

Paper 11- Indirect Taxation

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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.

1. Answer the following questions:

(A) Multiple choice questions: [10×1=10]

- (a) Which of the following is a canon of taxation, as enunciated by Adam Smith?
- (i) Canon of Equality
 - (ii) Canon of Convenience
 - (iii) Canon of Certainty
 - (iv) All of the above.
- (b) Form ER-1 has to be submitted by the manufacturer on:
- (i) weekly basis
 - (ii) monthly basis
 - (iii) quarterly basis
 - (iv) half-yearly basis.
- (c) S.S.I. units can make the excise duty payments once in:
- (i) Months
 - (ii) Quarter
 - (iii) Half- year
 - (iv) Annual
- (d) Which of the following amount to manufacture under central Excise Act 1944?
- (i) Cutting and sizing
 - (ii) Repairing & reconditioning
 - (iii) Mixing of metals
 - (iv) None
- (e) Which of the following activity is not covered under the negative list of services?
- (i) Forward contracts in commodities
 - (ii) Auxiliary services relating to future contracts or commodity futures provided by commodity exchanges, clearing houses or agents.
 - (iii) Commodity futures
 - (iv) Sale or purchase of goods
- (f) Which of the following rule of the Place of Provision of Services Rules, 2012 is dealt with performance based services?
- (i) Rule 4
 - (ii) Rule 5
 - (iii) Rule 6
 - (iv) Rule 7
- (g) As per sec 2(d) of the CST Act, 'Goods' includes all materials, articles, commodities and all other kinds of movable property, but does not include:
- (i) newspapers
 - (ii) stocks
 - (iii) shares
 - (iv) All of the above.
- (h) VAT rate of gold, if within State of Gujarat, is 1%. If gold is sold to an unregistered buyer in Delhi, the CST rate will be:

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- (i) Nil
- (ii) 1%
- (iii) 4%
- (iv) 10%

(i) In case of customs valuation, if the cost of insurance is not ascertainable, these will be calculated at:

- (i) 1.125% of FOB Value of goods
- (ii) 20% of FOB Value of goods
- (iii) 10% of FOB Value of goods
- (iv) 1.50% of FOB Value of goods

(j) Registrations of Service Tax is granted by _____

- (i) Assistant Commissioner
- (ii) Commissioner
- (iii) Superintendent
- (iv) Joint Commissioner

(B) Say True or False for the following question:

[5×1=5]

- (a) Excise Department cannot challenge the reasonability of MRP printed on the package.
- (b) Cenvat credit can be availed on the rent-a-cab service utilized to carry employees from home to factory and back.
- (c) Hides and skins are declared goods under CST Act.
- (d) A service provider is required to file return in form ST-4 on quarterly basis within 15 days from close of quarter.
- (e) Duty drawback is allowed on wearing apparels.

(C) Match the following:

[5×1=5]

| | Column 'A' | | Column 'B' |
|----|--------------------------------------|---|---|
| 1. | Tax Identification Number | A | Calculation of cost of production for captive consumption |
| 2. | All type of services provided by RBI | B | person does not have any dutiable goods |
| 3. | Krishi Kalyan Cess | C | @0.5% on the value of taxable services |
| 4. | CAS-4 | D | consist of 11 digits |
| 5. | Green channel | E | included in negative list |

(D) Fill in the blanks:

[5×1=5]

- (i) CENVAT credit _____ (is/is not) available if there is loss of input due to leakage in storage tank during Process.
- (ii) Goods manufactured or produced in SEZ are _____ goods.
- (iii) Margin of dumping is the difference between _____ and export price.
- (iv) Under the concept of _____ mechanism, for one service the service provider as well as service receiver is made liable for payment of service tax to the extent notified.
- (v) CST is collected in the State in which the goods are _____.

Answer to 1(A):

- (a) (iv)
- (b) (ii)
- (c) (ii)
- (d) (iii)
- (e) (ii)
- (f) (i)

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- (g) (iv)
- (h) (ii)
- (i) (i)
- (j) (iii)

Answer to 1(B):

- (a) True
- (b) False
- (c) True
- (d) False
- (e) False

Answer to 1(C):

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

Answer to 1(D):

- (i) is
- (ii) excluded excisable
- (iii) normal value
- (iv) joint charge
- (v) delivered.

