

## **Paper-11 Indirect Taxation**

Time Allowed: 3 hours

Full Marks: 100

### **Group-A**

(Answer Question 1 which is compulsory)

#### **Question 1.**

Answer the following questions with suitable reasons:

- (i) "A service provider cannot opt for centralised registration under service tax even though he has centralised billing system." — Discuss
- (ii) "VAT helps in checking tax evasion and in achieving neutrality." — Is the statement true? Justify.
- (iii) A biscuit manufacturing company prints on the packages the MRP of ₹5.00 for the state of West Bengal, ₹6.00 for Madhya Pradesh and ₹7.00 for the rest part of India. What will be the Assessable Value for the purpose of calculating the excise duty?
- (iv) "No anti-dumping duty is payable by EOUs under the Customs Act, 1962, even where the goods imported are used for manufacture of goods sold in India." — Clarify.
- (v) What is 'Goods' under CST Act?
- (vi) Mitali, a consulting engineer, raised a bill of ₹2,19,225 (including Service Tax) on her client for Consultancy Services rendered by her on January 15, 2013. If a partial payment of ₹1,33,945 is received by Mitali on February 5, 2013, what would be the amount of Service Tax payable by her for the quarter ended on March 31, 2013.
- (vii) A manufacturer produces a product which is not sold but supplied to a related person who consumes it in his production process. What will be the valuation for such captive consumption?
- (viii) Determine the point of taxation in case of copyright, trademarks etc.
- (ix) A retailer sold cold drinks to its buyers for ₹20 (₹10 for the cold drinks and the balance ₹10 for the bottle) if they want to get it at their home. The retailer refunds the amount of the bottle if the buyer returns it in the usable condition. Then whether the amount taken for returnable bottles should be included in the assessable value or not?
- (x) "Goods already exported cannot be confiscated under Customs Act." — Explain.

[10×2]

**Answer:**

- (i) A person can obtain centralized registration at his option, if (a) he has centralized billing system or Centralised accounting system in respect of such service and (b) Such Centralised billing or Centralised Accounting system are located in one or more premises.

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- (ii) Yes, the statement is true. The input tax credit system encourages traders to collect invoice which will lead to more transparency and shall allow several tax departments to apply 'cross checks'. Thus tax evasions can be controlled significantly.
- (iii) A manufacturer may print different prices for different States. In some cases, manufacturer earmarks different packages for different areas and marks different prices for different areas.

If a package bears more than one retail sale price, maximum out of these will be deemed to be retail price for purpose of section 4A [Explanation 2(a) to section 4A(4)]. In the given case, the assessable value for the purpose of calculating excise duty will be ₹7.00.

- (iv) Export Oriented Unit (EOU) is exempt from antidumping duty as such. However, if the imported goods are sold as such or have been used for manufacture and sale of goods in India, then antidumping duty will become payable.
- (v) As per section 2(d) of 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 & securities.

The definition of 'Goods' is inclusive definition which declares that all materials, articles commodities and all other kinds of movable property are goods and excludes some specified items.

- (vi) In case of individuals whose aggregate value of taxable services provided from one or more premises is ₹50 lakhs or less in the previous financial year, the service provider shall have the option to pay tax on taxable services provided or to be provided by him up to a total of ₹50 lakhs in the current financial year.

In the present case, it is assumed that Mitali, an individual, had taxable service for less than ₹50 lakhs in the previous year.

Hence Service Tax payable in this case will be:  $(₹1,33,945 \div 1.1236) \times 0.1236 = ₹14,734$ .

- (vii) In case goods are supplied to a 'related person' but consumed by the related person and not sold, valuation will be done on the basis of cost of production plus 10% [Proviso to rule 9]. – CBE&C, vide its circular No. 643/34/2002-CX dated 1-7- 2002, has clarified that this proviso applies when goods are transferred to a sister unit or another unit of the same factory for captive consumption in their factory.
- (viii) As per Rule 8 of Point of Taxation Rules, in respect of royalties and payments pertaining to copyrights, trademarks, designs or patents, where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and the payment for the benefit of such service is made subsequently. In this case, point of taxation will be each time when the payment received or the date when the invoice is issued by the provider of service, whichever is earlier. But as per Rule 8A, where date of invoice or date of payment is not available, the Central Excise Officer can conduct best judgment assessment to determine the point of taxation.

