

Paper-11 Indirect Taxation

Time Allowed: 3 hours

Full Marks: 100

Working notes should form part of the answers.

Group-A
(Answer Question 1 which is compulsory)

Question 1.

Answer the following questions with suitable reasons:

[10×2]

- (a) Under Central Excise Tariff Act goods are classified using 8-digit system as headings under 'Harmonised System of Nomenclature' — Justify.
- (b) Define Cross-Border Transaction in the context of International transactions.
- (c) Is customs duty levied on goods derelict, wreck, jetsam etc.? State with reason.
- (d) What is APTA in the context of customs?
- (e) What is the place of provision for Passenger Transportation Services?
- (f) State the distinction between 'Zero Rated Sale' and 'Exempted Sale'.
- (g) AB & Co., a proprietary firm provides service relating to security of building to PK & Co, a partnership firm, for ₹ 10 lakhs. State the persons liable to pay service tax and amount of tax payable by them.
- (h) Are sale of bundles of old newspapers as waste papers exempt from CST and why?
- (i) What is the method of the valuation for stock transfer in case of excise?
- (j) When Provisional Anti-Dumping Duty is imposed in customs?

Answer:

- (a) In case of harmonised system of nomenclature under Central Excise Tariff Act, goods are classified using 4 digit system as 'headings'. Further 2 digits are added for sub-classification, called 'sub-headings' and further 2 digits are added for sub-sub-classification, which is termed as 'tariff item'. Thus Goods are classified under Central Excise Tariff Act under the "Harmonized System of Nomenclature" having eight digit classifications. Rate of duty is indicated against each 'tariff item' and not against heading or sub-heading.
- (b) Cross-Border Transaction: A transaction is considered as cross-border transaction if it originates in one country and gets concluded in another country. Thus, it is not necessary that every international transaction within the meaning of section 92B of the Income-tax Act is a cross-border transaction or vice-versa.
- (c) As per section 21 of the Customs Act, 1962, all goods derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India, unless it is shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under this Act.
- (d) Bangladesh, Sri Lanka, South Korea, India and China are exchanging tariff concessions under Asia-Pacific Trade Agreement (APTA). Certificate of Origin (CoO) is required to be obtained from Export Inspection Council [EIC].

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- (e) As per rule 11 of Place of Provision of Services Rules, 2012, the place of provision of a passenger transportation service is the place where the passenger embarks on the conveyance for a continuous journey.
- (f) Distinction between 'Zero Rated Sale' and 'Exempted Sale' is that in case of 'Zero Rated Sale', credit is available on tax paid on inputs, while in case of exempted sale, credit of tax paid on inputs is not available.
- (g) Here the security services are provided by an individual to partnership firm hence the person liable to pay service tax is service provider i.e. AB & Co.

Service tax payable — ₹ 10 lakhs × 12.36% = ₹ 1,23,600.

- (h) As per section 2(d) of CST Act, goods do not include 'news paper'. When old newspapers are sold as newspapers, they are only in the character of newspapers and they are not goods. However, when the newspapers are sold as waste papers, they are not newspapers and hence they are goods. Therefore, sale of bundles of old newspapers as waste papers is taxable.
- (i) In case of stock transfer in excise, value to be adopted is the price prevailing in depot at the time of clearance from factory. Once goods are cleared from factory to depot on payment of duty (on basis of price prevailing at the time of removal from factory), it is not necessary to chase the goods and see at what price the goods were subsequently sold.
- (j) 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 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.

Group-B

(Answer any eight questions out of the ten questions given)

Question 2.

- (a) Bitan Ltd., which is engaged in the manufacture of excisable goods started its business in May, 2013. It availed small scale exemption in terms of Notification No. 8/2003-C.E. dated 01-03-2003. The following details are provided (₹) ;

15,000 kg of inputs purchased @ ₹ 992.70 per kg. (inclusive of excise duty @ 12.36%)	1,48,90,500
Capital goods purchased on 25-06-2013 (inclusive of excise duty at 12.36%)	45,60,000
Finished goods sold (at uniform transaction value throughout the year)	2,50,00,000

Calculate excise duty payable by M/s. Bitan Ltd. in cash, if any, during year 2013-14. Rate of duty on finished goods sold may be taken at 12.36% and you may assume that selling price is exclusive of central excise duty. There is neither any processing loss nor any inventory of input and output. Show your workings and notes with suitable assumptions as required.