**Answer any five questions from the following.
Each question carries 15 marks**

- 2.(a) State the differences between direct taxes and indirect taxes. [6]**
- (b) B Ltd manufactures two products namely, Eye Ointment and Skin Ointment. Skin Ointment is a specified product under section 4A of the Central Excise Act, 1944. The sale prices of the two products are ₹ 43 per unit and ₹ 33 per unit respectively. The sale price of both the products included 12.5% excise duty as BED, education cess of 2% and SAH of 1%. It also includes CST of 2%. Additional information is as follows:
Units cleared: Eye Ointment - 1,00,000 units, Skin Ointment – 1,50,000 units. Deduction permissible under section 4A: 40%.
Calculate the total excise duty liability of B Ltd for both the products. [9]**

Answer to 2(a):

Difference between Direct Taxes & Indirect Taxes:

| | Direct Taxes | Indirect Taxes |
|-------------------|---|---|
| Meaning | Direct Taxes are those taxes where the incidence and impact falls on the same person. | Indirect Tax is a tax where incidence and impact fall on two different person. |
| Nature of tax | Direct Tax progressive in nature. | Indirect Tax is regressive in nature. |
| Taxable Event | Taxable Income of the Assessee | Purchase / Sale / Manufacture of goods and provision of services. |
| Levy & Collection | Levied and collected from the Assessee. | Levied & collected from the consumer but paid/ deposited to the Exchequer by the Assessee / Dealer. |

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| | | |
|--------------------|---|--|
| Shifting of Burden | Directly borne by the Assessee. Hence, cannot be shifted. | Tax burden is shifted or the subsequent / ultimate user. |
| Collected | After the income for a year is earned or valuation of assets is determined on the valuation date. | At the time of sale or purchases or rendering of services. |

Answer to 2(b):

Eye Ointment:

Let us assume x as the assessable value

Assessable Value = x

Add: BED @12.5% = 0.125x

1.125x

Add: CST @ 2% = 0.0225x

Selling price = 1.1475x

Assessable value per unit ₹ 43 x 1/1.1475 = ₹ 37.47 per unit

Total Assessable Value = ₹ 37,47,000

Excise duty @12.5% on 1,00,000 units = ₹ 4,68,375 (i.e. ₹ 37.47 x 1,00,000 units)

Skin Ointment:

Maximum Retail Price = ₹ 33

Less: Abatement @40% = ₹ (13)

Assessable Value (per unit) = ₹ 20

Total Assessable Value = ₹ 30,00,000 (i.e. ₹ 20 x 1,50,00 units)

Excise Duty @12.5% = ₹ 3,75,000

B Ltd liable to pay total excise duty = ₹ 8,43,375

3.(a) Following transactions took place in the factory of A Ltd.:

- (i) An imported consignment of raw materials was received vide Bill of Entry dated 2.12.15 showing the following customs duty payments: Basic Customs duty ₹ 25,000; Additional duty (CVD) ₹ 20,000; Special Additional duty ₹ 5,800.
- (ii) A consignment of 1,000 kgs of inputs was received. The Excise duty paid as per the invoice was ₹ 10,000. While the input was being unloaded 50 kgs were damaged and were found to be not usable.
- (iii) A vehicle containing machinery was received. The machinery was purchased through a dealer and not from the manufacturer. The dealer's Invoice No. 925, dated 3.9.15 marked 'original for buyer' certified that the excise duty paid by the manufacturer of machinery was ₹ 24,000. The dealer is registered with the Central Excise Authorities.
- (iv) Some inputs for final products were received. These were accompanied by a certified Xerox copy (photo copy) of Invoice No. 286 dated 15.1.2016 indicating that Excise duty of ₹ 6,400, has been paid on inputs. The original or duplicate copies of invoice are not traceable.

