

Paper 11 - Indirect Taxation

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Full Marks: 100

Time allowed: 3 Hours

1. Answer the following questions:

(A) Multiple choice questions

[7x2=14]

- (i) CESTAT Tribunal has passed an order on issue relating to classification of goods. An assessee is aggrieved with the order. Where should he file the appeal?
- (a) Supreme Court
(b) High Court
(c) Any where
- (ii) Goods not eligible for SSI concession
- (a) Pan masala
(b) Tobacco Products
(c) Both (a) and (b)
(d) None of (a) and (b)
- (iii) Which of the following are eligible for input tax credit?
- (a) Liquor
(b) Raw materials
(c) Petrol
(d) None
- (iv) Which of the following is not a declared goods under CST?
- (a) Cereals
(b) Hides and skin
(c) Cotton yarn
(d) Cigarettes
- (v) A Ltd. being an interior decorator received in advance money from his customer ₹ 30,000 in the month of July for which he works in the month of September. What is the POT?
- (a) July
(b) September
(c) August
(d) October
- (vi) An architect received fees of ₹ 4,48,500 after TDS of ₹ 51,500. Service Tax is payable on:
- (a) ₹4,48,500
(b) ₹ 51,500
(c) ₹ 5,00,000
- (vii) An importer imported some goods @ \$10000 on CIF. Following Dollar rates on the date of presentation of BOE is given. What is the exchange rate?
- (a) Inter Bank closing Rate ₹ 43.38 per dollar
(b) RBI floor rate 1\$= ₹ 43.37
(c) CBEC under Customs Act 1\$= ₹ 43.55
(d) Rate at which bank has ready payment from importer 1\$= ₹ 43.58

Answer:

(i) a

- (ii) c
- (iii) b
- (iv) d
- (v) a
- (vi) c
- (vii) c

(B) Say Yes or No for the following questions:

[6x1=6]

- (a) Subsidy given by government to manufacturer forms part of selling price.
- (b) Service tax is payable if consideration/value is received in kind.
- (c) Services Tax Law extends to the whole of India except Jammu & Kashmir.
- (d) Customs duty is not levied on goods Derelict, Wreck.
- (e) MRP provisions are over riding provisions.
- a) VAT can be imposed on the value of service.

Answer:

- (i) No
- (ii) Yes
- (iii) Yes
- (iv) No
- (v) Yes
- (vi) No.

(C) Match the following

[5x1=5]

Column A	Column B
1. ICD	A. Branch Transfer
2. MEIS	B. Warehousing of imported goods
3. RCMC	C. Inland Container Depot
4. Yellow colour BOE	D. Registration Cum Membership Certificate
5. Form F	E. Merchandise Exports from India Scheme

Answer:

- 1. C.
- 2. E.
- 3. D.
- 4. B.
- 5. A.

Answer any FIVE questions from the following each question carries 15 marks

2. (a) Explain briefly Compulsory Registration and Voluntary Registration under VAT.

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Answer:

Compulsory Registration:

If an assess fails to obtain registration under the applicable VAT Act, he may be registered compulsorily by the Commissioner. The Commissioner may assess the tax due from such person on the basis of evidence available with him and thereafter the concerned assessee is bound to pay such amount of tax. Further, failure to get registered shall result in attracting

default penalty and forfeiture of eligibility to set of all Input Tax Credit related to the period prior to the compulsory registration.

Voluntary registration:

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

(b) Mr. Raja Ram, a first stage dealer in packing machinery in the state of Tamil Nadu furnishes the following data:

- i) Total interstate sales during F.Y. 2015-16 (CST not shown separately) ₹ 92,50,000**
- ii) Above Sales include—**
Excise Duty ₹ 9,00,000; Freight (of this ₹ 50,000 is not shown separately in invoice) ₹ 1,50,000; Insurance charges incurred prior to delivery of goods ₹ 32,000; Installation and Commissioning charges shown separately ₹ 15,000; Determine the turnover and CST payable, assuming that all transactions were covered by valid 'C' forms. 7

Answer:

	₹
i) Total Inter State Sales	92,50,000
Less: Freight shown separately in invoice (₹ 1,50,000 – ₹ 50,000)	1,00,000
Installation and commissioning shown separately	15,000
Aggregate Turnover	91,35,000
ii) CST = ₹ 91,35,000 x 2 / 102	1,79,118
Taxable Turnover = ₹ 91,35,000 x 100/102	89,55,882

