

Paper 11- Indirect Taxation

Answer to MTP_Intermediate_Syllabus 2012_Dec 2015_Set 2

The following table lists the learning objectives and the verbs that appear in the syllabus learning aims and examination questions:

	Learning objectives	Verbs used	Definition
LEVEL B	KNOWLEDGE What you are expected to know	List	Make a list of
		State	Express, fully or clearly, the details/facts
		Define	Give the exact meaning of
	COMPREHENSION What you are expected to understand	Describe	Communicate the key features of
		Distinguish	Highlight the differences between
		Explain	Make clear or intelligible/ state the meaning or purpose of
		Identify	Recognize, establish or select after consideration
		Illustrate	Use an example to describe or explain something
	APPLICATION How you are expected to apply your knowledge	Apply	Put to practical use
		Calculate	Ascertain or reckon mathematically
		Demonstrate	Prove with certainty or exhibit by practical means
		Prepare	Make or get ready for use
		Reconcile	Make or prove consistent/ compatible
		Solve	Find an answer to
		Tabulate	Arrange in a table
	ANALYSIS How you are expected to analyse the detail of what you have learned	Analyse	Examine in detail the structure of
		Categorise	Place into a defined class or division
		Compare and contrast	Show the similarities and/or differences between
	Construct	Build up or compile	
	Prioritise	Place in order of priority or sequence for action	
	Produce	Create or bring into existence	

Paper 11- Indirect Taxation

Time Allowed : 3 Hours

Full Marks : 100

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

All questions are compulsory. In question No. 1, all sub-questions are compulsory. In question Numbers 2 to 8, student may answer any two of the three sub-questions (a), (b) and (c). Wherever necessary, you may make suitable assumptions and state them clearly in your answer. Working notes should form part of the answer.

1. Answer the following questions with suitable reasons: [1×20=20]
- (a) State the time when Provisional Anti-Dumping Duty is imposed in customs.
 - (b) Whether Service provided from India with respect to immovable property situated abroad is called export of services?
 - (c) List out the items which will appear on the Concurrent List (list III) given in Schedule Seven of the Constitution.
 - (d) State the date for determination of rate of duty in case of goods cleared from warehouse.
 - (e) State the types of registration in VAT.
 - (f) State the taxable event under Custom Act in case of exportation.
 - (g) State the types of Drawback rates.
 - (h) Whether fees paid to Court or Tribunal subject to service tax?
 - (i) Jeevan Exporters exported 1,000 Kg of metal of FOB value of ₹ 2 lakhs. The rate of duty draw back on such exports is ₹ 120 per Kg. Market price of the goods is ₹ 80,000. Calculate the duty draw back receivable by Jeevan Exports.
 - (j) ABC Co. Ltd. filed half yearly service tax return on 24th April 2014. Later, during internal audit, it was discovered that there was short payment of ₹ 1 lakh. The mistake came to notice on 2nd July 2014. Advise ABC Co. Ltd. about the course of action.
 - (k) "Clinkers produced from lime stone is consumed within the factory of production of cement." — Whether it is captive consumption?
 - (l) State the tariff value of readymade garments if the same are not covered under section 4A of Central Excise Act.
 - (m) Whether light diesel oil is included in the definition of 'input' under Rule 2(k) of Cenvat Credit Rules, 2004.
 - (n) State the due date of payment of excise duty paid electronically through internet banking by an assessee availing SSI exemption.
 - (o) State the point of taxation where invoice has been issued prior to change in effective rate of tax, but the payment for the invoice is made after the change in effective rate of tax.
 - (p) Give an example of bundled service for the purpose of service tax.
 - (q) In case of zero rated sales in VAT, whether credit is available on tax paid on inputs.
 - (r) Whether charcoal is included in the list of 'goods of special importance' in the context of interstate trade.
 - (s) Define Arm's Length Price as per section 92F(ii) of Income-tax Act.
 - (t) State the meaning of 'Permanent Establishment' in the case of international taxation.

Answer of 1:

- (a) When there is a pending determination of margin of dumping, duty can be imposed on provisional basis. After dumping duty is finally determined, Central Government can reduce

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such duty and refund duty extra collected than that finally calculated. Such duty can be imposed upto 90 days prior to date of notification, if there is history of dumping which importer was aware or where serious injury is caused due to dumping.

