

## **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:

- (a) How goods are classified under “Harmonised System of Nomenclature”?
- (b) State the availability of credit of taxes paid on inputs and capital goods when the inter-state sale or stock transfer is zero-rated.
- (c) Whether tailor made or unbranded software is goods or not? Give reason.
- (d) What is Bona fide Baggage? Is it exempted from import duty as per section 79 of the Customs Act, 1962?
- (e) Mr. X, a physiotherapist, providing his service in a clinical establishment in independent capacity. Is it taxable service?
- (f) What conditions are to be fulfilled before a settlement application can be filed to Settlement Commission?
- (g) A manufacturer puts labeling on packaged products which is produced by him. Is such labeling amounted to manufacture?
- (h) Describe Penultimate Sale for export of goods.
- (i) What types of powers are conferred to Revenue Officers in Central Excise?
- (j) Explain the term ‘Indian Customs Water’.

[10×2]

#### **Answer:**

- (a) Harmonised System of Nomenclature (HSN) is an internationally accepted product coding system, formulated to facilitate trade flow and analysis of trade statistics. Goods are classified under Central Excise Tariff Act based on the “Harmonized System of Nomenclature” having eight digit classifications. All goods are classified using 4 digit system. These are called ‘headings’. Further 2 digits are added for sub-classification, which are termed as ‘sub-headings’. Further 2 digits are added for sub-sub-classification, which is termed as ‘tariff item’. Rate of duty is indicated against each ‘tariff item’ and not against heading or sub-heading.
- (b) The VAT system will be VAT compliant if inter-state sale or stock transfer is ‘zero rated’ i.e. no tax will be payable on inter-state sale or stock transfers, but entire credit of taxes paid on inputs and capital goods is available. If CST is reduced to Nil, but restricted credit of tax paid inputs is available, then the inter-state sales will be ‘exempt’ and not ‘zero rated’. Then the VAT system will not be as per principles of VAT. The intention seems to be to make inter-state sales ‘zero rated’ and not merely ‘exempt’.
- (c) Though Supreme Court has held that tailor made software is also goods, Finance Bill, 2008 has imposed service tax on tailor made i.e. unbranded software. “Information technology software” means any representation of instructions, data, sound or image,

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including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment. Specific software is tailored to the specific requirement of the customer and is known as customized software.

- (d) Bona fide luggage includes used personal effects are exempt from customs duty. Bona fide baggage accompanying passenger is exempt from the import duty as per 79 of the Customs Act, 1962.
- Any articles in the baggage of a passenger or a member in the crew in respect of which the officer is satisfied that it has been in his use for such minimum period as may be specified in the rule.
  - Any article in the baggage of a passenger in respect of which the officer is satisfied that it is for the use of the passenger or his family or is a bona fide gift or souvenir, provided that the value of each such article and the total value of such article does not exceed such limits as may be specified in the rules.
- (e) The services of Mr. X, a physiotherapist is called as a paramedic services which are exempt from service tax. Services by him in a clinical establishment either would be in the capacity of employee or in independent capacity are exempted from service tax.
- (f) There are many conditions which must be fulfilled before a settlement application can be filed. Some of them are as follows:
- (i) In case of Central Excise, the applicant must be an assessee. "Assessee" means any person who is liable for payment of excise duty assessed under this Act or any other Act and includes any producer or manufacturer of excisable goods or a registered person under the rules made under this Act, of a private warehouse in which excisable goods are stored. In case of Customs, the applicant may be an importer or exporter or any other person;
  - (ii) the case must have not been adjudicated i.e. settlement application can be made only before adjudication;
- (g) Labelling on packaged products is also not manufacture as no new product emerges and since in the common market parlance a labeled and unlabelled product is treated as the same product and the distinction as such is made. In fact, these processes are adjunct to manufacture. Therefore, the labeling is a part of the manufacturing process. The principle was affirmed in the case of Pioneer Tools and Appliances Ltd. v UOI by the Bombay High Court.
- (h) Penultimate sale for export of goods:
- i. Penultimate sale is the last sale immediately prior to the original export.
  - ii. According to Section 5(3) of the CST Act, the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export after fulfilling certain conditions.
- (i) There are many powers which are conferred to Revenue Officers in Central Excise. Some of those are:

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1. Power to access registered premises: As per Rule 22(1) of Central Excise Rules, 2002, an officer empowered by the Commissioner in this behalf shall have access to any premises registered under these rules for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.
  2. Power to stop and search: As per Rule 23 of Central Excise Rules, 2002, any Central Excise Office, may search any conveyance carrying excisable goods in respect of which he has reason to believe that the goods are being carried with the intention of evading duty.
- (j) Indian Customs Waters [Section 2(28) of Customs Act]: The term Indian Customs Waters means the waters extending into the sea up to the limit of contiguous zone of India under section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zone Act, 1976 and includes any bay, gulf, harbour, creek or tidal river. Indian Customs Waters extend up to 24 nautical miles from the base line. Thereby, Indian Customs Waters cover both the Indian Territorial Waters and Contiguous Zone as well.

