

## **Paper-11 Indirect Taxation**

## Answer to PTP\_Intermediate\_Syllabus 2012\_Jun2015\_Set 3

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

	<b>Learning objectives</b>	<b>Verbs used</b>	<b>Definition</b>
<b>LEVEL B</b>	<b>KNOWLEDGE</b> 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
	<b>COMPREHENSION</b> 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
	<b>APPLICATION</b> 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
	<b>ANALYSIS</b> 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**

Working notes should form part of the answers.

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

**(i) What are the procedures are followed by the Central Excise department for collection of Central Excise duty?**

**Answer:**

The following two procedures are followed by the Central Excise Department:

(I) Physical Control Procedure and (II) Self-Removal Procedure

**(ii) When excise audit is compulsory to an assessee?**

**Answer:** Excise audit is compulsory every year if the payment of excise duty is more than 3 crores.

**(iii) Whether desk review audit can be conducted by a practicing Chartered Accountant or a practicing Cost Accountant in the premises of manufacturer?**

**Answer:** No. Desk review audit can be conducted by a practicing Chartered Accountant or a practicing Cost Accountant in the premises of Department.

**(iv) Who will bear the expenses of audit under Excise Audit?**

**Answer:** The expenses and audit fees shall be paid by the department.

**(v) Whether all goods manufactured are subject to Central Excise Duty?**

**Answer:** No. Goods manufactured in India may be excisable goods or non-excisable goods. No central excise duty, if the goods are non-excisable.

**(vi) Whether services delivered by a person having a place of business in Jammu and Kashmir to a person having a place of business in Andhra Pradesh is subject to service tax?**

**Answer:** Yes. Services delivered by a person having a place of business in Jammu and Kashmir to a person having a place of business in Andhra Pradesh is subject to service tax, place of delivery of service is important.

**(vii) Whether statutory services are also taxable services?**

**Answer:** No. Statutory services are not taxable services

**(viii) A person having a place of business in Maharashtra provides to a person having a place of business in Jammu and Kashmir. Whether such service is liable to service tax law?**

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**Answer:** No. A person having a place of business in Andhra Pradesh provides to a person having a place of business in Jammu and Kashmir. Such service is liable to service tax law.

**(ix) What is the taxable event under Custom Act in case of exportation?**

**Answer:** Taxable event in the case of exportation is when the vessel cross the territorial water of India.

**(x) What are the types of Drawback rates?**

**Answer:** Duty drawback rates are of following types – (a) All Industries Rate (b) Brand Rate and (c) Special Brand Rate.

**(xi) R Ltd., a company incorporate is USA holds 30% shares of P Ltd. an Indian Company. It also holds 32% and 25% shares of Q Ltd. and S Ltd. a company incorporated in Germany and Canada. Whether P Ltd. Q Ltd. and S Ltd are associated enterprise?**

**Answer:** No. Only P Ltd. and Q Ltd. are associated enterprises since in both the case more than 26% shares are hold.

**(xii) X Ltd. participates in the management or control or capital of Y Ltd. Whether X Ltd. and Y Ltd. is an associate enterprises?**

**Answer:** Yes. Y Ltd. shall be associated enterprises of X Ltd. as a result of direct participation.

**(xiii) What is the time limit for submission of bill of entry after the delivery of Import General Manifest?**

**Answer:**

As per Section 46(3) of the Customs Act, 1962 a bill of entry may be presented at any time after the delivery of import manifest or import report. Therefore, no time limit has been fixed for submission of bill of entry. Hence, no penalty can be imposed if there is delay in submission of Bill of Entry.

**(xiv) How many day within which cargo should be cleared from the wharf from the date unloading?**

**Answer:** Cargo should be cleared from the wharf within 30 days of unloading.

**(xv) Whether a service is rendered free service tax is payable?**

**Answer:** If a service is rendered free service tax is not payable because the value of the service is zero and no amount is received from the customer.

**(xvi) Whether value of goods transferred to the job worker is included in the assessable value of service?**

**Answer:** The value of goods transferred to the job worker is not included in the assessable value of service.

**(xvii) Whether service Tax can be levied on an advance payment received?**

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**Answer:** Yes, Service Tax can be levied on an advance payment received.

