

Paper-11 Indirect Taxation

Time Allowed: 3 hours

Full Marks: 100

Group-A

(Answer Question 1 which is compulsory)

Question 1.

Answer the following questions with suitable reasons:

- (a) Whether mere bringing together of parts of a plant and machinery at site can be termed as manufacture?
- (b) "VAT helps in checking tax evasion and in achieving neutrality." — Is the statement true? Justify.
- (c) Whether imports of samples are duty free in customs?
- (d) What is the value of taxable services of transport of passengers of air if the amount charged from passengers for flights starting from London to Mumbai ₹350 lakhs (exclusive of service tax)?
- (e) A manufacturer puts labeling on packaged products which is produced by him. Is such labeling amounted to manufacture?
- (f) Mr. X, a dealer in Delhi, transfers property in goods to Ram of Bangalore without any consideration. Is the transfer chargeable to CST?
- (g) What are intermediary services?
- (h) Can the rate of drawback be determined provisionally by the exporter?
- (i) A manufacturer produces a product which is not sold but supplied to a related person who consumes it in his production process. What will be the valuation for such captive consumption?
- (j) How goods are classified under "Harmonised System of Nomenclature"?

[10×2]

Answer:

- (a) In view of Entry No. 84 of List-I Seventh Schedule to the Constitution of India, duty of excise could be levied only on goods and not on immovable property. The goods are classified and charged to duty according to the state and condition in which they are removed from the factory.

Where assembly of parts and components brings out a different recognizable marketable product, before its installation or erection or attachment to the earth, it would be goods and hence chargeable to duty. Mere bringing together of parts of a plant and machinery at site cannot be termed to be manufacture and hence, assembled plant cannot be treated to be goods.

- (b) The statement is true. The input tax credit system encourages traders to collect invoice which will lead to more transparency and shall allow several tax departments to apply 'cross checks'. Thus tax evasions can be controlled significantly.
- (c) In the International trade it is considered often necessary that samples of the goods manufactured in one country be sent to another country for being shown or demonstrated for Customer appreciation. The imports of genuine commercial samples are duty free into the country for smooth flow of trade. These samples can also be brought by the persons as part of their personal baggage or through port or in courier.

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However, goods which are prohibited under Foreign Trade (Development and Regulation) Act, 1992 are not allowed to be imported as samples (i.e. wild animals, wild birds and parts of wild animals, arms and ammunitions and so on).

- (d) The amount charged from passengers for flights starting from London to Mumbai is ₹350 lakhs. Here place of embarkation is London, viz outside India. Hence place of provision as per rule 11 of Place of Provision Rules is London, viz outside India. Therefore, it is not chargeable to service tax in India.
- (e) Labelling on packaged products is also not manufacture as no new product emerges and since in the common market parlance a labeled and unlabelled product is treated as the same product and the distinction as such is made. In fact, these processes are adjunct to manufacture. Therefore, the labeling is a part of the manufacturing process. The principle was affirmed in the case of Pioneer Tools and Appliances Ltd. v UOI by the Bombay High Court.
- (f) Sale u/s 2(g) means transfer of property for cash or deferred payment or for any other valuable consideration. Where there is transfer of property in goods without consideration, it does not amount to sale within the meaning of the definition under the Central Sales Tax Act and therefore CST is not attracted in this case.
- (g) Generally, an "intermediary" is a person who arranges or facilitates a supply of goods, or a provision of service, or both, between two persons, without material alteration or further processing. Thus, an intermediary is involved with two supplies at any one time:
- i) the supply between the principal and the third party; and
 - ii) the supply of his own service (agency service) to his principal, for which a fee or commission is usually charged.
- (h) The exporter may be granted provisional duty drawback when he execute a bond binding himself to repay the entire or excess amount of drawback. Where an exporter desires that he may be granted drawback provisionally, he may make an application in writing to the Commissioner of Central Excise or Commissioner of Customs and Central Excise that a provisional amount be granted to him towards drawback on export of such goods pending determination of the final amount or drawback. The manufacturer may be allowed provisional duty drawback of an amount not exceeding the amount claimed by him in respect of such export.
- (i) In case goods are supplied to a 'related person' but consumed by the related person and not sold, valuation will be done on the basis of cost of production plus 10% [Proviso to rule 9]. – CBE&C, vide its circular No. 643/34/2002-CX dated 1-7- 2002, has clarified that this proviso applies when goods are transferred to a sister unit or another unit of the same factory for captive consumption in their factory.
- (j) Harmonised System of Nomenclature (HSN) is an internationally accepted product coding system, formulated to facilitate trade flow and analysis of trade statistics. Goods are classified under Central Excise Tariff Act based on the "Harmonized System of Nomenclature" having eight digit classifications. All goods are classified using 4 digit system. These are called 'headings'. Further 2 digits are added for sub-classification, which are termed as 'sub-headings'. Further 2 digits are added for sub-sub-classification,

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which is termed as 'tariff item'. Rate of duty is indicated against each 'tariff item' and not against heading or sub-heading.