- (b) What is Duty Entitlement Pass Book Scheme (DEPB Scheme)? Who cannot avail DEPB?

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[6+(2+2)]

Answer:

(a) Computation of duty payable by Bitan Ltd. during financial year 2013-14

Particulars	Units	₹/unit	₹
Total value of all finished goods	15,000	1,666.67	2,50,00,000
Less: Exemption of ₹150 lakhs	9,000	1666.67	1,50,00,000
Dutiable clearances (60% clearances are exempt and 40% dutiable)	6,000	1,666.67	1,00,00,000
Duty @ 12.36% on final product		206.00	12,36,000
Total Credit on inputs [Duty = ₹ 992.70 x 12.36 ÷ 112.36]	15,000	109.20	16,38,000
Less: 60% credit relating to exempted clearances [Reversal under Rule 6 of the CENVAT CREDIT Rules, 2004]	9,000	109.20	9,82,800
Credit relating to dutiable clearances	6,000	109.20	6,55,200
Add: Credit relating to capital goods [100% credit available in first year to SSI- units] [₹ 45,60,000 x 12.36 ÷ 112.36]			5,01,616
Total CENVAT Credit			11,56,816
Duty payable in cash [Duty on Final Product – CENVAT Credit]			79,184

(b) The Duty Entitlement Pass Book Scheme (DEPB Scheme) is easy to administer and more transparent. The scheme is similar to Cenvat credit scheme. The exporter gets credit when he exports the goods. The credit is on the basis of rates prescribed. This credit can be utilized for payment of customs duty on imported goods. Exporter can have either DEPB scheme or duty drawback but not both. Exports under DEPB scheme are allowed only when DEPB rate for the concerned export product is finalised.

Following cannot avail DEPB –

- (i) Goods manufactured in customs bonded warehouse
- (ii) Goods exported against discharge of export obligation under Advance Authorisation
- (iii) EOU, SEZ, STP, BTP or EHTP units
- (iv) Export of goods of foreign origin, unless there is manufacture or processing
- (v) Exports made under specified paras of Foreign Trade Policy.

Question 3.

(a) Compute the VAT liability of Manyata for the month of March, 2014 using the invoice method of computation of VAT - Purchases from the local market (including VAT @ 4%) – ₹ 62,400, Storage cost incurred – ₹ 800, Transport Cost – ₹ 1,750. Goods sold at a margin of 10% on the cost of such goods sold. VAT rate of sales is 4%.

(b) Describe the taxability of 'bundled services'.

(c) State the object of introducing Transfer pricing?

[4+3+3]

Answer:

(a) Since VAT credit on purchases is available, VAT paid on purchases does not form cost of the product. Purchase price inclusive of VAT is ₹ 62,400. VAT rate is 4%. Hence, net purchase cost is ₹ 60,000 [(₹ 62,400 x 100)/104]. VAT @ 4% of ₹ 60,000 is ₹ 2,400.

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Hence, total cost of goods is ₹ 62,550 (₹ 60,000 + ₹ 800 + ₹ 1,750). Add 10% margin of ₹ 6,255 (10% of ₹ 62,550). Thus, selling price is ₹ 68,805.

Vat payable on sale price of ₹ 68,805 @ 4% is ₹ 2,752. Vat credit available is ₹ 2,400. Hence, net Vat payable is ₹ 352 (₹ 2,752 - ₹ 2,400).

Note that Value added to product is ₹ 800 + ₹ 1,750 + ₹ 6,255 i.e. ₹ 8,805. 4% of this amount is ₹ 352. Thus, effectively, Vat is paid only on Value added.

- (b)** 'Bundled service' means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services. An example of 'bundled service' would be air transport services provided by airlines wherein an element of transportation of passenger by air is combined with an element of provision of catering service on board. Each service involves differential treatment as a manner of determination of value of two services for the purpose of charging service tax is different.

Example - A hotel provides a 4-D/3-N package with the facility of breakfast. This is a natural bundling of services in the ordinary course of business. The service of hotel accommodation gives the bundle the essential character and would, therefore, be treated as service of providing hotel accommodation.

