

Paper 18- Indirect Tax Laws and Practice

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Full Marks: 100

Time allowed: 3 hours

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

Working notes should form part of the answer.

Answer Question No. 1 which is compulsory and any five from the rest

Q.1. Choose the correct answer with justification/ workings wherever applicable: [10×2=20]

(i) The normal warehousing period for Other than EOUs is _____ from the date of issuing the order by Customs Officer permitting deposit of goods in a warehouse.

- (A) Three years
- (B) Five years
- (C) One year
- (D) 180 days

(ii) Service tax was levied by the Central Government by drawing power from:

- (A) Entry 97 of the Union List.
- (B) Entry 85 of the Union List.
- (C) Entry 83 of the Union List.
- (D) Entry 82 of the Union List.

(iii) An assessee being aggrieved by the order of Assessing Officer can file a revision petition to the Commissioner within a period of..... under Central Excise Act.

- (A) 2 years
- (B) 60 days
- (C) 1 year
- (D) 30 days

(iv) The excise duty paid at the time of purchase of Lubricating oil – ₹ 2,000 and Pollution control equipment – ₹ 22,000 by a non-SSI unit. Total Cenvat credit admissible in the current year is:

- (A) ₹ 2,000
- (B) ₹ 22,000
- (C) ₹ 13,000
- (D) ₹ 11,000

(v) An area beyond 200 nautical miles from the base line is called:

- (A) High Seas
- (B) Exclusive Economic Zone
- (C) Indian Customs Waters
- (D) None of the above.

(vi) Service provided by a private transport operator to a school in relation to transportation of students to and from a school is:

- (A) Exempted service
- (B) Fully taxable service
- (C) Taxable service with abatement
- (D) Not at all service.

(vii) Any transfer of property in goods by one person to another for cash or deferred payment or for any other valuable consideration, but does not include:

- (A) Mortgage

Answer to MTP_Final_Syllabus 2016_Jun2017_Set 2

- (B) Hypothecation
- (C) Charge or pledge on goods
- (D) All of the above.

(viii) Section 14A of Central Excise Act deals with:

- (A) CENVAT Credit Audit
- (B) Valuation Audit
- (C) CE Audit 2000
- (D) None of the above.

(ix) Which of the following is not 'goods' under CST Act?

- (A) Lottery tickets
- (B) Electricity and electric meters
- (C) Copyrights
- (D) Claim for loss or damages

(x) Mr. A purchases the goods from a manufacturer for ₹ 1,000 plus VAT @4%. If he, sell the same by adding ₹ 200 profit, his net VAT payable will be:

- (A) 48
- (B) 8
- (C) 40
- (D) None of the above.

Answer:

(i) (C) If imported goods are warehoused by other than EOUs, the normal warehousing period is one year from the date of issuing the order by Customs Officer permitting deposit of goods in a warehouse.

(ii) (A) Service tax was levied by the Central Government by drawing power from Entry 97 of the Union List.

(iii) (B) An assessee being aggrieved by the order of Assessing Officer can file a revision petition to the Commissioner within a period of 60 days only.

(iv) (C) Total Cenvat credit admissible is ₹ 13,000 (₹ 2,000 + 50% of ₹ 22,000).

(v) (A) An area beyond 200 nautical miles from the base line is called High Seas. All countries have equal rights in this area.

(vi) (A) This is an exempted service by way of Mega Exemption.

(vii) (D) Sales as per CST Act, any transfer of property in goods by one person to another for cash or deferred payment or for any other valuable consideration, but does not include Mortgage or Hypothecation or Charge or pledge on goods.

(viii) (B) Section 14A of Central Excise Act deals with Valuation Audit.

(ix) (D) Lottery tickets, Electricity and electric meters and Copyrights are held as goods but Claim for loss or damages are not goods under CST Act.