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- (ix) In case of durable/returnable containers, all that would be necessary, as per the Board's Circular No. 643/34/2002-CX dated 1-7-2002 [2002 (143) E.L.T. T39], is to include the amortised cost of the container in the price of the product itself; the returnable deposit taken from the buyer or deposit of the empty container by him would not then be treated as additional consideration.
- (x) Section 113 of the Customs Act uses the words 'confiscation, of goods attempted to be improperly exported' and not 'goods exported'. The reason is that goods already exported are not available for confiscation. Hence goods already exported cannot be confiscated under Section 113.

### **Group-B**

**(Answer any eight questions out of the ten questions given)**

#### **Question 2.**

- (a) What is 'excluded excisable goods' in Excise?**
- (b) An importer has imported certain goods and while determining the assessable value, landing charges @ 1% of CIF value were added. The importer has claimed that actual landing charges are much lower than 1% of the CIF value in his case. You have been asked to advise whether the importer can file a bill of entry by adding actual landing charges instead of notional 1% of CIF value or not.**
- (c) What are the schemes introduced to obtain inputs free from duty or to grant refund of the same?**

**[2+3+5]**

#### **Answer:**

- (a) Goods manufactured or produced in Special Economic Zone (SEZ) are "excluded excisable goods". This means, that the goods manufactured or produced in SEZ are "excisable goods" but no duty is leviable, as charging section 3(1) excludes these goods. Thus, the goods manufactured in SEZ are not "exempted goods". They can be termed as "excluded excisable goods".
- (b) The importer cannot file Bill of Entry by adding actual landing charges. Rule 3(2)(b) of Customs Valuation Rules, 1989 has statutorily laid down a fixed 1% charge on free on board value (F.O.B Value) of the goods plus the cost of transport plus the cost of insurance.

In Wipro Ltd. Vs ACC, it was held that handling charges of 1% of CIF Value, which is very nominal, are not arbitrary. It has been fixed under the power conferred by the Parliament on the rule making authority and such an act cannot be considered beyond the power conferred by Section 14(1) or Section 156 of the Customs Act, 1963. Accordingly, the importer should have filed Bill of Entry by adding the statutorily fixed 1% charges in the CIF value regardless of the actual handling charges being much lower in the present case.

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(c) There are various schemes have been devised to obtain inputs free from duty or to grant refund of the same. In some schemes, the unit has to be isolated from domestic production units, while in some schemes, the units producing goods for domestic production are also entitled to get inputs free of cost. The schemes are described as follows:

- A. Schemes where export production unit has to be isolated from domestic production units** — There are schemes where units producing goods for export purposes have to be isolated from domestic units. The schemes are - EOU, STP, EHTP, BTP and SEZ. [BTP – Bio-Technology Park]
- B. Schemes where domestic production unit can get inputs free from taxes** — The schemes of EOU, SEZ, STP, BTP and EHTP are suitable where the unit is exclusively or at least predominantly for export purposes. There are other schemes where a unit producing goods for domestic purposes is also entitled to get inputs / capital goods without payment of customs duty / excise duty. These can be broadly classified as follows.
- C. Relief of excise duty on inputs** — (a) Cenvat credit of duty paid on inputs can be utilized for payment of excise duty on other final products. Alternatively, refund of duty paid on inputs can be obtained (b) Same result can be achieved by paying duty on final product and claiming rebate. In this case, additional benefit is that duty paid on capital goods will also get refunded indirectly. In first case, only duty paid on inputs is refundable (c) Obtaining inputs without payment of excise duty under notification No. 43/2001-CE(NT). This is advisable when there are one or two major identifiable inputs (d) Rebate of duty paid on inputs under notification No. 41/2001-CE (NT) (e) Excise portion of Duty drawback.
- D. Relief of customs duty on inputs** — (a) Advance Authorisation (b) Duty Entitlement Pass Book scheme (DEPB) (c) DFIA (d) Customs portion of duty drawback.
- E. Capital goods at concessional rate** — Capital goods can also be obtained at concessional rate of customs duty under EPCG scheme.

### Question 3.

Mr. Sen, a service provider, has provided services of ₹4,00,000 in 2012-13. Out of this, ₹2,50,000 are taxable output services and ₹1,50,000 are exempt output services. Service tax paid on his input services (excluding education cess and SAH education cess) is ₹4,000 which do not include any service specified in rule 6(5) of Cenvat credit rules. Rate of basic service tax is @ 12%.

