

Paper-11 Indirect Taxation

Answer to PTP_Intermediate_Syllabus 2012_Jun2015_Set 2

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	List	Make a list of
	What you are expected to know	State	Express, fully or clearly, the details/facts
		Define	Give the exact meaning of
		COMPREHENSION	Describe
	What you are expected to understand	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	Apply
	How you are expected to apply your knowledge	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	Analyse	Examine in detail the structure of
	How you are expected to analyse the detail of what you have learned	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

Working notes should form part of the answers.

1. Answer the following questions [1 × 20= 20]

(i) Whether all Excisable goods are dutiable goods?

Answer: No. Excisable goods may be dutiable or non-dutiable goods.

(ii) Whether duty can be levied if the goods manufactured by the manufacturer is not movable but marketable?

Answer: No duty can be levied if the goods manufactured by the manufacturer are not movable but marketable as per the decision of the Supreme Court of India in the case of Union of India v Delhi Cloth and General Mills Ltd.

(iii) Whether goods has been defined in the Central Excise Act?

Answer: The term goods have not been defined in the Central Excise Act, 1944.

(iv) Whether classification is irrelevant, since all products attract 12% duty?

Answer: No. Classification is relevant, even though all products attract 12% duty.

(v) Whether airfare collected by air travel agent in respect of service provided by him should be included in the value of services?

Answer: No. The airfare collected by air travel agent in respect of service provided by him should not be included in the value of services.

(vi) Whether Service provided from India with respect to immovable property situated abroad is called export of services?

Answer: Yes. Service provided from India with respect to immovable property situated abroad is called export of services.

(vii) Whether service tax required to be paid by an individual on monthly basis?

Answer: No. Service tax will be paid by an individual on quarterly basis.

(viii) Whether revised returns can be filed within 90 days from the date of original return filed by the assessee?

Answer: Yes. Revised returns can be filed within 90 days from the date of original return filed by the assessee.

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(ix) Whether manufacture includes any process incidental or ancillary to the completion of a manufactured product?

Answer: Yes. Manufacture includes any process incidental or ancillary to the completion of a manufactured product.

(x) List out the items which will appear on the Concurrent List (list III) given in Schedule Seven of the Constitution.

Answer:

Concurrent List (List-III) given in Schedule Seven of constitution:
Both union and State Government can exercise power in respect of —
Entry No.17A – Forest Income
Entry No. 25 – Education Income

(xi) Whether registration is also available under VAT for TOT dealers or compounding tax opted dealer?

Answer: Yes. Registration is also available under APVAT for TOT dealers.

(xii) Whether a certificate of registration under VAT is available?

Answer: Yes. A certificate of registration under VAT is in the Form VAT 105 is available.

(xiii) Are sale of bundles of old newspapers as waste papers exempt from CST?

Answer:

As per section 2(d) of CST Act, goods do not include 'news paper'. When old newspapers are sold as newspapers, they are only in the character of newspapers and they are not goods. However, when the newspapers are sold as waste papers, they are not newspapers and hence they are goods. Therefore, sale of bundles of old newspapers as waste papers is taxable.

(xiv) When Provisional Anti-Dumping Duty is imposed in customs?

Answer:

When there is a pending determination of margin of dumping, duty can be imposed on provisional basis. After dumping duty is finally determined, Central Government can reduce such duty and refund duty extra collected than that finally calculated. Such duty can be imposed upto 90 days prior to date of notification, if there is history of dumping which importer was aware or where serious injury is caused due to dumping.

(xv) What is APTA in the context of customs?

Answer:

Bangladesh, Sri Lanka, South Korea, India and China are exchanging tariff concessions under Asia-Pacific Trade Agreement (APTA). Certificate of Origin (CoO) is required to be obtained from Export Inspection Council [EIC].

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(xvi) “Barge or Lighterage charges are not to be added to the customs value while calculating the value of imported goods.” — Critically examine.