(x) (B) VAT liability of Mr. A only on the value of profit but not the entire value of sale. So, the net VAT payable = ₹ 8 [i.e. ₹ 200 x 4%]

2.(a) M/s. Kalaji Manufacturers & Exporters Pvt. Ltd. furnishes following information and requests you to compute the maximum refund eligible under Rule 5 of CENVAT Credit Rules for the relevant period (amounts in ₹) :

Answer to MTP_Final_Syllabus 2016_Jun2017_Set 2

(i)	Total CENVAT Credit taken on inputs	2,50,000
(ii)	Amount of CENVAT credit reversed under Rule 3(5C)	50,000
(iii)	Total CENVAT Credit taken on input services	80,000
(iv)	Total CENVAT Credit taken on capital goods	2,00,000
(v)	Value of final products exported without payment of duty	6,00,000
(vi)	Value of goods cleared for home consumption	20,00,000
(vii)	Amounts received towards services exported (includes ₹ 50,000 of advance towards services to be provided/exported after the current relevant period)	2,50,000
(viii)	Value of other services provided	2,00,000
(ix)	Value of inputs removed as such under Rule 3(5)	30,000

[10]

Answer:

Computation of maximum refund eligible u/s 5 of the CENVAT Credit Rules, 2004:

			₹
(i)	NET CENVAT Credit taken = CENVAT credit on inputs and input services - Credit reversed under Rule 3(5C)		2,80,000
(ii)	Export Turnover of goods (only goods cleared without payment of duty)		6,00,000
(iii)	Export turnover of services (advance received towards services to be provided/ exported after the current relevant period shall not be included, hence : ₹ 2,50,000- ₹ 50,000)		2,00,000
(iv)	Total Turnover:		
	Total of all excisable goods (exports + exempted + dutiable)	26,00,000	
	Export turnover of services (as computed above) + Value of other services	4,00,000	
	Value of inputs removed as such under Rule 3(5)	30,000	30,30,000
(v)	Maximum refund = [(Item (ii) + Item (iii)) + Item (iv)] × Item (i)		73,927

(b) What do you understand by Input Service Distributor?

[6]

Answer:

As per rule 2(m) of the Cenvat Credit Rules, 2004, "Input Service Distributor" means an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under rule 4A of the Service Tax Rules, 1994 towards purchase of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be.

"Input Service Distributor" means:

- an office of the manufacturer or producer of final products or provider of output service,
- which receives invoices issued under rule 4A of STR, 1994 towards purchase of input services; and
- issues invoice, bill or, as the case may be, challan;
- for the purposes of distributing the credit of service tax paid on the said services;
- to such manufacturer or producer or provider or w.e.f. 1-4-2016, an outsourced manufacturing unit as the case may be.

3.(a) Compute the assessable value and total customs duty payable under the Customs Act, 1962 for an imported machine, based on the following information:

	US \$
(i) Cost of the machine at the factory of the exporter	20,000
(ii) Transport charges from the factory of exporter to the port for shipment	800

Answer to MTP_Final_Syllabus 2016_Jun2017_Set 2

(iii) Handling charges paid for loading the machine in the ship	50
(iv) Buying commission paid by the importer	100
(v) Lighterage charges paid by the importer	200
(vi) Freight incurred from port of entry to Inland Container depot	1,000
(vii) Ship demurrage charges	400
(viii) Freight charges from exporting country to India	5,000
Date of bill of entry	20.01.2016 (Rate BCD 20%;
Exchange rate as notified by CBEC	₹ 60 per US \$)
Date of entry inward	25.03.2016 (Rate of BCD 12%;
Exchange rate as notified by CBEC	₹ 65 per US \$)
Additional duty payable under section 3(1) of the Customs Tariff Act, 1975	12.5%
Additional duty payable under section 3(5) of the Customs Tariff Act, 1975	4%

[10]

Answer:

Statement showing Assessable and customs duty:

Particulars	US \$	Remarks
Cost of the machine	20,000	
Add: transport charges from factory of exporter to the port for shipment	800	
Add: handling charges	50	
FOB	20,850	
Add: buying commission	Nil	Not addable
Add: Insurance	234.5625	20,850 x 1.125%
Add: Freight	5,000	
Add: Lighterage charges	200	
Add: Ship demurrage	400	
CIF Value	26,684.5625	
Add: 1% unloading charges	266.8456	26,684.5625 x 1%
Value of import	26,951.4081	
	₹	
Assessable Value	16,17,084	26,951.4081 USD x ₹60
Add: BCD 12%	1,94,050	₹ 16,17,084 x 12%
Balance	18,11,134	
Add: CVD 12.5%	2,26,392	₹ 18,11,134 x 12.5%
Balance	20,37,526	
Add: 3% Cess	12,613	(₹ 1,94,050 + ₹ 2,26,392) x 3%
Balance	20,50,139	
Add: 4% Spl. CVD	82,006	₹ 20,50,139 x 4%
Landed value of imported goods	21,32,145	
Total customs duty	5,15,061	