Question 2.

- (a) Ronny Ltd., a small scale manufacturer had achieved sales of ₹ 91 lakhs in 2011-12. Turnover achieved during 2012-13 was ₹ 1.67 crores. Normal duty payable on the product is 12% plus education cesses as applicable. Find the total excise duty paid by Ronny Ltd. during 2012-13 (1) If the unit has availed Cenvat credit, (2) If the unit has not availed Cenvat credit. [The turnover is without taxes and duties].
- (b) Write down the differences between direct tax and indirect tax.
- (c) Mr. Sen, a manufacturer, sells goods to Mr. Mehta, a distributor for ₹ 2,000 (excluding of VAT). Mr. Mehta sells goods to Mr. Kumar, a wholesale dealer for ₹ 2,400. The wholesale dealer sells the goods to a retailer for ₹ 3,000, who ultimately sells to the consumers for ₹ 5,000. Compute the Tax Liability, input credit availed and tax payable by the manufacturer, distributor, wholesale dealer and retailer under Invoice method assuming VAT rate @ 12.5%.

[3+4+3]

Answer:

- (a) The excise duty by Ronny Ltd.:

1. If the unit has availed Cenvat credit, it has to pay full duty on entire turnover. Hence, duty payable is 12% of ₹ 1.67 crores i.e. ₹ 20.04 lakhs, plus Education Cess @ 2% of ₹ 20.04 lakhs i.e. ₹ 40,080, plus SAH Education Cess @ 1% of ₹ 20.04 lakhs i.e. ₹ 20,040. Total - ₹ 20,64,120.
2. If Ronny Ltd., the SSI unit has not availed Cenvat, the duty payable is as follows: (i) On first ₹ 150 lakhs: Nil (ii) On subsequent sales - Normal duty of 12% plus education cess as applicable. Thus, duty on remaining ₹ 17 lakhs will be ₹ 2,04,000. Thus, excise duty paid is ₹ 2,04,000, plus education Cess of ₹ 4,080 plus SAH Education Cess of ₹ 2,040.
∴ Total - ₹ 2,10,120.

- (b) The following are the differences between direct tax and indirect tax:

Particulars	Direct Taxes	Indirect Taxes
Nature of tax	Direct Tax progressive in nature.	Indirect Taxes is regressive in nature.
Taxable Event	Taxable Income / Taxable Wealth of the Assessee.	Purchase / Sale / Manufacture of goods and provision of services.
Shifting of Burden	Directly borne by the Assessee. Hence, cannot be shifted.	Tax burden is shifted or the subsequent / ultimate user.
Collected	After the income for a year is earned or valuation of assets is determined on the valuation date.	At the time of sale or purchases or rendering of services.

- (c) As per Invoice Method:

Particulars	Amount (₹)	VAT Liability (₹)	VAT Credit (₹)	Tax to Government (₹)
Mr. Sen sold to Mr. Mehta Taxable turnover @12.5%	2,000	250	—	250

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Mr. Mehta sold to Mr. Kumar	2,400	300	250	50
Mr. Kumar sold to retailer	3,000	375	300	75
Retail sold to consumer	5,000	625	375	250

Note: Total VAT paid into the credit of Government (i.e. from the Manufacturer to Consumer) is ₹625/- (i.e. ₹250 + ₹50 + ₹75 + ₹250).

Question 3.

- (a) **Nayantara Ltd. filed its service tax returns for the half years ending on September 2012 and March 2013 on 25-11-2012 and 31-7-2013. The two half yearly returns show a service tax liability of ₹2,50,000 and ₹1,20,000 respectively. Is any late fee/fine payable by Nayantara Ltd.? If yes, what is the quantum of such fee in both the cases? Will your answer be different if Nayantara Ltd. files a nil return for the half year ending on September 2012?**
- (b) **Define arm's length principle. Also mention the difficulties in applying the arm's length principle.**

[4+6]

Answer:

- (a) The half-yearly due dates are as follows:

25th October for the first half of the year ending on 30th September

25th April for the second half of the year ending on 31st March

Fee for Late filing of ST-3 (As per Rule 7C of Service Tax Rules, 1994)

If a person fails to furnish the ST-3 return within the due date [25th October and 25th April every year] he shall be liable to pay late fee (penalty) is as follows:

Delay upto 15 days ₹500

Delay upto 30 days ₹1,000.

Delay beyond 30 days ₹1,000 + ₹100 per day subject to a maximum of ₹20,000 (w.e.f. 8-4-2011 ₹2,000 enhanced to ₹20,000).

For Nayantara Ltd. —

Actual No. of days delay for the first half year return = 31 days

(Oct 6 days + Nov 25 days)

Therefore, penalty is ₹1,100

Delay upto 30 days ₹1,000 plus ₹100 for last one day.

