

Paper 11 - Indirect Taxation

Answer to PTP_Intermediate_Syllabus 2012_Dec 2015_Set 1

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

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

Paper 11- Indirect Taxation

Time Allowed : 3 Hours

Full Marks : 100

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

All questions are compulsory. In question No. 1, all sub-questions are compulsory. In question Numbers 2 to 8, student may answer any two of the three sub-questions (a), (b) and (c).

Wherever necessary, you may make suitable assumptions and state them clearly in your answer.

Working notes should form part of the answer.

1. Answer the following questions with suitable reasons: [1×20=20]
- (a) State the conditions for levy of excise duty on waste and scrap.
 - (b) Determine the point of taxation in the case when the date of completion of service is 10.05.2014, date of invoice is 30.05.2014 and the date on which payment received is 15.06.2014.
 - (c) Which form is required to be issued to exempt penultimate sale in course of inter-state sale?
 - (d) State whether renting of immovable property is a declared service or not.
 - (e) State the warehousing period for which capital goods intended for use in 100% EOU, may remain in warehouse.
 - (f) State the meaning of 'margin of dumping' in the context of customs.
 - (g) State the implication of first two characters of Tax Identification Number.
 - (h) Define 'Goods' as per CST Act.
 - (i) State when taxable event in case of export is completed.
 - (j) Mention any one item which is covered under Compounded Levy Scheme.
 - (k) A Ltd., a service provider, received subsidy from Govt. for making investment in backward areas. Discuss whether this will form the value of taxable service or not.
 - (l) State the place of provision of service related to passenger transportation.
 - (m) Whether serving of food in a restaurant without air-condition facility is exempted from service tax or not?
 - (n) The Central Excise Tariff Schedules are divided into four column headings. Two of them are description of goods, standard unit of quantity. State the rest two.
 - (o) Define 'Normal Transaction Value' as per Rule 2(b) of Central Excise Valuation (Determination of Price of Excisable Goods), Rules.
 - (p) Differentiate direct tax and indirect tax in the context of taxable event.
 - (q) Name the legislation which governs the foreign trade.
 - (r) There are two duty exemption schemes under which an exporter can import the inputs duty free for export obligation. Mention those schemes.
 - (s) State the concept of Arm's Length Principle.
 - (t) Give an example of profit based method for determining Arm's length price.

Answer:

- (a) The waste and scrap shall be liable to excise duty, if:
 - arises during course of manufacture; and
 - it is movable, marketable, and
 - listed in tariff.
- (b) As the invoice is issued within 30 days of completion of provision of service and before receipt of payment, the point of taxation is 30.05.2014.
- (c) Form H is required to be issued by the purchaser which is the ultimate exporter to exempt penultimate sale in course of inter-state sale.

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- (d) Renting of immovable property is a declared service as per sec. 66E(a) of Finance Act, 1994.
- (e) Capital goods intended for use in any 100% EOU may be remained in warehouse till the expiry of 5 years.
- (f) Margin of dumping in relation of an article, means the difference between its export price and its normal value.
- (g) The first two characters of Tax Identification Number represent the state code which is allotted by Central Government.
- (h) Section 2(d) of CST Act defines that 'goods' include all materials, articles, commodities and all kinds of movable property, but does not include newspapers, actionable claims, stocks, shares and securities.
- (i) The taxable event in case of export is completed when the goods cross the territorial waters of India.
- (j) The compounded levy scheme covers:
 - (i) Stainless steel pattis / pattas and
 - (ii) Aluminum circles.
- (k) As per Rule 6 of the Service Tax (Determination of Value) Rules, 2006, any subsidy disbursed by the Govt. cannot form part of the value of taxable service unless such subsidy directly influences the value of such services.
- (l) The place of provision is the place where passenger embarks for continuous journey in case of passenger transportation service.
- (m) The serving of food in a restaurant without air-condition facility is exempted from service tax.
- (n) The rest two column headings are: tariff item and rate of duty.
- (o) 'Normal Transaction Value' means the transaction value at which the greatest aggregate quantity of goods are sold.
- (p) In case of direct tax, the taxable event is the taxable income or the taxable wealth of the assessee. In case of indirect tax, the taxable event is the purchase or sale or manufacture of goods and provision of services.
- (q) The legislation which governs the foreign trade is the Foreign Trade (Development and Regulation) Act, 1992.
- (r) The two duty exemption schemes are: advance authorization scheme and duty free import authorization scheme.
- (s) Arm's length principle is based on the concept that prices in uncontrolled transactions are determined by market forces.
- (t) The example of profit based method for determining Arm's length price are: profit split method, transaction net margin method.