Answer:

The statement is not correct. In some cases, the ship is not brought upto jetty. Goods are discharged at outer anchorage. This may be for various reasons, e.g. (i) deep draught at port; (ii) Ports are busy, (iii) Odd dimensional or heavy lifts or hazardous cargo discharged at anchorage. Charges for brining the goods from outer anchorage are known as 'barging/ lighterage charges'. As per explanation to rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, ship demurrage charges on chartered vessels, lighterage or barge charges are includible to the custom value while calculating the value of imported goods.

(xvii) Can an importer abandon the imported goods after the proper officer has given the order for clearance of the goods for home consumption?

Answer:

No. The importer can abandon the imported goods at any time before the proper officer has given the order for clearance of the goods for home consumption or for warehousing. However if any offence has been committed in respect of the said goods, then the option to abandon the goods is not available.

(xviii) What is meant by Transshipment of Goods Section 54 of the Customs Act, 1962?

Answer:

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.

(xix) What are the different types of arm's length price?

Answer:

Arm's length price can be computed by the following methods:

- a. Comparable uncontrolled price method;
- b. Resale price method;
- c. cost plus method;
- d. Profit split method;
- e. transactional net margin method;
- f. such other method as may be prescribed by the Board.

(xx) Who are said to be unrelated person under international transactions?

Answer:

Persons are said to be unrelated if they are not associated or deemed to be associated enterprise according to section 92A.

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(2) Answer any two questions [2 × 2= 4]

(a) What are the disadvantages of indirect tax?

Answer:

The following are the disadvantages of indirect tax:

- (i) Indirect taxes do not depend on paying capacity. Since this tax is uniform, the tax payable on commodity is same, whether it is purchased by a poor man or a rich person. Hence, the indirect taxes are termed as 'regressive'.
- (ii) Tax on goods and services increases its prices, which reduces demand of goods and services. Lesser demand means lower growth of industrialization.

(b) Write down the differences between direct tax and indirect tax.

Answer:

The following are the differences between direct tax and indirect tax:

Direct Taxes	Indirect Taxes
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.
Direct Tax progressive in nature.	Indirect Taxes is regressive in nature.
Levied and collected from the Assessee.	Levied & collected from the consumer but paid / deposited to the Exchequer by the Assessee / Dealer.

(c) What are the powers of taxation under Constitution of India?

Answer:

Power of Taxation under Constitution of India is as follows:

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

(3) Answer any two questions [2 × 8=16]

(a) Ram Ltd., which is engaged in the manufacture of excisable goods started its business in May, 2014. It availed small scale exemption in terms of Notification No. 8/2003-C.E. dated 01-03-2003. The following details are provided (₹):

15,000 kg of inputs purchased @ ₹ 992.70 per kg. (inclusive of excise duty @ 12.36%)	1,48,90,500
Capital goods purchased on 25-06-2014 (inclusive of excise duty at 12.36%)	44,12,000
Finished goods sold (at uniform transaction value throughout the year)	2,50,00,000

Calculate excise duty payable by M/s. Ram Ltd. in cash, if any, during year 2014-15. Rate of duty on finished goods sold may be taken at 12.36% and you may assume that selling price is exclusive of central excise duty. There is neither any processing loss nor any inventory of input and output. Show your workings and notes with suitable assumptions as required.

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Solution:

Computation of duty payable by Ram Ltd. during financial year 2014-15

Particulars	Units	₹/unit	₹
Total value of all finished goods	15,000	1,666.67	2,50,00,000
Less: Exemption of ₹150 lakhs	9,000	1,666.67	1,50,00,000
Dutiable clearances (60% clearances are exempt and 40% dutiable)	6,000	1,666.67	1,00,00,000
Duty @ 12.36% on final product		206.00	12,36,000
Total Credit on inputs [Duty = ₹ 992.70 x 12.36 ÷ 112.36]	15,000	109.20	16,38,000
Less: 60% credit relating to exempted clearances [Reversal under Rule 6 of the CENVAT CREDIT Rules, 2004]	9,000	109.20	9,82,800
Credit relating to dutiable clearances	6,000	109.20	6,55,200
Add: Credit relating to capital goods [100% credit available in first year to SSI- units] [₹44,12,000 x 12.36 ÷ 112.36]			4,85,336
Total CENVAT Credit			11,40,536
Duty payable [Duty on Final Product – CENVAT Credit]			95,464

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

- (i) An imported consignment of Raw Materials was received vide Bill of Entry dated 2nd Dec, showing the following Customs Duty payments —

Basic Customs Duty	₹ 23,000
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) Some inputs for final product were received. These were accompanied by a certified Xerox Copy (photo copy) of Invoice No. 356 dated 23rd Dec. indicating the Excise duty of ₹ 6,400 have been paid on inputs. The original for duplicate copy of invoice are not traceable.