Actual No. of days delay for the 2nd half year return = 97 days

(April 5 days + May 31 days + June 30 days + July 31 days)

Upto 30 days of delay ₹1,000 plus ₹100 per day of delay subject to maximum of ₹20,000

(w.e.f. 8-4-2011).

Therefore, penalty is ₹7,700.

Penalty can be reduced or waived if the ST-3 return belongs to nil return.

- (b) The arm's length principle seeks to ensure that transfer prices between members of an MNE (Multi National Enterprise) ("controlled transactions"), which are the effect of special relationships between the enterprises, are either eliminated or reduced to a large extent. It requires that, for tax purposes, the transfer prices of controlled transactions should be similar to those of comparable transactions between independent parties in

comparable circumstances ("uncontrolled transactions"). In other words, the arm's length principle is based on the concept that prices in uncontrolled transactions are determined by market forces and, therefore, these are, by definition, at arm's length. In practice, the "arm's-length price" is also called "market price". Consequently, it provides a benchmark against which the controlled transaction can be compared. The Arm's Length Principle is currently the most widely accepted guiding principle in arriving at an acceptable transfer price.

Difficulties in applying the arm's length principle:

The arm's length principle, although survives upon the international consensus, does not necessarily mean that it is perfect. There are difficulties in applying this principle in a number of situations.

- i. The most serious problem is the need to find transactions between independent parties which can be said to be exact compared to the controlled transaction.
- ii. It is important to appreciate that in an MNE system, a group first identifies the goal and then goes on to create the associated enterprise and finally, the transactions entered into. This procedure obviously does not apply to independent enterprises. Due to these facts, there may be transactions within an MNE group which may not be between independent enterprises.
- iii. Further, the reductionist approach of splitting an MNE group into its component parts before evaluating transfer pricing may mean that the benefits of economies of scale, or integration between the parties, is not appropriately allocated between the MNE group.
- iv. The application of the arm's length principle also imposes a burden on business, as it may require the MNE to do things that it would otherwise not do (i.e. searching for comparable transactions, documenting transactions in detail, etc).

Question 4.

(a) Reenee Ltd. imported a lift from Germany at an invoice price of ₹25,00,000. The assessee had supplied raw material worth ₹5,00,000 to the supplier for the manufacture of said lift. Due to safety reasons, the lift was not taken to the jetty in the port but was unloaded at the outer anchorage. The charges incurred for such unloading amounted to ₹25,000 and the cost incurred on transport of the lift from outer anchorage to the jetty was ₹50,000. The importer was also required to pay ship demurrage charges ₹12,000. The lift was imported at an actual cost of transport ₹45,000 and insurance charges ₹20,000. Compute its assessable value.

(b) The RR Airport used to collect 'users fee' @ ₹800/- for every outgoing international passenger. No users' fee was payable by domestic passengers and/or international passengers reaching the Airport from any foreign destination.

The Department sought to levy service tax thereon under 'Airport Services'.

The RR Airport contended that the user's fee is not for any service rendered, as the same is not charged from all passengers (to whom equivalent services are provided) but is charged only from outgoing international passenger. The assessee submitted that the same is charged in view of Board of Director's decision to collect users' development fee

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for enhancing the revenue of the Airport to cope up with the expenditure and debt servicing. Discuss whether the view taken by the Department is correct.

(c) What types of restrictions and conditions are imposed on declared goods (section 15 of CST Act, 1956)?

[4+3+3]

Answer:

(a) Computation of Assessable Value

(Amount in ₹)

FOB value being the invoice price		25,00,000
Add: Raw material supplied by assessee under Rule 10(1)(b)		5,00,000
FOB Value		30,00,000
Add: Transportation under Rule 10(2)		
Sea freight	45,000	
Ship demurrage charges	12,000	
Lighterage	25,000	
Barge charges	50,000	1,32,000
Add: Actual cost of insurance		20,000
CIF Value		31,52,000
Add: Landing charges @1%		31,520
Assessable Value		31,83,520

Notes:

(1) The cost of transportation of the imported goods includes the ship demurrage charges on chartered vessels, lighterage, or barge charges.

(2) The landing charges @1% of CIF value relate to loading, unloading and handling charges at port.

(b) It was clear from the decision of the Board of Directors that purpose of users fee was to augment revenue for the Airport and was not towards consideration for any service rendered to the outgoing international passenger. This was so specially because the airport had rendered its services equally to all passengers (incoming and outgoing – domestic and international) while the users' fee was charged only from outgoing international passengers.

Section 67 of the Finance Act, 1994 defining value of taxable services for charging service tax says that the value of service shall be gross amount charged by the service provider for the service provided to the recipient. Since collection of users' fee was not for any specific service rendered by them, but was a flat rate of charge to one category of passengers namely, outgoing international passengers, it could not be said that the amount so collected was by way of service charge. Hence, no service tax was payable.

