/s. ABC entered the territorial waters of India from a foreign country on January 20, 2010. The goods were exempted from payment of customs duty under the Customs Act, 1962 on that day under a notification issued in terms of the said Act by the Central Government. The goods were warehoused in a warehouse under Chapter IX of the Customs Act, 1962 on January 21, 2010. The goods were removed from the warehouse on February 14, 2010 by which time the earlier notification exempting the goods from payment of customs duty stood rescinded.

The importer has sought your advice whether he could resist the claim for duty on goods made upon him by Department on the ground that when the goods entered territorial waters on January 20,2010 no duty was payable and the taxable event had occurred in terms of Section 12 of Customs Act, 1962.

Answer 24. (a)

An SSI unit will be entitled to SSI exemption in 2010-2011 only if its turnover in 2009-2010 was less than 400 lacs. While calculating the turnover of Rs. 400 lacs, following are not required to be considered :

(i) Deemed exports i.e. supplies to 100% EOU (Rs. 120 lacs)

(ii) Job work that amounts to 'manufacture' done under notifications no. 214/86-CE, 83/94-CE and 84/94- CE (Rs. 75 lacs).

Exports to Nepal and Bhutan cannot be excluded, i.e. export turnover to Nepal and Bhutan will have to be added while calculating limit of Rs. 150 lacs and 400 lacs. It will be treated as 'clearance for home consumption', even if actually it is 'export'. The export to Nepal and Bhutan will be includible even if such export is against free foreign exchange.

If goods are manufactured in rural area with other's brand name, these are exempt upto Rs. 150 lacs. In such case, that turnover which is cleared without payment of duty will have to be included for calculating limit of Rs. 400 lacs.

Thus, turnover in respect of sale to EOU (Rs. 120 lacs) and job work under notification no. 214/86-CE (Rs. 75 lacs) is required to be excluded for purpose of SSI exemption limit of Rs. 400 lacs. Turnover of SSI excluding these sales is Rs. 280 lacs (475 – 120 – 75 lacs). Hence, the SSI unit will be entitled to exemption in 2010-2011 upto first turnover of Rs. 150 lacs.

Answer 24. (b)

The facts of the given case are similar to the facts in *UOI* v. *Apar Pvt. Ltd.* [1999] 112 ELT 3 (SC). In this case the Apex Court held that, the crucial date for determining the rate of duty applicable to any imported goods is the date determined in accordance with Section 15(1) of the Customs Act, 1962, viz.

(i) In case of goods cleared for home consumption, the date of presentation of bill of entry under section 46 or the date of grant of entry inwards to the vessel whichever is later; and

(ii) In the case of goods removed from a bonded warehouse, the date of presentation of Ex-bond clearance of Bill of Entry for home consumption.

The date when the vessel entered territorial waters of India is irrelevant.

Also, in case of *Garden Silk Mills Ltd*. v. *UOI* [1999] 113 ELT 358 (SC), the Apex court held that, import of goods 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.

In the light of these two judgments M/s. ABC are liable to pay customs duty at the rate in force on the date of presentation of Ex-bond clearance of bill of entry for home consumption u/s 68.

Q. 25. (a) M/s. Super Infotech imported a consignment of computer software and manuals valued at Rs. 50 lakhs and contended that the actual value was only Rs. 15 lakhs while the balance amount represented license fee for using the software at multiple locations and as such customs duty is payable only on the actual value of Rs. 15 lakhs. Is the contention, raised by M/s. Super Infotech, correct? Discuss.

(b) M/s. Sudha Ltd. took the credit of Rs. 17,45,000 for duty paid on inputs used in manufacture of goods cleared for export. Later, it reversed such credit on the insistence of the Department with the belief that since export goods were exempt from duty, credit cannot be taken for inputs used in manufacture of such goods. It was ignorant of Rule 5 of the Cenvat Credit Rules, 2004 whereby it could utilize such credit or claim refund thereof.