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

Solution:

Eligibility of Cenvat credit

Situation	Eligible Amount	Reasoning
Imported Consignment	₹ 25,800	Countervailing Duty for Excise Duty and VAT Equivalent will be eligible for credit under CENVAT Credit Rules. Basic Customs Duty of ₹ 23,000 is not eligible.

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Loss of Inputs	₹ 9,500	<ul style="list-style-type: none"> Inputs used in the manufacture of dutiable finished products alone are eligible for CENVAT Credit. When inputs are damaged irretrievably before usage in the manufacturing process, duty attributable to such goods cannot be claimed as CENVAT Credit. Therefore, duty for 950 Kgs alone is eligible for CENVAT Credit = ₹ 10,000 x 950 Kgs used / 1,000 Kgs received.
Inputs received under Photocopy of Invoice	₹ 6,400	<ul style="list-style-type: none"> Duty can be claimed only if inputs have been received and documents evidencing payment of duty is available. CENVAT Credit is allowable on Photostat copies of authenticated invoices. [Kothari General Foods Corpn Ltd 144 ELT 338 (Tri.)]
Total Credit	₹ 41,700	

(c) **M/s. Mona Pvt. Ltd., not an SSI unit, purchased fibre 10,000 kg @ ₹ 50 per kg plus excise duty. The said fibre was used to manufacture intermediate product yarn. The said yarn was captively used for the manufacture of fabrics. The said fabric was exempt from duty. The other information are as follows:**

- (i) Normal processing loss: 2% of inputs in manufacture of yarn
- (ii) Rate of excise duty on all products is 12.36%;
- (iii) Assessable Value of yarn: ₹ 80 per Kg.;
- (iv) Assessable Value of Fabric (Total): ₹ 13 lakhs;
- (v) Colouring Dyes used in the manufacture of Fabric: ₹ 2 lakhs plus excise duty.
- (vi) Duty on Capital Goods imported during the period and used in the manufacture of yarn: Basic Customs Duty ₹ 20,000; Additional duty of customs under section 3(1) of the Customs Tariff ₹ 30,000; Additional duty of customs under section 3(5) of the Customs Tariff Act ₹ 10,000.

Compute - (i) CENVAT Credit available; (ii) Duty payable.

Solution:

Since the final product 'fabrics' is exempt from duty, hence, the intermediate product 'yarn' shall be liable to excise duty. Thus, the CENVAT Credit of raw material fibre shall be available.

The relevant computations are as follows—

	(Amounts in ₹)
(1) Excise duty on yarn : (10,000 kg - 2% Normal Loss = 9,800 kg) x ₹ 80 per kg x 12.36%	96,902
(2) CENVAT Credit:	
(a) On raw material fibre 10,000 kg x ₹ 50 per kg x 12.36% [WN-1]	61,800
(b) Colouring Dyes [WN-2]	---
(c) Capital goods used in the manufacture of yarn are eligible for 50%	

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credit as follows -	
Basic Customs Duty is not eligible for Cenvat credit.	---
Additional Customs Duty u/s 3(1) of CTA - Eligible for 50% credit in the current year and the balance in subsequent year	15,000
Additional duty of customs u/s 3(5) of CTA - Eligible for 100% credit in current year	10,000
Total Credit [2(a) + 2(b) + 2(c)]	86,800
(3) Duty payable in cash [1 - 2]	10,102

Working Notes:

- Normal loss of inputs is incurred in factory and in relation to manufacture; hence the same shall also be eligible for Cenvat Credit.
- Colouring Dyes used in the manufacture of fabric shall not be eligible for credit as fabric is exempt from duty.