3. (a) M/s XYZ Ltd. sold machinery to Mr. K at a price of ₹ 5 lacs on 15.6.2015 and the same was removed from the factory at Kolkata. The rate of Excise Duty applicable is 12.5% on the date of removal. Mr. K refused to take delivery of the machine when it reached his destination. In the meantime M/s XYZ Ltd. increased the prices of similar type of machinery to ₹ 6 lacs w.e.f 16.6.2015. The machinery refused by Mr. K has been sold on 20.7.2015 to Mr. L at the revised price of ₹ 6 lacs. The Excise Duty rate applicable is 13.5% w.e.f. 1.7.2015. Explain the following with reasons:

- i) What is the value to be taken as Assessable value?**
- ii) What is the Rate of Excise Duty applicable and duty payable on above transaction?**
- iii) The C.E.O is demanding duty on the price of ₹ 6 lacs. Is he right in his approach?**
- iv) Does cost of production have any bearing on A.V? 10**

Answer:

- i)** The assessable value is ₹ 5,00,000, as it is the price prevailing at the time of removal from factory.
- ii)** Excise duty rate is 12.5% and excise duty is ₹ 5,00,000 x 12.5% = ₹ 62,500
- iii)** No, C.E.O is not correct in his approach.
- iv)** Cost of production has no bearing on A.V when Transaction value is available.

(b) What is meant by Doctrine of Unjust Enrichment in the context of Excise? 5

Answer:

If the manufacturer had charged excise duty to his buyer, it is clear that he had passed on the burden to the buyer and has already recovered duty from his customer. In such cases, refund of excise duty paid to the manufacturer will amount to excess and undeserved profit to him. It will not be equitable to refund the duty to him, as he will get double benefit one from customer and again from government. This is called "unjust enrichment". It is applicable to service – tax and customs duty also.

4. (a) Distinguish between the provisions of duty drawback u/s 74 and u/s 75. 8

Answer:

Difference between duty drawback under section 74 of Customs Act and section 75 of Customs Act:

- i. Section 74 is applicable when imported goods are re-exported as it is, and article is easily identifiable while section 75 is granted when imported materials are used in the manufacture of goods which are then exported.
- ii. Drawback, in relation to any goods exported out of India, means refund of duty paid on importation of such goods in terms of section 74. Thus, drawback is allowed only on import duties of customs.
As per section 75, "Drawback" in relation to any goods manufactured in India and exported, means the rebate of duty or other things, as the case may be, chargeable on imported materials or excisable materials used or taxable services used as input services in the manufacture of such goods.
- iii. As per section 74, the identity of the goods exported should be established as the one, which was imported on payment of duty.
The goods exported under section 75 are made of such inputs which are manufactured, processed or any operations are carried on them before their export.
- iv. Drawback under section 74 is available on all goods (Identification is the only criterion) while Drawback under section 75 is available only on notified goods.
- v. Under the section 74, the exported goods should have been imported and customs duty be paid thereon. But under section 75, the goods to be exported may be manufactured or processed from imported or indigenous inputs or by utilizing input services.
- vi. In case of section 74, the goods should be exported within two years from the date of payment of duty or such extended time as the board may allow. But there is no such restriction in case of section 75.
- vii. There is no criterion of minimum value addition, which is to be fulfilled before export for claim of drawback as per section 74.
It has been specifically provided that there should not be negative value addition and in case where minimum value addition is specified the same should be achieved for claim of drawback as per section 75.
- viii. The drawback is governed by the Re-export of imported goods under the section 74. While the drawback, in section 75, is governed by the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995. The rules cover customs duty, central excise duty and service tax.

(b) Mr. R Venkata Rao, an Indian Resident, had gone to UK for business purposes. He brought following goods while returning to India

- i) Personal effects like cloths valued at ₹ 73,000**
- ii) Two liters of liquor of ₹ 4,200**

iii) New Camera of ₹ 58,500

iv) One Laptop of ₹ 58,000. What is the Customs Duty payable?

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Answer:

- A. Here is no duty on personal effects
- B. One Laptop can be imported without payment of customs duty.
- C. Liquor upto 2 liters can be accommodated in GFA Dutiable goods.

	₹
Liquor	4,200
Camera	58,500
	62,700
Less: General Free Allowance	50,000
Taxable Baggage	12,700
Customs duty payable (₹ 12,700×36.05%)	4,578.35

5. (a) Services provided by Indian railways to B.L. India for ₹ 2,00,000. Find the S.T. payable and S.B.C payable by Indian Railways?