### Group-B

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

#### Question 2.

- (a) Prior Ltd. supplies raw materials to a job worker Tweet Ltd. after completing the job work, the finished product of 6,500 packets are returned to Prior Ltd. putting the retail sale price as ₹15 on each packet. The product in the packet is covered under MRP provisions and 40% abatement is available on it. Determine the assessable value under Central Excise Law from the following details:

Cost of raw materials supplies	₹32,000
Transportation charges for sending raw material to Tweet Ltd.	₹4,500
Job worker's charges including profit	₹10,000
Transportation charges for returning the finished packets to Prior Ltd.	₹4,500

- (b) Which records are required to be maintained under the provision of the service tax?  
(c) What is the meaning of the term, "advance ruling" in the context of "Cross Border Services"?

[5+3+2]

#### Answer:

- (a) In case of goods covered under MRP (Maximum Retail Price) based excise levy under section 4A of the Central Excise Act, the valuation thereof will be done in accordance with the provisions of the said section and not as per the section 4, since section 4A has overriding effect over the provisions of the section 4. The assessable value of goods is as follows:

	₹
Retail sale price of each product	15
Less: Abatement @40%	6
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Assessable Value per packet	9

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Hence total assessable value is ( $\text{₹ } 9 \times 6,500$ ) = ₹ 58,500.

(b) The following records to be maintained:

1. The records including computerized data as maintained by an assessee in accordance with the various laws in force from time to time shall be acceptable.
2. Every assessee shall furnish to the superintendent of Central Excise at the time of filing of return for the first time or the 31st day of January, 2008, whichever is later, a list in duplicate, of –
  - (i) all the record prepared or maintained by the assessee for accounting of transactions in regard to,-
    - a) Providing of any service;
    - b) receipt pr procurement of input services and payment for such input services;
    - c) receipt, purchase, manufacture, storage, sale, or delivery, as the case may be, in regard of inputs and capital goods;
    - d) other activities, such as manufacture and sale of goods, if any.
  - (ii) all other financial records maintained by him in the normal course of business.
3. All such records shall be preserved at least for a period of five years immediately after the financial year to which such records pertain.

**Explanation** – For the purpose of this rule, “registered premises” includes all premises or offices from where an assessee is providing taxable services.

(c) The term ‘advance ruling’ means:

- i. the determination of a question of law or fact in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant and also includes the determination of the tax liability of a non-resident arising out of such transaction with a resident applicant;
- ii. the determination or a decision on a question of law or fact relating to the computation of total income which is pending before any Income-tax authority or the Appellate Tribunal.

**Question 3.**

- (a) M/s. Nayna Infosystem imported a consignment of computer software and manuals valued at ₹60 lakhs and contended that the actual value was only ₹20 lakhs while the balance amount represented license fee for using the software at multiple locations and as such customs duty is payable only on the actual value of ₹20 lakhs. Is the contention, raised by M/s. Nayna Infosystem, correct? Discuss.**
- (b) Write a short note on Duty Entitlement Pass Book Scheme.**
- (c) Who is the service receiver?**

**[4+4+2]**

**Answer:**

- (a) According to Rule 10(1)(c), royalties and license fees relatable to the imported goods shall be included in the price actually paid or payable for such goods. However, charges for right to reproduce will not be included in the assessable value. The facts of the case are similar to that in State Bank of India v. CC [2000] 115 ELT 597 (SC) wherein the Supreme Court has held that –

- i. Since no separate value of the software has been indicated in the agreement except the license fee, therefore, the price was payable for only allowing the SBI to use the software in a limited way at its own centers for a limited period and therefore the same is called as license fees. Total cost incurred including the license fee for the countrywide use would be the transaction value on which Customs duty is to be paid.
- ii. The interpretative notes provide for exclusion of reproduction royalty. Countrywide use of the software and reproduction of software are two different things and license fee for countrywide use cannot be considered as charges for right to reproduce the imported goods because reproduction and use are two different things.

Accordingly, the total cost incurred, including the license fee for countrywide use of software, would be the transaction value on which customs duty was to be charged.