Indicate the eligibility of CENVAT Credit in each case under the CENVAT Credit Rules, 2004 with explanations where necessary. [10]

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- (b) A Trader supplies raw material of ₹ 1,150 to processor. Processor processes the raw material and supplies finished product to the trader. The processor charges ₹ 450, which include ₹ 350 as processing expenses and ₹ 100 as his (processor's) profit. Transport cost for sending the raw material to the factory of processor is ₹ 50. Transport charges for returning the finished product to the trader from the premises of the processor is ₹ 60. The finished product is sold by the trader at ₹ 2,100 from his premises. He charges Vat separately in his invoice at applicable rates. The rate of duty is 12.5%. What is the Assessable Value and what is total duty payable? [5]

Answer to 3(a):

- (i) CENVAT credit available for the following: Additional duty (CVD) ₹ 20,000;
Special Additional duty ₹ 5, 800
- (ii) CENVAT credit available for 950 Kgs
Eligible CENVAT credit = ₹ 10,000 x 950/1000 = ₹ 9,500.
- (iii) CENVAT credit can be availed if the goods are purchased from a first or second stage dealer. The eligible CENVAT credit for the first year = ₹ 24,000 x 50% = ₹ 12,000.
The balance CENVAT credit for the second and subsequent years
- (iv) CENVAT credit is not available based on the certified Xerox copy of invoice. CENVAT credit can be availed only when any one of the following invoices available:
- (1) Original for buyer
 - (2) Duplicate for transporter
 - (3) Triplicate for seller.

However, It is pertinent to note that the High Court held that Cenvat Credit could be taken on the strength of private challans (i.e. other than prescribed documents) as the same were not found fake and there was proper certification that duty has been paid (CCEx. v Stelko Strips Ltd. 2010 (255) E.L.T. 397 (P&H)).

Therefore in the given case Xerox copy of invoice can be considered as a valid document for taking CENVAT credit.

Answer to 3(b):

Assessable Value is to be calculated on basis of selling price of trader which is ₹ 2,100 (cum-duty). This price is to be treated as inclusive of excise duty. Hence, assessable value will be (₹ 2,100 x 100) / 112.50 i.e. ₹ 1,866.67. Basic excise duty @ 12.5% will be ₹ 233.33.

4.(a) What is transit of goods and transhipment of goods? Give examples. [4+4]

- (b) A commodity is imported into India from a country covered by a notification issued by the Central Government under section 9A of the Customs Tariff Act, 1975. Following particulars are made available:

CIF value of the consignment: US\$25,000

Quantity imported: 500 kgs.

Exchange rate applicable: ₹ 50= US\$1

Basic customs duty: 20%

Education and secondary and higher Education Cess as applicable as per the Finance Act, 2008.

As per the notification, the anti-dumping duty will be equal to the difference between the costs of commodity calculated @US\$70 per kg. and the landed value of the commodity as imported.

Appraise the liability on account of normal duties, Cess and the anti-dumping duty.

Assume that only 'Basic Customs Duty' (BCD) and Education and Secondary and Higher Education Cess are payable. [7]

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Answer to 4(a):

Transit of Goods: Any goods imported in any conveyance will be allowed to remain on the conveyance and to be transited without payment of duty, to any place out of India or any customs station.

Example: A vessel Bhishma, sailing from U.S.A. to Australia via India. Bhishma carries various types of goods namely 'A, B, C & D'. 'A & B' are destined to Mumbai Port and balance remains in the same vessel. Subsequently vessel chartered to Australia.

Transshipment of Goods: Transshipment means transfer from one conveyance to another with or without payment of duty. It means to say that goods originally imported from outside India into India, then transhipped to another vessel to a place within India or outside India.

Example: A vessel Bhishma, sailing from U.S.A to Australia via. India carries various types of products namely A, B, C & D. A & B are destined to Mumbai Port. On account of submission of bill of transshipment product 'A' transhipped to Chennai port as ultimate destination in India and product 'B' transhipped to Srilanka. Product 'A' is imported goods because its ultimate destination is in India. Products 'A' & 'B' are called as Transshipment goods, since these goods are transhipped to another vessel, Product 'A' transhipped to Chennai attracts import duty whereas product 'B' is destined to Srilanka without payment of duty. Products 'C' & 'D' are transit goods since these goods remains in the same vessel Bhishma chartered to Australia.