- (b) Yes. Service provided from India with respect to immovable property situated abroad is called export of services.
- (c) Concurrent List (List-III) given in Schedule Seven of constitution: Both union and State Government can exercise power in respect of — Entry No.17A – Forest Income, Entry No. 25 – Education Income.
- (d) In the case of goods cleared from a warehouse under section 68, the date of presentation of the Ex-Bond clearance Bill of Entry for home consumption under that section.
- (e) There are two types of registration in VAT — (i) Compulsory Registration (ii) Voluntary Registration.
- (f) Taxable event in the case of exportation is when the vessel cross the territorial water of India.
- (g) Duty drawback rates are of following types – (a) All Industries Rate (b) Brand Rate and (c) Special Brand Rate.
- (h) No. Fees paid to Court or Tribunal for dispensation of justice will not be subject to service tax as these are excluded from definition of service.
- (i) Duty drawback eligibility is ₹ 1,20,000 (1,000 Kg. x ₹ 120 per Kg). However, as per section 76(1)(b) of Customs Act, Duty drawback shall not be allowed in respect of any goods, the market price of which is less than the amount of drawback due thereon. Hence, the exporter is not entitled to get any duty drawback.
- (j) ABC Co. Ltd. should pay amount of service tax with interest and file revised return as revised return can be filed within 90 days from the date of submission of the return under rule 7 of the Service Tax Rules, 1994.
- (k) Yes. Clinkers produced from lime stone is consumed within the factory of production of cement is captive consumption.
- (l) The tariff value of readymade garments if the same are not covered under section 4A of Central Excise Act is 30% of retail sale price.
- (m) Light diesel oil is excluded from the definition of 'input' under Rule 2(k) of Cenvat Credit Rules, 2004.
- (n) The due date of payment of excise duty paid electronically through internet banking by an assessee availing SSI exemption —
- For a quarter other than the quarter ending on 31st March — 6th day of month following that quarter.
 - For the quarter ending on 31st March — duty shall be paid by 31st March.
- (o) The point of taxation where invoice has been issued prior to change in effective rate of tax, but the payment for the invoice is made after the change in effective rate of tax is the date of payment.
- (p) Example of bundled service — Air transport services provided by airlines wherein, an element of transportation of passengers is combined with an element of provision of catering service on board.
- (q) Yes. In case of zero rated sales in VAT, credit is available on tax paid on inputs.
- (r) No. Charcoal is not included in the list of 'goods of special importance' in the context of interstate trade.
- (s) Arm's Length Price: As per section 92F(ii) of Income-tax Act, Arm's Length Price is the price applied (or proposed to be applied) when two unrelated persons enter into a transaction in uncontrolled conditions.

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(t) Permanent Establishment includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.

2. Answer any two:

[2×2=4]

- (a) State the purpose of the Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2000. 2
- (b) State the basic concept of Excise Duty. 2
- (c) State the administration policy of Service Tax. 2

Answer of 2(a):

The purpose of the Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2000: These rules have been framed to prescribe valuation methods where Retail Sale Price cannot be determined under Section 4A of the Central Excise Act, 1944.

Answer of 2(b):

Concept of Excise Duty-Excise duty is a duty on production or manufacture of excisable goods in India. The Central Government has power to levy excise duty since the subject matter is covered under Entry 84 of Union List.

The power to levy excise duty on alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics, vests with the State Government as the subject matter is covered under Entry 51 of the State List.

Answer of 2(c):

Service tax is administered by the Central Excise Department. Certain provisions of the Central Excise Act, 1944 have been made applicable to the Finance Act, 1994.

3. Answer any two:

[8×2=16]

(a)(i). A Ltd. has given a Turnkey Contract to B Ltd. for erection, installation and commissioning of a Central Air Conditioning Plant. The Central Excise Officer raises a demand for Excise Duty on B Ltd in respect of the installed plant. Examine as to whether the Excise Duty is payable on the Plant. 3

(ii). D Ltd., engaged in the manufacture of Machines (and not availing Small-Scale concession) sold a Machine to A Ltd. The Cum-Duty Sale Price of the Machine excluding VAT is ₹5,80,000. Rate of Excise Duty is 12%, Education Cess is 2% and Secondary Higher Education Cess is 1%. Sale Price includes the following Charges:

Particulars	₹
Warranty Charges	28,000
Secondary Packing	6,000
Trade Discount actually allowed	30,000
Design and Development Charges of Machine	20,000
Primary Packing	10,000
Cost of return fare of vehicles	5,000
Advertisement & Publicity charges borne by A Ltd.	16,000
Pre-Delivery Inspection Charges	22,000
After Sales Service Charges	18,000

Determine the Assessable Value of the machine for the purpose of Central Excise Duty. Provide notes in respect of the treatment for each of the items listed above. 5

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(b)(i). ABC Bank provides the following information for the month of June:

CENVAT Credit available on Inputs	2,50,000
CENVAT Credit available on Inputs Services	3,00,000
Service Tax liability before availing eligible CENVAT	10,00,000

Determine the amount of CENVAT Credit available to ABC Bank for the month of June, 2014 in view of Rule 6(3B) of Cenvat Credit Rules, 2004. Also determine the net service tax liability of the bank after availing the eligible CENVAT Credit. [1+1+2]

(ii). M/s PQR Ltd. was denied CENVAT Credit on the grounds that the documents produced by it for claiming CENVAT credit did not contain the information required therein. Discuss whether such a denial is right in provisions of the Central Excise Law. 4

(c)(i). Explain with reference to Central Excise Rules, 2002 —

1. Power to stop and search;

2. Power to detain or seize goods. [2+2]

(ii). C Ltd. is a manufacturer of tooth powder, which is a commodity notified u/s 4A of the Central Excise Act, 1944 and the notified percentage of abatement is 35%. It sells tooth powder in cans to various retail shop-keepers and gives 2 cans free along with purchase of every 100 cans. The MRP indicated on each can is ₹ 150 per cans. The transaction value is ₹130 per can. During a month, M/s. C Ltd. sold 1,00,000 cans and gave away 2,000 cans free to the retail shop-keepers. Compute the amount of excise duty payable by C Ltd. Excise Duty is 12%. 4

Answer of 3(a)(i):

- I. As per Sec 3 of Central Excise Act, 1944, Excise Duty shall get attracted on all excisable goods manufactured or produced in India.
- II. The term "Goods" represent all products which satisfy the following 2 conditions -
 - Movability at the time of creation of the product.
 - Marketability.
- III. The goods should be capable of being moved from one place to another without causing substantial damage.