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Answer:

	₹
Services	2,00,000
Less: Abatement 70%	(1,40,000)
Taxable services	60,000
Service Tax @ 14%	8,400
SBC 0.5%	300
Total	8,700

(b) ASB Ltd. dealing in all activities relating to Real Estate business furnishes the following information pertaining to services provided.

Particulars	₹
Construction services provided to International Labour Organization	10,00,000
Construction of private clinic to Dr. Deepak	50,00,000
Renovation service provided to government relating to plant for sewerage treatment	25,00,000
Construction of roads in factory	20,00,000
Construction of residential complex meant for use of M.P.	80,00,000
Renting of Residential dwelling for use as residence	20,00,000
Repairs and maintenance of Railway Station	1,50,000

Compute the value of Taxable service, service tax liability by considering the rate as 14% and SBC 0.5%.

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Answer:

Services to	Amount ₹	
International Labour Organization	Exempted	
Dr. Deepak	50,00,000	
Government	Exempted	
Roads in factory	20,00,000	
M.P.	80,00,000	
Residential Dwelling	Nil	Negative List
Repairs and maintenance of Railway Station	1,50,000	
	1,51,50,000	

Service Tax @ 14%	21,21,000	
SBC @ 0.5%	75,750	
	21,96,750	

6. (a) State the dealers who are not eligible for composition scheme.

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Answer:

Small dealers having gross turnover exceeding ₹5 lakhs but upto ₹50 lakhs have option of composition scheme. They will have to pay a small percentage of gross turnover. They will not be entitled to any input tax credit Following dealers are not eligible for composition scheme –

- (i) Dealers who make inter-state purchases
- (ii) Dealers who make inter-state sales
- (iii) Dealers who import the goods and then sale in India
- (iv) Dealers who stock transfer goods outside the State
- (v) Dealers who export the goods
- (vi) Dealers who want to show Vat in their Invoice.
- (vii) Dealers whose turnover exceeds ₹50 lakhs.

(b) Calculate the Customs Duty payable on the basis of following information:

(i) A.V. of goods as per Sec 14 of Customs Act ₹1,00,000

(ii) BCD @ 10%

(iii) Excise Duty @12.5%

(iv) Education Cess and Secondary & Higher Education Cess on excise is exempt by way of notification

(v) The product is covered under MRP provision.

The imported goods contained 1000 packages. MRP printed on each package is ₹ 200.

Abatement available on MRP is 40%.

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Answer:

	₹
MRP on each package	200
Less: Abatement 40%	80
Taxable amount of each package	120
Taxable amount of total package (₹ 120×1,000)	1,20,000
Calculation of Customs Duty:	
Assessable Value	1,00,000
BCD 10%	10,000
CVD	15,000
Total	1,25,000
Add:	
E.C. @ 2% on (₹ 25,000)	500
SHEC @1% on (₹ 25,000)	250
SAD (as the product is covered under MRP)	Nil
Landed Value	1,25,750
Total Duty	25,750

7. (a) State the power of taxation under Constitution of India.

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Answer:

- (i) The Central Government gets tax revenue from Income Tax (except on Agricultural Income), Excise (except on alcoholic drinks) and Customs.
- (ii) The State Governments get tax revenue from sales tax, excise from liquor and alcoholic drinks, tax on agricultural income.
- (iii) The Local Self Governments e.g. municipalities, etc. get tax revenue from entry tax and house property tax.

Article 265 provides that no tax shall be levied or collected except by authority of Law. The authority for levy of various taxes has been provided for under Article 246 and the subject matters enumerated under the three lists set out in the Schedule VII to the Constitution. Some examples are given below:

List I: Union List	
Item No. 82	Tax on income other than agricultural income
Item No. 83	Duties of customs including export duties
Item No. 84	Duties of excise on tobacco and other goods manufactured or produced in India except alcoholic liquors for human consumption, opium, narcotics, but including medical and toilet reparation containing alcohol, opium or narcotics.
Item No. 85	Corporation Tax
Item No. 92A	Taxes on the sale or purchase of goods other than news papers, where such sale or purchase takes place in the course of interstate trade or commerce.
Item No. 92B	Taxes on consignment of goods, where such consignment takes place during interstate trade or commerce.
Item No. 92C	Taxation of Services
Item No. 97	Any other matter not included in the List II, List III and any tax not mentioned in List II or List III
List II i.e., the State List:	
Item No. 46	Taxes on agricultural Income
Item No. 51	Excise duty on alcoholic liquors, opium and narcotics
Item No. 52	Tax on entry of goods into a local area of consumption, use or sale therein (usually called as Octroi)
Item No. 54	Tax on sale and purchase of goods other than newspapers except tax on interstate sale or purchase

(b) State the distinction between Abatement and Composition Scheme.