In view of what has been stated above, the contention raised by M/s. Nayna Infosystem is incorrect. The amount of license fees relating to the use of software at multiple locations is not reproduction royalty and hence, not excludible from the value of the consignment of computer software and manuals. M/s. Nayna Infosystem shall be liable to pay customs duty on the total sum of ₹ 60 lakhs.

(b) Duty Entitlement Pass Book Scheme (DEPB Scheme):

The scheme is easy to administer and more transparent. The scheme is similar to Cenvat credit scheme. The exporter gets credit when he exports the goods. The credit is on basis of rates prescribed. This credit can be utilized for payment of customs duty on imported goods.

The scheme is proposed to be replaced by a new scheme, since it is said that existing scheme is not WTO compliant.

The objective of the scheme is to neutralise incidence of customs duty on the import content of export product. The neutralisation shall be provided by way of grant of duty credit against the export product.

Exporter can have either DEPB or duty drawback and not both.

Exports under DEPB scheme are allowed only when DEPB rate for the concerned export product is finalised. Under this scheme, exporters will be granted duty credit on the basis of notified entitlement rates. The entitlement rates will be notified by DGFT. The entitlement rates will be a percentage of FOB made in free foreign currency.

The entitlement rate will be fixed on basis of SION (Standard Input Output Norms) and deemed import content.

Value addition achieved in export product will also be taken into account.

DEPB is a post export duty remission scheme, which allows neutralization of deemed import duty charges on inputs used in the export product as per SION and the basic customs duty payable on such deemed imports. Value addition is also taken into account.

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Credit can be utilised for payment of customs duty on any item which is freely importable.

Credit can be used for payment of basic customs duty as well as CVD. The importer has option to pay CVD by cash.

The credit can be transferred to another person, but the transfer will be valid for imports within the same port from where exports were made. Import from other port will be available under TRA facility.

DEPB is valid for 24 months for import. The DEPB and/or the items imported are freely transferable. However, DEPB can be transferred only after realisation of export proceeds.

The scheme is available to both manufacturer exporters as well as merchant exporters. DEPB has to be registered with customs house.

- (c) Normally, the person who is legally entitled to receive a service and, therefore, obliged to make payment, is the receiver of a service, whether or not he actually makes the payment or someone else makes the payment on his behalf.

Example: A lady leaves her car at a service station for the purpose of servicing. She asks her chauffer to collect the car from the service station later in the day, after the servicing is over. The chauffer makes the payment on behalf of the lady owner and collects the car. Here the lady is the 'person obliged to make the payment' towards servicing charges, and therefore, she is the receiver of the service.

### Question 4.

- (a) Mr. Reddy, a dealer, purchases goods for ₹3,50,000 (exclusive of VAT). He incurs ₹37,000 on the goods and sells them at a profit of ₹16,000. Compute the invoice value to be charged and amount of tax payable under VAT. The rate of VAT on purchases and sales is 4%.
- (b) Explain how Intangibles and R & D activities are related with the transfer pricing issues.

[4+6]

### Answer:

- (a) **Computation of invoice value**

Particulars	₹
Cost of goods purchased	3,50,000
Add: Expenses	37,000
Profit margin	16,000
Taxable turnover	4,03,000
Add: VAT @ 4 % on ₹ 3,00,000	16,120
<b>Invoice Value</b>	<b>4,19,120</b>

### Computation of amount of tax payable under VAT

Particulars	₹
VAT payable on sales	16,120
Less: Input credit of VAT paid on purchases @ 4% on ₹3,50,000	14,000
<b>Tax Payable under VAT</b>	<b>2,120</b>

(b) Transfer pricing issues are related with —

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

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

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

Intangibles are often transferred bundled along with tangible assets. They are difficult to be detected.

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

- (ii) R&D activities - Several global MNEs have established subsidiaries in India for research and development activities on contract basis to take advantage of the large pool of skilled manpower which are available at a lower cost. These Indian subsidiaries are generally compensated on the basis of routine and low cost plus mark up. The parent MNE of these R&D centres justify low cost plus markup on the ground that they control all the risk and their subsidiaries or related parties are risk free or limited risk bearing entities.

The claim of parent MNEs that they control the risk and are entitled for major part of profit from R&D activities is based on certain contentions. Some of which are as follows:

- Parent MNE designs and monitors all the research programmes of the subsidiary.
- Parent MNE provides fund needed for R&D activities.
- Parent MNE controls the annual budget of the subsidiary for R&D activities.
- Parent MNE controls and takes all the strategic decisions with regards to core functions of R&D activities of the subsidiary.