Calculate the service tax in each of the following cases:

- (i) If out of ₹4,000 of service tax paid by Mr. Sen on his input services, ₹1,000 are in respect of exempt output services and ₹3,000 pertains to taxable output services.
- (ii) Mr. Sen not maintains separate books of account and willing to pay an 'amount'.
- (iii) Mr. Sen wants to pay amount by reversing proportionate amount of input tax credit [Rule 6(3)(ii)].

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**Answer:**

**Calculation of service tax payable**

**Case – (i)**

	₹
Taxable output services	2,50,000
Service tax @ 12% on ₹ 2,50,000	30,000
Less : Cenvat credit allowed (on taxable output service)	3,000
<b>Net service tax payable</b>	<b>27,000</b>

**Case – (ii)**

If the service provider is not maintaining separate books of account and using common input service to provide taxable as well as exempted output services, he can opt to pay 'amount' of 6% of 'value of exempted services' [Rule 6(3)(i)].

	₹
Taxable output services	2,50,000
Service tax @ 12% on ₹ 2,50,000 (a)	30,000
Exempted output services	1,50,000
'Amount' @ 6% on RS. 1,50,000 (b)	9,000
Total service tax liability (a + b)	39,000
Less : Cenvat credit allowed	4,000
<b>Net service tax plus amount payable</b>	<b>35,000</b>

**Case – (iii)**

If assessee intends to pay amount on proportionate basis as provided in rule 6(3)(ii) (w.e.f. 1.4.2008), the 'amount' is to be calculated as provided in rule 6(3A) of Cenvat Credit Rules. He has to pay 'amount' provisionally on monthly basis. At the year-end, he has to calculate exact amount and pay difference if any or adjust excess amount paid.

Calculation of percentage of exempted services on total services:

$$1,50,000 / 4,00,000 = 37.50\%$$

	₹
Pay an amount @ 37.5% on ₹ 4,000	1,500
Service tax @ 12% on ₹ 2,50,000	<u>30,000</u>
Total liability of service tax	31,500
Less: Cenvat credit allowed	<u>4,000</u>
<b>Net service tax liability</b>	<b>27,500</b>

**Note:** Service tax is subject to education cess @ 2% and SAH education cess @ 1%.

**Question 4.**

(a) What advantage is associated with the collection of indirect tax as against the direct tax?

(b) Purchase price of the inputs purchased from the local market (inclusive of VAT) ₹ 52,000.

VAT rate on purchases 4%

Storage cost incurred ₹ 2,000

Transportation cost ₹ 8,000

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Goods sold at a profit margin of 10% on cost of such goods

VAT rate on sales 12.5%

From the above informations calculate the VAT liability of Mr. Roy for the month of February 2013, using 'invoice method' for computation of VAT.

- (c) Romit of Kolkata sells his land along with the standing crops and trees for ₹20 lakhs to Prasad of Chennai. Central Sales Tax Officer wants to assess to tax the value of standing crops and trees in the said land. Comment.

[2+5+3]

**Answer:**

- (a) Indirect taxes are easier to collect as indirect taxes are mainly on goods/ commodities/ services, for which record keeping, verification and control is relatively easy (at least organized sector). Manufacturing activities are carried out mainly in organized sector, where records and controls are better.

But direct taxes are mainly on income/ wealth of individuals, firms or corporate bodies, where millions of transactions are carried out in lakhs of places and keeping an eye over all such transactions is virtually impossible.

- (b) **Computation of VAT liability**

	₹
Cost of Purchases = ₹52,000 x 100/104	50,000
Add: Storage cost and transportation cost	10,000
Total cost	60,000
Add: profit 10% on Cost (₹60,000 x 10%)	6,000
Taxable Turnover	66,000
Add: VAT on Taxable Turnover (₹66,000 x 12.50%)	8,250

**Net VAT Tax liability:**

VAT payable on Sales	₹8,250
Less: Input Tax Credit (₹52,000 – ₹50,000)	₹2,000
Net VAT liability payable by Mr. X for the month of Jan 2013	₹6,250

- (c) **Leviability of CST on standing crops:**

The following aspects may be noted:

- What is sold is land along with standing crops and trees.
- The sale does not pertain to the latter alone in which case they are uprooted and removed. Consequently, they become goods.
- In the instant case, the standing crops and trees are immovable goods since they have been sold along with land.
- They are not goods and hence do not attract CST in the given situation.