- (c)** There is legislative object behind provisions relating to transfer pricing. The existence of different tax rates in different countries offers multinational enterprises to fix up their prices for goods and services and allocate profits among the enterprises within the group in such a way that there may be either no profit or negligible profit in the jurisdiction which taxes such profits and substantial profit in the jurisdiction which is tax haven or where the tax liability is minimum. This may adversely affect a country's share of due revenue and which may lead to erosion of tax revenue. Therefore, transfer pricing provisions have been brought with a view to provide a statutory framework which can lead to computation of reasonable, fair and equitable profits and tax in India, in the case of such multinational enterprises.

Question 4.

- (a)** Describe how indirect taxes are administered in India.

- (b)** Navin Ltd. of Mumbai (having diversified business) has provided the following services, whose values are listed below. Compute its service tax liability:

- (1)** Services provided to a company located in Colombo in relation to organization of a sport event in Colombo: ₹ 25 lakh;
- (2)** Services provided to a company located in Srinagar in relation to festival celebration in Srinagar: ₹ 5 lakh;
- (3)** Services provided to a company located in Jaipur in relation to fashion show in Dubai: ₹ 12 lakh;
- (4)** Services of online database access and retrieval services provided from its website: ₹ 17 lakhs (out of this, ₹10 lakh was provided to recipients located outside India).

- (c)** What is Automation of Central Excise and Service Tax or ACES?

[3+5+2]

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Answer:

- (a) The Department of Revenue of the Ministry of Finance exercises control in respect of matters relating to the indirect taxes through a Statutory Boards, namely, the Central Board of Excise and Customs (CBEC). Matters relating to the levy and collection of all the indirect taxes (customs duties, central excise duties, service tax) fall within the purview of CBEC. The Board has been constituted under the Central Board of Revenue Act, 1963.

CBEC deals with the tasks of formulation of policy concerning levy and collection of customs and central excise duties and service tax, prevention of smuggling and administration of matters relating to customs, central excise, narcotics to the extent under CBEC's purview and service tax. The Board is the administrative authority for its subordinate organizations, including Custom Houses, Central Excise and Service Tax Commissionerates.

The State level indirect taxes are administered by Commercial Tax Departments of the respective States.

(b) The taxable value and service tax is computed below (amount in ₹) —

(1)	Services provided to a company located in Colombo in relation to organization of a sport event in Colombo: As per Rule 6 of the Place of Provisions Rules, 2012, in case of services provided in relation to organization of events, the services shall be taxable at the place of location of event. Since event is held in non-taxable territory, it is not liable to service tax.	Nil
(2)	Services provided to a company located in Srinagar in relation to festival celebration in Srinagar: As per Rule 6 of the Place of Provisions Rules, 2012, in case of services provided in relation to organization of events, the services shall be taxable at the place of location of event. Since event is held in non-taxable territory, it is not liable to service tax.	Nil
(3)	Services provided to a company located in Jaipur in relation to fashion show in Dubai: Since services are in relation to event held in Dubai, hence, as per Rule 6, they are not taxable. But, since the services are provided to a recipient located in taxable territory (Jaipur) and both service provider and recipient are located in taxable territory, hence, as per Rule 8, these services are liable to service tax.	₹ 12,00,000
(4)	Services of online database access and retrieval services provided from its website: As per Rule 9, the place of provision is the place of location of service provider. Since service provider Navin Ltd. is located in Mumbai (taxable territory), hence, these services will be taxable in full irrespective of location of the service recipient.	₹ 17,00,000
	Total Taxable Value	29,00,000
	Service tax @ 12.36%	3,58,440

- (c) The Central Board of Excise & Customs has developed a new software application called Automation of Central Excise and Service Tax or ACES, which aims at improving taxpayer services, transparency, accountability and efficiency in indirect tax administration. It is a centralized, web based software application which automates various processes of Central Excise and Service Tax for Assessee and Department, and gives complete end to end solution.

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Question 5.

(a) Explain abatements and composition schemes in the context of service tax. Also state the distinction between them.

(b) Esking Ltd. has a manufacturing unit situated in Lucknow. In the financial year 2013-14, the total value of clearances from the unit was ₹ 465 lakhs.