In the given case, the product is Central Air Conditioning Plant. Though the individual components of such AC Plant are movable, product as such is not movable at the time of its creation. [Virdi Brothers 207 ELT 321 (SC)]

In the given case, A Ltd. is not liable for Excise Duty, as the product is not goods.

Answer of 3(a)(ii):

Calculation of Assessable Value of the Machine u/s 4 of Central Excise Act, 1944

Particulars	₹	Reasons
Cum Duty Price	5,80,000	Assumed to be all inclusive and all adjusted price.
Less: Trade Discount	-	Note 2
Less: Cost of Return Fare of Vehicles	5,000	All expenses after the place of removal shall be excluded from AV (Assessable Value). When cost of onward journey is excluded as per Rule 5, cost of return journey shall also be excluded from AV.

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Net Cum-Duty Price	5,75,000	
Excise Duty Liability	63,252	$(5,75,000 \times 12.36) \div 112.36$
Assessable value	5,11,748	

Working Notes: Adjustments are not made for the following heads based on the reasoning given therein -

1. Warranty Charges, Secondary Packing and Primary Packing are specifically included in Assessable Value u/s 4 of the Central Excise Act.
2. Trade Discount is deductible on the assumption that it is part of the Manufacturer's policy to allow trade discount in ordinary course of his business. Since it is assumed that the cum-duty price is all inclusive and all adjusted price, it is assumed that the trade discount is already deducted in the price given.
3. Design and Development expenses are incurred in relation to manufacture, and hence includible in AV.
4. Advertisement, Publicity and After-Sales Service charges are specifically included u/s 4.
5. Pre-Delivery Inspection Charges are assumed to be incurred as per the contract before removal from Factory, and hence includible in Assessable Value.

Answer of 3(b)(i):

According to Rule 6(3B) of Cenvat Credit Rules, 2004, a banking company and a financial institution including a non-banking financial company engaged in providing services by way of extending deposits, loans or advances, shall pay for every month, an amount equal to 50% of the CENVAT credit available on inputs and input service in that month. Therefore, a banking company is entitled to avail only 50% of CENVAT credit in respect of inputs and input services.

In view of above statutory provisions, CENVAT Credit available to ABC bank for the month of June and its net service tax liability will be computed as under:

CENVAT Credit available on Inputs	2,50,000
Less: Payment of 50% of CENVAT Credit available on Input by virtue of Rule 6(3B). It effectively means 50% of available CENVAT Credit is to be disallowed.	1,25,000
Net CENVAT Credit available on Inputs	1,25,000
CENVAT Credit available on input Services	3,00,000
Less: Payment of 50% of CENVAT Credit available on Input Services by virtue of Rule 6(3B).	1,50,000
Net CENVAT Credit available on Input Services	1,50,000

Determination of Net Service Tax liability of ABC Bank for the month of June:

Service Tax liability of bank before availing eligible CENVAT Credit	10,00,000
Less: Net Eligible CENVAT Credit available on Inputs	1,25,000
Less: Net/Eligible CENVAT Credit available on Input Services	1,50,000
Net Service Tax liability of bank after availing eligible CENVAT Credit	7,25,000

Answer of 3(b)(ii):

According to Rule 9(2) of Cenvat Credit Rules, 2004, no CENVAT credit under rule 9 shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the documents produced for claiming CENVAT credit.

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However, the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, on being satisfied that the goods or services covered by the said document have been received and accounted for in the books of the accounts of the receiver, may allow the CENVAT credit even if the said document does not contain all the particulars.

However, the said documents must contain the following particulars -

1. the details of duty or service tax payable;
2. description of the goods or taxable service;
3. assessable value;
4. central excise or service tax registration number of the person issuing the invoice;
5. name and address of the factory or warehouse or premises of first or second stage dealers or provider of output service.

Answer of 3(c)(i):

- (1) Power to stop and search [Rule 23 of the Central Excise Rules, 2002]: Any Central Excise Officer, may search any conveyance carrying excisable goods in respect of which he has reason to believe that the goods are being carried with the intention of evading duty.
- (2) Power to detain or seize goods [Rule 24]: If a Central Excise Officer, has reason to believe that-
 - o any goods, which are liable to excise duty but no duty has been paid thereon, or
 - o the said goods were removed with the intention of evading the duty payable thereon, the Central Excise Officer may detain or seize such goods.

Answer of 3(c)(ii):

It has been clarified vide *Circular No. 938/28/2010-CX., dated 29-11-2010* that quantity discount, bonuses etc. are applicable for the valuation of goods under section 4 of the Central Excise Act, 1944 and not in case of goods valued u/s 4A. It was held that sale is not a necessary condition for charging to excise duty; duty becomes payable (unless otherwise exempted) in respect of every removal of excisable goods.