### Question 5.

**(a) What is Indirect Tax? State the features of Indirect Tax.**

**(b) Determine the eligibility for exemption based on value of clearances for the financial year 2013-14 in terms of Notification No. 8/2003-CE dated 1.3.2003 of Sindhu Company, a small scale industry as: (1) Total value of clearances during the financial Year 2012-13**

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(including VAT ₹50 lakhs) ₹870 lakhs, (II) Total exports (including for Nepal and Bhutan ₹200 lakhs) ₹500 lakhs, (III) Clearances of excisable goods without payment of duty to a Unit in software technology park ₹20 lakhs, (IV) Job work under Notification No.84/94-CE dated 11.4.1994 ₹50 lakhs. Job work under Notification No.21 4/86-CE dated 25.3.1986 ₹50 lakhs (v) Clearances of excisable goods bearing brand name of Khadi and Village Industries board ₹200 lakhs. Make suitable assumptions and provide brief reasons for your answers where necessary.

(c) Is the service provider providing taxable services under the brand name of other person can avail the ₹10,00,000 exemption?

[4+4+2]

### Answer:

(a) Indirect Taxes: They are imposed on goods/ services. The immediate liability to pay is of the manufacturer/ service provider/ seller but its burden is transferred to the ultimate consumers of such goods/ services. The burden is transferred not in form of taxes, but, as a part of the price of goods/ services.

Example - Excise Duty, Customs Duty, service Tax, Value-Added Tax (VAT), Central Sales Tax (CST).

Features of Indirect Taxes:

- (i) Taxable Event — Taxable event is arised at the time of Purchase / Sale / Manufacture of goods and provision of services.
- (ii) Levy & Collection — This tax is levied & collected from the consumer but paid / deposited to the Exchequer by the Assessee / Dealer.
- (iii) Shifting of Burden — Tax burden is shifted or the subsequent / ultimate user.
- (iv) Collected — It is collected at the time of sale or purchases or rendering of services.

(b) Computation of turnover limit eligible for SSI exemption

	₹ in lakhs
Total turnover	870
Less: Value of clearances including VAT	50
Total Exports excluding Nepal & Bhutan ₹(500-200) lakhs	300
Clearance for STP jobs	20
Clearance for job work ₹(50+50) lakhs	100
Turnover (for calculating limit of crores)	400

Goods bearing brand name of Khadi and Village Board are eligible for SSI exemption. Hence, its turnover cannot be excluded for calculating limit of ₹ 4 crores.

Thus, the turnover for purpose of SSI exemption limit is ₹ 400 lakhs. The requirement is that turnover should not exceed ₹ 400 lakhs.

Since it is not exceeding ₹ 400 lakhs, the company will be entitled to avail exemption upto first ₹ 150 lakhs in financial year 2013-14.



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- (c) Service provider who is providing taxable services under the brand name of another person is not eligible for claiming exemption limit of ₹ 10,00,000 and hence, is liable to pay service tax irrespective of the turnover.

Notification No. 8/2005-ST clearly provides that small scale service provider exemption will not be applicable to taxable services provided by a person under a brand name or trade name, whether registered or not, of another person.

### Question 6.

- (a) Mr. Asharam, the proprietor of Sundaram Enterprises is a registered dealer in Mumbai (Maharashtra). From the under mentioned particulars relating to the quarter ended 31st March, 2013, find out his taxable turnover and the tax payable under the Central Sales Tax Act, 1956:
- (i) Goods worth ₹2,20,000 were invoiced to its against at Lucknow (UP) while the goods were in transit, these were sold to Uttar Pradesh Government for ₹2,41,020. The rate of tax in respect of such goods in the appropriate state is 12.5%.
- (ii) Sale to a 100% Export Oriented Undertaking (EOU), goods worth ₹20,20,000 in Delhi. The rate of tax in the State is 1%.
- (b) "SEZ should have minimum specified area. In respect of non-processing areas, developer cannot lease vacant lands." — Mention the conditions relating to area and its utilisation.
- (c) What is Daily Stock Account?

[4+4+2]

### Answer:

- (a) Computation of taxable turnover

	₹
Taxable Turnover for goods sold to Uttar Pradesh Government (₹2,41,020×100/112.50)	2,14,240
Taxable turnover for sales to EOU (₹20,20,000×100/101)	20,00,000
Total	22,14,240

### Computation of Central Sales Tax payable

	₹
CST on sale of goods to UP Government (₹2,14,240×12.5/100)	26,780
CST on sale of goods to 100% EOU (₹20,00,000×1/100)	20,000
Total	46,780

### Notes:

- (i) Here it is assumed that the above selling prices are inclusive of the central sales tax. The dealer has submitted all necessary declarations, wherever required.
- (ii) Branch transfer exempted from Central Sales Tax against Form F. However, goods are sold during the movement from one state to another state which will attract CST.
- (iii) Goods sold to 100% Export Oriented Units subject to Central Sales Tax.

