Paper 11- Indirect Taxation

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
		Identity	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
		Priorities	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) What are the procedures to be followed by the Central Excise department to collect Central Excise duty?
(b) What is the method of the valuation for stock transfer in case of excise?
(c) State the items which are covered under the compounded levy scheme for excise duty purpose.
(d) State the treatment of design and engineering charges in computing the assessable value of excisable goods.
(e) Whether storage tank is capital goods under the Cenvat Credit Rules.
(f) Whether a service is rendered free service tax is payable?
(g) What is Non Injurious Price in Anti Dumping Duty?
(h) Whether the services provided by the Reserve Bank of India are included in the negative list.
(i) A transporter charges ₹ 10,000 for transportation of goods which includes ₹ 1,000 towards the octroi paid on behalf of the owner. What shall be the amount liable to service tax?
(j) State the percentage of abatement in respect of construction service for residential unit having carpet area less than 2,000 sq. ft. and amount charged is less than ₹ 1 crore.
(k) What is the place of provision for Passenger Transportation Services?
(l) What is anti-subsidy duty in custom?
(m) What will be the cost of transportation if it is not ascertainable in case of imported goods?
(n) Whether refund of VAT Credit is possible?
(o) What is 'Goods' under CST Act?
(p) What are the types of registration under VAT?
(q) What are the different types of methods in computing arm's length price?
(r) Who are said to be unrelated person under international transactions?
(s) Mention the name of any one export from India scheme under Foreign Trade Policy.
(t) What is Importer-Exporter Code in Foreign Trade Policy?

Answer:

(a) The following two procedures are to be followed by the Central Excise Department to collect Central Excise duty:
(I) Physical Control Procedure and (II) Self-Removal Procedure
(b) In case of stock transfer in excise, value to be adopted is the price prevailing in depot at the time of clearance from factory.

(c) Stainless steel pattis/pattas and aluminium circles are covered under the compounded levy scheme for excise duty purpose.
(d) Design and engineering charges is essential for the purpose of manufacture of the goods. Hence, these charges should be included in the assessable value of the goods.
(e) Yes. Storage tank is capital goods under the cenvat credit Rules.
(f) 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.
(g) Non Injurious Price is the sale price which is constructed (i.e. arrived at/ ascertained) for the domestic industry, which will give a reasonable return on investment and if Domestic Industry is able to sale its product at that price it will claim no injury
(h) Yes. The services provided by the Reserve Bank of India are included in the negative list.
(i) Expenditure of ₹ 1,000 is incurred as pure agent and therefore, not includible in the taxable value of service provided by him. His service tax liability is on ₹ 9,000 only.
(j) The percentage of abatement is 75% in respect of construction service for residential unit having carpet area less than 2,000 sq. ft. and amount charged is less than ₹ 1 crore.
(k) As per rule 11 of Place of Provision of Services Rules, 2012, the place of provision of a passenger transportation service is the place where the passenger embarks on the conveyance for a continuous journey.
(l) In case any foreign country or territory gives any subsidy, directly or indirectly, upon the manufacture or production, transportation or exportation of such article into India, then the Central Government on recommendation of anti subsidy authority levy countervailing duty not exceeding the amount of such subsidy. This duty is also known as anti-subsidy duty.
(m) In case the actual cost is not ascertainable, such cost shall be 20% of the FOB value of the imported goods.
(n) Yes, refund of excess VAT credit is permitted only if goods were exported out of India.
(o) As per section 2(d) of the Central Sales Tax Act, 1956, 'Goods' includes all materials, articles, commodities and all other kinds of movable property, but does not include newspapers, actionable claims, stocks, shares and securities.
(p) There are two types of registration (i) Compulsory Registration (ii) Voluntary Registration.
(q) Arm's length price can be computed by the following methods:
    (i) Comparable uncontrolled price method;
    (ii) Resale price method;
    (iii) Cost plus method;
    (iv) Profit split method;
    (v) Transactional net margin method;
    (vi) Such other method as may be prescribed by the Board.
(r) Persons are said to be unrelated if they are not associated or deemed to be associated enterprise according to section 92A of the Income-tax Act.
(s) The following are the Exports from India Scheme:
    (i) Merchandise Exports from India Scheme;
    (ii) Service Exports from India Scheme.
(t) An Importer-Exporter Code (IEC) is a 10-digit number allotted to a person that is mandatory for undertaking any export/import activities. Now the facility for IEC in electronic form or e-IEC has also been operationalised.