Answer to 4(b):

Statement showing land value of imported goods and anti-dumping duty:

| Particulars | US \$ |
|--|------------|
| CIF value | 25,000 |
| Add: 1% unloading charges on CIF | 250 |
| Assessable value | 25,250 |
| | Value in ₹ |
| Assessable value (i.e. 25,250 x ₹ 50) | 12,62,500 |
| Add: Customs duty 20.60% on Assessable value | 2,60,075 |
| Landed value (or value of imported goods) | 15,22,575 |
| Market value of imported goods (500 kgs x ₹ 50 x US\$70) | 17,50,000 |
| Anti-dumping duty (₹ 17,50,000 – ₹ 15,22,575) | 2,27,425 |
| Total customs duty payable | 4,87,500 |

5.(a) What do you understand by Automation of Central Excise and Service Tax (ACES)? State the usefulness of it. [4+4]

(b) M/s. Pure Drugs Ltd. manufactures medicines, which are liable to excise duty only under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955. The Assistant Commissioner of Central Excise has directed it to pay the service tax as it is not covered by negative list [Section 66D(f) of the Finance Act, 1994] since the central excise duty under Section 3 of the Central Excise Act, 1944 is not payable on the medicines manufactured by it. Examine whether M/s. Pure Drugs Ltd. is liable to pay service tax for the year. Give reasons in support of your answer. [7]

Answer to 5(a):

Automation of Central Excise and Service Tax (ACES): The Central Board of Excise & Customs (CBE & C) has developed a new software application called Automation of Central Excise

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and Service Tax (ACES), which aims at improving tax-payer 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.

In ACES, the various processes of Service Tax automated are —

- i. Registration,
- ii. Returns,
- iii. Refunds,
- iv. ST-3A,
- v. Dispute Resolution and
- vi. Audit.

Usefulness: ACES can be used for —

- i. Online registration and amendment of registration details
- ii. Electronic filing of documents such as Returns, Claims, Intimations and permissions
- iii. Online tracking of the status of applications, claims and permissions
- iv. Online facility to view documents like Registration Certificate, Returns, Show Cause Notice, Order-In-Original etc.

Answer to 5(b):

The following points are relevant:

1. The definition of 'process amounting to manufacture or production of goods' under Section 65B(40) includes process amounting to manufacture under Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (M&TP Act).
2. The M&TP Act provides for levy of excise duty on medicinal and toilet preparations containing alcohol or opium, Indian hemp and other narcotic drugs and narcotics.
3. Therefore, job-work therein will be covered under negative list under Section 66D(f) and not liable to service tax.

Hence, M/s. Pure Drugs is not liable to pay any service tax, as the service is in negative list.

6.(a) AB Bank Ltd., furnishes the following information relating to services provided and the gross amount received —

| | ₹ (lakhs) |
|--|------------|
| Merchant Banking Services | 10 |
| Asset Management (including portfolio management) | 3 |
| Service charges for services to the Government of India | 1.5 |
| Interest on overdraft and cash credits | 3 |
| Banker to the issue | 5 |
| Locker rent | 2 |

Repayment of financial lease made by the customer to the bank ₹ 80 lakhs which includes a principal amount of ₹ 50 lakhs. Compute the value of taxable service under the Finance Act, 1994 and the service tax liability of AB Bank Ltd. [9]

(b) Determine Point of Taxation (with reasons) in the following cases –

| No. | Date of Completion of Service | Date of Payment | Date of Invoice |
|-----|-------------------------------|-----------------|-----------------|
| 1 | 10/08/2016 | 06/09/2016 | 18/08/2016 |
| 2 | 10/08/2016 | 10/09/2016 | 13/09/2016 |

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| | | | |
|---|------------|------------|------------|
| 3 | 10/08/2016 | 05/08/2016 | 17/08/2016 |
|---|------------|------------|------------|

[6]

Answer to 6(a):