Answer to MTP_Final_Syllabus 2016_Jun2017_Set 2

(b) State the benefits available to EOU/ EHTP/ STP/ BTP in the context of foreign trade policy 2015-20. [6]

Answer:

Benefits available to EOU/ EHTP/ STP/ BTP:

- (i) Reimbursement of Central Sales Tax (CST) paid on procurement of goods. Interest @ 6% p.a. 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.
- (iv) CENVAT credit on service tax paid.
- (v) Exemption from industrial licensing for manufacture of items reserved for SSI sector.
- (vi) Export proceeds will be realized within 9 months.
- (vii) Units will be allowed to retain 100% of its export earnings in the EEFC account.
- (viii) Unit will not be required to furnish bank guarantee at the time of import or going for job work in DTA, subject to fulfillment of required conditions.
- (ix) 100% FDI investment permitted through automatic route similar to SEZ units.

4.(a) Ms. Priya rendered taxable services to a client. A bill of ₹ 40,000 was raised on 19-6-2016. ₹ 15,000 was received from the client on 25-6-2016 and the balance on 29-6-2016. No service tax was separately charged in the bill.

(i) Is Ms. Priya liable to pay service tax, even though the same has not been charged by her?

(ii) If so, what is the value of taxable services and the service tax?

(iii) Due date of payment of service tax?

Note: previous year turnover is ₹ 25 lakhs.

[2+3+1]

Answer:

- (i) Ms. Priya is liable to pay service tax even though she has not collected the service tax from his client, by considering the service tax is inclusive in the value of the bill. The point of taxation is date on which sum received. It means she is liable to pay service tax as per Rule 6 of Service Tax Rules, 1994 (i.e. on receipt basis).
- (ii) Service tax liability is as follows:
Value of taxable services = 40,000 x 100/115 = ₹ 34,783
Service tax liability = ₹ 34,783 x 15/100 = ₹ 5,217
- (iii) Due date of payment of service tax is 6th July 2016.

(b) Euro Bank Ltd. furnishes the following information relating to services provided and the gross amount received:

Particulars	Amount (₹)
Interest on overdraft	5,00,000
Interest on loans with a collateral security	6,00,000
Interest on corporate deposits	10,00,000
Administrative charges (over and above interest) on loans, advances and deposits	6,00,000
Sale of foreign exchange to general public (It represents the value of taxable service computed as per rule 2B of the Service Tax Valuation Rules)	15,00,000
Service charges relating to issuance of Certificates of Deposits(CDs)	20,00,000

Compute the value of taxable service and the service tax liability along with Swachh Bharat Cess & Krishi Kalyan Cess of Euro Bank Ltd. considering the rate of service tax at

Answer to MTP_Final_Syllabus 2016_Jun2017_Set 2

14% assuming that it is not eligible for small service providers exemption under NT. No. 33/2012-ST, dated 20-6-2012. [10]

Answer:

Statement showing taxable value of services and service tax liability of Euro Bank Ltd.:

Particulars	Amount (₹)	Remarks
Interest on overdraft	Nil	Negative list of service
Interest on loans with a collateral security	Nil	Negative list of service
Interest on corporate deposits	Nil	Negative list of service
Administrative charges (over and above interest) on loans, advances and deposits	6,00,000	Taxable services
Sale of foreign exchange to general public (It represents the value of taxable service computed as per rule 2B of the Service Tax Valuation Rules)	15,00,000	Taxable services
Service charges relating to issuance of Certificates of Deposits (CDs)	20,00,000	Taxable services
Total value of taxable services	41,00,000	
Service tax @14% on ₹ 41,00,000	5,74,000	
Swachh Bharat Cess 0.5% on ₹ 41,00,000	20,500	
Krishi Kalyan Cess 0.5% on ₹ 41,00,000	20,500	
Total tax	6,15,000	

5.(a) With reference to the Finance Act, 1994, answer the following questions:

- (i) Is service tax payable on entry and exit load charged by a mutual fund from the investor?
- (ii) Whether job work is liable to service tax? [3+2]

Answer:

- (i) Entry and exit load charges are not towards fund management service provided by the asset management company but to meet the initial issue expense and other specified expenses. Hence, "entry and exit load" charged by a mutual fund would not attract service tax under the category of fund management service under 'Banking and other Financial Service'.
- (ii) Job work is not liable to service tax if such job work amounts to manufacture. However, if it does not amount to manufacture then service tax attracted.