(c) Section 15 provides that every sales tax law of a State shall impose or authorise the imposition of a tax on the sale or purchase of declared goods, be subject to certain restrictions and conditions. Some of them are as follows:

(i) Where local sales tax has been levied in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of interstate trade or commerce, and CST having been paid thereupon, the local sales tax paid shall be reimbursed to the seller making the interstate sale.

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- (ii) Where a tax has been levied under the State law in respect of the sale or purchase inside the State of any paddy, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy.
- (iii) Where a tax on sale or purchase of paddy is leviable under that law and the rice procured out of such paddy is exported out of India, then, for the purposes of section 5(3), the paddy and rice shall be treated as a single commodity.

Question 5.

(a) "Advance Authorisation' is not transferable, while material imported under DFIA will be transferable after fulfillment of export obligation." — Write about Advance Authorisation and DFIA (Duty Free Import Authorisation) in this context.

(b) Having regard to the provisions of section 4 of the Central Excise Act, 1944, compute the assessable value of the excisable goods, for levy of duty of excise, given the following information:

	(Amount in ₹)
Cum-duty wholesale price including sales tax of ₹2,000	15,500
Normal secondary packing cost	1,000
Cost of special secondary packing	1,500
Cost of durable and returnable packing	2,000
Freight	750
Insurance on freight	200
Trade discount (normal practice)	1,000
Rate of excise duty as per Tariff (add EC and SAHEC)	12% Adv.

Also state the reasons for the admissibility or otherwise of the deductions.

(c) What is the place of provision of services relating to events?

[4+5+1]

Answer:

(a) Under Advance Authorisation inputs required to manufacture export products can be imported without payment of customs duty.

Advance Authorisation can be granted to merchant exporter or manufacturer exporter to import raw materials. Since the raw materials can be imported before exports of final products, the Authorisation issued for this purpose is called 'advance Authorisation'.

Advance Authorisation is issued to allow duty free import of inputs with normal allowance for wastage. In addition, fuel, oil, energy, catalysts etc. required can also be allowed. Duty free import of mandatory spares upto 10% of CIF Value of Authorisation, which are required to be exported with resultant products, may also be allowed. However, prohibited items of imports cannot be imported.

The Advance Authorisation will be for actual user only. It is not transferable. The material imported under Advance Authorisation is also not transferable even after completion of

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export obligation. However, goods manufactured out of such imported material can be disposed of, after export obligation is fulfilled.

In case of Advance Authorisation, positive value addition is sufficient, while in case of DFIA (Duty Free Import Authorisation), 20% value addition is required, except in case of gem and jewellery sector.

DFIA is issued to allow duty free import of inputs used in manufacture of export product (with normal allowances for wastages), and fuel, energy, catalyst etc. Duty free import of mandatory spares upto 10% value of authorisation, which is required to be exported/ supplied with resultant product, is also allowed.

DFIA is initially issued with 'actual user condition'. Imports will be exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-Dumping Duty and Safeguard duty, if any.

DFIA is issued on basis of SION (Standard Input Output Norms). Import Authorisation will be limited to quantity mentioned in SION. DFIA is issued to manufacturer-exporter or merchant-exporter for following – (i) Physical exports including supplies to SEZ (b) Intermediate supplies and (c) Main contractors for supply of goods under Deemed Exports (except supply against Advance Authorisation and marine containers). In case of some deemed exports, DFIA is available to sub-contractors also.

(b) Computation of assessable value

(Amount in ₹)

Price inclusive of all elements and taxes		15,500
Less: Normal secondary packing and special secondary packing (all forms of packing form part of value. Hence no deduction is allowable in this regard).	Not deductible	
Cost of durable and returnable packing (assumed that amortized cost of such packing is already included in costs and these charges are kept as refundable deposit, hence they are deductible from assessable value)	2,000	
Freight and insurance on freight (deductible as per Rule 5 assuming they relate to transport of goods from place of removal to place of delivery) (₹750 + ₹200)	950	
Sales tax [deductible from transaction value as per section 4(3)(d)]	2,000	
Trade discount (deductible in computing price actually paid or payable)	1,000	5,950
Price-cum-duty		9,550
Less: Excise duty @12.36% [₹9,550 × 12.36 ÷ 112.36] [excise duty is deductible from transaction value as per section 4(3)(d)]		1,051
Transaction / Assessable value		8,499

(c) Place of provision of services provided by way of admission to, or organization of a cultural, artistic, sporting, scientific, educational, entertainment event, or a celebration, conference, fair, exhibition, or any other similar event and of services ancillary to such admission, shall be the place where the event is held.

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Question 6.