2. Answer any two:

[2×2=4]

- (a) State the constitutional power by which a State Govt. can levy taxes. Also state the entry number by which income tax other than tax on agricultural income is taxed. [1+1]
- (b) Distinguish between Value Added Tax and Excise Duty. 2
- (c) Write down the difference between 'levy' and 'collection'. 2

Answer:

- (a) As per Article 246(3) of Constitution of India, a State Government can levy taxes as per list II of Seventh Schedule. Income Tax other than tax on agricultural income is taxed as per Entry No. 82 of List I (Union List).

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(b) Distinctions between Value Added Tax and Excise Duty:

Aspect	Value Added Tax (VAT)	Excise Duty
1. Meaning	VAT is a tax on sale made by the dealer, in the course of intra-state trade or commerce.	Excise duty is levied on manufacture of excisable goods/commodities.
2. Point of Levy & Remittance	A Dealer is liable to pay Sales Tax on the sale made by him.	Excise Duty is levied on the manufacture of goods. Duty is payable only on removal of goods from the factory.
3. Own Consumption	Manufacture of goods and its consumption for own use, is not liable for VAT, since a person cannot sell to himself.	Person is liable to pay duty on goods removed for own consumption or captive consumption also.

(c) Difference between 'levy' and 'collection':

Levy	Collection
Levy includes both imposition of taxes as well as assessment/quantification of taxes.	Collection means collection/recovery of assessed tax.

3. Answer any two:

[8×2=16]

(a) (i) Discuss the veracity or otherwise of the following:

Branding/labeling of packed spices is manufacture, but branding/labeling of stainless steel screws is not manufacture. 4

(ii) Calculate 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 01/02/2015
	01/02/2015	31/01/2015	
Mysore Depot	₹ 210/unit	₹ 205/unit	₹ 215/unit
Hosur Depot	₹ 220/unit	₹ 215/unit	₹ 225/unit
Tirupati Depot	₹ 230/unit	₹ 225/unit	₹ 235/unit

The goods were cleared to respective Depots on 01/01/2015 and actually sold at the depots on 01/02/2015. 4

(b) MNO Ltd. is in the manufacture of both excisable and non-excisable goods in their factory building rented by them from October 1, 2014 and have been occupying the same as a tenant. From the following particulars for the period October 1, 2014 to March 31, 2015, state with suitable explanations, whether MNO Ltd. could claim the benefit of exemption in terms of Notification No. 8/2003-CE dated 1-3-2003 for the financial year 2015-16.

	₹ in lakh
(i) Clearances of branded goods	60
(ii) Export Sales to Nepal	80
(iii) Export Sales to USA and Canada	120
(iv) Clearances of goods (duty paid passed on Annual capacity of production under Section 3A of the Central Excise Act, 1944)	70
(v) Clearances of goods subject to valuation based on retail sale price under Section 4A of the Central Excise Act, 1944 (said goods are eligible for 30% abatement)	200
(vi) Job work under Notification No. 214/86-CE.	60

During the period April 1, 2014 to September 30, 2014 the previous tenant of the building presently occupied by MNO Ltd. had cleared excisable goods of the aggregate value of ₹ 120

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lakhs.

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(c) (i) On 10-04-2014, M/s. Sheetal Packagings cleared plastic bottles whose assessable value was ₹ 20,00,000 and duty payable was ₹ 2,47,200. On 15-04-2014, the purchaser returned the plastic bottles to Sheetal Packagings. M/s. Sheetal Packaging took credit of duty of ₹ 2,47,200 on basis of invoice issued at the time of clearance of plastic bottles. The Department denies the credit on the ground that the duty on such goods has not been paid, as plastic bottles. The Department denies the credit on the ground that the duty on such goods has not been paid, as the due date for payment of duty falls on 06-05-2014. Discuss whether contention of department is correct. 5

(ii) XYZ Ltd. paid Central Excise duty of ₹ 15,00,000 for the goods cleared in the month of December 2014 on February 26th, 2015. Arrive at the penalty under rule 8 of the Central Excise Rules, 2002 which is leviable in this case. 3

Answer:

(a) (i)

- **Natural meaning of manufacture:** The process of branding/labeling doesn't result in emerge of a new product with distinct name, character or use. Hence, it doesn't amount to manufacture.
- **Deemed manufacture u/s 2(f)(ii) of the Central Excise Act or CEA:** The Section Notes and Chapter Notes to First Schedule of Central Excise Tariff Act or CETA do not contain any provision declaring the branding/labeling in relation to spices or stainless steel screws as amounting to manufacture. Therefore, there is no deemed manufacture.
- **Deemed manufacture u/s 2(f)(iii) of the CEA:** Spices and stainless steel screws are not covered in Third Schedule to the CEA, 1944. Hence, section 2(f)(iii) doesn't apply.