(b) Rana Pvt. Ltd. is engaged in providing the taxable services. Compute the value of taxable service and the service tax payable by it in the month of June 2016 from the information furnished below:

Receipts	₹
Free Services provided to friend of director (Similar services are rendered for consideration of ₹1,00,000).	Nil
Subsidy received from Government for making investment in backward area	1,00,000
Interest received from client who has not made timely payment of service	2,00,000
For free service rendered to customers, amount reimbursed by the manufacture of such product	50,000
Other taxable services provided during the month	15,00,000

Note: Rana Pvt. Ltd. is eligible for small service providers' exemption under Notification No. 33/2012-ST, dated 20-06-2012.

Answer to MTP_Final_Syllabus 2016_Jun2017_Set 2

All the above amounts are exclusive of service tax.

[11]

Answer:

Statement showing service tax liability of Rana Pvt. Ltd.:

Particulars	₹
Free Services provided to friend of director	Nil
Subsidy received from Government for making investment in backward area	Nil
Interest received from client who has not made timely payment of service	Nil
For free service rendered to customers, amount reimbursed by the manufacture of such product	50,000
Other taxable services provided during the month	15,00,000
Total value of taxable services	15,50,000
Less: Small Service Providers' Exemption	-10,00,000
Taxable Services	5,50,000
Service Tax @14% on ₹ 5,50,000	77,000
Swachh Bharat Cess @0.5% on ₹ 5,50,000	2,750
Krishi Kalyan Cess @0.5% on ₹ 5,50,000	2,750

6.(a) PQR Ltd., Ghaziabad purchased plastic granules valued ₹ 1,16,000 (inclusive of central excise) for manufacture of plastic moulded chairs. It availed CENVAT credit of excise duty of ₹ 16,000 paid on the said inputs. It subsequently cleared the said inputs as such from the factory in the following manner:

- (i) Sales to Sansar Ltd. (purchase price: ₹ 20,000) – ₹ 40,000
- (ii) Sales to Krishna Trading Co. (purchase price: ₹ 10,000) – ₹10,000
- (iii) Clearance to PQR Ltd.'s own factory at Kanpur (purchase price: ₹ 70,000) – Free of cost.

PQR Ltd. has sought your advice on the excise duty payable by it on the above clearances. Give your advice in the matter. [8]

Answer:

Statement showing reversal or credit or an amount payable by PQR Ltd. as per Rule 3(5) of the CENVAT Credit Rules, 2004:

Particulars	CENVAT credit reversal (₹)	Workings
Sales to Sansar Ltd	3,200	$\text{₹ } 16,000 \times \text{₹ } 20,000 / \text{₹ } 1,00,000 = \text{₹ } 3,200$
Sales to Krishna Trading Co.	1,600	$\text{₹ } 16,000 \times \text{₹ } 10,000 / \text{₹ } 1,00,000 = \text{₹ } 1,600$
Clearance to PQR Ltd.'s own factory at Kanpur	11,200	$\text{₹ } 16,000 \times \text{₹ } 70,000 / \text{₹ } 1,00,000 = \text{₹ } 11,200$
Total	16,000	

Working note:

Cost of purchases = ₹ 1,00,000 (i.e. ₹ 1,16,000 – ₹ 16,000)

(b) Mrs. Vasudha, a registered dealer in Chennai, furnishes the following information relating to Inter-state sales made by her during the year ended 31.3.2016:

Particulars	₹
Sales turnover as per books	36,72,000
Above includes	
(i) Excise duty	3,20,000

Answer to MTP_Final_Syllabus 2016_Jun2017_Set 2

(ii) Freight (of this ₹ 30,000 alone is shown separately in sales invoices)	1,10,000
(iii) Deposit for returnable containers	2,40,000
(iv) Transfer to branch (covered by Form F)	12,15,000
(v) Packing charges	35,000

Further, in ascertaining the sales turnover above which includes CST also, the dealer has deducted the following:

1. Turnover relating to goods worth ₹ 10,000 (exclusive of tax) covered by invoice dated 2.4.2015, which were returned on 1.10.2015.
2. Goods worth ₹ 12,400 (including tax) covered by invoice dated 13.4.2015 were rejected by the customer and the dealer received back the goods on 14.10.2015.