2. Answer any two questions: [2×2=4]

(a) What are the powers of taxation under Constitution of India? 2

(b) State any two characteristics of Indirect Tax. 2

(c) Who can make a law on tax – Centre or State? 2

Answer:

(a) Power of Taxation under Constitution of India is as follows:

(i) The Central Government gets tax revenue from Income Tax (except on Agricultural Income), Excise (except on alcoholic drinks) and Customs.

(ii) The State Governments get tax revenue from sales tax, excise from liquor and alcoholic drinks, tax on agricultural income.

(iii) The Local Self Governments e.g. municipalities, etc. get tax revenue from entry tax and house property tax.

(b) The following are the characteristics of Indirect Taxes:

(i) Meaning: Indirect Tax is a tax where incidence and impact fall on two different person.

(ii) Nature of tax: Indirect Taxes are regressive in nature.

(iii) Taxable Event: Purchase / Sale / Manufacture of goods and provision of services.

(iv) Levy & Collection: Indirect taxes are levied & collected from the consumer but paid / deposited to the Exchequer by the Assessee / Dealer.

(v) Shifting of Burden: Tax burden is shifted on the subsequent / ultimate user.

(vi) Collection: Indirect Taxes are collected at the time of sale or purchases or rendering of services.

(c) Article 246(1) of Constitution of India states that Parliament has exclusive powers to make laws with respect to any of matters enumerated in List I in the Seventh Schedule to Constitution (Called Union List). As per Article 246(3), State Government has exclusive power to make laws for State with respect to any matter enumerated in List II of Seventh Schedule to Constitution. List III (concurrent list) contains entries where both Union and State Governments can exercise power.

3. Answer any two questions. [8×2=16]

(a) (i) State the conditions for levy of excise duty on waste and scrap. 4

(ii) An excisable product is covered under the Provisions of the Legal Metrology Act, 2009 and falls in the category of 'specified goods' subject to excise duty on the basis of retail sale price. Following particulars are made available: MRP printed on the package is ₹ 10,500 per unit. The price is inclusive of excise duty of 12.5%. Compute the assessable value, and excise duty payable if it is eligible for an abatement of 38%. 4

(b) (i) Compute assessable value and amount of excise duty payable under the Central Excise Act, 1944 and rules made thereunder from the following information:

Particulars	No. of Units	Price at Factory Per Unit	Price at Depot per Unit	Rate of Duty Ad valorem
(i) Goods transferred from factory to depot on 15th March, 2016	1000	₹ 200	₹ 220	12.5%
(ii) Goods actually sold at depot on 25th March, 2016	750	₹ 225	₹ 250	8%

3

(ii) RNT Manufacturers has a canteen for the workers in its factory, as per requirement of the Factories Act, 1948. It purchases a cooking gas range for use in the

canteen. Supplier of cooking gas range has charged excise duty of ₹ 3,750. Can RNT manufacturers avail the CENVAT credit of the excise duty paid on cooking gas range? 2

(iii) A particular Central Excise Notification grants full exemption to all products of Printing Industry including Newspapers and printed Periodicals. A manufacturer, who is Manufacturing Cardboard Cartons and subsequently doing varied printing on them, claims the benefit of the said Exemption Notification on the ground that every material on which, printing work is done becomes a product of the Printing Industry. Is the claim of the Manufacturer Justified? Give reasons. 3

(c) (i) A Small Scale Industrial unit (SSI) is required to pay the following Central Excise duties by October 5, 2015 for clearances effected from its factory in respect of final products manufactured during the month of September, 2015:

Basic Excise Duty (B.E.D.)(in ₹)	**56,000**
National Calamity Contingent Duty (N.C.C.D) (in ₹)	**1,000**