The branding/labeling referred to in this question doesn't amount to manufacture from any angle.

(ii) 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.

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., 01.01.2015)-

Clearance from	Assessable Value
(a) Mysore Depot	₹ 210
(b) Hosur Depot	₹ 220
(c) Tirupati Depot	₹ 230

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

(b) Computation of value of clearances for home consumption in the financial year 2014-15:

Sl. No.	Particulars		₹ in lakh
(i)	Clearances of branded goods	[WN-1]	Nil
(ii)	Export Sales to Nepal	[WN-1]	80
(iii)	Export Sales to USA and Canada	[WN-1]	Nil
(iv)	Clearances of goods (duty paid based on annual capacity of		70

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	production under Section 3A of the Central Excise Act, 1944)		
(v)	Clearances of goods subject to valuation based on retail sale price under Section 4A of the Central Excise Act, 1944	[WN-2]	140
(vi)	Job work under Notification No. 214/86-CE.	[WN-1]	Nil
(vii)	Clearances of previous tenant of the building occupied by MNO Ltd.	[WN-3]	120
	Total		410

Working Notes:

- (1) In order to claim the benefit of exemption under Notification No. 8/2003-CE, dated 01.03.2003 in a financial year, the total turnover of a unit should not exceed ₹ 400 lakhs in the preceding financial year. Notification No. 8/2003-CE, dated 01.03.2003 provides that for the purpose of computing the turnover of ₹ 400 lakhs.
 - (a) clearances bearing the brand name or trade name of another person are excluded. It has been assumed that the branded goods are excisable goods and they bear the brand name of another person and not the brand name of MNO Ltd.
 - (b) export turnover is excluded. However, exports to Nepal and Bhutan are not excluded as these are treated as "clearance for home consumption". It has been assumed that goods exported by MNO Ltd. to Nepal are excisable goods.
 - (c) Clearances under specified job work notifications are excluded and Notification No. 214/86-CE, dated 25-03-1986 is one of the specified notification.
- (2) In case of the goods subject to valuation under section 4A of the Central Excise Act, 1944, value for the purpose of the SSI exemption would mean value fixed under section 4A i.e., retail sale price less abatement. Hence, value of such clearances would be ₹ 200 lakhs × 70% = ₹ 140 lakhs.
- (3) For the purpose of computing the turnover of ₹ 400 lakhs, all the clearances made by different manufactures from the same factory are to be clubbed together. Hence, clearances, worth ₹ 120 lakhs of previous tenant of the building occupied by MNO Ltd. have been added.

Since the value of clearances for home consumption exceeds ₹ 400 lakhs in the financial year 2014-15, hence MNO Ltd. is not eligible to claim the benefit to exemption under Notification No. 8/2003-CE, dated 01.03.2003 in the financial year 2015-16.

- (c) (i) The Board vide Instruction F. No. 267/44/2009-CX. 8, dated 25-11-2009 has clarified in accordance with Rule 8(2) of the Central Excise Rules, 2002, "the duty of excise shall be deemed to have been paid for the purposes of these rules on the excisable goods removed in the manner provided under sub-rule (1) and the credit of such duty is allowed as provided by or under any rule".

This provision explains that the invoice of the returned goods, would be a valid document for availing credit and duty is deemed to have been discharged.

According to Rule 16(1), the assessee shall be entitled to take CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit Rules, 2004 and utilize this credit according to the said rules.

In view of above, credit on rejected/returned goods, received in the factory before prescribed date for duty payment, can be allowed to be taken under Rule 16(1). Hence, M/s. Sheetal Packagings' action is correct in law. M/s. Sheetal packagings should pay duty of ₹ 2,47,200 on 06-05-2014 as per Rule 8.