Computation of taxable value and tax payable (assuming all sums received are exclusive of service tax)

| | ₹ |
|--|------------------|
| Merchant Banking Services - Taxable | 10,00,000 |
| Asset Management (including portfolio management) - Taxable | 3,00,000 |
| Service charges for services to the Government of India - No exemption, hence, taxable | 1,50,000 |
| Interest on overdraft and cash credits - Not taxable, as covered in negative list u/s 66D(n) | Not taxable |
| Banker to the issue - Taxable ; | 5,00,000 |
| Locker rent - Taxable (It is renting and taxable) | 2,00,000 |
| Hire-purchase/Finance Lease: Value of taxable service = 10% of (Installment ₹ 80 lakh -Principal sum ₹ 50 lakh) i.e. 10% of interest of ₹ 30 lakh [This is a declared service u/s 66E(g).] | 3,00,000 |
| Total taxable value | 24,50,000 |
| Service tax @ 15% | 3,67,500 |

Answer to 6(b):

The point of taxation will be:

| No. | Date of Completion of Service (DoS) | Date of Payment (DoP) | Date of Invoice (DoI) | Point of Taxation |
|-----|-------------------------------------|-----------------------|-----------------------|--|
| 1 | 10/08/2016 | 06/09/2016 | 18/08/2016 | 18/08/2016 [DoI, as invoice issued within 30 days of DoS] |
| 2 | 10/08/2016 | 10/09/2016 | 13/09/2016 | 10/08/2016 [DoS, as invoice not issued within 30 days of DoS] |
| 3 | 10/08/2016 | 05/08/2016 | 17/08/2016 | 05/08/2016 [DoP, as payment received before DoI] |

7.(a) Anuradha & Co., a registered dealer in VAT, furnishes following details of purchases and sales for the month of March, 2016:

| Particular | Amount (₹) |
|--|------------------|
| Opening balance of VAT Input Tax Credit | 25,000 |
| Opening balance of stock of inputs | Nil |
| Purchase of goods from registered dealers within the State (including State VAT) | 28,62,500 |
| Purchases from outside State against issue of C form (including CST amount) | 15,30,000 |
| Net sales within State excluding State VAT | 55,00,000 |
| Closing stock of goods purchased within the State as on 31.03.2016 (inclusive of VAT paid on purchases) | 1,14,500 |

VAT rate on both inputs and outputs is 14.5%. Determine VAT liability of dealer for the month of March, 2016. [8]

(b) Laxman & Co. furnishes to you the following information.

1) Interstate sale of goods (it includes ₹ 10,00,000 being the value of goods transferred

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- to Chennai branch for which it had issued form F) ₹ 69,00,000.
- 2) Dharmada collected separately ₹ 25,000 (This was collected only from buyers who had voluntarily agreed to pay such charges).
 - 3) Weighment charges recovered separately from buyers ₹ 2,40,000.
 - 4) Cash discount shown in invoice as per trade practices ₹ 60,000.
 - 5) Transit insurance charges recovered from buyer to cover transit loss based on their request ₹ 50,000.

Calculate the turnover and CST payable on the assumption that all the sales were made to registered dealers who have issued 'c' forms. Assume that the prices are exclusive of CST. [7]

Answer to 7(a):

Computation of VAT Payable:

| Particulars | Amount (₹) | Amount (₹) |
|--|------------|------------|
| VAT Output [₹ 55,00,000 x 14.5%] | | 7,97,5000 |
| Less: input | | |
| — Opening Balance | 25,000 | |
| — Local Purchase [₹ 28,62,500 /114.5% x 14.5%] | 3,62,500 | |
| — CST Purchase | Nil | 3,87,500 |
| VAT Payable | | 4,10,000 |

Answer to 7(b):

Computation of Taxable Turnover

| Particulars | Amount (₹) | Amount (₹) |
|---------------------------------|------------|------------|
| Gross turnover | | 69,00,000 |
| Add: Weighment charges | | 2,40,000 |
| Dharmada (Charity) | | 25,000 |
| | | 71,65,000 |
| Less: | | |
| Stock transfer to the branch | 10,00,000 | |
| Cash Discount | 60,000 | |
| Transit Insurance | 50,000 | 11,10,000 |
| Taxable turnover | | 60,55,000 |
| Tax on above [₹ 60,55,000 × 2%] | | 1,21,100 |

8. Write short note on any three of the following:

[3×5=15]

- (a) Harmonised System of Nomenclature (HSN);
- (b) Anti-dumping duty;
- (c) Intermediary services;
- (d) Subtraction method of VAT.