**(xviii) What are the types of registration under VAT?**

**Answer:** There are two types of registration (i) Compulsory Registration (ii) Voluntary Registration.

**(xix) Whether dealers Voluntary Registration always rejected by the department?**

**Answer:** No. Dealers Voluntary Registration always not rejected by the department.

**(xx) Whether dealer dealing with inter-state sales has to compulsorily register under the State VAT?**

**Answer:** Yes. Dealer dealing with inter-state sales has to compulsorily register under VAT.

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

**(a) List the characteristics of Indirect Taxes.**

**Answer:**

The following are the characteristics of Indirect Taxes:

- (1) Meaning: Indirect Tax is a tax where incidence and impact fall on two different person.
- (2) Nature of tax: Indirect Taxes are regressive in nature.
- (3) Taxable Event: Purchase / Sale / Manufacture of goods and provision of services.
- (4) Levy & Collection: Indirect taxes are levied & collected from the consumer but paid / deposited to the Exchequer by the Assessee / Dealer.
- (5) Shifting of Burden: Tax burden is shifted on the subsequent / ultimate user.
- (6) Collection: Indirect Taxes are collected at the time of sale or purchases or rendering of services.

**(b) If there is a matter in Concurrent List and both Centre and State make a law on that matter, which law will prevail?**

**Answer:**

The law made by parliament shall prevail over the law made by the state legislature and the latter will be valid only to the extent to which it is not repugnant to the former.

**(c) Who can make a law for Wealth tax on agricultural property – Central or State?**

**Answer:**

The Supreme Court has held that the power to impose wealth-tax on the total wealth of a person including his agricultural land belongs to parliament in its residuary jurisdiction. (Union of India v, H. S. Dhillon, A.I.R. 1972 SC 1061).

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

**(a) Punjab National Bank provides the following information for the month of June:**

CENVAT Credit available on Inputs	₹ 2,00,000
CENVAT Credit available on Inputs Services	₹ 4,00,000
Service Tax liability before availing eligible CENVAT	₹10,00,000

**Determine the amount of CENVAT Credit available to Punjab National Bank for the month of June, 2014 in view of Rule 6(3B) of Cenvat Credit Rules, 2004. Also determine the net service tax liability of the bank after availing the eligible CENVAT Credit. [8]**

**Solution:**

According to Rule 6(3B) of CCR, 2004, a banking company and a financial institution including a non-banking financial company engaged in providing services by way of extending deposits, loans or advances, shall pay for every month, an amount equal to 50% of the CENVAT credit available on inputs and input service in that month. Therefore, a banking company is entitled to avail only 50% of CENVAT credit in respect of inputs and input services.

In view of above statutory provisions, CENVAT Credit available to bank for the month of June and its net service tax liability will be computed as under (amount in ₹) :

CENVAT Credit available on Inputs	2,00,000
Less: Payment of 50% of CENVAT Credit available on Input by virtue of Rule 6(3B). It effectively means 50% of available CENVAT Credit is to be disallowed	1,00,000
<b>Net CENVAT Credit available on Inputs</b>	<b>1,00,000</b>
CENVAT Credit available on input Services	4,00,000
Less: Payment of 50% of CENVAT Credit available on Input Services by virtue of Rule 6(3B). It effectively means 50% of available CENVAT Credit is to be disallowed.	2,00,000
<b>Net CENVAT Credit available on input services</b>	<b>2,00,000</b>

Determination of Net Service Tax liability of Bank for the month of June (amount in ₹):

Service Tax liability of bank before availing eligible CENVAT Credit	10,00,000
Less: Net/ Eligible CENVAT Credit available on Inputs	1,00,000
Less: Net/ Eligible CENVAT Credit available on Input Services	2,00,000
<b>Net Service Tax liability of bank after availing eligible CENVAT Credit</b>	<b>7,00,000</b>

**(b) (i) Give the consequences regarding excise duty liability if goods manufactured by EOU (Export Oriented unit) & brought to DTA (Domestic Tariff Area). [5]**

**Answer:**

Goods manufactured by EOU (Export Oriented unit) & brought to DTA (Domestic tariff Area) will be liable to excise duty equal to customs duty [Proviso to section 3(1) of the Central Excise Act].

Any excisable goods -

- (i) manufactured by a 100% Export Oriented Units (EOU) and
- (ii) brought to any other place in India (termed, "Domestic Tariff Area" or DTA) are also liable to excise duty.

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However, Excise duty = Aggregate of customs duties which would be leviable under Customs Act, 1962, or any other law on like goods produced/manufactured outside India if imported into India.

For this purpose -

- (i) Valuation as per Customs law : The value of such goods shall be determined in accordance with the provisions of the Customs Act, 1962 and the Customs Tariff Act, 1975 ; and
- (ii) Highest rate to be taken in case of different rates: Where in respect of any such like goods, any duty of customs is leviable at different rates, then, the highest of those rates shall be taken.