- **Balance available as credit at the beginning September, 2015 were: B.E.D.: ₹ 25,000, N.C.C.D. ₹ 2,000**
- **No inputs were received during the month. However, certain inputs were received on October 1, 2015 on which total duty paid by the suppliers of inputs was : B.E.D.: ₹ 16,000**
- **Excise duty paid on Capital goods received during the month was as follows: B.E.D.: ₹ 20,000.**

For the month of September, 2015 you are required to determine:

1. **The credit available for utilization;**
2. **The permissible extent to which such credit available may be utilized against payment of B.E.D,, N.C.C.D.; and**
3. **The B.E.D. payable through account current (P.L.A.) 6**

(ii) State the implication of tariff item for excise duty purpose. 2

Answer:

(a) (i) Waste or scrap may be liable to duty only if such waste or scrap –

I. Arises in the course of manufacture or production (e.g. waste of packing material in which raw material was received does not arise in course of manufacture);
II. Is goods (i.e., movable and marketable);
III. Listed in the Tariff; and
IV. Is subject to duty of excise in the Tariff.

(ii) As per Explanation 1 to Section 4A of the Central Excise Act, Retail Sale Price means price inclusive of all taxes, local or otherwise. Hence, the excise duty shall be computed as follows -

Particulars	₹
Retail Sale price (inclusive of all taxes, local or otherwise)	10,500
Less: Abatement @ 38%	3,990
Assessable Value under section 4A	6,510
Duty @ 12.50% (rounded off to nearest rupee)	814

(b) (i) According to Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, in cases where the goods are not sold at factory gate, but are transferred by the assessee to his depot, the assessable value for the goods cleared from factory and sold from deport shall be normal transaction value of such goods at the depot at or about the same time at which the goods being valued are removed from the factory.

Calculation of central excise duty

(Amount in ₹)

Assessable Value = 800 units × ₹ 220	1,76,000
Excise duty payable (₹ 1,76,000 × 12.5%)	22,000

Note: It is assumed that price stated in question does not include duties of excise leviable thereon.

(ii) As per the definition of the inputs, the cooking gas range in the canteen which has no relation with manufacturer of the final product cannot be termed as inputs. Further, any goods which are used primarily for personal use or consumption of any employee are not eligible as inputs for the purposes of CENVAT credit. Hence, RNT manufacturers cannot avail CENVAT credit of the excise duty paid on the cooking gas range used in the canteen.

(iii) The Exemption Notification is in respect of a product of Printing Industry. The Cardboard Carton is a product of Packaging Industry, and in common parlance the Cardboard Carton remains a Carton only, whether any printing is done on it or not. Where a Packing Manufacturer also prints on the cardboard/packing manufactured by him, he will not be entitled for the benefit of Exemption Notification because, any amount of printing on cardboard will not make it a product of printing Industry. [Rollatainers Ltd. 72 ELT793 (SC)]. Therefore, the claim of the Manufacturer does not hold good.

(c) (i) The relevant points/notes are –

- Separate column will be required for NCCD, which can be used only for payment of NCCD.
- Credit is available on inputs on receipt thereof in factory. Since inputs were received on 1-10-2015, credit thereof cannot be taken in September, 2015. It can be taken only in October , 2015.

Computation of credit available, utilized and duty paid for September, 2015 by a SSI-unit:

Particulars	CENVAT	NCCD
Opening Balance	25,000	2,000
Add: Credit on capital good received in September 2015 (Since assessee is an SSI unit, it is assumed that it is eligible for SSI exemption and, therefore, 100% credit on capital goods in available in the year of receipt)	20,000	Nil
Total credit available	45,000	2,000
CENVAT payable in September, 2015	56,000	1,000
Less: Credit Set-off (to the extent of -		
➢ Duty payable or		
➢ Credit available, whichever is less	45,000	1,000
Duty payable in cash through account current (Duty payable – Credit set-off)	11,000	0
Balance CENVAT Credit carried forward	0	1,000

(ii) "Tariff item" means a description in the list of tariff provisions accompanying -

- Either 8-digit number and the rate of the duty of excise or
- 8-digit number with blank in the column of the rate of duty.