(4) Answer any two questions [2 × 6= 12]

(a) Compute the duty payable under the Customs Act, 1962 for an imported machinery based on the following information:

- Assessable value of the imported equipment US \$ 12,000.
- Date of Bill of Entry 25.03.2015 basic customs duty on this date 20% and exchange rate notified by the Central Board of Excise and Customs US \$ 1 = ₹ 65.
- Date of Entry inwards 21.03.2015 Basic customs duty on this date 16% and exchange rate notified by the Central Board of Excise and Customs US \$ 1 = ₹ 57.
- Additional duty payable under Section 3(1) and (2) of the Customs Tariff Act, 1975: 15%.
- Additional duty under Section 3(5) of the Customs Tariff Act, 1975: 4%.
- Education Cess @ 2% and secondary and higher education cess @ 1%.

Make suitable assumptions where required and show the relevant workings and round off your answer to the nearest Rupee.

Answer:

Computation of Duty

	Duty		Total
	Rate	₹	₹
Assessable Value (US\$ 12,200 x Rate of exchange in force on date of presentation of bill of entry i.e., ₹65)	---	---	7,87,800.00
Add: BCD [As per section 15(1)(a), rate of duty prevalent on date of presentation of bill of entry or date of entry inwards, whichever is later, shall be applicable. Therefore, rate prevalent on 25-03-2015 viz. 20% shall be taken.]	20.00%	1,57,560.00	1,57,560.00
Add: Additional duty i.e., CVD u/s 3(1) (excise duty excluding EC and SHEC due to exemption)	15.00%	1,41,804.00	1,41,804.00
Add: Education Cess @ 3% on DUTY sub-total upto last stage	3.00%	8,981.00	8,981.00

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Add: Special CVD u/s 3(5) @ 4% of total value (including duty)	4.00%	3,08,345.00 43,846.00	10,96,145.00 43,846.00
Total (rounded off on nearest rupee)		3,52,191.00	11,39,991.00

(b) What are the taxable event in case of imports in customs.

Answer:

Taxable event in case of imports in customs:

- (i) In case of goods cleared for home consumption: It implies that customs duty on imported goods has been paid and thus, goods can be removed by the importer for utilization or consumption within the country. Import of goods commences when they cross the territorial waters, but continues and is completed when they become part of the mass of goods within the country; the taxable event being reached at the time when the goods reach the customs barriers and bill of entry for home consumption is filed.
- (ii) In case of goods cleared for warehousing: In case where the goods are not immediately cleared for home consumption, they may be deposited in a warehouse and cleared at a later point of time. In such a case, the collection of customs duty will be deferred till such goods are cleared from warehouse for home consumption. In case of warehoused goods, the goods continue to be in customs bond. Hence, import takes place when the goods are cleared from the warehouse. The customs barriers would be crossed when they are sought to be taken out of the customs and brought to the mass of goods in the country.

(c) An importer imported some goods for subsequent sale in India at \$ 30,000 on CIF basis. Relevant exchange rate as notified by the Central Government ₹60. The item imported attracts basic duty at 10% and education Cess as applicable. If similar goods were manufactured in India, Excise Duty payable as per Tariff is 14% plus education Cess of 2% and SAH 1%. Special Additional Customs Duty is 4%. Find the total duty payable.

Solution:

Calculation of duty payable:

	(₹)
CIF value USD 30,000 X 60	18,00,000
Add: Loading and unloading @1%	18,000
Assessable Value	18,18,000
Add: Basic Customs Duty @10% on ₹18,18,000	1,81,800
	19,99,800
Add: Additional Customs Duty [@ 14% x ₹19,99,800]	2,79,972
	22,79,772
Add: Education Cess 2% on (₹ 1,81,800+ ₹ 2,79,972)	9,235
Add: SAH @1% on (₹ 1,81,800+ ₹ 2,79,972)	4,618
	22,93,625
Add: Special Additional Customs Duty	91,745

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[@4% x ₹22,93,625]	
Total value of imported goods	23,85,370

Therefore total duty payable ₹5,10,634.