Answer to 8(a):

Harmonised System of Nomenclature (HSN): Goods are classified under Central Excise Tariff Act based on the "Harmonized System of Nomenclature" having eight digit classifications. All goods are classified using 4 digit system. These are called 'headings'. Further 2 digits are added for sub-classification, which are termed as 'sub-headings'. Further 2 digits are added for sub-sub-classification, which is termed as 'tariff item'. Rate of duty is indicated against each 'tariff item' and not against heading or sub-heading.

Harmonised System of Nomenclature (HSN) is an internationally accepted product coding system, formulated to facilitate trade flow and analysis of trade statistics. The system was

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developed by World Customs Organisation (WCO), which was earlier known as Customs Cooperative Council. HSN was adopted by International Convention of Harmonised System of Nomenclature.

The CETA is also based on the HSN pattern, of course, with some deviation. HSN has got commercial as well as judicial recognition.

Answer to 8(b):

Anti-dumping duty:

- i. Anti dumping duty is leviable u/s 9A of Customs Tariff Act when foreign exporter exports his goods at low prices compared to prices normally prevalent in the exporting country.
- ii. Dumping is unfair trade practice and the anti-dumping duty is levied to protect Indian manufacturers from unfair competition.
- iii. Margin of dumping is the difference between normal value (i.e. his sale price in his country) and export price (price at which he is exporting the goods).
- iv. Price of similar products in India is not relevant to determine 'margin of dumping'.
- v. 'Injury Margin' means difference between fair selling price of domestic industry and landed cost of imported products. Dumping duty will be lower of dumping margin or injury margin.
- vi. Benefits accruing to local industry due to availability of cheap foreign inputs are not considered. This is a drawback.
- vii. CVD is not payable on anti-dumping duty. Education Cess and SAH education Cess is not payable on anti-dumping duty. In case of imports from WTO countries, anti-dumping duty can be imposed only if it causes material injury to domestic industry in India.
- viii. Dumping duty is decided by Designated Authority after enquiry and imposed by Central Government by notification. Provisional antidumping duty can be imposed.
- ix. Appeal against antidumping duty can be made to CESTAT.

Answer to 8(c):

Intermediary services: Generally, an "intermediary" is a person who arranges or facilitates a supply of goods, or a provision of service, or both, between two persons, without material alteration or further processing. Thus, an intermediary is involved with two supplies at any one time:

- i) the supply between the principal and the third party; and
- ii) the supply of his own service (agency service) to his principal, for which a fee or commission is usually charged.

For the purpose of the rule 9 of Place of Provision of Services Rules, an intermediary in respect of goods such as a commission agent (i.e. a buying or selling agent, or a stockbroker) is excluded by definition.

An intermediary cannot alter the nature or value of the service, the supply of which he facilitates on behalf of his principal, although the principal may authorize the intermediary to negotiate a different price. Also, the principal must know the exact value at which the service is supplied (or obtained) on his behalf, and any discounts that the intermediary obtains must be passed back to the principal.

The service provided by the intermediary on behalf of the principal is clearly identifiable.

In accordance with the above guiding principles, services provided by the following persons will qualify as 'intermediary services':-

- i) Travel Agent (any mode of travel)
- ii) Tour Operator

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- iii) Commission agent for a service [an agent for buying or selling of goods is excluded]
- iv) Recovery Agent

Even in other cases, wherever a provider of any service acts as an intermediary for another person, as identified by the guiding principles outlined above, this rule will apply. Normally, it is expected that the intermediary or agent would have documentary evidence authorizing him to act on behalf of the provider of the 'main service'.

Answer to 8(d):

Subtraction method of VAT:

Steps of computation involved in the method —

1. Determine Value addition from either of the following methods:
 - Direct Subtraction method —
Total value of sales
Less: Total value of purchases
(both exclusive of tax)
or
 - Intermediate subtraction method —
Total value of sales
Less: Total value of purchases
(both inclusive of tax)
2. Apply the rate of tax on the amount calculated in step 1.

Pros and Cons of this method:

- (1) This method is normally applied where the tax is not charged separately.
- (2) Tax is charged only on the value added at each stage of the sale of goods
- (3) There is no tax credit as the total value of goods sold is not taken into account.