4. Answer any two questions. [6×2=12]

(a) State the differences between safeguard duty and Anti-dumping. 6

(b) (i) A bill of entry was presented on 1st November, 2015. The vessel carrying goods arrived on 11th November, 2015. Entry inwards was granted on 12th November, 2015 and the bill of entry was assessed on that date and was also returned to the importer for payment of duty on that date. The duty amounting to ₹ 2,40,000 was paid by the importer on 20th November, 2015. Calculate the amount of interest payable under section 47(2) of the Customs Act, 1962, given that there were two holidays on 14th and 15th November, 2015. 4

(ii) Mention the time limit to file Import Report in case of a vehicle. 2

(c) After visiting USA, Mrs. & Mr. Z brought to India a laptop computer valued at ₹ 75,000, personal effects valued at ₹ 85,000 and a personal computer for ₹ 50,000. Calculate the customs duty payable? 6

Answer:

(a) The differences between safeguard duty and anti-dumping duty are listed below:-

Basis	Safeguard Duty	Anti-dumping duty
1. Legislation	Section 8B or 8C of the Customs Tariff Act, 1975.	Section 9A of the Customs Tariff Act, 1975.
2. Objective	To ensure that bulk imports of goods do not cause serious injury/disruption to domestic industry.	To ensure that goods are not imported at lower than normal value (dumping), thereby, causing loss to domestic market.
3. Based on	Increased imports in quantity.	Imports at value less than normal value.
4. Quantum	Levied as determined by the Government.	Cannot exceed margin of dumping.
5. Duration	Remains in force for 4 years, extendable upto 10 years from date of levy.	Remains in force for 5 years, extendable by further 5 years.
6. Exception	Not levied if imports from a developing country doesn't exceed 3% and total imports from all developing countries (each with share upto 3%) doesn't exceed 9% in total.	Exceptions to levy of this duty are listed in section 9B of the Customs Tariff Act, 1975.

(b) (i) Importer has to pay interest under section 47(2) of the Customs Act @ 15% p.a. only if he fails pay duty within 2 working days (i.e., excluding holidays) from date of return of assessed bill of entry to him.

In this case, -

Date of return of assessed bill of entry	12 Nov 15
Add: Two working days 13th and 16th November [14th and 15th are holidays]	2 working days
Due date for payment of duty	16 Nov 15
Actual Date of Payment of Duty	20 Nov 15
Period of delay in payment of duty [Date of Payment – Due Date]	4
Duty payable	2,40,000
Rate of Interest	15.00%
Interest = ₹ 2,40,000 × 15% × 4 ÷ 365 days	394.52

(ii) The time limit to file Import Report in case of a vehicle is within 12 hours after its arrival in the customs station.

(c) Computation of custom duty

(Amount in ₹)

(1) Laptop	[WN-1]	Exempt
(2) Personal effects	[WN-2]	Nil
(3) Personal Computer	[WN-3]	50,000
Total dutiable goods imported (that can be accommodated in General Free Allowance)		50,000
Less: general Free Allowance		45,000
Balance Goods on which duty is payable		5,000
Customs Duty payable @ 36.05%		1,803

Working Notes:

(1) Laptop Exempt: The laptop brought by Mr. & Mrs. Z will not be included in assessable value of Baggage, since one laptop computer imported by any passenger (other than a member of the crew) of 18 years or above as a part of the baggage has been exempted from the whole of customs duty.

(2) Personal effects are not included in the value of baggage.

(3) It has been assumed that the assessee stayed for more than 3 days, hence, under Rule 3 of the Baggage Rules, 1998, the general free allowance of ₹ 45,000 will be available.
Hence, the value of personal computer i.e., ₹ 50,000 will be reduced by the General Free Allowance and duty shall be levied on the balance of ₹ 5,000.

(4) The general free allowance cannot be pooled with another person. Hence, Mr. Z & Mrs. Z will be separately allowed the general free allowance. Thus, personal computer can be claimed exempt either by Mr. Z or Mrs. Z.