- (a) Compute the amount of interest (if any) as per Customs Act, 1962 in the following case:
 Piano Ltd. imported goods valuing ₹ 300 lakhs vide a Bill of Entry presented before the proper officer on 01-11-2012, on which the rate of customs duty was 10%. The proper officer decided that the goods are subject to chemical examination and therefore, the same were provisionally assessed at a value of ₹ 300 lakhs and Piano Ltd. paid provisional duty ₹ 30 lakhs on the same date. Piano Ltd. wants to voluntarily pay duty of ₹10 lakhs on 15-12-2012. Can it do so what are the conditions which are to be completed before such payment.
- (b) What are the issues relating to risk regarding transfer pricing in India?
- (c) What is Negative List in service tax? Give an example of two such services which is included in negative list and their exceptions.

[3+2+5]

Answer:

- (a) The department has clarified vide Circular No. 40/2011-Cus, dated 09-09-2011 that whenever any importer or exporter intimates to the proper officer in writing that he desires to pay voluntarily certain amount of duty of customs, at any time before finalization of the provisional assessment, the following conditions must be satisfied before such payment:
- (i) Such duty should be paid, along with interest on the amount of duty so being paid, @ 18% from the first day of the month in which the duty is provisionally assessed till the date of payment thereof;
 - (ii) The term and conditions of the bond and the amount of security of surety furnished at the time of provisional assessment shall remain unchanged; and
 - (iii) No refund of duty will be granted till the assessment is finalized.
- Thus, on above compliances, Piano Ltd. can provisionally pay duty.
- (b) A comparison of functions performed, assets employed and risks assumed is basic to any comparability analysis. India believes that the risk of a MNE (Multi National Enterprise) is a by product of performance of functions and ownership, exploitation or use of assets employed over a period of time. Accordingly, risk is not an independent element but is similar in nature to functions and assets. In this context, India believes that it is unfair to give undue importance to risk in determination of arm's length price in comparison to functions performed and assets employed.
- (c) In terms of Section 66B of the Finance Act, 1994, service tax will be leviable on all services provided in the taxable territory by a person to another for a consideration other than the services specified in the negative list. The services specified in the negative list therefore go out of the ambit of chargeability of service tax. The negative list of service is specified in the Act itself in Section 66 D. In all, there are seventeen heads of services that have been specified in the negative list. Two of them are explained below:

Services	Inclusion in Negative list (it means outside the scope of service tax)	Exclusion from Negative list (it means taxable unless exempted from service tax)	Remarks

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1) Services provided by Govt. or local Authority	All services provided by Govt., in terms of their sovereign right to business entities. • Grant of mining licenses • Audit of Comptroller and Auditor General, etc.	• Speed post, Express Parcel post, Life insurance and agency services carried out on payment of commission • Services in relation to vessel or an aircraft • Transport of goods and passengers • Support services.	Reverse charge applicable in case of support services Examples: Adv. Service, Construction Works contract, Renting of movable or immovable property, Security Testing and analysis.
(2) Services provided by Reserve Bank of India (RBI)	All type of services provided by RBI.	Services provided to RBI.	Services provided banks to RBI taxable.

Question 7.

(a) Mr. Zed reported sales turnover of ₹ 35,00,000. This includes the following:

(a) Excise duty ₹ 3,23,540; and

(b) Deposit for returnable containers and packages ₹ 5,00,000.

Sales Tax was not included separately in the sales invoice.

Compute tax liability under the CST Act, assuming the rate of tax @ 2%.

(b) Mr. Maity presents the following details for the quarter ending 31st March, 2013 —

1. Opening balance of input VAT credit as on 01.01.2013: ₹25,500.
2. Inputs purchased during 01.01.2013 to 31.03.2013: ₹40 lakhs.
3. Within the state sales of manufactured goods: ₹55 lakhs.
4. Inter-state sales: ₹6 lakhs.

CST rate is 2%. There was no inventory as on 01.01.2013 or 31.03.2013. The VAT laws governing Mr. Maity provide for the return of input VAT credit after the end of the first financial year itself.

VAT rate is 12.5% on inputs and 4% on sales. Compute the amount of refund available to Mr. Maity.

(c) Write a short note on Export Promotion Councils (EPC). Also give the reference of Registration Cum Membership Certificate (RCMC) in that context.

[3+3+4]

Answer:

(a) Computation of Central Sales Tax liability of Mr. Zed

(Amount in ₹)

Turnover (including Central sales tax and deposit received towards returnable containers and packages)	35,00,000
Less: Deposit received towards returnable containers and packages not to be considered in turnover	5,00,000
Turnover (including central sales tax)	30,00,000
Less: Central sales tax thereon = 30,00,000 x 2/102	58,824

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Taxable Turnover (excluding central sales tax)	29,41,176
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Note: Excise duty is part of turnover and hence should not be excluded from turnover.

(b) Computation of refund available to Mr. Maity (Amount in ₹)

Input tax credit:		
Opening balance of input VAT credit as on 01.01.2013	25,500	
Inputs purchased during 01.01.2013 to 31.03.2013 (₹40,00,000×12.5%)	5,00,000	5,25,500
Less: Output VAT		
VAT payable on sales (₹55,00,000×4%)	2,20,000	
CST payable on sales (₹6,00,000×2%)	12,000	2,32,000
Balance lying as VAT credit as on 31.03.2013 eligible for refund		2,93,500

Note: Input VAT credit can be utilised for payment of CST.