The breakup of clearances is as under:

- i. Clearances worth ₹ 85 lakhs of certain non-excisable goods manufactured by it.
- ii. Clearances worth ₹ 55 lakhs exempted under specified job work notification.
- iii. Exports worth ₹ 100 lakhs (₹ 75 lakhs to USA and ₹ 25 lakhs to Nepal).
- iv. Clearances worth ₹ 50 lakhs which were used captively to manufacture finished products those are exempt under notifications other than Notification No. 8/2003-CE., dated 01-03-2003 as amended.
- v. Clearances worth ₹ 200 lakhs of excisable goods in the normal course.

Explain briefly, the treatment for various items and state, whether the unit will be eligible for the benefits of exemption under Notification No. 8/2003-CE dated 1-3-2003 as amended for the year 2014-15.

[(2+2+2)+4]

Answer:

(a) 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.

(b) In order to claim the benefit of SSI exemption in a financial year, the total turnover of a unit should not exceed ₹ 400 lakh in the preceding year.

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For this purpose, the total value of clearances shall be calculated as follows –

	(₹ lakhs)
Total value of clearances	465
Less:	
(i) Clearances of certain non-excisable goods manufactured by it	85
(ii) Clearances exempted under specified job-work notification	55
(iii) Exports clearances to USA	75
(iv) Clearances of goods used captively to manufacture finished products, which are exempt under Notification other than SSI-exemption notification	Nil
Value of clearances	250

Unit eligible for exemption: Since the aggregate value of clearances during the preceding financial year doesn't exceed ₹ 400 lakhs, therefore, the unit is eligible for SSI-exemption in the financial year 2014-15.

Question 6.

(a) Ruby Constructions undertakes works contracts and maintains sufficient records to quantify the labour and other service charges. From the details given below, calculate the taxable turnover, input tax credit and net VAT payable under the State VAT Law.

Sl. No.	Particulars	Amount (₹)
(i)	Total contract price (excluding VAT @ 12.5%)	1,95,00,000
(ii)	Materials purchased and used for the contract taxable at 12.5% VAT (inclusive of VAT)	33,75,000
(iii)	Labour charges paid for execution of the contract (excluding VAT @12.5%)	40,00,000
(iv)	Other service charges paid for the execution of the contract (excluding VAT @12.5%)	20,00,000
(v)	Cost of consumables used not involving transfer of property in goods (excluding VAT @12.5%)	15,00,000

Ruby Constructions also purchased a plant for use in the contract for ₹ 20,80,000 (inclusive of VAT). In the VAT invoice relating to the same VAT was charged at 4% separately.

Assume 100% input tax credit is available on capital goods immediately.

(b) Mr. A of Kolkata sells goods to Mr. E of Hyderabad and delivers the same at Kolkata to BBS Transport. The lorry receipt was sent to Mr. E by post. While goods were in transit, Mr. E sells the goods to Mr. U of Vijayawada by making an endorsement of LR and goods were diverted to Vijayawada. Is the second sale between Mr. E and Mr. U chargeable to tax?

(c) Write the advantages of indirect taxes (any two).

[6+2+2]

Answer:

(a) The question states that -

- ◆ contractor maintains sufficient records to quantify the labour charges;

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- ◆ hence, value of transfer of property in goods involved in execution of works contract is to be computed by deducting labour and service charges from total contract price.

The computations in this regard are as follows -

	Value (excl. VAT) (₹)	VAT Rate	VAT (₹)
Total Contract Price	1,95,00,000		
Less: Labour charges (assumed inclusive of normal profit)	40,00,000		
Other service charges (assumed inclusive of normal profit)	20,00,000		
Cost of consumables (assumed inclusive of normal profit)	15,00,000		
Value of goods involved in works contract	1,20,00,000	12.50%	15,00,000
Materials purchased and used for contract (eligible for credit) [Value excluding VAT = ₹ 33,75,000 × 100 ÷ 112.5]	30,00,000	12.50%	3,75,000
Capital goods used for contract (eligible for credit; in fact, question itself states that capital goods are eligible for 100% credit) [Value excluding VAT = ₹ 20,80,000 × 100 ÷ 104]	20,00,000	4.00%	80,000
Net VAT payable in cash			10,45,000

- (b) The first sale by Mr. A to Mr. E is chargeable to central sales tax. However, sale of goods by E to U is exempt under Section 6(2) of Central Sales Tax Act, 1956 i.e. subsequent sale by transfer of documents to avoid multiple tax incidences.

Note: Form E-I from A and Form C from U has to be received by E.