- (ii) The penalty shall be computed as follows (amount in ₹) -

Excise duty payable	15,00,000
Due date of payment of excise duty for the month of December 2014	06-01-2015

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Date of actual payment	26-02-2015
Period of default (in month or part thereof)	2 month
Penalty @ 1% p.m. [$\text{₹ } 15,00,000 \times 1\% \times 2$]	30,000

4. Answer any two:

[6×2=12]

(a) (i) A product is liable to 12% Basic Excise Duty. However, a Notification has granted exemption to the said product, whereby the rate of Basic Excise Duty has been reduced from 12% to 8%. Further, a Special Excise Duty of 4% is also leviable on such product by virtue of a Finance Act. This product has been imported by "Y" from Brazil. Basic Customs Duty is leviable at 8%. Determine the rate of Additional Duty of Customs (ACD) leviable, on such product. 3

(ii) HRC Co. imported a consignment of Computer Software and Manuals valued at US \$42 Lakhs and contended that the actual value was only US \$10 Lakhs while the balance amount represented License Fee for using the software at multiple locations, and as such Customs Duty is payable only on the actual value of US \$10 Lakhs. Is the contention raised by HRC Co. correct? Discuss. 3

(b) M/s. ABC Ltd. imported machinery, which were warehoused on 1-4-2014 for a period of 7 months. An ex-bond bill of entry for home consumption was presented on 1-11-2014, which was returned to ABC Ltd. duty assessed on 3-11-2014. The duty amounting to ₹ 5 lakhs was paid on 14-11-2014. There were two holidays during the period from 3-11-2014 to 14-11-2014. The Department has demanded the following interest:

(i) Interest u/s 61(2) for storage of warehoused goods beyond statutory period provided therein; and

(ii) Interest under section 47(2) for delay in payment of duty beyond statutory period provided therein.

Compute the interest, if any, payable by M/s. ABC Ltd. Support your answer with decided case law, if any. 6

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

Calculate 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. 6

Answer:

(a) (i) If Special Excise Duty is not considered while levying CVD (Countervailing Duty), the CVD so levied would not counter – balance the Excise Duty payable by the Local Manufacturers on a like product, in order to ensure a level playing field. "Excisable Duty of the time being leviable" also includes a Special Duty of Excise payable in terms of the Finance Act. [J.K. Synthetics Ltd., vs. Union of India (2006) 204 ELT 369

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(Del.)]

In the given case, ACD u/s 3(1) shall be taken at 8% Basic Excise Duty (effective rate after exemption) and 5% Special Excise Duty.

- (ii) As per Rule 10(1), Royalty and License Fees relating to Imported Goods as a condition of sale of goods, shall be included in Assessable Value. However, charges for right to reproduce will not be included in Assessable Value.

Amount of License Fee relating to the use of software at multiple locations is not reproduction royalty. Hence, it is includible in the value of consignment of Computer Software and Manuals. [State Bank of India 115 ELT 597 (SC)]

The Total Cost of USD 42 Lakhs, (i.e., including the License Fee for countrywide use of software) should be taken as the Transaction Value, on which Customs Duty is to be charged.

- (b) In case of warehoused goods, if the same remain in warehouse beyond a period of 90 days, interest shall be payable @ 15% p.a. on the amount of duty for the period after expiry of 90 days till the date of actual payment of duty.

Accordingly, the interest payable by M/s. ABC Ltd. u/s 61(2) is computed as follows –

Date of deposit of goods in warehouse	01/04/2014
Period of 90 days referred to in section 61(2) expires on	30/06/2014
Date of actual payment of duty	14/11/2014
No. of days from date referred to in [b] above to date referred to in [c] above	137
Duty payable	5,00,000
Interest u/s 61(2) [$\text{₹ } 5,00,000 \times 15\% \times 137 \div 365 \text{ days}$]	28,151

The department's contention to demand interest u/s 47(2) for delay in payment of duty is not correct in law.

Interest under section 47 is to be paid if the goods are to be cleared for home consumption and Bill of entry for home consumption is presented under section 46. According to Section 47, if importer fails to pay duty within 2 working days from the date of which assessed Bill of entry for home consumption is returned to him interest shall be levied @ 15% p.a.

Once the goods are deposited in warehouse the provision relating to interest in respect of warehoused goods as provided in Section 61 shall be applicable. Therefore, even if duty is not paid within 2 days after return of ex-bond Bill of entry duty assessed, interest cannot be levied under section 47.

The same view has been expressed by Tribunal in CC v. Acalmar Oils & Fats Ltd. [2009] 240 ELT 440 (Tri.-Bang.) and CBEC Circular No. 15/2009-Cus., dated 12-05-2009].