Vasudha deals only in one type of commodity which is chargeable to VAT at 2% in Tamil Nadu.

You are required to compute the total turnover, CST and taxable turnover for the financial year 2015-16. Treatment of each item above should be shown distinctly. [8]

Answer:

Statement showing taxable turnover, CST and total sales for the year 2015-16:

Particulars	Taxable Turnover ₹	Workings
Total sales	36,72,000	
Less: Freight shown separately	30,000	
Less: Deposit of returnable containers	2,40,000	
Less: Transfer to Branch	12,15,000	No CST against Form F
Less: sales returns within 6 months from the date of sales	—	Deductible, already deducted
Less: Goods rejected	—	Allowed to deduct irrespective of time, already deducted
Total sales	21,87,000	
Less: Central Sales Tax	42,882	₹ 21,87,000 x 2/102
Taxable Turnover	21,44,118	

7.(a) M/s. Cool and Kool Ltd., has two units, one in Jaipur and another in Delhi. Jaipur unit manufactures condensing units which are cleared to Delhi unit on payment of appropriate excise duty. Delhi unit procures cooling units manufactured locally and combines the same with such condensing units. After conducting quality control test and affixing the brand name, the Delhi unit clears the complete units along with pipe kits, electrical cord, remote control, etc. The Department contends that the process being carried out by Delhi unit amounts to manufacture as it is not a mere process of assembly. Whereas the assessee argues that putting together various duty paid articles in a carton with a brand name to be marketed as 'air conditioner' is not a manufacture. No process is involved except that all the items are put together in one box.

Explain, with the help of decided case law, whether the contention of the Department is correct in law? [8]

Answer:

M/s. Cool and Kool Ltd. has two units, one at Jaipur and another one at Delhi. Jaipur unit manufactures condensing units which are cleared to Delhi unit on payment of appropriate excise duty. Delhi unit procures cooling units manufactured locally and combines the same with such condensing units. After conducting quality control test and affixing the brand name, clears the complete units along with pipe kits, electrical cord, remote control, etc. The air conditioner, so cleared by Delhi branch was a commercially new article. Hence, the process amounted to manufacture.

Answer to MTP_Final_Syllabus 2016_Jun2017_Set 2

In the case of **Fedders Lloyd Corporation Ltd v CCEx (2008) (SC)**, the apex court had held that neither the condensing unit nor the cooling unit by itself, was a complete air conditioner. It was only when these two were put together that the complete unit of air conditioner fit for use came into existence.

Therefore, in the given case Department's contention is correct.

(b) Kalyani Hotels (P) Ltd. is of the opinion that the value of service provided in restaurants and those provided in outdoor catering should be the same and therefore valuing them differently at 40% and 60% of the total amount respectively is incorrect. Discuss with an appropriate case law. [8]

Answer:

Restaurant services and Outdoor catering services are altogether different. The Supreme Court had occasion to consider this difference in the judgment in *Tamil Nadu Kalyana Mandapam Assn. v. Union of India — 2006 (3) S.T.R. 260 (S.C.)* (applied in *Hotel East Park v. Union of India 2014 (35) S.T.R. 433 (Chhattisgarh)*). The Supreme Court opined that the services rendered by outdoor caterers is clearly distinguishable from the service rendered in a restaurant or hotel in as much as —

- (i) Choice of food: In the case of outdoor catering service, the food/eatables/drinks are the choice of the person who partakes the services. He is free to choose the kind, quantum and manner in which the food is to be served. But in the case of restaurant, the customer's choice of foods is limited to the menu card.
- (ii) Choice of time and place: Again in the case of outdoor catering, customer is at liberty to choose the time and place where the food is to be served.
- (iii) Negotiation: In the case of an outdoor caterer, the customer negotiates each element of the catering service, including the price to be paid to the caterer.
- (iv) More personalized: Outdoor catering has an element of personalized service provided to the customer. Clearly the service element is more weighty, visible and predominant in the case of outdoor catering.