After more than one year Sudha Ltd. discovered such mistake and filed a refund claim of Rs. 17,45,000 u/s 11B in respect of refund of credit reversed. The Department rejected assessee's refund claim contending that Section 11B is not applicable to erroneous reversal of credit or to refund arising out of aforesaid Rule 5. The other ground for rejection was expiry of period of limitation given u/s 11B.

Sudha Ltd. seeks your advice whether it is entitled to the refund. Advise Sudha Ltd. suitably.

Answer 25. (a)

According to Rule 10(1)(c), royalties and license fees relatable to the imported goods shall be included in the price actually paid or payable for such goods. However, charges for right to reproduce will not be included in the assessable value.

The facts of the case are similar to that in State Bank of India v. CC [2000] 115 ELT 597 (SC) wherein the Supreme Court has held that –

(i) Since no separate value of the software has been indicated in the agreement except the license fee, therefore, the price was payable for only allowing the SBI to use the software in a limited way at its own centers for a limited period and therefore the same is called as license fees. Total cost incurred including the license fee for the countrywide use would be the transaction value on which Customs duty is to be paid.

(ii) The interpretative notes provide for exclusion of reproduction royalty. Countrywide use of the software and reproduction of software are two different things and license fee for countrywide use cannot be considered as charges for right to reproduce the imported goods because reproduction and use are two different things.

Accordingly, the total cost incurred, including the license fee for countrywide use of software, would be the transaction value on which customs duty was to be charged.

In view of what has been stated above, the contention raised by M/s. Super Infotech is incorrect. The amount of license fees relatable to the use of software at multiple locations is not reproduction royalty and hence, not excludible from the value of the consignment of computer software and manuals. M/s. Super Infotech shall be liable to pay customs duty on the total sum of Rs. 50 lakhs.

Answer 25. (b)

The facts of this case are similar to that of UOI v. Indo-Nippon Chemicals Co. Ltd. [2005] 186 ELT A117 (SC) wherein it has been held that :

(i) **Rule 5 vis-à-vis Section 11B :** The procedure and limitation of refund is covered under main Section 11B. rule 5 of the Cenvat Credit Rules, 2004 only enables making of the refund claim, it does not take away the right of party to resort to Section 11B.

(ii) **Cenvat Credit vis-à-vis Section 11B :** Section 11B refers to refund of duty of excise. As per Section 2A expression 'duty of excise' includes reference to 'Cenvat'. Further, Section 11B itself speaks of refund of credit. Therefore, refund of wrongly denied Cenvat Credit is fully covered u/s 11B.

(iii) **Period of limitation :** Erroneous reversal of credit was a result of mutual mistake of the assessee and the Deaprtment. In case of mutual mistakes, the period of limitation starts from the date of discovery of mistake by either party. Hence, the period of limitation of 1 year shall start from the date of discovery of mistake and not from the date of reversal of credit. Since the assessee's claim was filed just after the discovery of mistake by it, the claim was within time.

(iv) Unjust enrichment : It is a case of refund claim based on erroneous reversal of Cenvat credit and therefore, the burden could not have been passed to any one. Therefore, there was no unjust enrichment of the assessee. Instead, the concept of unjust enrichment shall operate against the Department. Since, the credit was reversed erroneously on the insistence of the Department, the Department cannot be allowed to take advantage of mutual mistake.

For the reasons set out in the aforesaid judgment, the assessee Sudha Ltd. will be entitled to the refund of Rs. 17,45,000 in respect of the credit wrongly reversed.

Q. 26. Answer the following :

(a) X contracts with Y, a real estate agent to sell his house and thereupon Y gives an advertisement in television costing Rs. 5 lakhs. Y billed Rs. 15 lakhs to X including charges for Television advertisement, showing them separately in invoice. Mr. Y says that the value of taxable service in his case is Rs. 10 lakhs only, as he acted as pure agent of Mr. X while taking advertisement. Compute service tax to be billed.