**(b)(ii) There are different forms of Bonds available under Central Excise. Write briefly about those Bonds which are very common in Excise. [3]**

**Answer:**

**Forms of Bonds in Excise:**

Bonds are of different nature and for various purposes. Forms of bond etc. have been standardised. The main bonds are as follows:

- **B-1 general bond**- The bond is for due dispatch of excisable goods removed for export without payment of duty. The bond can be with surety or security.
- **B-2 Bond** - This is a General Bond for provisional assessment. It can be with security or surety.
- **B-5A Bond** - It is for due arrival and re-warehousing of excisable goods removed from a warehouse in India to a factory in SEEPZ (*Santacruz Electronics Export Processing Zone*).
- **B-8 Bond** - This bond is for obtaining goods at Nil or concessional rate of duty under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules.
- **B-11 Bond** - Often, goods are seized by excise officer, if there is reason to believe that goods are liable to confiscation. The goods are actually confiscated only after these are confiscated after adjudication. This may take a long time. Hence, the assessee can get the seized goods released after execution of bond in form B-11. The bond is for provisional release of seized goods. It can be only security bond.
- **B-17 Bond** - This is a general surety/security bond to be executed by EOU/EHTP/STP/BTP units. It is for provisional assessment of goods for export of goods to foreign countries without payment of duty and for disposal of excisable goods procured without payment of duty.

**(c) Determine the cost of production on manufacture of the under-mentioned product for purpose of captive consumption in terms of Rule 8 of the Central Excise Valuation Rules, 2000 (Amount in ₹)**

<b>Direct material</b>	<b>11,648</b>
<b>Direct wages &amp; salaries</b>	<b>8,400</b>
<b>Works overheads</b>	<b>6,200</b>
<b>Quality control costs</b>	<b>3,500</b>
<b>Research and development costs</b>	<b>2,400</b>
<b>Administrative overheads</b>	<b>4,100</b>
<b>Selling and distribution costs</b>	<b>1,600</b>
<b>Realizable value of scrap</b>	<b>1,200</b>

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The Administrative Overheads are in relation to production activities.  
Material cost includes Excise duty ₹ 1,648.

[8]

**Answer:**

**Calculation of cost of production in terms of Rule 8 of Valuation Rules, 2000 (amounts in ₹)**

Direct material (11,648 – 1,648 = 10,000)	WN 1	10,000
Direct wages & salaries		8,400
Works overheads		6,200
Quality control costs	WN 2	3,500
Research and development costs	WN 2	2,400
Administrative overheads	WN 2	4,100
Selling and distribution costs	WN 3	-
Total		34,600
Less : Realisable Value of scrap	WN 4	1,200
Cost of production		33,400
Value of excisable goods under Rule 8 @ 110% of cost of production		36,740

Working notes:

1. Raw-material cost shall be taken net of excise duty assuming Cenvat credit is available
2. Quality control cost, Research and Development cost and Administration overheads related to production shall form part of cost of production as per CAS-4.
3. Selling and distribution costs shall not form part of cost of production
4. Realizable value of scrap shall be deducted to arrive at cost of production.

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

(a) State briefly with reasons whether credit under the CENVAT Credit Rules, 2004 would be available in the following cases:

- (i) Inputs are pilfered from the store-room.
- (ii) Final product is cleared in durable and returnable packing material.
- (iii) An input becomes a waste and is sold as scrap.
- (iv) Inputs used in trial runs

**Answer:**

The admissibility of CENVAT credit is discussed as under –

- (i) **Inputs are pilfered from the store-room:** No, since credit on inputs is available only for inputs used in the factory of manufacturer of final products. If the inputs are lost in the store-room without being used at all, credit of duty paid on such inputs will not be available.
- (ii) **Final product is cleared in durable and returnable packing material:** Yes, The definition of 'input' covers all goods used in the factory of production by the manufacturer and such packing has relationship with the manufacture of the final products therefore, Cenvat credit will be available on durable and returnable packing material. Besides this, since the proportionate cost of durable container is included in assessable value of final product, they are eligible for Cenvat credit.
- (iii) **An input becomes a waste and is sold as scrap:** Yes. If inputs becomes waste and sold as scrap, it cannot be said that input is cleared 'as such' [Rule 3(4) of the Cenvat Credit Rules 2004]. What is cleared is 'waste' and duty will be payable as if waste has been removed. In case the inputs have become waste during the manufacturing process, then the CENVAT

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credit shall be allowed on such waste, even if such waste is exempted or chargeable with nil rate of duty.