- (c) The following points are to be taken note of -
- (1) The question clearly states that only basic customs duty, EC and SHEC thereon and anti-dumping duty are leviable on the goods in question and no other duty viz. additional duty of customs u/s 3(1) or special additional duty of customs u/s 3(5) is leviable.
 - (2) For the purposes of the notifications imposing anti-dumping duty, "landed value" means the assessable value as determined under the Customs Act, 1962 and includes

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all duties of customs except duties levied under sections 3, 8B, 9 and 9A of the said Customs Tariff Act, 1975.

(3) No EC and SHEC is imposable on anti-dumping duty.

Keeping in mind the aforesaid, the relevant computations are as under (amounts in ₹) -

CIF Value of the consignment (in Indian ₹) [US \$ 25,000 × ₹ 50]	12,50,000
Add: Landing Charges @ 1%	12,500
Assessable Value	12,62,500
Add: Basic Customs Duty @ 20%	2,52,500
Add: EC and SHEC @ 3% on Basic Customs Duty	7,575
Landed Value/Cost of the goods [A]	15,22,575
Cost of commodity for the purposes of anti-dumping notification [B] [500 Kg. × US \$ 70 per Kg. × ₹ 50 per dollar]	17,50,000
Anti-dumping duty [B - A]	2,27,425

5. Answer any two:

4×2=8

- (a) Explain the administrative authorities of Foreign Trade Policy. 4
- (b) (i) State the items which can be imported duty free against Advance Authorization. 3
- (ii) State the validity of duty credit scrip in connection to the reward scheme of Foreign Trade Policy. 1
- (c) State the salient features of Post Export EPCG (Export Promotion Capital Goods) Duty Credit Scrip. 4

Answer:

(a) The administrative machinery authorities of the foreign trade policy is as under -

- I. Director General of Foreign Trade: Director General of Foreign Trade (DGFT), an attached office of the Ministry of Commerce & Industry, Government of India formulates, controls and supervises the Foreign Trade Policy. DGFT has several offices in various parts of the country for execution of the policy formed by the headquarters at Delhi.
- II. Other Authorities involved in administration of FTP: Though the FTP is formulated by DGFT, it is administered in close coordination with other agencies, like -
 - A. Central Board of Excise and Customs (CBEC): CBEC, along with its two Departments viz-Customs and Central Excise, under the Ministry of Finance, facilitate the implementation of FTP.
Responsibilities of the Departments: Customs Department which is responsible for clearance of export and import goods, follow the policy framed by FTP. On the other hand the Central Excise Authorities are required to be involved for all matters of exports, where goods have to be cleared without payment of duty.
 - B. Reserve Bank of India (RBI): RBI which is the nodal bank in the country, working under the Ministry of Finance, is entrusted with policy formulation for foreign exchange management including the payments and receipts of foreign exchange and promotion and orderly development and maintenance of foreign exchange market in India.
 - C. State VAT Departments : Since VAT is payable on domestic goods but not on export goods, formalities with State VAT departments assume importance in ensuring tax free exports.

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- (b) (i) The items which can be imported duty free against Advance Authorization:
- (1) Inputs, which are physically incorporated in export product (making normal allowance for wastage).
 - (2) Fuel, oil, energy, catalysts which are consumed/ utilized to obtain export product.
 - (3) Mandatory Spares upto 10% of CIF Value of Authorization which are to be exported/supplied with resultant product.
- (ii) Duty Credit Scrip is valid only for 24 months, and can be re-validated only if it had expired when the goods were under the custody of Customs.
- (c) The salient features of the Post Export EPCG (Export Promotion Capital Goods) Duty Credit Scrip schemes are as follows -
- A. Specific EO under this scheme shall be 85% of the applicable specific EO, if the imports of such capital goods had taken benefit of duty exemption. Average EO remains unchanged.
 - B. Duty remission shall be in proportion to the EO fulfilled.
 - C. These Duty Credit Scrip(s) can be used for payment of applicable custom duties for imports and applicable excise duties for domestic procurement.
 - D. All provisions of the existing EPCG Scheme shall apply insofar as they are not inconsistent with this scheme.