(b) In the course of providing a taxable service, a service provider incurs costs such as traveling expenses, postage, telephone, etc. to the tune of Rs. 20,000. He charges Rs. 80,000 for his services and indicates the said costs separately on the invoice issued to the recipient of service. Compute the amount of service tax to be billed by the service provider.

(c) A contracts with B, an architect for building a house and B's fees is fixed at Rs. 3,00,000. During the course of providing the taxable service, B incurs expenses such as telephone charges, air travel tickets, hotel accommodation, etc., totaling Rs. 50,000 to enable him to effectively perform the provision of services to A. Compute the service tax liability of B.

(d) A clearing and forwarding agent charges Rs. 50,000 for his services, which includes octroi charges Rs. 10,000 paid on behalf of his client. Compute the value of taxable service and service tax liability.

(e) A cable operator charges Rs. 10,000 for his services, which includes entertainment tax Rs. 2,000 paid on behalf of his client. Compute the value of taxable service and service tax liability.

Answer 26.

The answers to the aforesaid are as follows :

(a) Since advertising service is an input service for the estate agent in order to enable or facilitate him to perform his services as an estate agent, hence, Mr. Y doesn't act as agent of Mr. X in taking advertisement. Hence, service tax = Rs. 15 lakhs × 10.30 % = Rs. 1,54,500.

(b) In this case, the service provider is not acting as an agent of recipient of service but procures such inputs or input service on his own account for providing taxable service. Such expenses do not become reimburseable expenditure merely because they are indicated separately in the invoice issued by the service provider to the recipient of service. Hence, service tax = (80,000 + 20,000) × 10.30% = Rs. 10,300.

(c) Value of taxable service = 3,00,000 + 50,000 = Rs. 3,50,000 and service tax @ 10.30 % = Rs. 36,050.

(d) The clearing and forwarding agent acts as pure agent of the client while paying octroi charges. Hence, value of taxable service = 50,000 – 10,000 = Rs. 40,000, and service tax @ 10.30 % = Rs. 4,120.

(e) The cable operator acts as pure agent of the client while paying entertainment tax. Hence, value of taxable service = 10,000 – 2,000 = Rs. 8,000, and service tax @ 10.30 % = Rs. 824.

Q. 27. An importer imported raw materials @ 30,000 US $ FOB. The goods were packed for which packing charges of 700 US $ were charged extra. The goods were stuffed in a returnable container, the price of which is 2500 US $. Insurance and Sea-freight were 300 US $ and 1,000 US $ respectively. Brokerage paid by importer 500 US $.

Customs duty is 10%, Education Cess is 2% and SAH Education Cess is 1%. Excise duty on similar goods in India is 10%. Find the duty payable. (1 US $ = Rs. 45.60).

How much Cenvat can be availed of by importer, if he is a manufacturer?

Answer 27.

Computation of Customs duty payable :

	FOB value		=	30,000 $
Add :	Packing charges		=	700 $
Add :	Freight		=	1,000 $
Add :	Insurance		=	300 $
Add :	Commission to broker		=	500 $
		Total CIF	=	32,500 $

Note :

Containers are durable and reusable. No customs duty is charged, if bond is executed for their return.

			Rs.
Total @ Rs. 45.60		=	14,82,000
Add : Landing charges @ 1% of CIF		=	14,820
Assessable value	(A)	=	14,96,820
Basic customs duty @ 10%	(B)	=	1,49,682
Sub-total for calculating CVD	(C = A+B)	=	16,46,502
CVD @ 10.30% of C (10% + Education cess 2% + SAH Education cess 1%) (D)			1,69,589.71
Sub-total for calculating cess (E = B + D)		=	3,19,271.71
Education cess @ 2% of E	(F)	=	6,385.43
SAH education cess @ 1% of E	(G)	=	3,192.72
Total customs duty payable (B+D+F+G) (rounded off)		=	3,28,850

Note : [No surcharge is payable on basic customs duty of 10%]

Cenvat credit :

The importer may avail Cenvat Credit as follows, if he is a manufacturer.