- (b) Conditions relating to area and its utilisation of SEZ units are as follows:

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- A. Area requirements of SEZ** - Minimum area of land and other terms and conditions of approval shall be prescribed by Central Government [section 3(8) of SEZ Act]. Minimum area requirements stipulated for various categories of SEZs are as follows.

As per press report dated 5-4-2007, maximum area of SEZ can be 5,000 hectares. Minimum processing area shall be 50%. State Government shall not undertake any compulsory acquisition of land for such SEZ. Comprehensive resettlement and rehabilitation policy will be worked out ensuring livelihood of displaced persons.

- B. Multi-product SEZ** - Multi-product SEZs should have an area of 1,000 hectares or more [rule 5(2) (a) of SEZ Rules]. "Special Economic Zone for multi-product" means a Special Economic Zone where Units may be set up for manufacture of two or more goods in a sector or goods falling in two or more sectors or for trading and warehousing or rendering of two or more services in a sector or rendering of services falling in two or more sectors [rule 2(za) of SEZ Rules]

Minimum 35% area shall be earmarked for processing. This can be relaxed to 25% by Central Government on recommendation from Board of Approvals. Thus, remaining 65%/75% area will be available for developing residential and commercial areas.

- C. Service Sector SEZ** - Services-Sector SEZs should have an area of 100 hectares or more [first proviso to rule 5(2)(a) of SEZ Rules]. Minimum 35% area shall be earmarked for processing. This can be relaxed to 25% by Central Government on recommendation from Board of Approvals. Thus, remaining 65%/75% area will be available for developing residential and commercial areas.

- D. SEZ in port or airport** - In case of SEZ in port or airport, the area must be at least 100 hectares [rule 5(2)(b) of SEZ Rules]. "Special Economic Zone in a port or airport" means a Special Economic Zone in an existing port or airport for manufacture of goods in two or more goods in a sector or goods falling in two or more sectors or for trading and warehousing or rendering of services [rule 2(zc) of SEZ Rules].

- E. Sector Specific SEZ** - In some sectors where India has a competitive advantage, such as gems and jewellery, information technology, electronic hardware and software, bio-technology, sector-Specific SEZs can be set up over an area of 10 hectares or more. Similarly, in case of SEZ in non-conventional energy, solar energy, the area shall be 10 hectares or more [first and second proviso to rule 5(2)(b) of SEZ Rules]

In case of SEZ for specific sectors, at least 50% of the area shall be earmarked for developing processing area. Thus, remaining 50% area will be available for developing residential and commercial areas.

- (c) Every assessee registered under Central Excise should maintain the Daily Stock Account (DSA) [Rule 10(1) of Central Excise Rules, 2002].

There is no specific format for Daily Stock Account. The following information should be captured in the DSA:

- i. Description of goods manufactured

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- ii. Opening balance of goods manufactured
- iii. Quantity manufactured
- iv. Inventory of goods (closing stock)
- v. Goods removed from the place of removal (quantity)
- vi. Assessable value of goods removed
- vii. Amount of duty payable to the department
- viii. Particulars with regard to the amount of duty actually paid.

### Question 7.

- (a) Rungliot Company provides a service of rent-a-cab by providing chauffeur-driven cars for overseas visitors. It is a taxable service. The chauffeur is given a lump-sum amount to cover his overnight accommodation, food and other incidental expenses such as parking fees by Rungliot Company during the whole tour. After finishing the tour, the chauffeur returns the balance of the amount with a statement of his expenses and the relevant bills thereof. In the present case write about the consideration related to the services with the help of Service Tax (Determination of Value) Rules, 2006.
- (b) Give a Comparative Analysis of availing and not availing exemption of an intermediate product for XTY Ltd, a SSI unit.
- (c) Write about Import General Manifest (IGM). What is the time limit for submission of bill of entry after the delivery of IGM?

[3+4+3]

### Answer:

- (a) In the instant case, Rungliot Company should charges the amount (lump-sum amount to cover chauffer's overnight accommodation, food and other incidental expenses) from the recipient of services. The cost incurred by the chauffer and billed to the recipient of service constitutes part of gross amount charged for the provision of services by the Rungliot Company. Where the expenses incurred are necessary for providing services, therefore it will form part of the value of taxable services.

Sub-rule (2) of Rule 5 of Service Tax (Determination of Value) Rules, 2006 contains whereby certain expenditure or costs that a service provider incurs as a pure agent of the client shall be excluded from the value of service subject to fulfillment of certain conditions.