In the present case, the sale is for the gross quantity (1,02,000) at the net price (₹ 130 per can on 1 lakh cans) and the claimed free supply (2,000 cans) is not meant for the ultimate customer; and such quantity claimed to be given free (2,000 cans) also carries MRP. Therefore, duty is to be discharged on the entire quantity including goods covered as "the quantity discount" i.e. 1,02,000 cans on the basis of valued arrived at under Section 4A after giving the abatement provided for. Accordingly, the computation of duty payable is as shown below:

No. of cans on which duty payable	(A)	1,02,000
Retail Sale Price or MRP per can	(B)	150
Retail Sale Price of all cans on which duty payable	(C) = (A) x (B)	1,53,00,000
Less: Abatement @ 35%	(D) = (C) x 35%	53,55,000
Value (net of abatement) (E= C-D)		99,45,000

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Excise duty @ 12.36% (F = E * 12.36%)	12,29,202
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4. Answer any two: [6 x 2 =12]
- (a)(i). Mr. P of Kolkata imported a machinery on 1-1-2014 (value ₹ 2 lakh and duty ₹20,600) from Mr. B of US. Later, he found that machinery was defective and therefore, he sent back that machinery for repairs, etc. abroad. The cost of insurance and freight from Kolkata to US is ₹10,000. Repair work was carried out on machinery by Mr. B and materials worth ₹15,000 and labour, etc. worth ₹8,000 was borne by Mr. B. The cost of insurance and freight for repaired goods from US to Kolkata is ₹12,000. Determine the duty payable at the time of re-import on 1-1-2015, if rate of duty is 10.3%. Department claims that machinery will be liable to duty on full normal value of ₹2,20,000 (market price on 1-1-2015). 3
- (ii). Determine the dates of commencement of the definitive anti-dumping duty in the following cases under section 9A of the Customs Tariff Act, 1975 and the Rules made thereunder :
1. Where no provisional duty is imposed;
 2. Where provisional duty is imposed ;
 3. Where anti-dumping duty is imposed retrospectively from a date prior to the date of imposition of provisional duty. [1+1+1]
- (b). From the following particulars, determine the assessable value of the imported equipment giving explanation for each item: (₹)
1. FOB cost of equipment (Japanese Yen) 2,00,000 Yen
 2. Freight charges in Japanese Yen 20,000 Yen
 3. Charges for development connected to equipment paid in India ₹ 60,000
 4. Insurance charge paid in India for transportation from Japan ₹ 15,000
 5. Commission payable to agent in India ₹ 20,000
- Exchange rate as per RBI is 1 Yen = ₹ 0.45; Exchange rate as per CBEC is 1 Yen = ₹ 0.50.
Landing charges: one per cent of CIF cost. 6
- (c). Ms. Roy, a resident of India and carrying out her profession in USA, returned back to India after 2 years of stay and brought -
1. Used personal effects (including jewellery ₹1,10,000): ₹ 1,60,000 ;
 2. Professional equipments : ₹ 1,20,000 (including personal computer : ₹ 45,000)
 3. Used household articles : ₹ 25,000 ;
- Determine duty payable by Ms. Roy.
Assume that Ms. Roy is not eligible for concession available on termination of work under Rule 5 of the Baggage Rules, 1998 and concession on transfer of residence under Rule 8. 6

Answer of 4(a)(i):

In view of section 20 of the Customs Act, re-import is also liable to duty. However, as per concession granted in this behalf, in case of re-import after repairs abroad, the duty payable would be that on value comprising of 'fair cost of repairs (even if not borne by importer)' plus Insurance/freight (both ways). Hence, the duty would be —

$$\text{Value} = ₹ 10,000 + ₹ 15,000 + ₹ 8,000 + ₹ 12,000 = ₹ 45,000;$$

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Duty = ₹ 45,000 X 10.3% = ₹ 4,635

Answer of 4(a)(ii):

The date of commencement of anti-dumping duty in the following cases shall be as under –

Case	Date of commencement	Example
1. Where no provisional duty is imposed	Date on which notification levying such duty is published.	For example, if notification levying such duty is published on 17-12-2014, then, duty shall come into effect on 17-12-2014. It shall come into end on 16-12-2019, unless extended. If review is started before 16-12-2019, but is pending, duty may continue upto 16-12-2020.
2. Where provisional duty is imposed	Date on which notification imposing provisional duty is issued	Example: If notification levying such provisional duty is published on 17-12-2014, then, duty shall come into effect on 17-12-2014.
3. Retrospective imposition	Date specified in notification but upto 90 days prior to date of issue of notification	Example: If notification levying such provisional duty is published on 15-11-2014, then, duty may be imposed retrospectively prior to 15-11-2014 but not earlier than 90 days prior to 15-11-2014 i.e., retrospective duty may be imposed at the earliest w.e.f. 17-08-2014.

Answer of 4(b):

The answer is as follows -

FOB Price	Yen 2,00,000.00
Exchange rate notified by the CBEC (in force on date of presentation of bill of entry)	₹ 0.50
	₹
FOB price in Indian ₹	1,00,000.00
Add: Local agent's commission [Includible]	20,000.00
Add: Development work in India [Development work other than in India is includible; but, work done in India is post-import activity and not includible.]	Not includible
Add: Cost of transport [Actual: 20,000 Yen X 0.5]	10,000.00
Add: Insurance	15,000.00
Assessable Value	
CIF	1,45,000.00
Add: Loading, unloading and handling charges @ 1% of CIF	1,450.00
Assessable Value	1,46,450.00

Answer of 4(c):

Ms. Roy is eligible for allowance under Rules 3, 5 (professional equipments) and 6 (jewellery) of the

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Baggage Rules.