(c) 19 Export Promotion Councils have been set up to promote and develop export of the country. These EPCs (Export Promotion Councils) are expected to monitor and encourage exports and to assist and guide the exporters. Their main aim is to project India's image abroad as a reliable supplier of high quality goods and services.

EPC are non-profit autonomous organizations.

Each Council is responsible for promotion of a particular group or products like Engineering Export Promotion Council, Apparel Export Promotion Council, Gem and Jewellery Export Promotion Council etc. These Councils are non-profit organisations registered as Companies or registered Societies.

Export Promotion Council for EOU and SEZ units has also been constituted.

Some Agencies like Coffee Board, Tea Board, Tobacco Board etc. are also considered as Export Promotion Councils. These are autonomous professional bodies. Government may provide financial support to these EPCs.

RCMC - Exporter has to obtain Registration Cum Membership Certificate (RCMC) from Export Promotion Council or Commodity Board. Membership of EPC is compulsory, if an exporter intends to get export incentives. In other cases, membership is optional.

RCMC is valid from the 1st April of licensing year and is valid for five years.

Exporter should submit quarterly export returns to Export Promotion Council. Status holders should also file return with FIEO (Federation of Indian Export Organisations).

Question 8.

(a) "The input service distributor may distribute the CENVAT CREDIT in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following conditions" — List out those conditions.

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(b) Write a short note on Coastal Goods and Customs Station.

(c) Ananda & Co. manufactured 1,000 units of Product A, out of which 800 units were cleared to a sister unit for captive consumption and balance 200 units were lying in stock. Compute assessable value for central excise purpose for Product A from the following:

- Cost of production of 1,000 units as per CAS-4 = ₹7,80,000
- Profit margin as per Annual report of the company = 15% on cost
- Selling price per unit (excluding excise duty and other taxes) = ₹950.

What will be the answer if the balance 200 units were sold to an unrelated buyer @₹930 per unit (exclusive of taxes) on the same day?

[4+3+3]

Answer:

(a) Input service distributor means an office managing the business of manufacturer or producer of final products or provider of output services, which receives invoices issued under Rule 4A of the Service Tax Rules, 1994 towards purchase of input services and issues invoice, bill or, as the case may be, challan for the purpose of distributing the credit of service tax paid under said services to such manufacturer or producer or provider, as the case may be. [Rule 2(m) of the CENVAT CREDIT RULES, 2004].

The following conditions are to be satisfied for an input service distributor who can distribute the CENVAT CREDIT in respect of the service tax paid on the input service to its manufacturing units or units providing output service:

- (i) The Input service distributor must ensure that such a distribution should not exceed the service tax paid.
 - (ii) In case an input service is attributable to service use in a unit exclusively engaged in manufacture of exempted goods or exempted services, then such credit of service tax shall not be distributed.
 - (iii) Credit of service tax attributable to service used wholly in a unit shall be distributed only to that unit; and
 - (iv) Credit of service tax attributable to service used in more than one unit shall be distributed prorata on the basis of the turnover of the concerned unit to the sum total of the turnover of all the units to which the service relates.
- (b) The importer cannot file Bill of Entry by adding actual landing charges. Rule 10(2)(b) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 has statutorily laid down a fixed 1% charge on free on board value (F.O.B Value) of the goods plus the cost of transport plus the cost of insurance.

The Madras High Court, in Wipro Limited Vs. ACC (2002 (53) RLT 515), has held that the provisions of the Customs Valuation Rules regarding addition of one percent of CIF value towards the landing/handling charges instead of at actual, are valid in law. Accordingly, the importer should have filed Bill of Entry by adding the statutorily fixed 1% charges in the CIF value regardless of the actual handling charges being much lower in the present case.

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(c) Computation of assessable value under Rule 8 at 110% of cost of production

Particulars	Units	Per unit	₹
Cost of production	1,000	780	7,80,000
Less: Closing stock	200	780	1,56,000
Cost of production of goods cleared to sister concern	800	780	6,24,000
Add: Notional profit @10%		78	62,400
Assessable Value	800	858	6,86,400

If balance 200 units were sold to an unrelated buyer @₹950 per unit on same day:

- (1) Captive consumption: Value of goods transferred to sister unit for captive consumption = ₹6,86,400 (Though Rule 8 applies only if goods are not sold, but since value is to be computed for each removal, hence Rule 11 will apply read with Rule 8 and value shall continue to be 110% of cost of production).
- (2) Sale to unrelated buyer: Since value is to be computed for each removal, hence as per section 4, value = transaction value = ₹950 per unit × 200 units = ₹1,90,000.

Question 9.