**Question 5.**

- (a) **There are difficulties in applying arm's length principle in a number of situations in international consensus. What are those difficulties?**

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- (b) Assessable value of certain goods imported from Canada is ₹5,00,000. The packet contains 5,000 pieces with maximum retail price of ₹200 each. The goods are assessable under section 4A of the Central Excise Act, 1944 after allowing an abatement of 40%. The excise duty rate is 12% ad valorem. Calculate the amount of additional duty of customs under section 3(1) of the Customs Tariff Act, 1975 assuming basic customs duty @ 10% ad valorem.

[5+5]

Answer:

- (a) The "arm's-length principle" of transfer pricing states that the amount charged by one related party to another for a given product must be the same as if the parties were not related. An arm's-length price for a transaction is therefore what the price of that transaction would be on the open market.

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.

- (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 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.

### (b) Computation of Amount of Additional Duty of Customs

Description	₹
Maximum Retail Price (5,000 × ₹200/-)	10,00,000
Less : Abatement @ 40%	4,00,000
Assessable value Under Section 3(2)	6,00,000
Additional duty of customs @ 12%	72,000
Add : Education cess @ 2% on Additional duty of Customs	1,440
Add : Secondary and Higher Education Cess @ 1% on Additional Duty	720
Additional Custom Duty Payable	74,160

Question 6.

- (a) Discuss whether the following leads to "Manufacture" —
- (i) Upgradation of computer system

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**(ii) Lifts and escalators**

**(b) Specify the areas from where the Central Government, the State Government and the local self Government can get the tax revenues?**

**(c) What are the allowances a professional get in addition to the General Free Allowance when he/she returning to India?**

**[4+2+4]**

**Answer:**

(a) (i) Upgradation of computer may involve changing the processor (e.g. from 486 chip to Pentium or Pentium II chip), the motherboard, the hard disk etc. The new components which replace the components in existing system have already suffered duty. The remaining old parts of the old system have also suffered duty as a system initially. The upgradation is generally carried out at residential or business premises of the customer and there is no rigid requirement for the upgradation to be done at the factory of the manufacturer.

So we can say that the upgrading of old and used computer systems would not amount to manufacture, in so far as the upgradation does not bring into existence goods with a distinct new name, character and use.

(ii) Though lifts and escalators are specifically mentioned in sub heading 8428.10, those which are installed in buildings and permanently fitted into the civil structure, cannot be considered to be excisable goods. Such lifts and escalators have also been held to be non-excisable by the Govt. of India in the case of Otis Elevators India Co Ltd reported in 1981 ELT 720 (GOI).

There may, however, be instances of fabrication of complete lifts and escalators which are movable in nature as a whole and can be temporarily installed at construction sites or exhibitions for carrying men or material. Such cases alone would be liable to duty under sub-heading 8428.10 of the Central Excise Tariff.

(b) Collection of tax revenues:

(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.

Article 265 provides that no tax shall be levied or collected except by authority of Law. The authority for levy of various taxes has been provided for under Article 246

(c) **Professionals stays abroad**

Stay	House hold articles (GFA) (₹)	Professional articles GFA (₹) (in addition to General Free Allowance
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		of ₹35,000)
> 3 months	12,000	20,000
> 6 months	12,000	40,000

The compounding rates of duty are applicable only when the following conditions are satisfied in case of gold, silver and platinum:

- A. The person should have been staying abroad for over six months (i.e. more than 6 months)
- B. Duty must be paid only in convertible foreign currency.

If any one of the above condition is not satisfied then, normal rate of duty @36.05% (inclusive of Cess) is required to be paid.

### Question 7.

- (a) Find Assessable Value and duty payable. The product is not covered under section 4A. Maximum Retail Trade Price: ₹1,300 per unit, State Vat, Octroi and other Local Taxes: 10% of net price, Cash Discount: 3%, Trade Discount: 8%, Primary and Secondary packing cost included in the above MRP: ₹180, Excise duty rate: 12% ad valorem plus education cesses as applicable.
- (b) "Section 75 of Customs Act, 1962 provides some disallowances or cases when drawback allowed can be recovered." — Describe any six of such disallowances.
- (c) Who is Dealer according to Section 2(b) of Central Sales Tax Act?