Particulars	Rule 3	Rule 5	Rule 6
Used personal effects (jewellery claimed as exempt under Rule 6)	Exempt	-	1,10,000.00
Professional equipments (personal computer is not professional equipment, but, is covered by GFA under Rule 3; other professional equipments are covered by Rule 5)	45,000.00	75,000.00	
Used household articles - Covered by Allowance under Rule 5	-	25,000.00	-
Total	45,000.00	1,00,000.00	1,10,000.00
Less : Duty Free Allowance [Under Rule 5 : ₹ 12,000 for household articles and ₹ 40,000 for professional equipments, as stay is more than 6 months. Further, Allowance under Rule 6 is available as stay abroad is more than 1 year.]	45,000.00	52,000.00	1,00,000.00
Dutiable Value	—	48,000.00	10,000.00
Total dutiable value			58,000.00
Duty @ 36.05%			20,909.00

- 4. Answer any two. [4 x 2 = 8]**
- (a) M/s Max Ltd. claimed duty drawback in respect of its export products. Over 97% of the inputs by weight of the product were procured indigenously and were not excisable. All industry rates under the Customs and Central Excise Duties Drawback Rules, 1995 were fixed taking into account the incidence of customs duty on imported product inputs. Explain briefly with reference to Rule 3(1)(ii) of the said rules whether the claim of M/s Max will merit consideration by the authorities. 4
- (b) State the role played by DGFT in executing Foreign Trade Policy. 4
- (c) State the objectives of the SEZ Act, 2005. 4

Answer of 5(a):

Drawback is allowed under Rule 3 of the Customs and Central Excise Duties Drawback Rules, 1995 based on average quantity or value of the imported materials or excisable materials used for production or manufacture in India of a particular class of goods. Hence, such drawback at average rate viz. All Industry Rate is allowed even if some non-dutiable or non-duty-paid inputs are used in manufacture of export goods.

But, if no duties have been paid on imported/excisable material, then, Rule 3 itself disallows any drawback. In this case, 97% of inputs were non-excisable i.e., not liable to excise duty. Merely because duty is paid on 3% of the inputs, it cannot be said that duty-paid materials have been used so as to allow drawback at average rates under Rule 3. Hence, drawback under Rule 3 will not be allowed to M/s. Max.

Answer of 5(b):

Execution of FTP - DGFT (Director General of Foreign Trade) acts as advisor and executor:

1. DGFT: The Central Government may appoint any person to be the Director General of Foreign Trade (DGFT) for the purposes of this Act.

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2. Advisory and Executory Role : The DGFT shall —
 - ◆ advise the Central Government in the formulation of the FTP ; and
 - ◆ shall be responsible for carrying out that policy.
3. Delegation of powers: The Central Government may, by Order published in the Official Gazette, delegate its powers to DGFT or any other subordinate officer.

Answer of 5(c):

Objectives of the SEZ Act, 2005:

1. Creation of employment opportunities,
2. Development of infrastructure facilities,
3. Providing exemption from duties and taxes on procurement,
4. Export of goods and services without taxes,
5. Generation of additional economic activity,
6. Promotion of exports of goods and services,
7. Promotion of investment from domestic and foreign sources
8. Single window clearance.

[It is expected that this will trigger a large flow of foreign and domestic investment in SEZs, in infrastructure and productive capacity, leading to generation of additional economic activity and creation of employment opportunities.]

6. Answer any two:

[10×2=20]

(a)(i). Rini Sugar Mills is engaged in the manufacture of sugar. Government of India had issued directions under the Sugar Control Order for sugar companies to maintain buffer stock of sugar of certain quantity for a specified period. In order to compensate the sugar mill the government had extended buffer stock subsidy towards storage, interest and insurance charges in respect of the buffer stock of sugar actually held by the sugar mill. The department has issued a show cause notice to the assessee raising a demand of service tax on the ground that the amount received by the sugar mill as buffer subsidy is covered under the taxable service of 'storage and warehousing'. Discuss whether the action of the department is sustainable in law. 4

(ii). DBC Ltd. is engaged in providing taxable services under the Finance Act, 1994. For the half year ending on 31-3-2014, it furnished the return on 20-6-2014. On the basis of information provided answer the following :

1. Specify the due date and form for filing the return.
2. Compute the amount of late fee payable by DBC Ltd., under the Finance Act, 1994 and Rules made thereunder. [2+2]

(iii). State few items which are excluded from the definition of 'service'. 2

(b)(i). TLT Industries furnishes the details of its activities undertaken in the month of May, 2014 as under (Amounts are exclusive of service tax):

S.No.	Particulars	Amount (₹)
1.	Supply of farm labour	60,000
2.	Warehousing of refined vegetable oil	1,30,000
3.	Sale of wheat on commission basis	60,000
4.	Hiring of trucks for transport of minerals	2,50,000
5.	Leasing of vacant land to a stud farm	40,000

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6.	Renting of farmhouse for marriage and birthday parties	45,000
7.	Dehusking of paddy in rice mill	30,000

Compute the service tax liability of company for the month of May, 2014.

Assume that the point of taxation in respect of all the activities falls in the month of May, 2014 itself. Company had paid service tax ₹ 3,18,000 during the Financial Year 2013-14.