6. Answer any two:

[10×2=20]

(a) (i) **Determine service tax in following cases:**

- (1) **Services valuing ₹ 5 lakhs are provided.**
- (2) **Services are provided for a consideration inclusive of service tax of ₹ 1,12,360.**
- (3) **Mr. Salim, an architect has received the fees of ₹ 4,50,000 after the deduction of Income Tax of ₹ 50,000. (All sums exclusive of service tax).**
- (4) **Mr. Shyam provided services valuing ₹ 5 lakh (excluding service tax) to Mr. Mohan. Mr. Mohan retained 10% thereof viz. ₹ 50,000 until satisfactory performance of services received and was paid after 6 months from completion of provision of service.**

(ii) **Compute value and service tax from following sums received by M/s. A Ltd. (exclusive of service tax) (Ignore small service provider's exemption) -**

- (1) **Holding a dance programme, entry tickets whereof were sold for : ₹ 50 lakh;**
- (2) **Collections from a standalone ride set up in a mall: ₹ 11 lakh;**
- (3) **Running a video-parlour showing cinematographic films : ₹ 12 lakh;**
- (4) **Acting as an event manager for organisation of an entertainment event: ₹ 4 lakh;**
- (5) **Receipts from running a circus : ₹ 12 lakh;**
- (6) **Direct-to-Home Services on which it has paid entertainment tax under State laws: ₹ 20 lakhs**

(b) **M/s. Auriga Pvt. Ltd. provides the following services relating to information technology software. Compute the value of taxable service and service tax payable thereon if all charges are exclusive of service tax. Ignore Small Service Providers exemption :**

- (1) **Development and Design of information technology software : ₹ 18 lakhs;**
- (2) **On-site development of software : ₹ 5 lakhs;**
- (3) **Sale of pre packaged software which is put on media : ₹ 22 lakhs;**
- (4) **Advice and consultancy on matters relating to information technology software : ₹ 8 lakhs;**
- (5) **License to use software was given to different clients : ₹ 28 lakhs;**

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- (6) On the basis of specification of P Ltd., a software was developed and delivered to it on media i.e. CD : ₹ 7 lakhs;
(7) Up-gradation of information technology software : ₹ 9 lakhs;
(8) Programming of software : ₹ 1 lakhs;
(9) Enhancement and implementation of information technology software: ₹ 5 lakhs.

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- (c) (i) Reddy & Co. a business owned by an individual, operates a Security Agency. It supplied 10 security personnel to R Ltd on a monthly charge of ₹ 10,000 per person. Determine the taxability in the hands of Reddy & Co. and R Ltd for this service assuming the service, is provided only for June 2014.

If the services are provided to M/s Raju & Co. which is an individual business entity, determine the tax liability. [2+2]

- (ii) Briefly answer the following questions:-

- I. Is filing of return compulsory even if no taxable service is provided or received or no payments are received during a period (a particular half year)?
- II. Whether a single return is sufficient when an assessee provides more than one service?
- III. What are the returns a service tax assessee has to file? [1+1+2]

- (iii) State the meaning of 'Bundled Service'. 2

Answer:

- (a) (i) Service tax (ST) payable shall be :

- (1) ST = ₹ 5,00,000 × 12% = ₹ 60,000. Education Cess @ 2% of ₹ 60,000 = ₹ 1,200. Secondary and Higher Education Cess @ 1% of ₹ 60,000 = ₹ 600. Total = 12.36% of ₹ 5 lakh = ₹ 61,800.
- (2) ST = ₹ 1,12,360 × 12.36 ÷ 112.36 = ₹ 12,360.
Value of services = ₹ 1,12,360 × 100 ÷ 112.36 = ₹ 1,00,000.
- (3) Value = Gross amount charged for provision of service = ₹ 4,50,000 + ₹ 50,000 = ₹ 5 lakh. Hence, service tax @ 12.36% = ₹ 61,800.
- (4) Retention Money of 10% is a deferred consideration; it is liable to service tax. Therefore, value of taxable services = ₹ 5 lakh (without deducting retention money) and service tax thereon @ 12.36% = ₹ 61,800.

- (ii) Computation of service tax liability

- (1) Holding a dance programme, entry tickets whereof were sold for: ₹ 50 lakh - Amounts to entertainment event - Granting admission thereto is a negative list item u/s 66D(j)
- (2) Collections from a standalone ride set up in a mall: ₹ 11 lakh - Amounts to amusement facility - Granting access thereto is a negative list item u/s 66D(j)
- (3) Running a video-parlour showing cinematographic films : ₹ 12 lakh- Amounts to entertainment event - Granting admission thereto is a negative list item u/s 66D(j)
- (4) Acting as an event manager for organisation of an entertainment event: ₹ 4 lakh - Auxiliary services in relation to an entertainment event are not covered within negative list - Taxable.
- (5) Receipts from running a circus: ₹ 12 lakh - Amounts to entertainment event - Granting admission thereto is a negative list item u/s 66D(j).
- (6) DTH Services on which it has paid entertainment tax under State laws : ₹ 20 lakhs - Taxable.