- (iv) **Inputs used in trial runs:** Yes. Inputs used in trial runs during the production or commissioning of plant are eligible for CENVAT credit as they are used in the manufacture of final product. Since trial run/ production is a pre-requisite for manufacture of the final product, hence, they bear relationship with the manufacture of the final product. Hence, they are eligible as 'input'. - Fertiliser Corporation of India v. CCE.

(b) **Answer the following questions with reference to the Section 14 of the Customs Act, 1962 & relevant Rules regarding the valuation of goods:**

- (i) **What shall be the value if there is price rise between the date of contract and the date of actual importation?**
- (ii) **Whether the payment for post-importation process is includible, if the same is related to imported goods and is a condition of the sale of the imported goods?**
- (iii) **Bill of Entry was filed on 27.10.2014. Will you apply the Exchange Rate notified by the CBEC on 25.9.2014 or notified on 25.10.2014?**

**Answer:**

**The situation-wise treatments will be as follows:**

Situation	Treatment
1. Price Rise between date of contract and date of actual importation.	The <b>escalated</b> price is the value for the purpose of Customs, if the contract <b>contains an Escalation Clause</b> .
2. Payment for Post-Importation process.	Rule 10 of Customs Valuation Rules provides that any payment as <b>Condition of Sale</b> of Imported goods is included in the Transaction Value. Hence, the value of post-importation process is <b>includible</b> .
3. Relevant exchange rate.	Exchange Rate applicable for a month is the rate notified by CBEC on 25th of previous month. Hence, Exchange Rate notified on 25/09/2014 is applicable.

(c) **Describe the procedures to be followed in clearance of goods imported by post.**

**Answer:**

**The procedures to be followed in clearance of goods imported by post:**

- (1) **Procedure on receipt of parcel mail:** Post master has to handover details regarding parcels received along with parcel bills to the Appraiser.
- (2) **Scrutiny & Detention of dutiable/prohibited articles:** The parcels are scrutinised and those suspected to contain dutiable or prohibited articles are detained and presented to customs appraiser.
- (3) **Segregation:** Parcels are segregated into: (1) Assessable on basis of label; (2) Assessable after opening of packet; and (3) Assessable only after further inquiry.
- (4) **Assessment:** The parcels shall be assessed based on label or based on examination or after calling requisite information. The rate of duty, value, etc. shall be determined. Such duty is recovered by the postal authorities from the addressee at the time of

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delivery and sum is credited to Customs Department.

- (5) Evasion/Prohibition cases:** In case of mis-declared, undervalued or prohibited goods, the parcel/packet is detained and not allowed to be cleared, except with order of the Customs Officer.

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

#### **(a) What kind of duty is to be performed by DGFT regarding SCOMET Items?**

**Answer:**

Export of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) is either prohibited or restricted. These cover nuclear material, nuclear reactors, equipment for nuclear explosive devices, rocket systems, toxic chemicals, micro-organisms, chemicals for weapons, viruses, etc.

Application for license for exporting these items is to be made to DGFT (Director General of Foreign Trade). Application will be considered by Exim Facilitation Committee (EFC). In respect of items specified in Appendix 3 to Schedule 2 of ITC (HS), application will be considered by Inter-Ministerial working group in DGFT based on criteria as specified.

#### **(b) "Advance Authorisation' is not transferable, while material imported under DFIA will be transferable after fulfillment of export obligation." — Write about Advance Authorisation and DFIA (Duty Free Import Authorisation) in this context.**

**Answer:**

Under Advance Authorisation inputs required to manufacture export products can be imported without payment of customs duty.

Advance Authorisation can be granted to merchant exporter or manufacturer exporter to import raw materials. Since the raw materials can be imported before exports of final products, the Authorisation issued for this purpose is called 'advance Authorisation'.

Advance Authorisation is issued to allow duty free import of inputs with normal allowance for wastage. In addition, fuel, oil, energy, catalysts etc. required can also be allowed. Duty free import of mandatory spares upto 10% of CIF Value of Authorisation, which are required to be exported with resultant products, may also be allowed. However, prohibited items of imports cannot be imported.

The Advance Authorisation will be for actual user only. It is not transferable. The material imported under Advance Authorisation is also not transferable even after completion of export obligation. However, goods manufactured out of such imported material can be disposed of, after export obligation is fulfilled.

In case of Advance Authorisation, positive value addition is sufficient, while in case of DFIA, 20% value addition is required, except in case of gem and jewellery sector.

DFIA is issued to allow duty free import of inputs used in manufacture of export product (with normal allowances for wastages), and fuel, energy, catalyst etc. Duty free import of mandatory

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spares upto 10% value of authorisation, which is required to be exported/ supplied with resultant product, is also allowed.