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(ii). State few areas which are covered by the ACES (Automation of Central Excise and Service Tax). 2

(c)(i). Super Ltd., located in Mumbai (India), receives taxable services from Best Ltd., of USA on 18-10-2014. The relevant invoice for \$ 2,00,000 is raised by Best Ltd., on 20-11-2014. Assuming that Super Ltd. makes the above mentioned payment on the dates as indicated in the following table, determine the point of taxation under the Point of Taxation Rules, 2011 in each case giving reasons for your answer :

CASE I: 10-2-2015

CASE II: 15-04-2015.

[2+2]

(ii). During the year ended 31-3-2015, Anil & Co. (partnership firm), running a coaching centre, has collected a sum of ₹ 10.2 lakhs as service tax. ₹ 70,000 was met through Cenvat credit and the balance was paid by cheque on various dates. The details pertaining to the quarter ended 30-9-2015 are as under (all sums exclusive of service tax):

Particulars	Amount (₹)
Value of free coaching rendered	30,000
Coaching fees collected from students	14,50,000
Advance received from a college for coaching their students on 30-9-2015.	3,00,000

Determine the service tax liability for the quarter and indicate the date by which the service tax has to be remitted by the assessee. [3+1]

(iii). Discuss whether services related to 'post mortem' is included in the negative list of services. 2

Answer of 6(a)(i):

On similar facts, it was held in CCEx. v. Nahar Industrial Enterprises Ltd. [2010] 29 STT 172 (P&H) that:

- (i) Since ownership of stock of sugar, kept at directions of Government under the law, continued to vest with the assessee-mill, hence, storage was on behalf of assessee himself. Hence, it was a case of self-service.
- (ii) No services were provided to Government.
- (iii) Even otherwise, subsidy was received not for services provided to Government. There was no contractual relationship between Government and assessee as to provision of service. The flow of subsidy was not due to any reciprocity.
- (iv) Further, as per Rule 6(2)(vii) of the Service Tax (Determination of Value) Rules, 2006, subsidies and grant received from Government not directly affecting the value of service shall not form part of value.

Hence, the action of the Department is not correct in law.

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Answer of 6(a)(ii):

1. Return is to be filed in Form ST-3 by 25th April, 2014.
2. Actual date of submission is 20-6-2014 i.e., there is delay of 56 days (20-6-2014 — 25-4-2014).

The late fee payable = Lower of the following -

- ₹ 1,000 + ₹ 100 X No. of days in excess of 30 days viz. 26 days = ₹ 3,600;
- Amount specified in section 70 of the Finance Act, 1994 viz. ₹ 20,000

Hence, late fee payable = ₹ 3,600, being lower of the two sums above.

Answer of 6(a)(iii):

Following items are excluded from the definition of 'service':

1. Mere transfer of title in goods and immovable property by way of sale, gift or in any other manner.
2. Transactions which are merely 'deemed sale of goods' under Article 366(29A) of Constitution.
3. Transactions in money or actionable claim.
4. Services provided by employee to employer.
5. Fees paid to Court or Tribunals for dispensation of justice.
6. Duty performed by MP, MLA, persons holding constitutional posts etc.

Answer of 6(b)(i):

Since the company paid a service tax of ₹ 3,18,000 during the preceding financial year, it is not eligible for Small Service Provider's exemption under Notification No. 33/2012-ST., as the turnover last year was exceeding ₹ 10 lakhs.

The amount of service tax payable is as follows —

s. No.	Particulars	Treatment	Amount (₹)
1.	Supply of farm labour	Falls under negative list entry under Section 66D(d) of the Finance Act, 1994 [Agricultural Services] - Not liable to service tax	Negative List
2.	Warehousing of refined vegetable oil	Refined Vegetable Oil is not 'agricultural produce'; hence, warehousing thereof is not in negative list under Section 66D(d) - It is therefore, liable to service tax.	1,30,000
3.	Sale of wheat on commission basis	Wheat is agricultural produce; activity of sale of wheat on commission basis falls under negative list under Section 66D(d)	Negative List
4.	Hiring of trucks for transport of minerals	As per Entry 22 of Not. No. 25/2012-ST, services by way of giving on hire to a goods transport agency, a means of transportation of goods shall be exempt from service tax. <i>It is clear that truck has been given on hire to a 'goods transport agency'.</i>	Exempt

Answer to MTP_Intermediate_Syllabus 2012_Dec 2015_Set 2

5.	Leasing of vacant land to a stud farm	Leasing of vacant land, with or without incidental structure for its use, for purposes of agriculture falls under negative list. However, definition of agriculture does not cover 'rearing of horses'. Since 'stud farm' is used for rearing of horses, leasing of vacant land therefore is not in negative list and is liable to service tax.	40,000
6.	Renting of farmhouse for marriage and birthday parties	Since the purpose is not 'agriculture', hence, said renting is liable to service tax.	45,000
7.	Dehusking of paddy in rice mill	Dehusking of paddy is a process that is generally not carried out at farm and is carried out at rice mill and, therefore, the same is not in negative list. However, the same is exempt from service tax if carried out on job-work basis under Entry 30 of the Notification No. 25/2012-ST.	Exempt, assuming carried out on job-work basis
Taxable Value (assumed amounts excluding service tax)			2,15,000
Service Tax @ 12.36%			26,574

Answer of 6(b)(ii):

ACES covers automation of major processes of Central excise and service tax —

1. registration,
2. returns,
3. accounting,
4. refunds,
5. dispute resolution,
6. audit,
7. provisional assessment,
8. exports,
9. claims,
10. intimations and
11. permissions.