CVD – 10% of (C) above	=	1,64,650.00
Education cess on excise @ (2+1 = 3)%	=	4,939.51
		1,69,589.51

Q. 28. (a) Discuss about the eligibility of Cenvat credit in each of the following situations :

(i) 8,00 Kgs. of Raw Materials were purchased on which duty paid was Rs. 18,000. Whilst in the production yard, they were destroyed by accidental fire.

(ii) 9,000 kgs. of Raw Materials on which duty paid was Rs. 12,000 was used in manufacture of a final product for which the duty payable is Rs. 10,000.

(iii) The original invoice for 1000 units of inputs purchased were missing; however 'Duplicate for transport' copy of invoice is available, which shows that duty of Rs. 10,000 had been paid on inputs.

(b) Having regard to the provisions of Section 4 of the Central Excise Act, 1944, compute/derive the assessable value of excisable goods, for levy of duty of excise, given the following information (in Rs.).

Cum-duty wholesale price including sales tax of Rs. 2,500	**15,000**
Normal secondary packing cost	**1,000**
Cost of special secondary packing	**1,500**
Cost of durable and returnable packing	**1,500**
Freight	**1,250**
Insurance on freight	**200**
Trade discount (normal practice)	**1,500**
Rate of C.E. duty as per C.E. Tariff (add education and SAH education cess)	**10% Adv.**

State the reasons for the admissibility or otherwise of the deductions.

Answer 28. (a)

(i) If inputs are lost during manufacturing process, it is used in or in relation to manufacture. Hence, cenvat credit of full Rs. 18,000 will be available.

(ii) Even if duty on final product is less, full cenvat credit of Rs. 12,000 is available. The excess credit can be utilized for payment of duty on other final products. However, if this is not possible, the excess credit will lie idle. There is no provision to obtain its refund. The excess credit can continue in central excise records. However, as per accounting guidelines, this un-utilisable excess cenvat credit should be written back in books of accounts.

(iii) The Cenvat Rules states that Cenvat credit can be availed on basis of 'Invoice issued by a manufacturer'. This, whether the invoice is marked as "ORIGINAL FOR BUYER' or "DUPLICATE FOR TRANSPORTER', it is still a 'invoice issued'.

A certified copy of invoice is however is not an 'Invoice issued by a manufacturer'. Thus, cenvat credit can be availed on the strength of invoice marked 'Duplicate for Transporter'.

Answer 28. (b)

The assessable value from cum—duty price can be worked out by the under-mentioned formula.

$$\text{Assessable value} = \frac{(\text{Cum - duty price} - \text{Permissible deductions})}{100 + \text{Rate of duty}} \times 100$$

Computation of Assessable value (amounts in Rs.) :

Cum duty price		15,000
Deductions : (See notes)		
Sakes tax	2,500	
Durable & returnable packing	1,500	
Freight	1,250	
Insurance	200	
Trade- discount	1,500	6,950
		8,050
Less : Excise duty thereon @ 10.30%		829
Assessable value		7,221

Notes :

(i) The transaction value does not include Excise duty, Sales tax and other taxes.

(ii) The excise duty is to be charged on the net price, hence trade discount is allowed as deduction.

(iii) With regards to packing, all kinds of packing except durable and returnable packing is included in the assessable value. The durable and returnable packing is not included in the value, as such packing is not sold and is durable in nature.

(iv) Freight and insurance on freight will be allowed as deduction as per Rule 5 of the Central Excise Valuation Rules, 2000.

Q. 29. A dealer purchased 11,000 kgs. of inputs on which VAT paid @ 4% was Rs. 4,000. He manufactured 10,000 kgs. of finished products from the inputs. 1,000 kgs. was the process loss. The final product was sold at uniform price of Rs. 10 per kg. as follows – Goods sold within the state – 4,000 kgs. Finished product sold in inter-state sale against C form – 2,500 kgs. Goods sent on stock transfer to consignment agents outside the state – 2,000 kgs. Goods sold to Government departments outside the state – 1,500 kgs. There was no opening or closing stock of inputs, WIP or finished product. The state Vat rate on the finished product of dealer is 12.5%. Calculate liability of Vat and CST. Find Vat credit available to dealer and tax required to be paid in cash.