DFIA is initially issued with 'actual user condition'. Imports will be exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-Dumping Duty and Safeguard duty, if any.

DFIA is issued on basis of SION. Import Authorisation will be limited to quantity mentioned in SION. DFIA is issued to manufacturer-exporter or merchant-exporter for following – (i) Physical exports including supplies to SEZ (b) Intermediate supplies and (c) Main contractors for supply of goods under Deemed Exports (except supply against Advance Authorisation and marine containers). In case of some deemed exports, DFIA is available to sub-contractors also.

**(c) "Duty drawback rates are of following types – (A) All Industry Rate (B) Brand Rate and (C) Special Brand Rate." — Describe.**

**Answer:**

The types of duty drawback rates are described as follows:

**A. All Industry Drawback Rates** - All Industry Drawback rates are fixed by Directorate of Drawback, Dept. of Revenue, Ministry of Finance, Govt. of India. The rates are periodically revised – normally on 1st June every year.

Whenever specific rates are provided, drawback shall be payable only if amount is more than 1% of FOB value, except when the drawback claim per shipment exceeds ₹500. Revised rates have been announced vide Notification No. 68/2007-Cus(NT) dated 16-7-2007 [earlier Notification No. 81/2006-Cus(NT) dated 13-7-2006].

The all industry drawback rates are given in two ways – (a) when Cenvat facility has been availed and (b) when Cenvat facility not availed. The difference between the two is central excise portion of duty drawback. If rate indicated in both is same, it means that it pertains to only customs portion and is available irrespective of whether exporter has availed Cenvat or not – Condition No 5 to Notification No. 68/2007-Cus(NT) dated 16-7-2007 [earlier No. 81/2006-Cus(NT) dated 13-7-2006].

Duty drawback rate shall not exceed 33% of market price of export goods (Rule 8A w.e.f. 15-2-2006). In case of some cases, value cap has been fixed. In such cases, maximum drawback allowable per unit of quantity has been specified (This is to avoid misuse by over-valuation of export goods].

**B. Brand Rate of duty drawback** – It is possible to fix All Industry Rate only for some standard products. It cannot be fixed for special type of products. In such cases, *brand rate* is fixed under rule 6. The manufacturer has to submit application with all details to Commissioner, Central Excise. Such application must be made within 60 days of export. This period can be extended by Central Government by further 30 days. Further extension can be granted even upto one year in if delay was due to abnormal situations as explained in MF(DR) circular No. 82/98-Cus dated 29-10-1998.

Duty drawback rate shall not exceed 33% of market price of export goods (Rule 8A w.e.f. 15-2-2006).

**C. Special Brand Rate of duty drawback** – All Industry rate is fixed on average basis. Thus, a particular manufacturer or exporter may find that the actual excise/customs duty paid on inputs or input services are higher than All Industry Rate fixed for his product. In such case,

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he can apply under rule 7 of Drawback Rules for fixation of Special Brand Rate, within 30 days from export. The conditions of eligibility are (a) the All Industry Rate fixed should be less than 80% of the duties paid by him (b) rate should not be less than 1% of FOB value of product except when amount of drawback per shipment is more than ₹500 (c) export value is not less than the value of imported material used in them – i.e. there should not be 'negative value addition'.

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

**(a)(i) Compute taxable value and service tax from following sums received by M/s. Sen Medical Centre (exclusive of service tax) (Ignore small service provider's exemption) -**

- (1) Testing (with Transmission of medical samples between laboratories): ₹ 6 lakh ;**
- (2) Medicines consumed as a part of health care services : ₹ 5 lakh ;**
- (3) Preventive health care services : ₹4 lakh ;**
- (4) Treatment along with Facilities provided such as TV, AC, room rent, meal to patient (as a part of package): ₹33 lakh ;**
- (5) Genetic affinity examination for determining biological father : ₹4 lakh ;**
- (6) Hair transplant services due to injury in a fire accident: ₹7 lakh ;**
- (7) Cosmetic surgery of a film star : ₹16 lakh ;**
- (8) Conducting medical examinations of individuals : ₹1 lakh** **[5]**