5. Answer any two questions. [4×2=8]

(a) State the important features of the Foreign Trade Policy. 4

(b) Write short notes on: Passenger Baggage – Import and Export thereof. 4

(c) State the items of capital goods which are eligible under Export Promotion Capital Goods Scheme (EPCG). 4

Answer:

(a) The key features of FTP are –

- Free Export-Import: Export – Import is free unless specifically regulated by the provisions of the Policy or any other law for the time being in force.
- Restrictions for strategic and health reasons: There are restrictions on exports and imports for various strategic, health and other reasons. If the goods are not banned, the government can give a permission/license for specific reasons.
- Export Promotion Schemes: Exports are promoted through various promotional schemes.
- Duty exemptions, drawbacks and rebates available: To provide for tax free exports, the taxes on exports are either exempted or adjusted or refunded on both outputs and inputs, through schemes of Duty Exemption, Duty Refund (Drawbacks and Rebates).
- Free import of capital goods for exports: Even capital goods can be imported at NIL duty for the purpose of exports under the scheme of EPCG.
- Special Schemes for EOU: For united undertaking to export all their production, there are special schemes so that they can avoid taxes at every stage under the scheme of EOU.

- Deemed Exports: In certain cases imports get duty exemption/concession for certain special purposes. In such cases, to enable domestic suppliers compete with the international suppliers, the supplies of domestic suppliers are treated as deemed exports.

(b) The relevant provisions relating to Passenger Baggage are as under –

(i) Import of passenger baggage: The provisions are as under:

(1) Bona-fide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by Ministry of Finance.

(2) Samples of such items that the otherwise freely importable under FTP may also be imported as part of passenger baggage without an Authorisation.

(3) Exporters coming from abroad are also allowed to import drawings, patterns, labels, price tags, buttons, belts, trimming and embellishments required for export, as part of their passenger baggage without an Authorisation.

(ii) Export of Passenger Baggage: The provisions are as under:

(1) Bona-fide personal baggage may be exported either along with passenger or, if unaccompanied, within one year before or after passenger's departure from India. However, items mentioned as restricted in ITC (HS) [Indian Trade Classification (Harmonised System)] shall require an Authorisation. Government of India officials proceeding abroad on official postings shall, however, be permitted to carry along with their personal baggage, food items (free, restricted or prohibited) strictly for their personal consumption.

(2) Samples of such items that are otherwise freely exportable under FTP may also be exported as part of passenger baggage without an Authorisation.

(c) Eligible capital goods under Export Promotion Capital Goods Scheme (EPCG) are as under:

(1) Capital goods, including those in CKD/SKD condition
(2) Computer Software Systems
(3) Spares, Moulds, Dies, Jigs, Fixtures, Tools and Refractories for Initial Lining and Spare Refractories
(4) Catalysts for initial charge plus one subsequent charge
(5) Capital goods for Project Imports notified by CBEC.

6. Answer any two questions: [10×2=20]

(a) (i) A builder has entered into agreement to sale a flat (carpet area 1800 sq ft to customer. The breakup of his charges are as follows:

(1) Price of flat (including apportioned value of cost of land) : ₹ 50,00,000
(2) Prime Location Charges (PLC) (extra charges for getting sea view) : ₹ 2,50,000
(3) Charges for providing space for covered parking : ₹ 1,20,000
(4) Club membership fee (for club to be formed after construction is complete): ₹ 1,60,000
(5) Charges for carrying out modifications as required by customer : ₹ 2,00,000
(6) Stamp duty for executing sale deed on actual basis : ₹ 4,00,000
(7) Documentation Charges : ₹ 80,000
(8) Maintenance charges to maintain building till the residential complex is handed over to Housing Society of members: ₹ 2,00,000.