Sub-rule (2) also lists certain conditions where such agency will be inferred. The sum and substance is that the service user must have the primary liability to pay or incur such costs or expenses, but for the sake of convenience he authorises the service provider to incur such expenses on his behalf and account duly for the same.

- (b) A Comparative Analysis of availing and not availing exemption of an intermediate product for XTY Ltd, a SSI unit:

Particulars	Exemption Amount in ₹ lakhs	No exemption Amount in ₹ lakhs
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Raw material cost including duty	55.00	55.00
CENVAT credit availed	—	5.00
Net Cost	55.00	50.00
Conversion Cost	40.00	40.00
Total Cost	95.00	90.00
Profit Margin	10.00	10.00
Basic Selling Price	105.00	100.00
Excise Duty (Net of CENVAT credit) (12%)	—	12.00
Total Selling Price	105.00	112.00
Benefit to the final manufacturer by way of CENVAT credit	—	12.00
Net cost to the buyer availing credit	105.00	100.00
Percentage Benefit for Customer	—	5%
Loss to Supplier	—	NIL
Benefit for Customer for ₹150 lakhs of purchase	NIL	₹ 5 lakhs

Note: The benefit may be shared between the customer and manufacturer. Normally 80% of the benefit could be passed on to the customer.

- (c) Import General Manifest (IGM) indicates the details of all the goods to be transhipped, private property of the crew and arms and ammunitions, gold and silver should also be cleared separately irrespective of whether for landing, for transshipment or for being carried as same bottom cargo. The IGM has to be filed within 24 hours after arrival of the ship/ aircraft.

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.

### Question 8.

- (a) The RR Airport used to collect 'users fee' @ ₹800/- for every outgoing international passenger. No users' fee was payable by domestic passengers and/or international passengers reaching the Airport from any foreign destination.

The Department sought to levy service tax thereon under 'Airport Services'.

The RR Airport contended that the user's fee is not for any service rendered, as the same is not charged from all passengers (to whom equivalent services are provided) but is charged only from outgoing international passenger. The assessee submitted that the same is charged in view of Board of Director's decision to collect users' development fee for enhancing the revenue of the Airport to cope up with the expenditure and debt servicing? Discuss whether the view taken by the Department is correct.

- (b) Compute the Customs duty from the following data— (i) Machinery imported from USA by Air (FOB) US \$ 9,500, (ii) Accessories were compulsorily supplied with Machine (Electric Motor & others) (FOB) US \$ 1,500, (iii) Air freight US \$ 3,200 (iv) Insurance US \$ 100, (v) Local agents commission to be paid in Indian Rupees is ₹4,500 (say equivalent to US \$ 100), (vi) The exchange rate is 1 US Dollars = Indian Rupees is ₹45, (vii) Customs duty on Machinery –10% ad valorem, (viii) Customs Duty on Accessory –normal rate 20% ad valorem, (ix) CVD – 24% (Effective Rate is 16% by a notification), (x) Education Cess and

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special CVD is as applicable. How much Cenvat can be availed by importer, if he is manufacturer?

(c) Define 'Business' as per section 2(aa) of Central Sales Tax Act, 1956. Give an example of it.

[3+4+3]

Answer:

(a) It was clear from the decision of the Board of Directors that purpose of users fee was to augment revenue for the Airport and was not towards consideration for any service rendered to the outgoing international passenger. This was so specially because the airport had rendered its services equally to all passengers (incoming and outgoing – domestic and international) while the users' fee was charged only from outgoing international passengers.

Section 67 defining value of taxable services for charging service tax says that the value of service shall be gross amount charged by the service provider for the service provided to the recipient. Since collection of users' fee was not for any specific service rendered by them, but was a flat rate of charge to one category of passengers namely, outgoing international passengers, it could not be said that the amount so collected was by way of service charge. Hence, no service tax was payable.

(b) Computation of Assessable Value

	US \$
FOB value of Machinery	9,500
FOB value of Accessories compulsorily supplied with machine	1,500
Total FOB value	11,000
Add: Air freight 20% on FOB is US\$ 2,200 or US \$ 3,200 (whichever is lower)	2,200
Add: Insurance	100
Add: Commission	100
CIF Value	13,400
Add: 1% unloading charges on CIF value	134
Assessable Value	13,534
Assessable value (i.e. US \$ 13,534 x ₹ 45)	₹ 6,09,030

Calculation Custom duties: BCD ₹ 60,903, CVD ₹ 1,07,189 and SPL. CVD ₹ 31,214.