Answer of 6(c)(i):

Since the service is provided by a Best Ltd. located in a non-taxable territory viz. USA to M/s. Super Ltd. Located in Mumbai (India) (taxable territory), hence, the person liable to pay service tax shall be the recipient of service viz. Super Ltd. under reverse charge method under Rule 2(1)(d) of the Service Tax Rules, 1994.

As per Rule 7 of the PoT Rules, 2011, the PoT shall be -

Case	Date of payment	PoT	Reason
I.	10-2-2015	10-2-2015	Since payment is made within 3 months from date of invoice viz. within 20-11-2014 + 3 months = 20-2-2015, hence, PoT as per Rule 7 = Date of Payment.
II.	15-4-2015	21-2-2015	Since payment is not made within 3 months from date of invoice viz. not within 20-11-2014 + 3 months = not by 20-2-2015, hence, PoT as per first proviso to Rule 7 = Date immediately following 20-2-2015 = 21-2-2015.

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Answer of 6(c)(ii):

Since the service tax paid during the last year exceeds ₹ 10 lakhs, it is reasonable to assume that Anil & Co. is not eligible for option under Rule 6(1) of the Service Tax Rules, 1994 to pay service tax on receipt basis, as the value of services provided during the preceding year would surely be higher than ₹ 50 lakhs. The computations are as follows -

Particulars	Amount (₹)
Value of free coaching rendered (free services are not taxable)	NIL
Coaching fees collected from students (taxable)	14,50,000
Advance received from a college for coaching their students on 30-9-2015	3,00,000
[PoT = Date of Invoice or Date of receipt of payment, whichever is earlier = 30-9-2015. Hence, the service tax shall be payable in the quarter ended September 2015]	
Taxable Value	17,50,000
Service Tax @ 12.36%	2,16,300
Due date for payment is 6-10-2015: Since e-payment is mandatory, due date for e-payment is 6-10-2015.	

Answer of 6(c)(iii):

The following are covered within the negative list:

- funeral, burial, crematorium or mortuary services
- including transportation of the deceased.

Word 'mortuary' means "A building (or room) where dead bodies are kept before burial or cremation". It also means "Of or relating to or characteristic of death". Hence, it appears that post-mortem services also fall within negative list.

7. Answer any two:

[6×2=12]

(a)(i). Mr. X, a dealer located in the State of Maharashtra, dealing in machinery used in rolling mills furnishes following information for the financial year 2014-15 - (i) Total Inter-state Sales during the financial year (CST not shown separately) - ₹ 2,29,50,000 (ii) Trade Commission for which credit notes have been issued separately - ₹ 5,78,125 (iii) Freight and Transportation charges charged separately in invoice - ₹ 4,00,000 (iv) Freight charges included in value but not shown separately - ₹ 2,00,000 (v) Insurance for transport of machinery upto destination - ₹ 75,000 (vi) Installation and commissioning charges levied separately in invoice - ₹ 1,00,000 (vii) The buyers have issued C forms in respect of machinery bought by them from Mr X. Compute the tax liability under CST Act. 4

(ii). State the restrictions in availing input tax credit in case of stock transfer to another state. 2

(b) The following information relates to purchases and sales of Prism Ltd. for the month of May, 2014:

	₹
Purchases for resale within the State	7,00,000

Answer to MTP_Intermediate_Syllabus 2012_Dec 2015_Set 2

Purchases from registered dealers who opted for composition scheme	4,00,000
Purchases to be used as consumable stores for manufacture of taxable goods	6,00,000
Purchases of goods where invoices does not show the amount of taxes separately	5,00,000
Purchases of goods for personal consumption	2,00,000
Purchases of capital goods (not eligible for input credit)	5,50,000
Purchases of capital goods (eligible for input credit)	5,76,000

Sales made within the State during the month of May, 2014 was ₹ 50,00,000 on which VAT @ 4% was payable. The input VAT credit on eligible capital goods is available in 24 equal monthly installments. Assuming that all purchases given above are exclusive of VAT @ 12.5%, calculate:

- (i) The amount of input tax credit available for the month of May, 2014.
- (ii) VAT payable for the month of May, 2014.
- (iii) Input tax credit carried forward.

6

(c) State the cases where no input tax credit is available to the dealers in VAT.

6

Answer of 7(a)(i):

	₹
Gross Sales Turnover (including CST)	2,29,50,000
Less—	
(i) Trade Commission	5,78,125
(ii) Freight & transportation charged separately	4,00,000
(iii) Installation and Commissioning	1,00,000
Aggregate Sale Price for CST	2,18,71,875
Less - CST payable - $(2,18,71,875 \times 2)/102$	4,28,860
Turnover for year 2013-14	2,14,43,015

Answer of 7(a)(ii):

Restriction on input tax credit in case of stock transfer - If the final products are transferred to another State as stock transfer or branch transfer, input credit availed will have to be reversed, which is in excess of 2%. For example, if tax paid on inputs is 12.5%, credit of 10.5% is available. If tax paid on inputs was 5%, input tax credit of 3% is available.