The builder received payment of ₹ 15,00,000 before construction was complete and balance amount was received after obtaining completion certificate from the Corporation. The builder has availed services for construction of flat on which service tax of ₹ 40,000 had been paid. He had used cement, steel and building material during construction, on which excise duty paid was ₹ 50,000. Compute the service tax payable. 8

(ii) Compute taxable value and service tax from following sums received by M/s. Rakhi Services Ltd.(exclusive of service tax) (ignore small service provider's exemption)
- **Toll Receipts from Highway of Jaipur to Chomu: ₹ 80,00,000;**
- **Commission earned on toll receipts : ₹ 75,000. 2**

(b) (i) Mr. Sen has a permanent residence at Ahmedabad. He has a savings bank account with Ahmedabad Branch of Safe and Sound Bank. On April 1, 2014 Mr. Sen opened a safe deposit locker with the Ahmedabad Branch of Safe and Sound Bank. Mr. Sen went to USA for official work in December, 2014 and has been residing there since then. Mr. Sen contends that since he is a non resident during the year 2015-16 in terms of the Income-tax Act, service tax cannot be levied on the locker fee charged by Safe and Sound Bank for the year 2015-16. Examine the correctness of the contention of Mr. Sen. 5

(ii) A Ltd. have received services from a foreign company. Under the agreement, they are liable to pay know-how charges tax free. TDS @ 40% is liable to be made under Income-tax law. The sum paid tax-free: ₹ 588; rate of TDS: 41.2% and service tax: 14.5%. Compute the amount of service tax payable. 5

(c) (i) Barin Sugar Mills is engaged in the manufacture of sugar. Government of India had issued directions under the Sugar Control Order for sugar companies to maintain buffer stock of sugar of certain quantity for a specified period. In order to compensate the sugar mill the government had extended buffer stock subsidy towards storage, interest and insurance charges in respect of the buffer stock of sugar actually held by the sugar mill. The department has issued a show cause notice to the assessee raising a demand of service tax on the ground that the amount received by the sugar mill as buffer subsidy is covered under the taxable service of 'storage and warehousing'. Discuss whether the action of the department is sustainable in law. 5

(ii) M/s Asha & Co. provided Works Contract Service to M/s Bihari Ltd. for ₹ 3,00,000. M/s Asha & Co. is a Small Service Provider and hence he availed the exemption. Can such exemption be availed by M/s Bihari Ltd also? 3

(iii) State the due dates for payment of service tax by an individual. 2

Answer:

(a) (i) Computation of value of taxable service and service tax liability (amount in ₹):

1	Price of flat (including apportioned value of cost of land)	50,00,000
2	Prime Location Charges (PLC) (extra charges for getting sea view) (These charges are part of construction service of flat. These are part of 'naturally bundled services'.)	2,50,000
3	Charges for providing space for covered parking (These charges are part of construction service of flat.)	1,20,000
4	Club membership fee (for club to be formed after construction is complete) These are not part of construction service of flat. These are not part of 'naturally bundled services'.	Nil
5	Charges for carrying out modifications as required by customer (These charges are part of construction service of flat.)	2,00,000
6	Stamp duty for executing sale deed on actual basis (Stamp duty is not a part of service. It is only reimbursement of expenses incurred on behalf of customer.)	Nil
7	Documentation Charges (These charges are part of construction service of flat.)	80,000
8	Maintenance charges to maintain building till the residential complex is handed over to Housing Society of members. (These	Nil

	are not part of construction service of flat. These are not part of 'naturally bundled services').	
	Total Amount	56,50,000
	Less: Abatement (75%) (Since carpet area is less than 2000 sq ft and amount charged is less than ₹ 1,00,00,000)	42,37,500
	Taxable Value	14,12,500
	Service-tax payable @ 14.5%	1,66,750
	Less: CENVAT credit of input services (CENVAT credit of excise duty paid on building material cannot be availed.)	40,000
	Net service tax payable	2,04,813

(ii) Toll receipts are covered within negative list under section 66D(h) of the Finance Act, 1994 and not liable to service tax. However, commission thereon is liable to service tax.
Taxable value = ₹ 75,000; Service tax @ 14.5% = ₹ 10,875.