- (c) Advantages of Indirect Taxes:

- (i) Easy management: Indirect taxes mainly relate to organized sector. Hence, it is convenient to control, i.e., levy, control and collection of indirect taxes are easy.
- (ii) Assured Collection: Being easier to control, the incidence of tax evasion is comparatively less. So, the contribution of indirect taxes to the Government shows an increasing trend, as the business progress.

Question 7.

- (a) Write down the scope of international transaction.

- (b) Compute the assessable value under the Central Excise Act, 1944 in the following case:

Production	:	2,000 units on 01.01.2014
Quantity sold	:	500 units @ ₹ 200 per unit 600 units @ ₹ 190 per unit
Samples clearances	:	75 units
Balance in stock	:	825 units (at the end of factory day for 01.01.2014)

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Assume that the rate per unit is exclusive of Central Excise duty.

[5+5]

Answer:

(a) Scope of international transaction:

"International transaction" shall include—

- (i) the purchase, sale, transfer, lease or use of tangible property including building, transportation vehicle, machinery, equipment, tools, plant, furniture, commodity or any other article, product or thing;
- (ii) the purchase, sale, transfer, lease or use of intangible property, including the transfer of ownership or the provision of use of rights regarding land use, copyrights, patents, trademarks, licences, franchises, customer list, marketing channel, brand, commercial secret, know-how, industrial property right, exterior design or practical and new design or any other business or commercial rights of similar nature;
- (iii) capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;
- (iv) provision of services, including provision of market research, market development, marketing management, administration, technical service, repairs, design, consultation, agency, scientific research, legal or accounting service;
- (v) a transaction of business restructuring or reorganisation, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or at any future date;

(b) Computation of assessable value of the goods (amount in ₹)

Clearances of 500 units @ ₹ 200 per unit	1,00,000
Clearances of 600 units @ ₹ 190 per unit	1,14,000
Samples clearances of 75 units @ ₹ 190 per unit [WN]	14,250
Transaction Value	2,28,250

Working note:

CBEC Circular No. 813/10/2005-CX, dated 25.04.2005 has clarified that Sample are to be valued as per provisions of Rule 4 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 i.e. on the basis of value of goods cleared at or around the same time.

However, since the information relating to value of goods sold at the time nearest to the time of removal of samples is not available, valuation may be done on the basis of Rule 11 read with Rule 4. Therefore, normal transaction value of goods sold at or about the time nearest to the time of removal of samples will be the assessable value of the samples. Normal transaction value is the value at which the greatest aggregate quantity of goods is sold. Since, in the given case, the greatest aggregate quantity viz., 600 units are sold at ₹ 190, the normal transaction value would be ₹ 190.

Question 8.

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(a) State the situation where an abatement of duty on damaged or deteriorated goods is given in customs as per section 22 of the Customs Act. How the abatement of duty on damaged or deteriorated goods is computed?

(b) Following transactions took place in the factory of Pipli Ltd. —

- (i) An imported consignment of Raw Materials was received vide Bill of Entry dated 2nd Dec, showing the following Customs Duty payments —
- | | |
|-------------------------|----------|
| Basic Customs Duty | ₹ 10,000 |
| Additional Duty (CVD) | ₹ 12,000 |
| Special Additional Duty | ₹ 4,000 |
- (ii) A consignment of 1,000 kgs of inputs was received. The Excise Duty paid as per the invoice was ₹ 12,360. While the input was being unloaded 45 kgs were damaged, and were found to be not usable.
- (iii) Some inputs for final product were received. These were accompanied by a certified Xerox Copy (photo copy) of Invoice No. 270 dated 23rd Dec. indicating the Excise duty of ₹ 5,500 has been paid on inputs. The original for duplicate copy of invoice are not traceable.

Indicate the eligibility of CENVAT Credit under the CENVAT Credit Rules, 2004 with explanations where necessary.

[(3+1)+6]

Answer:

- (a) Abatement of duty on damaged or deteriorated goods can be given in the following situations [Section 22 of the Customs Act]: Where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs, —
- a. that any imported goods had been damaged or had deteriorated at any time before or during the unloading of the goods in India; or
 - b. that any imported goods, other than warehoused goods, had been damaged at any time after the unloading thereof in India but before their examination under section 17, on account of any accident not due to any wilful act, negligence or default of the importer, his employee or agent; or
 - c. that any warehoused goods had been damaged at any time before clearance for home consumption on account of any accident not due to any wilful act, negligence or default of the owner, his employee or agent, then abatement of duty on damaged or deteriorated goods can be allowed.