(a) What is Anti-Dumping?

(b) A Ltd., purchased a machine at a cum-duty price of ₹ 18,63,680. The excise duty rate charged on the said machine was 16% plus education cess 2% plus secondary and higher education cess 1%. The machine was purchased on 1-7-2012 and was disposed of on 30-9-2014 for a price of ₹ 10,00,000 in working condition as second hand machine.

- Calculate the amount of CENVAT credit allowable for the financial years 2012-13 and 2013-14 and
- Also specify the amount payable towards CENVAT credit already taken at the time of disposal of the machinery in the year 2013-14.

(c) What are the services that are provided “in respect of goods that are made physically available, by the receiver to the service provider, in order to provide the service”?

[2+5+3]

Answer:

(a) Dumping means export of goods by exporters of one country/territory to the market of another country/ territory at a price lower than the price prevailing in the country of export and the difference in such price is called margin of dumping. This is an unfair trade practice which can have a distortive effect on international trade and needs to be condemned under WTO law.

Anti dumping is a measure to rectify the situation arising out of the dumping of goods and its trade distortive effect. Thus, the purpose of anti dumping duty is to rectify the trade distortive effect of dumping and re-establish fair trade.

(b) **Part I – CENVAT Credit allowable [Rule 4(2)(a) and 4(2)(b)]**

Total Duty paid = ₹ 18,63,680 × 16.48% ÷ 116.48% = ₹ 2,63,680	F.Y. 2012-13	F.Y. 2013-14
50% credit in year of receipt and balance in subsequent year	₹1,31,840	₹1,31,840

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Date of taking credit	01-07-2012	01-04-2013
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Part II – Computation of amount payable under Rule 3(5A)

	Date of taking credit is 1-7-2012 only	Date of taking credit is 1-7-2012 for 50% and 1-4-2013 for bal. 50%	
		For first 50%	For balance
Credit taken	₹2,63,680	₹1,31,840	₹1,31,840
Date of taking credit	01-07-2012	01-07-2012	01-04-2013
Date of removal	30-09-2014	30-09-2014	30-09-2014
No. of quarters or part thereof	9	9	6
Percentage eligible @ 2.5% for every quarter	22.50%	22.50%	15.00%
Credit reversible [100% - Percentage eligible]	77.50%	77.50%	85.00%
Amount to be paid=Credit Taken x % Reversible	₹2,04,352	₹1,02,176	₹1,12,064
Limit I = Total amount payable as about	₹2,04,352		₹2,14,240
Limit II = Value ₹ 10 lakh x Duty i.e., 16.48%	₹1,64,800		₹1,64,800
Amount payable under Rule 3(5A) = Higher of Limit I or Limit II	₹2,04,352		₹2,14,240

- (c) Services that are related to goods, and which require such goods to be made available to the service provider or a person acting on behalf of the service provider so that the service can be rendered, are covered here. The essential characteristic of a service to be covered under this rule is that the goods temporarily come into the physical possession or control of the service provider, and without this happening, the service cannot be rendered. Thus, the service involves movable objects or things that can be touched, felt or possessed. Examples of such services are repair, reconditioning, or any other work on goods (not amounting to manufacture), storage and warehousing, courier service, cargo handling service (loading, unloading, packing or unpacking of cargo), technical testing/ inspection/certification/ analysis of goods, dry cleaning etc. It will not cover services where the supply of goods by the receiver is not material to the rendering of the service e.g. where a consultancy report commissioned by a person is given on a pen drive belonging to the customer. Similarly, provision of a market research service to a manufacturing firm for a consumer product (say, a new detergent) will not fall in this category, even if the market research firm is given say, 1000 nos. of 1 kilogram packets of the product by the manufacturer, to carry for door-to-door surveys.

Question 10.

- (a) After visiting Pakistan for 10 days, Mr. & Mrs. Z brought to India a laptop computer valued at ₹35,000, personal effects valued at ₹66,000 and a personal computer for ₹47,000. They have returned by land route viz. Amritsar Railway Station. What is the customs duty payable?

- (b) State whether the following elements are to be included or not as part of the 'Transaction value' under section 4 of the Central Excise Act, 1944.

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- (i) Erection and commissioning charges
- (ii) System software etched in the computer system
- (iii) Cylinder holding charges
- (iv) After-sales warranty charges.

(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?