(b) (i) The following points are relevant —
- ♦ Residential status under Income-tax Act, 1961 is immaterial for levy of service tax ;
- ♦ As per rule 9(a) of Place of Provision of Service Rules, 2012, in case of banking services to "account-holder", the Place of Provision = Location of Bank.
- ♦ As per rule 2(b) of Place of Provision of Service Rules, account means account interest to the depositor and, therefore, savings bank account is an 'account'.
- ♦ Services linked to or requiring opening and operation of bank accounts such as lending, deposits, safe deposit locker etc. are examples of services provided by a bank to an "account holder" in the ordinary course of business.
- ♦ Hence, services (safe deposit locker) provided by Ahmedabad Branch of Safe and Sound Bank to account holder Mr. Sen is covered under Rule 9(a) and PoP = Ahmedabad (Taxable Territory). Hence, the services are liable to service tax.

(ii) Where the price set out in the Consultancy Agreement is net of all duties, taxes and other Government charges which, where applicable, were payable in addition to the price; then, consideration inclusive of income-tax deducted at source shall be assessable value for the purpose of the Act in the hands of the service recipient. Since the price of contract was net of taxes, the tax payable in India was to form part of contract price. Thus, consideration charged for the service provided shall include income-tax deducted at source as per terms of contract.
In this case, —
1. TDS is sum received: Tax deducted at source is sum received by the person on whose behalf tax is deducted (section 198 of the Income-tax Act, 1961) and, is therefore, a part of consideration paid.
2. Grossing up : The consideration/sum paid shall be calculated by way of statutory grossing up specified in section 195A of the Income-tax Act, 1961 as follows :
   (a) Grossed up sum = Sum paid (net of tax) ÷ (100 - TDS rate)
   (b) Here, grossed up sum = ₹ 588 ÷ (100 - 41.2)% = ₹ 1,000.
3. Value: Therefore, the value of taxable service received is ₹ 1,000 and service tax ₹ 145.

(c) (i) On similar facts, it was held in CCEx. v. Nahar Industrial Enterprises Ltd. [2010] 29 STT 172 (P&H) that-
- ➢ Since ownership of stock of sugar, kept at directions of Government under Law, continued to vest with assessee-mill, hence, storage was on behalf of assessee himself. Hence, it was a case of self-service.

- No services were provided to Government.
- Even otherwise, subsidy was received not for services provided to Government. There was no contractual relationship between Government and assessee as to provision of service. The flow of subsidy was not due to any reciprocity.
- Further, as per Rule 6(2)(vii) of the Service Tax (Determination of Value), Rules, 2006 subsidies and grant received from Government not directly affecting the value of service shall not form part of value.

Hence, the action of the Department is not correct in law.

(ii) In the present case, Service Provider is Asha & Co. (Non Corporate Entity), and Service Receiver is Bihari Ltd. (Corporate Entity). Hence, Partial Reverse Charge Mechanism is applicable. Both Service Receiver and Service Provider are liable for service tax to the extent of 50% each. The liability of the Service Receiver and the Service Provider are independent of each other. The exemption under Small Service Provider Scheme is available only for the Service Provider, and not for the Service Receiver. Hence, the Service Receiver shall be liable to pay his share of Service Tax on such service, even if the Service Provider has availed any exemption.

(iii) The due dates for payment of service tax by an individual is as follows:
- For first 3 Quarters of Financial Year: Due Date of E-Payment is 6^{th} of the next month from the end of each quarter and in other Case, it is 5^{th} of the next month from the end of each quarter;
- For last Quarter of Financial Year, which is ending on 31st March: Due Date is 31st of March itself.