Since the two services viz. 'restaurant services' and 'outdoor catering services' are different and outdoor catering services has more service element, hence, valuation of restaurant service at 40% and outdoor catering service at 60% (differently) is justified. The assessee's contention is therefore, incorrect.

8. Answer any four:

[4×4]

(a) Can the department file an appeal in respect of the same assessee if in respect of some years no appeal was filed in matters involving identical dispute. Write a brief note with reference to Central Excise Act. [4]

Answer:

As per sec. 35R of the Central Excise Act, Department may file appeal in a case involving same issue even if no appeal was filed in earlier cases, if such appeal was not filed earlier owing to monetary limits u/s 35R. However, if such earlier matter was appealable even in view of monetary limits u/s 35R and no appeal was filed earlier, then, assessee may validly contend that Department had accepted assessee's stand. In such cases, if facts & issue involved are identical to earlier matters, which were not appealed against, the Department cannot file appeal in subsequent matters. The Revenue cannot pick and choose years or assessees to file appeal - *CIT v. J. K. Charitable Trust [2008] (232) E.L.T. 769 (S.C.)*

(b) Maximum Retail Price of a product (being personal deodorant) under Customs Tariff Heading No. 3307.20 is ₹ 1,500 and its assessable value is ₹ 1,000. As per Notification 13/2002-CE (NT), personal deodorant is assessable under Central Excise on the basis of Maximum Retail Price after allowing an abatement of 40%. Basic Excise Duty rate is

Answer to MTP_Final_Syllabus 2016_Jun2017_Set 2

12.5%. What is the countervailing duty (CVD) payable under Customs Tariff Act on personal deodorant? [4]

Answer:

Since the product is covered under MRP provisions, CVD is payable on basis of MRP.

The MRP is	₹ 1,500
Less: Abatement is 40% on ₹ 1,500	₹ 600
Assessable Value	₹ 900
CVD (i.e. Basic Excise Duty @12.5% on ₹ 900)	₹ 112.50

(c) ABC Ltd. of Delhi has appointed Light Inc. of U.K. as an agent for marketing of goods manufactured by ABC Ltd. ABC Ltd. has paid a commission of \$ 7,00,000 to Light Inc. for the services rendered by Light Inc. Discuss the service tax liability in this case. [4]

Answer:

Here, Light Inc. provides services as an intermediary. As per the provisions of Rule 9(c) of the Place of Provision of Services Rules, the place of provision of intermediary services shall be the location of the service provider. Here, Light Inc. (service provider) is situated in U.K. (non-taxable territory), hence, the place of provision of service shall be U.K. Hence, the commission shall not be taxable in India.

(d) Bala Subramanian & Co, a registered dealer having stock of goods costing ₹ 2,50,000 purchased from outside the State, wishes to opt for the composition scheme. Advise the dealer whether it is possible? State the other conditions to be satisfied by a dealer before opting for composition scheme. [4]

Answer:

Composition scheme under VAT not allowed to those dealers who possess the stock purchased from outside the state. Bala Subramanian & Co, is not eligible for opting composition scheme, since, said dealer has stock of goods costing ₹ 2,50,000 purchased from outside the state.

Conditions to be satisfied by a dealer who wishes to opt for the composition scheme are as follows:

- (i) The turnover of the dealer should not exceeds ₹ 50,00,000 and the said dealer has to intimate to the Commissioner of Commercial Tax Department of the state.
- (ii) Dealers should not claim ITC on the inputs.

(e) Differentiate between Advance Authorisation and Duty Free Import Authorisation (DFIA). [4]

Answer:

The differences between Advance Authorisation and Duty Free Import Authorisation (DFIA) are as follows -

- (i) 'Advance Authorisation' is not transferable. DFIA is transferable after export obligation is fulfilled.
- (ii) Material imported under Advance Authorisation is not transferable even after fulfillment of export obligation. Material imported under DFIA will be transferable after fulfillment of export obligation.
- (iii) Advance Authorisation scheme requires 15% value addition, while in case of DFIA, minimum 20% value addition is required.
- (iv) Advance Authorisation scheme is available to gem and jewellery sector but not DFIA.
- (v) Advance Authorisation can be issued even if SION for that product is not fixed. DFIA can be issued only if SION has been fixed for the product to be exported.