Notes:

- While calculating CVD we should not take into account NCCD of excise.
- CVD can also be imposed even if there is exemption from Basic Customs Duty.
- Imported goods contain more than one classification and the importer is unable to give the breakup of each item with value then the highest rate of duty among them will be considered.
- CVD can be levied only when the importer imported manufactured goods. It means CVD can be levied only if goods are obtained by a process of manufacture [*Hyderabad Industries Ltd v Union of India* (1995) (SC)].

(5) Answer any two questions [2 × 4= 8]

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

Answer:

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

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

(b) List out the powers of the DGFT (Director General of Foreign Trade).

Answer:

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

1. **Interpretation of Policy:** If any question or doubt arises in respect of interpretation of any provision, said question or doubt shall be referred to DGFT, whose decision thereon shall be

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- final and binding.
2. **Procedure:** DGFT may specify the procedure to be followed by an Exporter or Importer or by any licencing or any other Competent Authority for the purpose of implementing provisions of Foreign Trade Act, the Rules and the Orders made thereunder and FTP. Such procedures shall be published in Hand Book of Procedures by means of a Public Notice, and may, in like manner, be amended from time to time.
 3. **Exemption from Policy/Procedure:** DGFT may pass such orders or grant such relaxation or relief, as he may deem fit and proper, on grounds of genuine hardship and adverse impact on trade. DGFT may, in public interest, exempt any person or class or category of persons from any provision of FTP or any procedure and may, while granting such exemption, impose such conditions as he may deem fit.
 4. **Scope of Restriction:** DGFT may, through a Notification, adopt and enforce any measure necessary for -
 - a. Protection of -
 - (i) Public morals.
 - (ii) Human, animal or plant life or health.
 - (iii) Patents, Trademarks and Copyrights and the prevention of deceptive practices.
 - (iv) National treasures of artistic, historic or archaeological value.
 - (v) Trade of fissionable material or material from which they are derived.
 - b. Prevention of traffic in arms, ammunition and implements of war and use of prison labour.
 - c. Conservation of exhaustible natural resources.
 5. **Importer-Exporter Code (IEC):** DGFT is empowered to issue IEC. IEC is a unique 10 digit code issued by DGFT to Indian Companies. IEC is mandatory to export any goods out of India or to import any goods into India unless specifically exempt. Permanent Account Number (PAN) is pre-requisite for grant of an IEC. Only one IEC can be issued against a single PAN.

An application for IEC is to be made to the nearest RA of DGFT in the 'Aayaat Niryaat Form-ANF2A' and shall be accompanied by the prescribed documents. In case of STPI/ EHTP/ BTP units, the Regional Offices of the DGFT having jurisdiction over the district in which the Registered/ Head Office of the STPI unit is located, shall issue or amend the IECs.

(c) State salient features of EPCG scheme under Foreign Trade Policy.

Answer:

Export Promotion Capital Goods (EPCG) scheme enables an Indian manufacturer to obtain capital goods at Nil rate of customs duty against commitment of export obligation.

Importer will be issued 'EPCG Authorisation' for this purpose.

EPCG scheme allows import of capital goods (including CKD/SKD thereof as well as computer software systems) for pre-production, production and post-production at zero Customs duty, subject to an export obligation equivalent to 6 times of duty saved on capital goods imported under EPCG scheme, to be fulfilled in 6 years reckoned from Authorization issue-date [para 5.1(a) of FTP w.e.f. 18-4-2013]

Import of capital goods shall be subject to Actual User condition till export obligation is completed.

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(6) Answer any two questions [2×10= 20]

(a) (i) Explain abatements and composition schemes in the context of service tax. Also state the distinction between them. [5]

Answer:

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

Composition schemes - 'Composition scheme' is a simplified scheme for payment of service tax when calculation of 'value of service' for payment of service tax is very cumbersome or difficult.

In composition scheme, some easy method is prescribed (like deduction of some ad hoc amount) to arrive at the value of taxable service. Composition scheme is at the option of assessee.

Abatement i.e. partial exemption - In case of some services, service tax is payable on lower value, i.e. abatement is available from amount charged. Abatement is nothing but partial exemption from service tax. However, in case of some services, abatement is used as a composition scheme.