### **Solution:**

Computation of service tax liability

- (1) Testing (with Transmission of medical samples between laboratories) - Exempt;
- (2) Medicines consumed as a part of health care services - Such medicine are never sold - Dominant nature is health care services, which is exempt - Fully exempt.
- (3) Preventive health care services : ₹ 4 lakh - Exempt ("care" is also exempt);
- (4) Treatment along with Facilities provided such as TV, AC, room rent, meal to patient (as a part of package): ₹ 33 lakh - Natural bundling in ordinary course of business - Essential character is "health care services", which is exempt - Fully exempt;
- (5) Genetic affinity examination for determining biological father : ₹ 4 lakh - Not related to "diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy" - Not exempt - Taxable ;
- (6) Hair transplant services due to injury in a fire accident : ₹ 7 lakhs – Exempt, as it has been done to restore damage due to fire accident;
- (7) Cosmetic surgery of a film star : ₹ 16 lakhs – Not exempt – Taxable;
- (8) Conducting medical examinations of individuals: ₹ 1 lakhs – Exempt;

Taxable value = ₹ (4 + 16) lakhs = ₹ 20 lakhs and service tax thereon @ 12.36% = ₹ 2,47,200.

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- (ii) What are the specified services where the place of provision is the location of the service provider? [5]

**Answer:**

**Following are the specified services where the place of provision is the location of the service provider:-**

- i) Services provided by a banking company, or a financial company, or a non-banking financial company to account holders;
- ii) Online information and database access or retrieval services;
- iii) Intermediary services;
- iv) Service consisting of hiring of means of transport, up to a period of one month.

- (b)(i) Mr. Amit has provided the following services during the year 2014-15. Determine whether he is eligible for threshold exemption (Small Service Providers exemption) during the year 2015-16:**

- (1) Services provided outside India: ₹ 2 lakh;
- (2) Services (falling under negative list): ₹ 2 lakh;
- (3) Services fully exempt under other notifications: ₹ 5 lakh;
- (4) Declared Services (Sum charged ₹ 4 lakh, but, value determined as per the valuation rules is 60% i.e., ₹ 2,40,000);
- (5) Services (where amount charged is ₹ 60,000, but, after abatement, value is ₹ 20,000). [5]

**Solution:**

Mr. Sen would be eligible for threshold exemption or small service providers' exemption if the "aggregate value" of taxable services provided during the year 2013-14 is upto ₹ 10 lakhs. The relevant computations are shown below —

Case	Treatment	₹
(1) Services provided outside India	Not taxable service, as not liable to service tax u/s 66B of Finance Act, 1994 – Not includible.	NIL
(2) Services (falling under negative list)	Not taxable service, as not liable to service tax u/s 66B of Finance Act, 1994 – Not includible.	NIL
(3) Services fully exempt under other notifications	Specifically excluded in determination of aggregate value.	NIL
(4) Declared Services	Value as determined as per section 67 of Finance Act, 1994 and Valuation Rules is to be taken.	2,40,000
(5) Services eligible for abatement	Abatement is a form of partial exemption. Value as per section 67 of Finance Act, 1994 viz. ₹ 60,000 shall be taken.	60,000
Aggregate Value for Financial Year 2014-15		3,00,000
Since the aggregate value of service is ₹ 3 lakhs (i.e., not exceeding ₹ 10 lakhs) during financial year 2014-15, Mr. Amit is eligible for threshold exemption (Small Service Providers exemption) during the financial year 2015-16.		Eligible for exemption

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(ii) CD Ltd. Carried out following works, all of which are leviable to sales-tax/VAT as transfer of property involved in the execution of works contract (the sum charged given below are exclusive of all taxes) -

- (1) New constructions: ₹ 50 lakh;
- (2) Additions and alterations to damaged structures on land to make them workable: ₹ 25 lakhs;
- (3) Supply along with erection, commissioning and installation of plants: ₹ 72 lakhs;
- (4) Maintenance and repair of goods: ₹ 40 lakhs;
- (5) Maintenance and repair of immovable property: ₹ 30 lakhs;

Compute taxable value and service tax thereon.

[5]

**Solution:**

Computation of taxable value & service tax: Since data regarding valuation under Rule 2A(i) is not given, value is computed as per Rule 2A(ii) at specified % of gross amount charged.

	Amount charged ₹	% of amount charged	Taxable Value ₹
New constructions (It is "original works")	50,00,000	40.00%	20,00,000
Additions and alterations to damaged structures on land to make them workable (It is "original works")	25,00,000	40.00%	10,00,000
Supply along with erection, commissioning and installation of plants (It is "original works")	72,00,000	40.00%	28,80,000
Maintenance and repair of goods	40,00,000	70.00%	28,00,000
Maintenance and repair of immovable property	30,00,000	70.00%	21,00,000
Total Taxable Value under Rule 2A(ii)			1,07,80,000
<b>Service Tax @ 12.36%</b>			13,32,408

(c)(i) What are the details contained in the service tax return?