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Answer:

Service tax is payable on value of taxable service. In case of some services, composition schemes are available while in some cases, partial abatement is available.

Composition schemes - 'Composition scheme' is a simplified scheme for payment of service tax when calculation of 'value of service' for payment of service tax is very cumbersome or difficult. In composition scheme, some easy method is prescribed (like deduction of some ad hoc amount) to arrive at the value of taxable service. Composition scheme is at the option of assessee.

Abatement i.e. partial exemption - In case of some services, service tax is payable on lower value, i.e. abatement is available from amount charged. Abatement is nothing but partial

exemption from service tax. However, in case of some services, abatement is used as a composition scheme.

Abatement is subject to certain conditions like restrictions on availment of Cenvat credit. If assessee does not want to avail the abatement, he simply should not comply with the conditions. In that case, he is required to pay service tax.

Distinction between abatement and composition scheme: Practically, result of both abatement and composition scheme appears to be same. However, abatement is nothing but partial exemption from service tax payable, subject to prescribed conditions, while composition scheme is an easy mode of calculating value of service, where finding of value of taxable service is difficult. However, this distinction has not been fully followed. In case of some services, abatement is actually used as a composition scheme.

8. (a) Explain the Advance Authorization under FTP.

8

Answer:

Inputs required for manufacturing export products can be imported without payment of customs duty under Advance Authorisation. Advance Authorisation can be granted to merchant exporter or manufacturer exporter to import inputs, fuel, oil and catalysts. Since the raw materials can be imported before exports of final products, the Authorisation issued for this purpose is called 'advance Authorisation'.

The import of raw materials is on the basis of standard input-output norms (SION). The SION are finalised and quantity allowed to be imported will be based on quantity exported.

(b) Describe the powers of DGFT.

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Answer:

The powers of the DGFT (Director General of Foreign Trade):

- 1. Interpretation of Policy:** If any question or doubt arises in respect of interpretation of any provision, said question or doubt shall be referred to DGFT, whose decision thereon shall be final and binding.
- 2. Procedure:** DGFT may specify the procedure to be followed by an Exporter or Importer or by any licensing or any other Competent Authority for the purpose of implementing provisions of Foreign Trade Act, the Rules and the Orders made there under and Foreign Trade Policy (FTP). Such procedures shall be published in Hand Book of Procedures by means of a Public Notice, and may, in like manner, be amended from time to time.
- 3. Exemption from Policy/Procedure:** DGFT may pass such orders or grant such relaxation or relief, as he may deem fit and proper, on grounds of genuine hardship and adverse impact on trade. DGFT may, in public interest, exempt any person or class or category of persons from any provision of FTP or any procedure and may, while granting such exemption, impose such conditions as he may deem fit.
- 4. Scope of Restriction:** DGFT may, through a Notification, adopt and enforce any measure necessary for -
 - a. Protection of –
 - (i) Public morals.
 - (ii) Human, animal or plant life or health.
 - (iii) Patents, Trademarks and Copyrights and the prevention of deceptive practices.

- (iv) National treasures of artistic, historic or archaeological value.
 - (v) Trade of fissionable material or material from which they are derived.
 - b. Prevention of traffic in arms, ammunition and implements of war and use of prison labour.
 - c. Conservation of exhaustible natural resources.
- 5. Importer-Exporter Code (IEC):** DGFT is empowered to issue IEC. IEC is a unique 10 digit code issued by DGFT to Indian Companies. IEC is mandatory to export any goods out of India or to import any goods into India unless specifically exempt. Permanent Account Number (PAN) is pre-requisite for grant of an IEC. Only one IEC can be issued against a single PAN.
- An application for IEC is to be made to the nearest RA of DGFT in the 'Aayaat Niryaat Form-ANF2A and shall be accompanied by the prescribed documents. In case of STP/ EHTP/ BTP units, the Regional Offices of the DGFT having jurisdiction over the district in which the Registered/ Head Office of the STP unit is located, shall issue or amend the IECs.