Taxable value = 4 + 20 = ₹ 24 lakh and service tax thereon @ 12.36% = ₹ 296,640.

- (b) The relevant computations are as follows (amount in ₹):

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(1)	Development and Design of information technology software (Taxable since it is under the ambit of declared service)	18,00,000
(2)	On site development of software (Taxable, since it is under the ambit of declared service)	5,00,000
(3)	Sale of Pre packaged software which is put on media - Not taxable (as it is in the nature of sale of goods, hence outside the ambit of service)	—
(4)	Advice and consultancy on matters relating to information technology software	8,00,000
(5)	License to use software was given to different clients (Taxable, it is under the ambit of declared service as it does not involve transfer of right to use of goods)	28,00,000
(6)	A customised software was developed and delivered to it on media i.e. CD (Taxable as this transaction involves both contract of provision of service and transfer of title in goods. But the essential part of contract is development of software and it is put on media only to deliver it to client.)	7,00,000
(7)	Upgradation of information technology software	9,00,000
(8)	Programming of software	1,00,000
(9)	Enhancement and implementation of information technology software	5,00,000
	Value of taxable service	81,00,000
	Service tax u/s 66B @ 12.36%	10,01,160

- (c) (i) (1) For Security Services provided by an Individual, HUF, Firm or AOP to a Business Entity registered as a Body Corporate, then 25% of ST liability shall be discharged by the Service Provider, and balance 75% shall be discharged by the Service Receiver.

However, if the service is rendered to any person other than a Registered Body Corporate, then the entire Service Tax liability shall be borne by the Service Provider.

- (2) Total Service Tax Liability on the above service is ($\text{₹ } 10,000 \times 10 \text{ persons} \times 12.36\% = \text{₹ } 12,360$)

If Service Receiver is	Joint Charge applicable?	Liability for Service Provider	Liability for Service Receiver	Invoice Amount
R Ltd.	Yes (Body corporate)	$12,360 \times 25\% = \text{₹ } 3,090$	$12,360 \times 75\% = \text{₹ } 9,270$	₹ 1,03,090
Raju & Co.	No (Not a Body Corporate)	$12,360 \times 100\% = \text{₹ } 12,360$	Nil	₹ 1,12,360

(ii)

Case (I)	Filing of Return within the prescribed time limit is compulsory, even if it may be a NIL return, failing which penal action is attracted.
Case (II)	A single return is sufficient, because the ST-3 Return is designed to capture details of each service separately with in the same return.
Case (III)	(i) ST-3 Return - For all the Registered Assesseees, including Input Service Distributors. (ii) ST-3A Return - The Assessee who is making provisional assessment under rule 6(4) of the Service Tax Rules, 1994 is required to file a Memorandum in form ST-3A accompanying the Return.

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- (iii) "Bundled Service" means a bundle of provision of various services, wherein an element of provision of one service is combined with an element of elements of provision of any other service or services.

7. Answer any two:

6×2=12

(a) (i) State whether cash incentives for additional sales effected by the distributor/dealer are allowed as deduction from sale price under CST. 2

(ii) Compute the VAT amount payable by Mr. A who purchases goods from a manufacture on payment of ₹ 2,27,000 (including VAT) and earn 10% profit on cost to retailers. Vat rate on purchase and sale is 13.50%. 4

(b) State the situations where voluntary registration may be refused by the Department under VAT. 6

(c) Mr. A, a first stage dealer in pharmaceutical plant and boiler in the State of Tamil Nadu, furnishes the under mentioned information:

Sl. No.	Particulars	₹
(i)	Total inter-State sales during financial year 2014-15 (CST not shown separately)	2,31,25,000
(ii)	Trade commission for which credit notes have to be issued separately	5,78,125
(iii)	Freight and transportation charges (of this ₹ 1,50,000 is on inclusive basis)	4,50,000
(iv)	Insurance premium paid prior to delivery of goods	70,000
(vi)	Installation and commissioning charges levied separately in invoices	75,000

Compute the tax liability under the CST Act, assuming the rate of tax @ 2%. 6

Answer:

- (a) (i) Cash bonus given for achieving sales over the target or quota fixed to the wholesales/dealer is not allowed as deduction from 'sale price', as it has no connection with 'consideration for sale'. The cash bonus given to dealers is a transaction independent of sale transaction. However, if quantity discount is given it will not form part of sale price.