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

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

(ii) Dutta and Dutta is located in India and holding 51% of shares of Kate Ltd., a USA based company. Kate Ltd. provides Business Auxiliary Services to Dutta and Dutta Ltd. From the following details, determine the Point of Taxation of Dutta and Dutta Ltd.:

Agreed consideration	US \$ 1,00,000
Date on which services are provided by Kate Ltd.	16 – 09 – 2014
Date on which invoice is sent by Kate Ltd.	19 – 09 – 2014
Date of debit in the books of account of Dutta and Dutta Ltd.	30 – 09 – 2014
Date on which payment is made by Dutta and Dutta Ltd.	23 – 12 - 2014

[5]

Solution:

As per section 65B(13) of Finance Act, 1994, associated enterprises have the same meaning as assigned to in section 92A of the Income-tax Act, 1961. In terms of that provision, since Dutta and Dutta holds 51% of shares of Kate Ltd., USA, the two companies are "associated enterprises".

Therefore, in case of "associated enterprises" (viz. Dutta and Kate), where the person providing the service viz. Kate is located in USA (outside India), the Point of Taxation (PoT) shall be determined as per 2nd proviso to Rule 7 of the Point of Taxation Rules, 2011. Accordingly, PoT =

- Date of debit in the books of account of the person receiving the service (Date of debit in books of Dutta) i.e., 30-9-2014; or
- Date of making payment i.e., 23-12-2014, whichever is earlier.

Therefore, PoT = 30-9-2014.

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- (b)(i) State with reasons whether service tax will be levied or not on the interest in relation to overdraft, cash credit, bill discount or exchange in the region of Banking and financial services. [5]

Answer:

In the context of Banking and other financial instructions, the Hon'ble Tribunal in State Bank of Indore v. CCE 2011 (23) STR 346 (Tri) held that interest in relation to overdraft, cash credit, bill discount or exchange was exempted under Notification No. 29/2004-ST, dated 22.09.2004. The mere fact that the bank did not show separately in the invoice the interest is not very factual to avail the exemption in view of the fact that the assessee, the banking company was regulated by RBI guidelines and public norm requires disclosure of bank's earning. Therefore, the Tribunal held that subject to the appellant adducing evidence as required by the Notification, the matter should stand remanded to the adjudicating authority for passing appropriate order.

- (ii) Determine the Point of Taxation in each of following independent cases in accordance with point of Taxation Rules, 2011.

S. No.	Date of actual provision of service	Time [date] of Invoice, Bill or Challan as the case may be	Date on which payment received
1	10.04.2014	30.04.2014	06.04.2014 (part) and 16.04.2014 (remaining)
2.	10.04.2014	12.05.2014	30.04.2014
3.	10.04.2014	12.05.2014	05.04.2014 (part) and 25.04.2014 (remaining)
4.	10.04.2014	22.05.2014	12.06.2014

[5]

Solution:

Point of Taxation for the different cases:

S. No.	Date of completion of service	Time [date] of Invoice, Bill or Challan as the case may be	Date on which payment received	Point of Taxation	Remarks
1.	10.04.2014	30.04.2014	06.04.2014 (part) and 16.04.2014 (remaining)	06.04.2014 and 16.04.2014 for the respective amounts	Invoice issued within 30 days. Part payment (in the form of advance received before issue of invoice and remaining payment received after completion of service)
2.	10.04.2014	12.05.2014	30.04.2014	10.04.2014	Invoice not issued within 30 days and payment received after completion of service
3.	10.04.2014	12.05.2014	05.04.2014 (part) and 25.04.2014 (remaining)	05.04.2014 and 10.04.2014 for the respective amounts	Invoice not issued within 30 days. Part payment received as advance before completion of service and remaining payment received subsequently
4.	10.04.2014	22.05.2014	12.06.2014	10.04.2014	Invoice not issued within 30

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					days and entire payment received after completion of service
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(c) (i) Explain provisions relating to service tax on restaurant service.

[5]

Answer:

Service tax provisions apply to restaurants air conditioned or having central air-heating in any part of establishment.

The restaurants with AC/central heating and bar are required to pay service tax on 40% amount. They can avail Cenvat credit of input services, capital goods and input goods other than food items.

However, services provided in relation to serving of food or beverages by a canteen maintained in factory covered under Factories Act having facility of air conditioning or central air heating at any time during the year is exempt from service tax.