[5]

**Answer:**

**The service tax return contains the following major details:**

- (i) particulars of assessee viz. name, registration number, address, etc.;
- (ii) particulars of taxable services viz. Nature;
- (iii) particulars of period viz. financial year, half year period (April-September or October-March),
- (iv) particulars of value of taxable services viz. amount received, advance received, details of exempted services, abatement/exemption claimed, etc.;
- (v) particulars of service tax viz. service tax & education cess payable, details of payment, interest or penalty paid, payment of excess collection of service tax, if any, etc.;
- (vi) particulars of Cenvat Credit viz. opening balance, availed, utilized, closing balance, etc.

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(ii) An interior decorator charges ₹ 6,50,000 from a client for providing professional services. The breakup of the bill is as follows:-

(a) Value of furniture sold to the client – ₹ 3,00,000

(b) Labour and facility charges – ₹ 2,00,000

(c) Value of materials consumed in providing the service – ₹ 1,50,000

Compute the amount of service tax to be charged from the client.

[5]

**Solution:**

**Computation of service tax payable (amounts assumed exclusive of service tax)**

	(₹)
Value of furniture sold to the client [Sale of furniture is 'sale of goods', which cannot be regarded as a service. Though sale is in course of providing the service, however, it constitutes a separate sale, because the parties intend to have separate rights arising out of sale. Such sale cannot be charged to service tax.]	Sale, not service
Add: Labour and facility charges [They are for provision of interior decoration service; hence, includible in value]	2,00,000
Add: Value of materials consumed in providing the service [Materials consumed viz. consumables, etc. in providing services are a part of the value of the service, because service cannot be provided without them.]	1,50,000
<b>Value of service</b>	<b>3,50,000</b>
<b>Service Tax @ 12.36%</b>	<b>43,260</b>

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

**(a) What are the essential ingredients of a sale under CST Act?**

**Answer:**

**Essential ingredients of a sale under CST Act:**

- There must be two parties to the contract of sale (i.e.) the buyer & the seller.
- There must be valid consent of both the above parties.
- There must be an actual transfer of property in goods (i.e. agreement to sell is not a sale).
- There must be a consideration in cash or in deferred payment or any other valuable consideration in money or money's worth.
- Sale includes deemed sales but it does not include a mortgage or hypothecation of or a charge or pledge on goods.

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- (b) Determine the Taxable Turnover, Input Tax Credit and net VAT payable by a Works Contractor from the details given below on the assumption that the Contractor maintains sufficient records to quantify the labour charges. Output VAT at 12.5%:

Particulars	(₹ in Lakhs)
Total Contract Price (excluding VAT)	105
Labour Charges paid for execution of the contract	40
Cost of Consumables used not involving transfer of property in goods	5
Material purchased and used for the Contract, taxable at 12.5% VAT (VAT included)	45

Contractor also purchased a Plant for use in the contract for ₹ 10.4 lakhs. In the VAT Invoice, VAT was charged at 4% separately, and the said amount of ₹ 10.4 Lakhs is inclusive of VAT.

**Solution:**

**Computation of Taxable Turnover, Input Tax Credit and net VAT liability**

Particulars	₹ Lakhs
Total Contract Value (excluding VAT)	105
<b>Less:</b> Labour Charges paid for execution of the contract	(40)
<b>Less:</b> Cost of Consumables used not involving transfer of property in goods	(5)
<b>Taxable Turnover, i.e.</b>	<b>60</b>
Output VAT Payable [₹ 60 lakhs x 12.5%]	7.5
<b>Less:</b> Input Tax Credit	
• On Materials Purchased Inclusive of VAT $\left[ \frac{12.5}{112.5} \times ₹ 45 \text{ lakhs} \right]$	(5)
• On Plant purchased $\left[ \frac{4}{104} \times ₹ 10.4 \text{ lakhs} \right]$	(0.4)
<b>Net VAT Liability</b>	<b>2.1</b>

- (c) Calculate the total tax liability under the State VAT law and under the Central Sales Tax Act for the month of October 2014 from the following particulars:

Particulars	₹
Inputs purchased within the state	1,70,000
Capital goods used in the manufacture of the taxable goods (not included in the negative list)	50,000
Inputs purchased from a registered dealer who opts for composition scheme under the provisions of the Act	10,000
High seas purchases of inputs	1,20,000
Finished goods sold: (a) within the state	2,00,000
(b) in the course of inter-State trade	2,50,000

Applicable tax rates are as follows:-

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**Case (A):** VAT rate on capital goods 12.5%; Input tax rate within the state 12.5%; Output tax rate within the state 4%; Central sales tax rate 2%.