CENVAT credit available to the importer being a manufacturer is ₹ 1,07,189 (CVD) and Special CVD is ₹ 31,214.

Cenvat Credit	Amount in ₹
CVD (₹ 1,07,189 × 50%)	53,595
SPL. CVD (100% allowed as Cenvat Credit)	31,214
Total	84,809

(c) As per Section 2(aa) of the Central Sales Tax Act, 1956 - 'Business' includes the following:

a. Any trade, commerce or manufacture, or any adventure or concern in the nature of trade, commerce or manufacture,

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- i. whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and
  - ii. whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern;
- b. Any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern.

### Question 9.

- (a) What is Negative List in service tax? Give an example of three such services which is included in negative list and their exceptions.
- (b) What is the mission of the Tariff Commission?
- (c) Explain briefly 'Pilferage' in customs.
- (d) Mention the roles of a Cost Accountant in the context of VAT.

[7+1+1+1]

### Answer:

- (a) In terms of Section 66B of the Finance Act, 1994, service tax will be leviable on all services provided in the taxable territory by a person to another for a consideration other than the services specified in the negative list. The services specified in the negative list therefore go out of the ambit of chargeability of service tax. The negative list of service is specified in the Act itself in Section 66 D. In all, there are seventeen heads of services that have been specified in the negative list. Three of them are explained below:

Services	Inclusion in Negative list (it means outside the scope of service tax)	Exclusion from Negative list (it means taxable unless exempted from service tax)	Remarks
1) Services provided by Govt. or local Authority	All services provided by Govt., in terms of their sovereign right to business entities. • Grant of mining licenses • Audit of Comptroller and Auditor General, etc.	<ul style="list-style-type: none"> <li>• Speed post, Express Parcel post, Life insurance and agency services carried out on payment of commission</li> <li>• Services in relation to vessel or an aircraft</li> <li>• Transport of goods and passengers</li> <li>• Support services.</li> </ul>	Reverse charge applicable in case of support services Examples: Adv. Service, Construction Works contract, Renting of movable or immovable property, Security Testing and analysis.
(2) Services provided by Reserve Bank of India (RBI)	All type of services provided by RBI.	Services provided to RBI.	Services provided banks to RBI taxable.
(3) Agriculture or agricultural produce	•Cultivation, harvesting, seed testing	<ul style="list-style-type: none"> <li>•Potato Chips or Tomato Ketchup</li> <li>• Grinding, sterilizing</li> </ul>	

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	<ul style="list-style-type: none"><li>• Supply of farm labour</li><li>• Trimming, sorting etc., thereby marketable in the primary market</li><li>• Renting of agro machinery loading, unloading, packing, storage and warehousing of agricultural produce</li><li>• Agricultural extension services</li><li>• Services by any agricultural Produce marketing committee</li></ul>	extraction of packaging in retail packs of agricultural products.	
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- (b) Mission of Tariff Commission is to advise the Government, Public Sector Undertakings (PSUs) and other client organisations, in a relevant, fair, and unbiased manner to enable and sharpen their decision making capabilities with practical recommendations.
- (c) Section 13 of the Customs Act, 1962 describes 'Pilferage' as —
- Pilferage means loss arising out of theft.
  - No duty is payable at all under section 13, if the goods are pilfered.
  - Importer does not have to prove pilferage, however, the pilferage is to find before the goods cleared from the customs.
- (d) Cost Accountants have the following key role to play in proper implementation of VAT:
- Record keeping: VAT requires proper record keeping and accounting. Systematic records of input credit and its proper utilization is necessary for the dealer to take input tax credit. No doubt, Cost Accountants are well equipped to perform these activities.
  - Tax planning: Cost Accountant is competent to analyze various alternatives and its impact on dealer so as to minimize the tax impact.

### Question 10.

- (a) What are the basic conditions for levy of excise duty under section 3(1) of Central Excise Act?
- (b) "Green Channel procedure has been introduced in major Custom Houses on experimental basis to expedite clearance of imported goods." — Write about Green Channel Procedure and its activities.
- (c) There are two types registration under VAT — (i) Compulsory Registration and (ii) Voluntary Registration. Write about any one of the two.

[4+3+3]

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### Answer:

- (a) It is obvious from section 3(1) that, to attract excise duty, the following conditions must be fulfilled:
- There should be movable goods;
  - The goods must be excisable;
  - The goods must be manufactured or produced; and
  - The manufacture or production must be in India.
- (b) Green Channel procedure has been introduced in major Custom Houses on experimental basis to expedite clearance of imported goods. This procedure is applied only in respect of certain specified imports. Some of such imports identified are:-
- (i) Goods imported by Government departments and public sector undertakings, which do not require physical identification for the purpose of either ITC classification/ restrictions or Customs classification.
  - (ii) Imports under project Import Regulations.
  - (iii) Bulk imports sourced directly from reputed suppliers.
  - (iv) Consignments, which consist of single product of a well- known brand or specification, tested earlier and, covered by valid test report of an earlier import.
  - (v) Imports by importers with proven identity and unblemished record of past conduct.