7. Answer any two questions. [6×2=12]

(a) Gold Constructions undertakes works contracts and maintains sufficient records to quantify the labour and other service charges. From the details given below, calculate the taxable turnover, input tax credit and net vat payable under the State VAT Law –
(i) Total contract price (excluding VAT) ₹ 1,80,00,000
(ii) Materials purchased and used for the contract taxable at 12.5% VAT (inclusive of VAT) ₹33,75,000.
(iii) Labour charges paid for execution of the contract ₹ 40,00,000.
(iv) Other service charges paid for the execution of the contract ₹ 20,00,000.
(v) Cost of consumables used not involving transfer of property in goods ₹10,00,000.
Gold Constructions also purchased a plant for use in the contract for ₹20,80,000 (inclusive of VAT). In the VAT invoice relating to the same, VAT was charged at 4% separately. Assume 100% input tax credit is available on capital goods immediately. Make suitable assumptions where required and show the workings. 6

(b) (i) What are the essential ingredients of a sale under CST Act? 4
(ii) Define 'turnover' as per CST Act. 2

(c) Compute the net VAT liability of Ritesh 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**

Ritesh sold the goods to Binay and earned profit @ 10% on the cost of production. VAT rate on sale of such goods is 12.5%. **6**

Answer:

(a) Following deductions are available from total value of works contract –

(i)	Labour charges	₹ 40,00,000
(ii)	Other service charges	₹ 20,00,000
(iii)	Consumables of which property is not transferred	₹ 10,00,000
	Total deductions	₹ 70,00,000

Hence value for purpose of Vat on works contract - ₹ 1,10,00,000 [₹ 1,80,00,000 - ₹ 70,00,000].
Vat payable on the works contract is not given in the question. Hence, it is assumed to be 12.5%.
Thus, Vat payable @ 12.5% on ₹ 1,10,00,000 is ₹ 13,75,000
Calculation of Input Tax Credit available –
(I) Materials purchased and used for the contract taxable at 12.5% VAT (inclusive of VAT) ₹ 33,75,000. Hence, Vat on purchase is ₹ 3,75,000 ([₹ 33,75,000 × 12.50)/112.5].
(II) Vat on capital goods - 4% of ₹ 20,80,000 i.e. ₹ 83,200. Entire credit on capital goods is available.

Hence, total input tax credit available is ₹ 4,58,200 [₹ 3,75,000 + ₹ 83,200].
Hence, net Vat payable by cash = ₹ 13,75,000 - ₹ 4,58,200 = ₹ 9,16,800.

(b) (i) 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.

(ii) **'Turnover'** means the aggregate of the sale prices received and receivable by his in respect of sales of any goods in the course of interstate trade or commerce made during any prescribed period and determined in accordance with the provisions of the CST Act and the Rules made there under.

(c)

Computation of net VAT liability

Particulars	₹
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 × 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	3,410

that it is an interest on working capital and operating expenditure; in any other case, it will not form part of cost of production.]	
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

8. Answer any two questions. [4×2=8]

(a) Compute the 'arm's 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. 2+2

(b) The transfer price adopted for an international transaction of sale of goods by an Indian Company during the financial year 2015-16 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. 4

(c) State the difficulties in applying the Arm's length Principle in international transfer pricing. 4

Answer:

(a) Computation of 'arm's 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) 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.

(b) The proviso to Section 92C(2) of the Income-tax Act 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 = ₹ (32 Lakhs + 42 Lakhs)/2 = ₹37 Lakhs.

Variation permitted as percentage of transfer price = ₹35 Lakhs × 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.

(c) The arm's length principle, although survives upon the international consensus, does not necessarily mean that it is perfect. There are difficulties in applying this principle in a number of situations, such as:

(i) The most serious problem is the need to find transactions between independent parties which can be said to be exact compared to the controlled transaction.
(ii) It is important to appreciate that in an Multi National Enterprise (MNE) system, a group first identifies the goal and then goes on to create the associated enterprise and finally, the transactions entered into. This procedure obviously does not apply to independent enterprises. Due to these facts, there may be transactions within an MNE group which may not be between independent enterprises.
(iii) Further, the reductionist approach of splitting an MNE group into its component parts before evaluating transfer pricing may mean that the benefits of economies of scale, or integration between the parties, is not appropriately allocated between the MNE group.
(iv) The application of the arm's length principle also imposes a burden on business, as it may require the MNE to do things that it would otherwise not do (i.e. searching for comparable transactions, documenting transactions in detail, etc).
(v) Arm's length principle involves a lot of cost to the group.