Answer of 7(b):

(A) Calculation of Vat Credit Available

1. Purchases for resale within the State - ₹ 7,00,000 - VAT paid @ 12.5% - ₹ 87,500.
2. Purchases from registered dealers who opted for composition scheme - No VAT credit available
3. Purchases to be used as consumable stores for manufacture of taxable goods - ₹ 6,00,000. VAT paid @ 12.5% - ₹ 75,000
4. Purchases of goods where invoices does not show the amount of taxes separately - No VAT credit available
5. Purchases of goods for personal consumption - - No VAT credit available
6. Purchases of capital goods (not eligible for input credit) - No VAT credit available
7. Purchases of capital goods (eligible for input credit) - ₹ 5,76,000. Vat paid @ 12.5% - ₹ 72,000. VAT Credit on capital goods is available in 24 equal monthly installments. Hence, VAT credit for May, 2014 will be ₹ 3,000.

Answer to MTP_Intermediate_Syllabus 2012_Dec 2015_Set 2

Hence, total Vat Credit available - ₹ 87,500 + ₹ 75,000 + ₹ 3,000 = ₹ 1,65,500.

(B) Calculation of Gross Vat Payable:

Sales ₹ 50,00,000 - VAT @ 4%. Hence, VAT payable ₹ 2,00,000.

(C) Net VAT payable by cash:

VAT payable by cash = B - A = ₹ 34,500.

Since Vat is payable by cash, there is no Vat credit which can be carried forward.

Answer of 7(c):

In following cases, the dealer is not entitled to input credit - (1) Inputs used in exempted final products (2) Final product not sold but given as free sample (3) Inputs lost/damaged/stolen before use. If credit was availed, it will have to be reversed.

It can be said that following purchases are not eligible for VAT credit—

1. Inter-state purchases i.e. goods purchased from outside the State
2. Goods imported (obvious, since there will be no VAT invoice)
3. Goods purchased from unregistered dealer (as he cannot charge VAT)
4. Goods purchased from dealer who is paying VAT under composition scheme (as he cannot charge VAT separately in invoice)
5. Purchase where final goods sold are exempt from VAT.
6. Final product is given free i.e. goods not sold
7. Inputs stolen/lost/damaged before use/sale as there is no sale.
8. Proper Tax Invoice showing VAT separately is not available
9. Articles in negative list like automobiles, fuel, petroleum products, tobacco, certain capital goods etc. as specified in relevant State VAT law i.e. items in negative list.

8. Answer any two:

[4×2=8]

(a)(i). An Indian company had placed purchase order for import of cement machinery from Germany. The contract envisaged that two engineers from Germany will be deputed to India for erection, commissioning and commissioning of the equipment in India. The German company will charge separately for such services. Advise whether the amount paid to foreign company will be considered as 'fees for technical services'.

(ii). Flip Laboratories Ltd. is 100% subsidiary of a US Company. The parent company sales its products to unrelated buyers at US dollars 150 per unit. Compute the Arms Length Price (ALP) in following two situations –

1. The product is sold to Indian subsidiary at 120 USD per piece;
2. The product is sold to Indian subsidiary at 180 USD per unit.

[2+2]

(b) Write a short note on — Comparable Uncontrolled Price Method.

4

(c) State the procedure to determine Arm's Length Price in the context of international taxation.

4

Answer of 8(a)(i):

This transaction is directly linked with the installation of machinery supplied by the same manufacturer from outside India. It is not a separate transaction. Hence, this will not be considered as 'fees for technical services'.

Answer to MTP_Intermediate_Syllabus 2012_Dec 2015_Set 2

Answer of 8(a)(ii):

1. The price is accepted as with the price, profit of Indian subsidiary will be higher
2. In this case, the price taken for computing income of Indian subsidiary is US dollars 150 per unit, as accepting price of 180 US dollars means the profit of Indian subsidiary will be lower.

Answer of 8(b):

Comparable Uncontrolled Price Method: This method is applicable when price charged for property or services transferred in uncontrolled transaction are available (in short price to unrelated buyer at same commercial level).

Under this method, the price charged or paid for property transferred or services provided in a comparable uncontrolled transaction, (*i.e.*, a transaction between enterprises other than associated enterprises whether resident or non-resident) or a number of such transactions, is identified.

The price is adjusted to account for differences, if any, between the international transaction and the comparable uncontrolled transactions or between the enterprises entering into such transactions, which could materially affect the price in the open market. The adjusted price arrived at is taken to be an arm's length price (ALP).

Answer of 8(c):

Determination of arm's length price by Assessing Officer: The Assessing Officer may determine the arm's length price, in a proceeding for assessment of income, if the Assessing Officer is of the 'opinion' that the arm's length price charged or paid in an international transaction has not been determined in accordance with section 92C(1) or 92C(2) of Income Tax Act or assessee has not kept the prescribed information and document relating to an international transaction; or information or data used for consulting the arm's length price is not reliable or correct; or assessee has failed to furnish, within the time specified any information or document which was required to be furnished by the Assessing Officer [Sec. 92C(3) of Income Tax Act].

Burden of proof is on assessee to prove that the transaction is at arm's length price. However, if assessing officer decides to change the transaction price, burden is on him to prove the Arm's Length Price (ALP) determined by him.