In the above problem, if 2,000 kgs. were exported (and not stock transferred), what would be the tax liability and credit available.

Answer 29.

CST against C form is 2%. Sale to government will be treated as sale to unregistered dealer and tax payable is 12.5%. Thus, the tax payable would be as follows :

Description	Qty. sold	Value of goods sold (Rs.)	CST payable (Rs.)	State Vat payable (Rs.)
Sale within state @ 12.5%	4,000	40,000		5,000
Goods sent on stock transfer	2,000	20,000		
Goods sold against C form, tax rate 2%	2,500	25,000	500	
Goods sold to Government, tax rate 12.5%	1,500	15,000	1,875	
	10,000	**1,00,000**	**2,375**	**5,000**

Tax paid on inputs – Rs. 4,000. Credit (set-off) will not be available in case of goods sent on stock transfer. Tax on inputs attributable to goods sent on stock transfer is 20% i.e. Rs. 800. Out of this, credit will be available of tax paid in excess of 2%. Thus, credit of Rs. 400 will be available in respect of goods stock transferred and credit of Rs. 400 will not be available (since Vat rate is 4%). Thus, total credit of Rs. 3,600 (tax paid on inputs) is available.

Thus, tax payable is as follows :

Total tax payable (State Vat plus CST) – Rs. 7,375

Set off (credit) available – Rs. 3,600

Tax payable in cash – Rs. 3,775

If finished product is exported, there is no tax liability. Further, the credit of tax paid on raw material is available. This credit can be utilized either for payment of CST or for State Vat or even for both, if required. Hence, tax payable is as follows –

Total tax payable (State Vat plus CST) – Rs. 7,375

Set off (credit) available – Rs. 4,000

Tax payable in cash – Rs. 3,375

Q. 30. (a) A taxable service provider outsources a part of the work by engaging another service provider, generally known as sub-contractor. Service tax is paid by the service provider for the total work. In such cases, whether service tax is liable to be paid by the service provider known as sub-contractor who undertakes only part of the whole work?

(b) XYZ Co. has claimed before the Customs Authority that since the exports of goods in its case attracted no duty, the value for purposes of Customs Act, 1962 to be declared shall be the value of the goods, which he expects to receive on sale of goods in the overseas market. Discuss whether the stand taken by XYZ Co. is correct.

Answer 30. (a)

A sub-contractor is essentially a taxable service provider. The fact that services provided by such sub-contractors are used by the main service provider for completion of his work does not in any way alter the fact of provision of taxable service by the sub-contractor.

Services provided by sub-contractors are in the nature of input services. Service tax is, therefore, leviable on any taxable services provided whether or not the services are provided by a person in his capacity as a sub-contractor and whether or not such services are used as input services. The fact that a given taxable service is intended for use as an input service by another service provider does not alter the taxability of the service provided.

Answer 30. (b)

Section 14(1) provides that for the purposes of the Customs Tariff Act, 1975 or any other law for the time being in force, the value of the imported or export goods shall be the value determined in accordance with the said section. However, where tariff values are fixed u/s 14(2) for any goods, the value will be the values so fixed by the Board.

Further, it was held in *Om Prakash Bhatia* v. *CC* [2003] 155 ELT 423 (SC) that the valuation of export goods shall be done as provided u/s 14, even if no duty is leviable on such goods. This is so, because, the word 'value', as defined u/s 2(41), means the value of such goods determined in accordance with the provisions of section 14(1) or section 14(2). Therefore, if export value of goods is to be determined, even if no duty is leviable, the mode for determining value of goods as provided u/s 14 is to be followed.

Hence, the stand taken by XYZ Co. is not correct. For all purposes (viz. for Customs law or for export promotion scheme), the exports made by XYZ Co. will be valued at transaction value u/s 14(1). However, if tariff values have been fixed u/s 14(2), such goods shall be valued at such tariff values.