(ii) What is meant by export of service?

[5]

Answer:

Rule 6A of Service Tax Rules, as inserted w.e.f. 1-7-2012 states as follows -

The provision of any service provided or agreed to be provided shall be treated as export of service when-

- (a) the provider of service is located in the taxable territory,
- (b) the recipient of service is located outside India,
- (c) the service is not a service specified in the section 66D of the Finance Act, 1994,
- (d) the place of provision of the service is outside India,
- (e) the payment for such service has been received by the provider of service in convertible foreign exchange, and
- (f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act.

(7) Answer any two questions [2 × 6= 12]

(a) Compute the net VAT liability of Mr. Yadav using the information given as follows:-

Raw material purchased from foreign market (including duty paid on imports @ 20%):

₹ 13,200

Raw material purchased from local market (including VAT charged on the material @ 4%):

₹ 22,880

Raw material purchased from neighbouring state (including CST paid on purchases @ 2%):

₹ 7,854

Storage, transportation cost and interest: ₹ 2,750

Other manufacturing expenses incurred: ₹ 660

Mr. Yadav sold the goods to Binay and earned profit @ 10% on the cost of production. VAT rate on sale of such goods is 12.5%.

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Solution:

Computation of net VAT liability (₹)

Imported goods (import duty is not eligible as Input credit, hence, import duty will form part of cost)	13,200
Local purchases [Input VAT is eligible for credit, hence, it will not form part of cost] [Total Price inclusive of VAT ₹ 22,880 – VAT 22,880 x 4 ÷ 104 = 22,880 – 880 = ₹ 22,000]	22,000
Purchases from other state (CST is ineligible for credit, hence, it will form part of cost)	7,854
Storage, transportation, interest and other manufacturing expenses [2,750 + 660] [Interest has been included in cost of production, assuming that it is an interest on working capital and operating expenditure; in any other case, it will not form part of cost of production.]	3,410
Total Cost	46,464
Add: Profit @ 10 % on cost	4,646
Sale Price	51,110
Add: VAT @ 12.5% on sale price	6,389
Total Invoice Price	57,449
VAT on Sales	6,389
Less: Credit of VAT paid on local purchases	880
VAT payable in cash	5,509

(b) Nisha Enterprises, a dealer in Rajasthan dealing in consumer goods, submits the following information pertaining to the month of March, 2015:

- (i) Exempt goods 'X' purchased for ₹ 1,75,000 and sold for ₹ 3,50,000.
- (ii) Goods 'Y' purchased for ₹ 2,25,000 (including VAT) and sold at a margin of 20% profit on purchases (VAT rate for purchases and sales is 12.5%)
- (iii) Goods 'Z' purchased for ₹ 2,00,000 (excluding VAT) and sold for ₹ 2,50,000 (VAT rate for purchases and sales is 4%);
- (iv) His unutilized balance of input VAT credit on 01.03.2015 was ₹ 3,000.

Compute the turnover, Input VAT, Output VAT and Net VAT payable by Nisha Enterprises.

Solution:

Goods	Purchases [A]	Input VAT rate [B]	Input VAT credit [C] = [A] x [B]	Sales (Turnover) [D]	Output VAT rate [E]	Output VAT [F] = [C] x [D]
	₹	%	₹	₹	%	₹
X	1,75,000	—	—	3,50,000	—	—
Y	2,00,000	12.5	25,000	2,40,000	12.5	30,000
Z	2,00,000	4	8,000	2,50,000	4	10,000
Total	5,75,000		33,000	8,40,000		40,000

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Computation of Net VAT payable by Nisha Enterprises

	₹
Opening balance of input VAT credit	3,000
Add: Input VAT credit for march, 2015 [C]	33,000
Total Input VAT credit available	36,000
Less: Output VAT payable on taxable turnover [F]	40,000
Net VAT payable	4,000

(c) Shiv Shanker, a Registered Dealer at Mumbai, furnishes the following information:

		(₹)
(i)	Inter-state sale of goods This includes the following—	40,00,000
(ii)	Excise duty	42,000
(iii)	Goods returned on 17/1/2015 [These goods were sold on 12/4/2014]	1,05,000
(iv)	Cash discount shown in invoice and allowed according to prevailing trade practice	50,000
(v)	Freight and transportation charges (of this ₹ 1,50,000 is on inclusive basis)	4,50,000
(vi)	Insurance premium paid prior to delivery of goods	70,000
(vii)	Installation and commissioning charges levied separately in invoices	75,000

Compute the taxable turnover under the CST Act, assuming the rate of tax @ 2%.