The abatement of duty on damaged or deteriorated goods is computed as follows:

Duty leviable on such damaged or deteriorated goods

$$= \frac{\text{Duty chargeable on the goods before the damage or deterioration}}{\text{V value of the goods before damage or deterioration}} \times \text{V value of the damaged or deteriorated goods}$$

Abatement of duty on damaged or deteriorated goods

$$= \text{Duty leviable on the goods before damage} - \text{Duty leviable on the goods after damage}$$

(b) Eligibility of Cenvat credit

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Situation	Eligible Amount	Reasoning
Imported Consignment	₹ 16,000	Countervailing Duty for Excise Duty and VAT Equivalent will be eligible for credit under CENVAT Credit Rules. Basic Customs Duty of ₹ 10,000 is not eligible.
Loss of Inputs	₹ 11,804	<ul style="list-style-type: none"> • Inputs used in the manufacture of dutiable finished products alone are eligible for CENVAT Credit. • When inputs are damaged irretrievably before usage in the manufacturing process, duty attributable to such goods cannot be claimed as CENVAT Credit. • Therefore, duty for 955 Kgs alone is eligible for CENVAT Credit = ₹ 12,360 x 955 Kgs used / 1,000 Kgs received.
Inputs received under Photocopy of Invoice	₹ 5,500	<ul style="list-style-type: none"> • Duty can be claimed only if inputs have been received and documents evidencing payment of duty is available. • CENVAT Credit is allowable on Photostat copies of authenticated invoices. [Kothari General Foods Corpn Ltd 144 ELT 338 (Tri.)]
Total Credit	₹ 33,304	

Question 9.

(a) Describe the benefits in case of supply to EOUs (Export Oriented units) from DTA (Domestic Tariff Area) units?

(b) Ascertain the Assessable Value in respect of each of the clearances given below –

Removed to	Price at Depot as on		Actual Sale Price at Depot on 01/02/2014
	01/01/2014	31/01/2014	
Kolkata Depot	₹ 190/unit	₹ 180/unit	₹ 230/unit
Mumbai Depot	₹ 185/unit	₹ 190/unit	₹ 210/unit
Ranchi Depot	₹ 195/unit	₹ 200/unit	₹ 220/unit

The goods were cleared to respective Depots on 01/01/2014 and actually sold at the depots on 01/02/2014.

(c) Distinguish between a Sale for Export and Sale in the Course of Export in the context of Central Sales Tax.

[4+3+3]

Answer:

(a) The benefits of Supply to EOUs (Export Oriented units) from DTA (Domestic tariff Area) units:

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1. **Deemed Export:** Supplies from DTA to EOU/ EHTP/ STP/ BTP units will be regarded as "Deemed Exports". The DTA Supplier shall be eligible for relevant entitlements under the FTP, besides discharge of export obligation, if any, on the Supplier. Also, the EOU/ EHTP/ STP/ BTP units shall, on production of a suitable disclaimer from DTA Supplier, be eligible for obtaining entitlements specified under the provisions relating to deemed exports in FTP. For claiming deemed export duty drawback, they shall get brand rates fixed by the DC, wherever All Industry Rates of Drawback are not available.
2. **Additional Benefits:** In addition, EOU/ EHTP/ STP/ BTP units shall be entitled to following:
 - (i) Reimbursement of Central Sales Tax (CST) on goods manufactured in India. Interest at 6% will be payable on delay refund of CST, if the case is not settled within 30 days of receipt of complete application.
 - (ii) Exemption from payment of Central Excise Duty on goods procured from DTA on goods manufactured in India.
 - (iii) Reimbursement of duty paid on fuel procured from Domestic Oil Companies/ Depots of Domestic Oil Public Sector Undertakings as per Drawback Rate notified by DGFT from time to time. Reimbursement of Additional Duty of Excise levied on fuel under the Finance Acts would also be admissible.
 - (iv) CENVAT Credit on Service Tax paid.