(ii)

Cost of purchase	₹ 2,27,000 × 100/113.5	₹ 2,00,000
Add: Profit	₹ 2,00,000 × 10%	₹ 20,000
Taxable turnover		₹ 2,20,000
VAT payable on sales	₹ 2,20,000 × 13.5%	₹ 29,700
Less: Input tax credit	₹ 2,27,000 × 13.5 / 113.5	₹ 27,000
Net VAT liability		₹ 2,700

(b) Voluntary Registration may be refused by the department in any one of the following situations:

- A. Dealer has no taxable sales at all.
- B. Dealer has no proper place of business.
- C. Dealer is not in a position to keep proper books of accounts.
- D. Dealer has no bank account with any bank.
- E. Dealer has arrears outstanding under General Sales Act, CST Act, etc.

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F. Dealer has no proper identity.

(c)

Particulars	(₹)
Sales turnover	2,31,25,000
Less: Trade Commission	5,78,125
Freight and transportation charges to the extent shown separately in the invoices	3,00,000
Installation and commissioning charges levied separately in invoices	75,000
Total Turnover	2,21,71,875
Less: Central Sales Tax (₹ 2,21,71,875 × 2 / 102)	4,34,743
Taxable turnover	2,17,37,132

8. Answer any two:

4×2=8

(a) State the steps of comparable uncontrolled price method in relation to Arm's Length Price.

4

(b) Swinhoe LLP of France and Rani Ltd. of India are associated enterprises. Rani Ltd. imports 3,000 compressors for Air Conditioners from Swinhoe at ₹ 7,500 per unit and these are sold to Paharpur Cooling Solutions Ltd at a price of ₹ 11,000 per unit. Rani had also imported similar products from Cold Ltd and sold outside at a Gross Profit of 20% on Sales.

Swinhoe offered a quantity discount of ₹ 1,500 per unit. Cold could offer only ₹ 500 per unit as Quantity Discount. The freight and customs duty paid for imports from Poland had cost Rani ₹ 1,200 a piece. In respect of purchase from Cold Ltd, Rani had to pay ₹ 200 only as freight charges.

Determine the Arm's Length Price & the amount of increase in Total Income of Rani Ltd.

[2+2]

(c) State the issues related to intangibles in the context of transfer pricing?

4

Answer:

(a) Step I: Identify the price charged/paid for property transferred or services provided in a comparable uncontrolled transaction(s).

Step II: Adjust the price derived in Step I above for difference, if any, which could materially affect the price in the open market.

A. between the international transaction and the comparable uncontrolled transactions,
or

B. between the enterprises entering into such transactions.

Step III: Arm's Length Price = Step I Add/ Less: Step II

(b) (i) Computation of Arm's Length Price of Products bought from Swinhoe, France by Rani Ltd.

Particulars	₹
Resale Price of Goods Purchased from Swinhoe	11,000
Less: Adjustment of differences	
(a) Normal gross profit margin @ 20% of sale price [20% × ₹ 11,000]	2,200
(b) Incremental Quantity Discount by Swinhoe [₹ 1,500 – ₹ 500]	1,000

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(c) Difference in Purchase related Expenses [₹ 1,200 – ₹ 200]	1,000
Arms Length Price	6,800

(II) Computation of Increase in Total Income of Rani Ltd.

Particulars	₹
Price at which actually bought from Swinhoe LLP of France	7,500
Less: Arms Length Price per unit under Resale Price Method	(6,800)
Decrease in Purchase Price per Unit	700
No. of Units purchased from Swinhoe	3,000
Increase in Total Income of Rani Ltd. [3,000 Units × ₹ 700]	21,00,000

(c) Transfer pricing of intangibles is well known as a difficult area of taxation practice. However, the pace of growth of the intangible economy has opened new challenges to the arm's length principles. Seventy five percent of all provide R&D expenditure worldwide is accounted for by MNEs.

The transactions involving intangible assets are difficult to evaluate because of the following reasons:

Intangibles are seldom traded in the external market and it is very difficult to find comparables in the public domain.

Intangibles are often transferred bundled along with tangible assets.

They are difficult to be detected.

A number of difficulties arise while dealing with intangibles. Some of the key issues revolve around determination of arm's length price of rate of royalties, allocation of cost of development of determination of arm's length price of rate of royalties, allocation of cost of development of market and brand in a new country, remuneration for development of marketing, Research and Development intangibles and their use, transfer pricing of co-branding etc.