**Case (B):** VAT rate on capital goods 4%; Input tax rate within the state 4%; output tax rate within the state 12.5%; Central sales tax rate 2%.

**Solution:**

### (a) Computation of VAT liability – Case (A)

	Value (₹)	Rate	Tax (₹)
I. VAT payable on Sales for the month	2,00,000	4.00%	8,000
Add: CST payable on inter-state sales made for the month	2,50,000	2.00%	5,000
Total sum required to be paid during the period <b>(1)</b>			13,000
II. Input Tax Credit Balance (Opening)	NIL	NIL	NIL
Add: Credit available on inputs	1,70,000	12.50%	21,250
Add: Credit available on capital goods (assumed fully allowed)	50,000	12.50%	6,250
Add: Credit available on purchases from dealer opting for Composition Scheme and High-sea purchases – Not eligible for credit. (₹ 10,000 + ₹ 1,20,000)	1,30,000	NIL	NIL
Total Input Tax Credit (ITC) <b>(2)</b>			27,500
VAT payable in cash <b>[1-2]</b> (if positive)			0
Balance of ITC to be carried forward <b>[2-1]</b> (if positive)			14,500

### Computation of VAT liability – Case (B)

	Value (₹)	Rate	Tax (₹)
I. VAT payable on Sales for the month	2,00,000	12.50%	25,000
Add: CST payable on inter-state sales made for the month	2,50,000	2.00%	5,000
Total sum required to be paid during the period (A)			30,000
II. Input Tax Credit Balance (Opening)	NIL	NIL	NIL
Add: Credit available on inputs	1,70,000	4.00%	6,800
Add: Credit available on capital goods (assumed fully allowed)	50,000	4.00%	2,000
Add: Credit available on purchases from dealer opting for Composition Scheme and High-sea purchases – Not eligible for credit. (₹ 10,000 + ₹ 1,20,000)	1,30,000	NIL	NIL
Total Input Tax Credit (B)			8,800
VAT payable in cash [A-B] (if positive)			21,200
Balance of ITC to be carried forward [B-A] (if positive)			0

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

**(a) Describe the application of Resale Price Method (RPM) in the context of Arm's Length Price.**

**Answer:**

Resale Price Method (RPM) 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

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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. The applications of this method are as follows:

- (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) There are many quantitative and qualitative filters available to filter the companies in transfer pricing issues. Name few of those filters.**

**Answer:**

In transfer pricing, after selection of comparable companies, the next step is to filter these companies with the use of quantitative and qualitative filters. The following filters are often used:

- (i) Companies whose data is not available for the relevant year
- (ii) Companies for which sufficient financial data is not available to undertake analysis
- (iii) Different financial year filter
- (iv) Turnover filter
- (v) Service Income filter
- (vi) Export filter
- (vii) Diminishing Loss filter
- (viii) Related party filter
- (ix) Employee cost filter
- (x) Onsite and offsite filter
- (xi) Fixed Asset filter
- (xii) Research & Development Expense filter
- (xiii) Income Tax filter

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(c) The transfer price adopted for an international transaction of sale of goods by an Indian Company during the financial year 2014-15 is ₹ 35 lakhs, whilst the Arm's Length Price determined using the most appropriate method are ₹ 32 Lakhs and ₹ 42 lakhs. With reference to transfer pricing provisions, discuss whether any adjustment is required. The rate of permissible variation prescribed by the Central Government may be assumed to be 2% of the transfer price for this class of international transaction.

### **Solution:**

The proviso to Section 92C(2) provides that Arm's Length Price shall be taken to be the arithmetical mean of prices, where more than one price is determined by the most appropriate method.

However, if the arithmetical mean, so determined, is within such percentage of transfer price, as prescribed by the Central Government, then, the transfer price shall be deemed to be the arm's length price and no adjustment is required to be made.

In the given case, the arithmetical mean of prices is =  $\frac{₹(32 \text{ Lakhs} + 42 \text{ Lakhs})}{2} = ₹37 \text{ Lakhs}$ .

Variation permitted as percentage of transfer price =  $₹35 \text{ Lakhs} \times 2\% = ₹70,000$

The Arithmetic Mean is ₹ 37 Lakhs and the permissible variation is ₹70,000 (2% of the transfer price). Thus, the Arithmetic Mean is not within the prescribed limit of the transfer price.

Hence, the Arm's Length Price shall be ₹ 37 Lakhs.