(b)

1. **Valuation for Depot Transfer:** Price prevailing at the Depot on the date of clearance from the factory will be the Assessable Value to pay Excise duty.
2. **Assessable Value:** Therefore Assessable Value for each of the clearances will be as under (based on price prevailing at the respective depot on the date of removal from factory i.e. 1.1.2014)

Clearance from	Assessable Value
Kolkata Depot	₹ 190
Mumbai Depot	₹ 185
Ranchi Depot	₹ 195

Note: The actual sale price has no relevance for determining the value of above goods.

(c) **Distinctions between a Sale for Export and Sale in the Course of Export**

Sale for Export	Sale in the Course of Export
(i) A sale effected by the dealer (seller) and he is not connected with the export of the goods which actually takes place subsequently.	(i) Seller has an express between the sale and the export.
(ii) Seller may or may not have the knowledge that the buyer intends to export the goods purchased.	(ii) The seller who purchases goods in India subsequently exports as such.
(iii) Seller has no intention for export.	(iii) Seller has clear intention to export.
(iv) This sale may be called as penultimate sale.	(iv) This sale is called as export sale.
(v) Sale exempted from Central Sales Tax provided Form 'H' received from his buyer.	(v) Sale exempted from Central Sales Tax automatically.
(vi) This sale is covered under Section 5(3) of	(vi) This sale is covered under Section

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the CST Act, 1956.	5(1) of the CST Act, 1956.
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Question 10.

(a) From the following particulars, calculate assessable value and total customs duty payable:

- (i) Date of presentation of Bill of entry : 14-05-2013 [Rate of BCD 25%; Exchange Rate: ₹ 43.40 and rate notified by CBEC ₹ 43.80]
- (ii) Date of arrival of goods in India: 27-05-2013 [Rate of BCD 20%; Exchange Rate; ₹ 44.10 and rate notified by CBEC ₹ 44.20]
- (iii) Rate of Additional Customs Duty : 12%;
- (iv) CIF value 2,000 US Dollar; Air Freight 500 US Dollars, Insurance cost 100 US Dollars [Landing Charges no ascertainable].
- (v) Education Cess applicable 3%
- (vi) Assume there is no special CVD.

Also determine the Cenvat credit eligibility if the buyer is — (1) manufacturer (2) service provider and (3) trader. [Provide working notes as and when required]

(b) Are Lease Transactions subjected to levy of Value Added Tax under VAT Legislations? State in details.

[6+4]

Answer:

(a) Computation of assessable value and the total customs duty payable –

CIF value	US\$	2,000
Less: Freight	US\$	500
Insurance	US\$	100
FOB Value	US\$	1,400
Add: Air Freight restricted @ 20% of FOB value	US\$	280
Insurance (actual amount)	US\$	100
CIF value	US\$	1,780
CIF Value in Indian ₹ (CIF Value in US\$ x ₹ 43.80 per US\$)	₹	77,964
Add: 1% for landing charges	₹	780
Assessable value	[A]	₹ 78,744
Add: Basic Customs duty @ 20% of [A]	[B]	₹ 15,749
Total for additional duty of customs u/s 3(1) Customs Tariff Act, 1975	[C]	₹ 94,493
Add: Additional Customs Duty (@ 12% of ₹ 94,493 i.e., [C])	[D]	₹ 11,339
Add: Education Cess on total customs duty i.e., 3% of [B+D]	[E]	₹ 813
Total for the levy of additional duty of customs u/s 3(5) of Customs Tariff Act, 1975	[F=C+D+E]	₹ 1,06,645
Add: Additional duty of customs equal to sales tax etc.	[G]	₹ ---
Total cost of imported goods	₹	1,06,645
Total Customs duty [B+D+E+G] (rounded off)	₹	27,901

Cenvat credit eligibility:

- (1) Buyer, who is manufacturer, is eligible to avail Cenvat credit of [D] and [G] above. As there is no Special CVD as per section 3(5) of the Customs Tariff Act, 1975, he will be eligible to avail credit of [D] only.
- (2) A buyer who is service provider is eligible to avail Cenvat credit of [D] above.

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- (3) A trader who sells imported goods in India after charging VAT/ sales tax can get refund of Special CVD of 4%, i.e. [G] above. Alternatively, he can pass on the credit of Special CVD also to his customer. In this case, as there is no Special CVD, the trader cannot avail the said benefit.