[5+3+2]

### Answer:

- (a) Cash discount ₹39 (3% of ₹1,300) and trade discount ₹104 [8% of ₹1,300] are available as deduction. Packing cost is not allowable as deduction. Hence, price of excise purposes is ₹1,157. [₹1,300 – 39 – 104]. — Now, if X is the assessable value, excise duty is 0.1236x. State Vat and local taxes @ 10% of 1.1236x will be 0.11236x and price including excise duty is inclusive of excise duty and sales tax will be 1.23596x.

Now, 1.23596x =	₹1,157
Hence, x =	₹936.11
Excise Duty @ 12.36% of ₹ 936.11	₹115.70
Check the answer as follows Assessable Value	₹936.11
Add: duty @ 12.36% of ₹936.11	₹115.70
Add: State Vat @ 10% on ₹1,051.81 (936.11+115.70)	₹105.18
Total Price (After allowable deductions)	₹1,157

- (b) Section 75 of Customs Act, 1962 provides some disallowances or cases when drawback allowed can be recovered. Further, section 76(2) of Customs Act, 1962 authorises Central Government to issue notifications prohibiting drawback if the goods are likely to be smuggled back to India after export. Drawback Rules also provide for some disallowances. These are summarised below:

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- i. If sale proceeds of export goods are not received within time stipulated by RBI [This provision does not apply to goods supplied from DTA unit to SEZ unit]
  - ii. If no customs/excise duty is paid on the inputs or service tax is not paid on input services
  - iii. If imported inputs were obtained under Advance License (DEEC scheme) without payment of duty
  - iv. Goods manufactured under Customs Bond or Excise Bond where inputs were obtained without payment of duty
  - v. Goods manufactured by EOU or a unit in Special Economic Zone (as they obtain inputs without payment of duty)
  - vi. If Cenvat was claimed on indigenous inputs. [In such case, excise portion of duty drawback will not be available].
- (c) As per section 2(b) of CST Act, 'Dealer' means any person
- i. who carries on (whether regularly or otherwise), the business of
  - ii. buying, selling, supplying or distributing goods, directly or indirectly,
  - iii. for cash or for deferred payment, or for commission, remuneration or other valuable consideration.

### Question 8.

- (a) Based on the following information, determine the CENVAT Credit available for use in the current year under the Cenvat Credit Rules, 2004:

Goods	Excise Duty paid at the time of purchase of goods (₹)
i. Pollution Control Equipments	30,000
ii. Spares for pollution control equipments	3,000
iii. Equipments used in office	13,000
iv. Storage tank	8,000
v. Paints used for painting machinery used	7,000
vi. Packing material	5,000
vii. Lubricating oils	9,000
viii. High speed diesel oil	5,000

- (b) Calculate the value of taxable service of Robin Transport Company engaged in the business of transport of goods by road. Give reasons for taxability or exemption of each item. No freight is received from any of the specified category of consignor/consignee.

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Suitable assumption may be made wherever required. Robin does not avail cenvat credit.

1.	<b>Total freight charges received by Robin during the year</b>	<b>6,45,000</b>
2.	<b>Freight charges received for transporting fruits</b>	<b>59,500</b>
3.	<b>Freight collected for transporting small consignment for persons who paid less than ₹750 for each consignment</b>	<b>39,500</b>
4.	<b>Freight collected for transporting goods in small vehicles for person who paid less than ₹1500 per trip</b>	<b>72,000</b>

[5+5]

**Answer:**

(a) Availability of Cenvat credit in the following cases:

- i. Pollution control equipments fall within the ambit of 'Capital Goods'. In case of capital goods credit not exceeding 50% of the duty paid is allowed in the year of acquisition and balance in subsequent years. Hence credit of ₹ 15,000 (50% of excise duty paid) will be allowed in the year of acquisition.
- ii. Spares for pollution control equipments also come within the purview of 'Capital Goods'. Consequently credit not exceeding 50% of the Excise Duty paid will be allowed in the year of acquisition and balance in subsequent years. Hence credit of ₹ 1,500/- (i.e. 50% of the Excise duty paid) will be allowed in the year of acquisition.
- iii. Duty paid on 'Equipment used in the office' will not be eligible for Cenvat Credit. This is so because the definition of capital goods as given in the Cenvat Credit Rules, 2004 specifically excludes 'Equipments used in office' from the ambit of capital goods.
- iv. Storage Tank is specifically included in the definition of 'Capital Goods' as given in Cenvat Credit Rules, 2004 and therefore 50% of the duty paid on storage tank i.e. ₹ 4,000/- will be allowed in the year of acquisition and balance in subsequent years.
- v. Paints used for painting machinery used will be eligible for Cenvat Credit as they are inputs used in or in relation to the manufacture of final products.
- vi. Packing material used in or in relation to the manufacture of the final product is included in the definition of 'Inputs' as given in Cenvat Credit Rules, 2004 and therefore is eligible for Cenvat Credit of 100% of the Excise duty paid i.e. ₹ 5,000/- at the time of receipt of goods.
- vii. Lubricating oils used in or in relation to the manufacture of the final product is included in the definition of 'Inputs' as given in Cenvat Credit Rules, 2004 and therefore is eligible for Cenvat Credit of 100% of the Excise duty paid i.e. ₹ 9,000/- at the time of receipt of goods.
- viii. High speed diesel oil is specifically excluded from the definition of 'Inputs' as given in Cenvat Credit Rules, 2004 and is therefore not eligible for Cenvat credit.

(b) Computation of value of taxable service:

Particulars	₹	₹
Total Freight received		6,45,000
Less : Freight charges received for transporting foods is exempt from service tax	59,500	
Less : Freight collected for transporting goods in small vehicles for person who paid less than ₹1,500 per trip is	72,000	

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exempt from service tax		
Less : Freight collected less than ₹ 750 for each consignment (both are separate exemptions)	39,500	1,71,000
Balance Freight Charges		4,74,000
Less : Unconditional Exemption of 75% (AS Cenvat credit is not claimed)		3,55,500
Value of Taxable Service		1,18,500

### Question 9.

- (a) Describe the term “reasonably accurate comparability adjustments” in the context of the transfer pricing.
- (b) Sunny Ltd., Kolkata sells goods for a value of ₹15,50,000 inclusive of central sales tax @ 2% to Munni Ltd. in Nagpur, both of them are registered dealers. The local sales tax on goods in Kolkata is 1%. Ascertain sales tax payable. If Munni Ltd. were unable to submit Form-C, being an unregistered dealer, what will be the central sales tax liability, if the local sales tax rate is 12.50%?
- (c) What is Point of Taxation?
- (d) “The CBE&C has developed a new software application called Automation of Central Excise and Service Tax (ACES)” — specify the objectives and uses of this application.

[3+2+3+2]

### Answer:

- (a) Like many other countries, Indian transfer pricing regulations provide for “reasonably accurate comparability adjustments”. The onus to prove “reasonably accurate comparability adjustment” is on the taxpayer. The experience of Indian transfer pricing administration indicates that it is possible to address the issue of accounting difference and difference in capacity utilization and intensities of working capital by making comparability adjustments. However, Indian transfer pricing administration finds it extremely difficult to make risk adjustments in absence of any reliable and robust and internationally agreed methodology to provide risk adjustment. In some cases taxpayers have used Capital Asset Pricing Method (CAPM).
- (b) Central Sales Tax payable against Form ‘C’ sales = ₹15,196 [i.e. (₹15,50,000 × 100/102) × 1/100].  
Central Sales Tax payable (if Form ‘C’ not received) = ₹1,89,951 [i.e. (₹15,50,000 × 100/102) × 12.50/100].
- (c) The point of taxation defines the point in time when a service shall be deemed to have been provided. It has impact on determination of rate of tax, as normally the rate of tax shall apply as prevailing on the date when service shall be deemed to have been provided.

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The Government of India has introduced the Point of Taxation Rules, 2011 to remove the disputes about applicability of the rate of tax and for ascertainment of the Point of Taxation. The three matters to be remembered as follows:

- i. The amount of service tax is based on the Point of Taxation.
- ii. Service tax is payable on the basis of provision of service instead of realization of value of taxable service except in the case of individuals/firms/limited liability partnership firms (LLP's) w.e.f. 1-4-2012.
- iii. If money is received in advance, ahead of completion or rendering of service, service tax is payable as soon as the advance is received.

We will discuss only Rule 3 (determination of point of taxation) here. As per this rule —

- i. Date of invoice or payment, whichever is earlier, if the invoice is issued within the prescribed period of 30 days from the date of completion of the provision of service (w.e.f. 1-4-2012).
- ii. Date of completion of the provision of service or payment, whichever is earlier if the invoice is not issued within the prescribed period as state in rule 4A of the Service Tax Rules, 1994.

w.e.f. 1-4-2012, in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service.