The Bills of Entry under this procedure are processed and assessed to duty under the second appraisement system i.e., assessment and duty collection is done first and then consignment examined. In such cases the Assessing Officer indicates on the reverse of the duplicate Bill of Entry to the Appraiser in charge of examination to 'Inspect the lot and check marks and numbers on the packages'. After inspection of the lot and marks and numbers of the packages with reference to the declaration in the Bill of Entry and other connection documents, the Docks Appraiser gives 'passed Out of Customs' order. The Docks Appraiser, in the presence of Assistant Commissioner may examine the goods in exceptional cases.

- (c) Although there are two types of registration under VAT — Compulsory Registration and Voluntary Registration, but the Voluntary Registration may be described in details as follows —

A Dealer can get himself voluntarily registered if he is not required to get himself compulsorily registered.

Taxable turnover of a dealer does not exceed the limit of ₹ 10 lakhs in the case of sales of goods and such dealer do not expect to exceed this limit still apply for voluntary registration for VAT.

He can do so if the activities of the dealer constitute a business for VAT purposes.

A dealer seeks voluntary registration because it gives him the following advantages:

- i. When dealer makes taxable sales to other VAT dealers he can pass the input tax credit
- ii. When dealer deals principally with other VAT dealer for purchasing of goods



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- iii. When dealer input tax credit likely to exceed the tax on the sales he made
- iv. When dealer exports the goods input tax credit can be claimed as refund

None of the above advantages will be available to him if he does not get himself registered.

Without a registration he cannot issue tax invoice to his customer who is eligible otherwise for input tax credit. Such a customer will therefore have to charge a higher price for his sales if he cannot claim a credit for the VAT. In this case he might choose to trade with another VAT dealer and unregistered dealer would lose business.

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

- i. Dealer has no taxable sales at all
- ii. Dealer has no proper place of business
- iii. Dealer is not in a position to keep proper books of accounts
- iv. Dealer has no bank account with any bank
- v. Dealer has arrears outstanding under General Sales Act, CST Act, etc.
- vi. Dealer has no proper identity

### Question 11.

- (a) What are the specified services where the place of provision is the location of the service provider?
- (b) Ganguly Ltd. is a manufacturer of cold drinks for local markets. The product is notified u/s 4A of CEA, 1944 and the notified percentage of abatement is 30%. It sells cold drinks in bottles to various retail shop keepers and gives 30 bottles free along with the purchase of every 100 bottles. The MRP printed on each bottle is ₹150 per bottle. During a month, Ganguly Ltd. sold 2,00,000 bottles and gave away 50,000 bottles free to the retail shop-keepers. Compute the amount of excise duty payable by the Ganguly Ltd. excise duty rate is 12%.
- (c) Is transfer by way of mortgage chargeable to CST?

[4+4+2]

### Answer:

- (a) 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) The computation of duty payable:

	Amount in ₹
No. of bottles on which duty payable (A)	2,50,000

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Retail Sale Price or MRP per bottle	(B)	150
Retail Sale Price of all bottles on which duty payable	(C)=(A)× (B)	3,75,00,000
Less: Abatement @30%	(D)=(C)×30%	1,12,50,000
Value (net of abatement)	(E=C-D)	2,62,50,000
Excise Duty @12.36%	(F=E×12.36%)	32,44,500

### Notes:

- (1) The product which is mentioned here as cold drinks is for knowledge purpose and the rate of abatement is imaginary. However, the product and the rate of abatement would be classified according to the rules.
  - (2) Excise duty is a levy on manufacture and is payable on removal. Therefore, it is payable on free samples as well even if there is no sale. In this case, when a manufacturer sells more goods for a seller price, then excise duty is payable on all such goods. In case of section 4, such duty shall be on transaction value (actual price net of discounts) or a value computed as per rules made thereunder; in case of section 3(2), it would be tariff value of goods removed; and in case of section 4A, it would be RSP less notified abatement of goods removed.
- (c) The definition of 'sale' u/s 2(g) of Central Sales Tax, 1956 specifically excluded mortgage, hypothecation of goods, charge or pledge on goods. Hence, CST cannot be charged when there is transfer by way or mortgage.