[3+4+3]

Answer:

(a) Computation of customs duty payable:

	₹
1. Laptop	Exempt
2. Personal effects	Exempt
3. Personal computer	47,000
Total	47,000
Less: General Free Allowance under Rule 4 [As the passengers are returning from Pakistan via land route, hence GFA under Rule 4 applies and GFA = ₹6,000, for stay more than 3 days] [Age is more than 10 years or more, as they are married.] [GFA under this rule shall not be allowed to be pooled with the free allowance of any other passenger. Hence Mr. & Mrs. Z cannot claim GFA for ₹6,000 each, i.e. ₹12,000 in total.]	6,000
Dutiable Value	41,000
Duty @36.05%	14,781

(b) The elements whether to be included or not in the transaction value is discussed below:

- (i) Any payment made by buyer to assessee is includible in assessable value only if it is in 'connection' with sale. In case of erection and commissioning charges for erecting machinery at site, these are incurred after goods are removed from the factory. These may be in 'relation' to sales but are not in 'connection' with sales as there is no 'cause and effect' relationship between the two. Hence these are not includible in assessable value.
- (ii) A computer manufacturer loads bought out computer software on computer while selling. Thus, the system software is loaded on computer while computer is cleared from the factory. Computer software as such is exempt from duty. Department had earlier clarified that value of computer software etched or loaded on computer will be includible. However, if computer software is supplied separately on floppy disc or tapes, its value will not be includible. [However, as per CBE&C circular dated 28-2-2003, value of computer software will not be includible in assessable value of computer].
- (iii) In case of durable and returnable containers, the container is returnable after the gas or other material inside is used. Often, manufacturing companies take some deposit and charge some rent for the container. These are 'cylinder holding charges'. CBE&C, vide its Circular No. 643/34/2002- CX, dated 1-7-2002, has clarified that rental charges or cost of maintenance of reusable metal containers like cylinders etc. are to be included in assessable value. This view is correct as such rental charges and the sale of gas are so intrinsically connected that there can be no sale without such charges.
- (iv) Compulsory after sales warranty charges are includible as the sale goods and such charges are inseparable. However, optional service charges are not

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includable as there is no connection between the sale of goods and the optional service charges.

(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.

Question 11.

(a) State briefly whether the following service under the Finance Act, 1994 relating to service tax are taxable service.

- (i) Service provided in the State of Rajasthan by a person having a place of business in the State of Jammu and Kashmir.
- (ii) Service provided from India for use outside India
- (iii) Service provided from outside India and received in India by Individual otherwise than purpose of use in business or commerce.
- (iv) Service provided to an Export Oriented Unit.

(b) Explain distinguishing features between provisions of 'pilferage' and 'loss or destruction of goods' under Customs Act.

(c) Mr. Laxman, a manufacturer, purchased a raw material for ₹3,30,000 (inclusive of 10% VAT) and plant and machinery for ₹6,00,000 (VAT Nil). The manufacturing and other expenses (including building rent, wages etc.) are ₹4,40,000. He sales the resultant products at 80% above cost (VAT on sales is 4%). The plant and machinery is depreciated at 10% straight line. Compute the amount of VAT payable adopting the addition method.

[4+3+3]

Answer:

(a) The taxability of the following services are described as follows:

- (i) These are taxable services. Services rendered within India (except in the state of Jammu and Kashmir) are come under the service tax net, provided these services are taxable services.
- (ii) These services can be considered as export of services, which are exempted from the service tax liability.

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- (iii) Services in the nature of import are taxable if these are imported for the purpose of business or commerce. Services imported for the purpose of personal use by individuals are exempted from service tax.
- (iv) Service provided to export oriented undertaking is liable to service tax. Service rendered to EOU or supplies of services by EOU in domestic market is not presently exempt from service tax.

(b) Difference in sections 13 and 23 (1) can be summarized as follows:

Section 13 - Pilferage	Section 23 – Loss or destruction of goods
Pilferage means loss arising out of theft.	Such loss may arise by fire, natural calamity etc.
No duty is payable at all under section 13, but liability revives for duty if goods are restored.	Duty is payable under section 23 (1), but it may be remitted by Asst. Comm. of Customs. Thus, unless remitted, duty has to be paid under section 23 (1)
Pilferage should be before order for clearance is made.	Loss or destruction can be at any time before clearance.
Loss must be only due to pilferage.	Loss or destruction may be due to fire, accident etc., but not pilferage e.g., loss by leakage is covered under section 23.
Under section 13, normally duty is not paid. However, if duty is paid before examination of goods, refund can be claimed if goods are found to be pilfered during examination but before order for clearance are made.	Under section 23 (1), if duty is paid, then refund can be obtained only if remission is granted by Customs Authorities. Thus, remission under section 23 (1) is at the discretion of Customs Authorities. [of course, the discretion has to be exercised judiciously].
Section 13 is not applicable for warehoused goods.	Section 23 (1) is applicable for warehoused goods also [As goods transferred to warehouse are not 'cleared for home consumption'].

(c) Computation of Value Added and VAT

(Amount in ₹)

Depreciation on plant and machinery (10% on ₹6,00,000)	60,000
Manufacturing and other expenses	4,40,000
Total factor payments	5,00,000
Profit @80% of total cost (note)	6,40,000
Value Added	11,40,000
VAT @4% on Value added	45,600

Note:

Total cost = Material cost (net of VAT) + Factor payments = ₹3,00,000 + ₹5,00,000 = ₹8,00,000.