It is pertinent to note point of taxation in case of individuals and partnership firms whose aggregate value of taxable services provided from one or more premises is ₹50 lakhs or less in the previous financial year, the service provider shall have the option to pay tax on taxable services provided or to be provided by him up to a total of ₹50 lakhs in the current financial year, by the dates specified in the Rule 6 of Service Tax Rules, 1994, with respect to the relevant quarter, in which payment is received (w.e.f 01.04.2012).

- (d) The Central Board of Excise & Customs (CBE & C) has developed a new software application called *Automation of Central Excise and Service Tax (ACES)*, which aims at improving tax-payer services, transparency, accountability and efficiency in indirect tax administration.

It is a centralized, web based software application which automates various processes of Central Excise and Service Tax for Assessee and Department, and gives complete end to end solution. Any Assessee can register with Department using ACES application, can file tax return, claims & intimations, track its status and get online messages.

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

- i. Registration,
- ii. Returns,
- iii. Refunds,

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- iv. ST3A,
- v. Dispute Resolution and
- vi. Audit.

### Question 10.

- (a) "In exceptional circumstances, goods can be cleared from factory without payment of excise duty and stored in any other premises." — Discuss.
- (b) A manufacturer purchased certain inputs from R. The, assessable value was ₹25,500 and the Central Excise duty was calculated at ₹3,152 making a total amount of invoice at ₹28,652. However, the buyer manufacturer paid only ₹22,320 to R in full settlement of this bill. How much CENVAT credit can be availed by the manufacturer and why?
- (c) What would be the situation where the payment for a service is made at one location (say by the headquarters of a business) but the actual rendering of the service is elsewhere (i.e. a fixed establishment)?

[2+3+5]

### Answer:

(a) Normally goods can be cleared from factory only after payment of duty or to another warehouse without payment of duty (in cases where warehousing is permitted). However, in exceptional cases, having regard to nature of goods and shortage of storage premises of the manufacturer where goods are manufactured, Commissioner can permit storage of goods in any other premises outside the factory without payment of duty. Commissioner can specify conditions while giving such permission. Normally, a bond may be asked to secure the duty liability.

(b) CENVAT credit that can be availed by the manufacturer is ₹3,152.

CENVAT credit cannot be reversed just because the supplier of inputs has given some reduction in price after removal of goods or the buyer manufacturer paid only reduced amount than that of invoice [unless supplier of inputs claims and get refund of excise duty paid by him].

[CCE v Trinetra Texturisers 2004 (CESTAT)]

(c) Occasionally, a person may be the person liable to make payment for the service provided on his behalf to another person. For instance, the provision of a service may be negotiated at the headquarters of an entity by way of centralized sourcing of services whereas the actual provision is made at various locations in different taxing jurisdictions (in the case of what is commonly referred to as a multi-locational entity or MLE). Here, the central office may act only as a facilitator to negotiate the contract on behalf of various geographical establishments.

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Each of the geographical establishments receives the service and is obligated to make the payment either through headquarters or sometimes directly. When the payment is made directly, there is no confusion. In other situations, where the payment is settled either by cash or through debit and credit note between the business and fixed establishments, it is clear that the payment is being made by a geographical location. Wherever a fixed establishment bears the cost of acquiring, or using or consuming a service through any internal arrangement (normally referred to as a "recharge", "reallocation", or a "settlement"), these are generally made in accordance with corporate tax or other statutory requirements. These accounting arrangements also invariably aid the MLE's management in budgeting and financial performance measurement.

Various accounting and business management systems are generally employed to manage, monitor and document the entire purchasing cycle of goods and services (such as the ERP Enterprise Resource Planning System). These systems support and document the company processes, including the financial and accounting process, and purchasing process.

Normally, these systems will provide the required information and audit trail to identify the establishment that uses or consumes a service.

It should be noted that in terms of proviso to section 66B, the establishments in a taxable and non-taxable territory are to be treated as distinct persons. Moreover, the definition of "location of the receiver" clearly states that "where the services are "used" at more than one establishment, whether business or fixed, the establishment most directly concerned with the use of the service" will be the location. Thus, the taxing jurisdiction of service, which is provided under a 'global framework agreement' between two multinational companies with the business establishment located outside the taxable territory, but which is used or consumed by a fixed establishment located in the taxable territory, will be the taxable territory.