Working Notes:

- (1) Rate of exchange notified by CBEC on the date of presentation of bill of entry has been considered.
- (2) Rate of duty as applicable on the arrival of aircraft which is later than the date of submission of the bill of entry has been considered.
- (3) Landing charges @ 1% have been considered as per Rule 10(2)(b) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
- (4) Since Air freight exceeds 20% of FOB value of goods, it shall be restricted to 20% of FOB value of goods.

(b) Levy: The Constitutional Authority to levy Sales Tax / VAT on Lease Transactions is contained in Article 366 of Constitution of India, which provides that tax on sale or purchase includes "a tax on the transfer of the right to use any goods for any purpose for cash, deferred payment or other valuable consideration."

Taxable Event: Transfer of right to use any "goods" for any purpose for a "valuable consideration". Hence, transfer of assets without consideration and lease of Immovable property does not attract levy of VAT / Sales Tax.

Taxable Turnover:

= Amount of Valuable Consideration Paid or Payable during given period + Any Charges before delivery thereof, (Less) Interest / Finance Charges included in Lease Payments (only in some States)

Input Tax Credit:

(i) Lessor's Books:

- Lessor will collect VAT on Lease Rentals over a period of time. Against such VAT Liability, the Lessor can claim Input Tax Credit of VAT Paid on purchase of the leased asset.
- Some States provide for claiming of Input Tax Credit on such purchases only over the lease period, and not against any other VAT liability.
- Some other States provide for complete utilization of Input Tax Credit on such purchase, against any VAT Liability. Some other States provide an option to carry forward the excess credit.

(ii) Input Tax credit on Capital Goods: Assets given on lease will be generally capitalized by the Lessor in his books, and will be treated as Capital Assets. Hence, provision relating to Input Tax Credit on Capital Goods will apply, i.e. utilization of credit over a period of time such within 36 Months etc.

Question 11.

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(a) M/s. Sinjen Ltd. received the following sums (exclusive of taxes). Compute its service tax liability (Ignore small service provider's exemption)-

- (1) Commission from selling of various goods belonging to other parties : ₹ 6.5 lakh ;
- (2) Commission from acting as Clearing and Forwarding Agent: ₹ 6.8 lakh ;
- (3) Commission from acting as clearing agent: ₹ 4.8 lakh ;
- (4) Commission from acting as forwarding agent: ₹ 2 lakh ;
- (5) Margin earned from trading in shares : ₹ 4.6 lakh ;
- (6) Margin from trading in futures : ₹ 4.8 lakh ;

(b) Write down the significance of Green Channel and Red Channel in customs.

[6+4]

Answer:

(a) Computation of service tax liability:

- (1) Commission from selling of various goods belonging to other parties : ₹ 6.5 lakh - Taxable;
- (2) Commission from acting as Clearing and Forwarding Agent: ₹ 6.8 lakh - Taxable;
- (3) Commission from acting as clearing agent: ₹ 4.8 lakh - Taxable;
- (4) Commission from acting as forwarding agent: ₹ 2 lakh - Taxable;
- (5) Margin earned from trading in shares : ₹ 4.6 lakh - Shares are securities and "goods" and trading in goods is a service covered within negative list u/s 66D(e) - Not taxable;
- (6) Margin from trading in futures: ₹ 4.8 lakh - Futures are securities and "goods" and trading in goods is a service covered within negative list u/s 66D(e) - Not taxable;

Taxable Value = ₹ (6.5+6.8+4.8+2) lakhs = ₹ 20.10 lakhs; and service tax thereon @ 12.36% = ₹ 2,48,436.

(b) Section 77 of Customs Act provides that owner of any baggage has to make declaration of its contents to Customs Officer. Rate of duty and tariff valuation shall be the rate and valuation in force on the date of declaration.

Green Channel — It is impractical to ask every traveller to declare contents of his baggage. Hence, customs have provided two channels at airports. If a person does not have any dutiable goods, he can go through green channel.

Going through green channel is in effect declaring that the person is not carrying any dutiable goods. It is not necessary that declaration has to be in writing. It is not duty of Customs Officer to accost individual passenger. A person going through green channel carrying dutiable goods can be penalised for 'false declaration'.

Red Channel — Person carrying dutiable goods should pass through red channel and should submit declaration. The declaration of goods and value as given by passenger in disembarkation card is generally accepted, but baggage can be inspected by Customs Officer.