Solution:

Computation of taxable turnover

	(₹)
Sales turnover	40,00,000
Less: Deductions	
Cash discount according to normal trade practice	50,000
Freight and transportation charges – deductible to the extent shown separately in the invoices	3,00,000
Installation and commissioning charges levied separately in invoices	75,000
Turnover inclusive of CST	35,75,000
Less: Central Sales Tax	70,098
Taxable turnover	35,04,902

Note: Goods returned after 6 months from the date of sale attracted CST @2%.

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(8) Answer any two questions [2 × 4= 8]

(a) One of the methods for determining Arm's Length Price is Resale Price Method (RPM). State the applicability of RPM.

Answer:

This method is ideally suited to measure the value of the services performed by a buyer or seller of goods who generally acts as a distributor and does not add a significant value to goods sold. It is applicable even with differences in products, as long as the functions performed are similar. However, it is less useful where goods are further processed or in nature of raw material.

RPM is applied in a backward process. From the sale price to an unrelated third party, appropriate adjustments to the gross margin are made by comparing the transaction to other, third party transactions.

- (1) This method can be applied when there are no comparable uncontrolled sales and an applicable resale price is available within a reasonable time before or after the controlled sale.
- (2) Where the reseller does not add substantial value to the goods through physical modification. Limited enhancements such as packaging, repackaging, labeling or minor assembly ordinarily do not generally affect the use of RPM. Hence, RPM may not be applicable if the reseller performs value added functions.
- (3) RPM is more accurate where it is realized within a short time of the reseller's purchase of goods.
- (4) RPM is ordinarily used when the controlled reseller does not use intangible property to add substantial value to the products.
- (5) RPM is applied when the reseller does not alter the physical characteristics of the product.
- (6) Where the reseller has the exclusive right to resell the goods, the gross margin would be affected by factors like size of market, existence of substitute goods, and level of activity undertaken by the reseller.

(b) Specify the scope of international transaction. Also mention the elements which are included in the Intangible property.

Answer:

Scope of international transaction:

"International transaction" shall include—

- (i) the purchase, sale, transfer, lease or use of tangible property including building, transportation vehicle, machinery, equipment, tools, plant, furniture, commodity or any other article, product or thing;
- (ii) the purchase, sale, transfer, lease or use of intangible property, including the transfer of ownership or the provision of use of rights regarding land use, copyrights, patents, trademarks, licences, franchises, customer list, marketing channel, brand, commercial secret, know-how, industrial property right, exterior design or practical and new design or any other business or commercial rights of similar nature;

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- (iii) capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;
- (iv) provision of services, including provision of market research, market development, marketing management, administration, technical service, repairs, design, consultation, agency, scientific research, legal or accounting service;
- (v) a transaction of business restructuring or reorganisation, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or at any future date;

(c) Compute the 'arm length price' (ALP) in the following cases :

- (i) **Medical Instruments Ltd. is a 100% Indian subsidiary of a US company. The parent company sells one of its products to the Indian subsidiary at a price of US\$ 100 per unit. The same product is sold to unrelated buyers at a price of US\$ 125 per unit.**
- (ii) **The US parent company sells the same product to an unrelated company in India @ US\$ 80 per unit.**

Answer:

Computation of 'arm length price (ALP) is as follows –

- (i) Though the ALP is ₹ 125 per unit; however, since the adoption of ALP will result in decrease in total income of Indian subsidiary (the cost of purchase being higher), therefore, the price of US\$ 100 per unit shall be admissible.
- (ii) However, in this case, the ALP = Price to unrelated buyers = US\$ 80 per unit; and since its adoption increases taxable income in India, hence, the same shall be adopted.