### **Question 11.**

- (a) "Assembly is manufacture only if machinery can be removed without dis-assembly" — explain the line with regards to the marketability test.**
- (b) What is meant by 'place of business' under the Central Sales Tax Act, 1956? What should a dealer do towards registration, if he has more than one place of business?**
- (c) A dealer purchased 11,000 kgs. of inputs on which VAT paid @ 4% were ₹4,000. He manufactured 10,000 kgs. of finished products from the inputs. 1,000 kgs. was the process loss. The final product was sold at uniform price of ₹10 per kg. as follows – Goods sold within the state – 4,000 kgs. Finished product sold in inter-state sale against C form – 2,500 kgs. Goods sent on stock transfer to consignment agents outside the state – 2,000 kgs.**

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Goods sold to Government departments outside the state – 1,500 kgs. There was no opening or closing stock of inputs, WIP or finished product. The state Vat rate on the finished product of dealer is 12.5%. Calculate liability of VAT and CST. Find VAT credit available to dealer and tax required to be paid in cash.

In the above problem, if 2,000 kgs. were exported (and not stock transferred), what would be the tax liability and credit available?

[2+3+5]

**Answer:**

- (a) In *Triveni Engineering v. CCE AIR 2000 SC 2896 = 2000 AIR SCW 3144 = 40 RLT 1 = 120 ELT 273 (SC)*, it was observed, 'The marketability test requires that the goods as such should be in a position to be taken to market and sold. If they have to be separated, the test is not satisfied'. [Thus, if machine has to be dis-assembled for removal, it is not 'goods' and duty cannot be levied].

If machine (generating set in this case) is only bolted on a frame and is capable of being shifted from that place, it is capable of being sold. It is goods and not immovable property – *Mallur Siddeswara Spinning Mills v. CCE 2004 (166) ELT 154 (SC)*.

- (b) Section 2(dd) of CST Act defines that 'Place of Business' includes –
- (i) Place of business of agent where dealer carries on business through an agent.
  - (ii) Warehouse, godown or other place where a dealer stores his goods.
  - (iii) Place where a dealer keeps his books of account.
- This is an 'inclusive definition' i.e. other places of business e.g. where dealer has a shop or factory is obviously covered. A dealer can have more than one 'place of business' within one State or even within one City.

If a dealer has more than one place of business in one State, he has to make a single application in respect of all the places. One of the places should be specified as 'principal place of business'. This place should be same as declared by him under general tax law of the State.

If a dealer has 'place of business' in different States, he will have to register in each such state.

- (c) CST against C form is 2%. Sale to government will be treated as sale to unregistered dealer and tax payable is 12.5%. Thus, the tax payable would be as follows:

Particulars	Quantity sold	Value of goods sold (₹)	CST payable (₹)	State VAT payable (₹)
Sale within state @ 12.5%	4,000	40,000		5,000
Goods sent on stock transfer	2,000	20,000		
Goods sold against C form, tax rate 2%	2,500	25,000	500	
Goods sold to Government, tax rate 12.5%	1,500	15,000	1,875	
	<b>10,000</b>	<b>1,00,000</b>	<b>2,375</b>	<b>5,000</b>

Tax paid on inputs – ₹ 4,000. Credit (set-off) will not be available in case of goods sent on stock transfer.

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Tax on inputs attributable to goods sent on stock transfer is 20% i.e. ₹ 800. Out of this, credit will be available of tax paid in excess of 2%. Thus, credit of ₹ 400 will be available in respect of goods stock transferred and credit of ₹ 400 will not be available (since Vat rate is 4%). Thus, total credit of ₹ 3,600 (tax paid on inputs) is available.

Thus, tax payable is as follows:

Total tax payable (State Vat plus CST) – ₹ 7,375

Set off (credit) available – ₹ 3,600

Tax payable in cash – ₹ 3,775

If finished product is exported, there is no tax liability. Further, the credit of tax paid on raw material is available. This credit can be utilized either for payment of CST or for State Vat or even for both, if required.

Hence, tax payable is as follows –

Total tax payable (State Vat plus CST) – ₹ 7,375

Set off (credit) available – ₹ 4,000

Tax payable in cash – ₹ 3,375