**P16 - Tax Management & Practice**

**Test Paper—III/16/TMP/2012/T-1**

**Time Allowed-3hours** **Full Marks-100**

**Section A-Tax Management [70 Marks]**

**Question 1**

**(i)** Discuss briefly whether excise duty is attracted on the excisable goods manufactured:

(a) in Jammu & Kashmir;

(b) in special economic zone;

(c) in 100% EOU;

(d) beyond Indian territorial waters (within 150 nautical miles from the shore line).

**(ii)** What is the legal status or otherwise of the Explanatory Notes to Harmonised System of Nomenclature (HSN) for the purposes of classification of goods under the Central Excise Tariff Act, 1985?

**(iii)** On 15.05.2012 goods were removed from the factory at Jalandhar for sale from the depot at Bombay. On that date (at Jalandhar factory) assessable value = ₹ 1,20,000 and tariff rate = 8%. These goods were sold ex New Delhi depot on 13.06.2012. On that date assessable value at New Delhi depot = ₹ 1,30,000 and tariff rate = 14%. The manufacturer has paid duty @ 8% on ₹ 1,20,000, but the department claims duty @ 14% on ₹ 1,30,000. Discuss the correct approach to be adopted in the case.

**[4+3+3]**

**Question 2**

**(i)** With reference to the CENVAT Credit Rules, 2004, comment upon the validity of the following statements taking into account the position after 01.03.2008:

(a) An amount equal to the credit availed in respect of capital goods has to be paid when such capital goods are removed outside the premises of the output service provider for providing the output service and are not brought back to the premises within 180 days of their removal.

(b) As per rule 6(3), one of the options available to a provider of output service, who opts not to maintain separate accounts is to pay an amount equal to 8% of value of the exempted services.

(c) The CENVAT Credit Rules, 2004 do not provide for any general penalty for contravention of any of the provisions of the said rules.

**(ii)** With reference to the Customs Act, 1962, differentiate between the following:

(i) Clearance for home consumption and Clearance for warehousing

(ii) Indian territorial water and Indian custom water

(iii) Bill of Entry and Entry Inward

**(iii)** Briefly explain the owner's right to deal with the warehoused goods as provided under section 64 of the Customs Act, 1962.

**[4+3+3]**

**Question 3**

**(i)** An exporter obtained inputs on payment of customs duty and has availed CENVAT credit. Advise whether he could also avail duty drawback under section 75 of the Customs Act, 1962, if imported inputs are used in the manufacture of goods which are then exported.

**(ii)** With reference to Notification No. 6/2005 ST dated 01.03.2005, answer the following questions:

(a) What is the threshold limit of service tax exemption for small service providers?

(b) Is the exemption mandatory to service provider in all cases?

(c) Whether credit on the capital goods received during the period of exemption limit can be availed after crossing of exemption limit?

(d) On opting for exemption in the beginning of the financial year, whether the credit of the duty paid on inputs lying in stock has to be reversed?

(e) If balance in CENVAT credit is available after the above said reversal, whether the same can be carried forward?

(f) In a case where the service provider provides more than one taxable service, does the exemption limit apply to individual taxable services or all taxable services?

**(iii)** Explain the concept of Reverse charge mechanism. Explain the services specified under Reverse Charge mechanism.

**Or**

**(iv)** A Ltd. provided Information Technology & Software services to B Ltd. in the month of July 2012. A bill inclusive of Service Tax issued in the month of July 2012. B Ltd paid ₹ 22,24,728 (after deducting TDS under sec 194J of the Income Tax Act, 1961 @10% towards TDS) in the month of August, 2012. You are required to calculate:

(a) Service tax liability

(b) Due date of payment of service tax.

**[4+3+3]**

**Question 4**

**(i)** What are the reasons for setting up of Export Promotion Councils? Write a brief note on their responsibilities and types of Councils in India in the context of foreign trade policy. Should an exporter compulsorily register himself as a member of such Export Promotion Council? (5 Marks)

**(ii)** Whether input tax credit of the VAT paid on purchases of goods that are stock transferred is available?

**(iii)** What is the difference between orders under Section 6A(1) and 6A(2) of the CSR Act, 1956.

**[5+2+3]**

**Question 5**

**(i)** Y Ltd. is a company in which 60% shares are held by P Ltd. Y Ltd declared a dividend amounting to ₹45 lakhs to its share holders for the financial year 2011-12 in its AGM held on 12th May, 2012. Dividend Distribution Tax was paid by Y Ltd. on 14th May, 2012. P Ltd declared an interim dividend amounting to ₹70 lakhs on 15th October, 2012 for the year ended 31st March, 2013.

Compute:
(a) The amount of tax on dividend payable by P Ltd.
(b) What would be your answer, if 58% shares of P Ltd are held by K Ltd. an Indian company?
(c) Does the position change further, if K Ltd. is a foreign company?

**(ii)** Where a trust is created, for carrying on the business hitherto carried on by joint family, after its partition, could such trust be treated as one liable to be assessed as AOP constituted by the beneficiaries?

**(iii)** Is it open to Arati, a member of HUF, to convert her property to that of a joint family of which she is a member?

**(iv)** What is the liability of a non-working partner as regards liability of firm after dissolution?

**(v)** Is it permissible for a company formed by conversion of firm under Part IX of the Companies Act, 1956 to avail unabsorbed losses and depreciation of the firm against its profits? What is the position of relief under sections 10A, 10B, 80-IA and 80-IB, etc.?

**(vi)** Are all partners of LLP equally responsible for the acts of LLP?

**(vii)**Amalgamation of companies S and T has been approved by the BIFR. CBDT refuses to allow carry forward of losses u/s. 72A. Is the CBDT justified?

**(viii)** Will incentive deductions available for amalgamating company continue for the remaining period to the amalgamated company?

**[5+3+1+1+2+1+1+1]**

**or**

**(i)** A co-operative society bought text books at a discount from the Government and sold them at profit to various persons including its members. The society claimed that the profit earned by the sales to its members was not taxable on ground of mutuality. Whether the claim of the society is in order?

**(ii)** Mr. A wants to set up a business. How can he select a location for the business?

**(iii)** What is the procedure for service of notice for assessment of amalgamating company, when it has ceased to exist on amalgamation?

**(iv)** Can a Nidhi company registered under section 620A of the Companies Act, 1956, be a mutual society, immune from application of section 269SS bearing deposits in cash above the specified limit?

**(v)** Can incomplete, unsigned or unverified return lead to best judgment assessment?

**(vi)** Is there any liability of the private company's directors in liquidation? Discuss briefly.

**(vii)**Who is liable for prosecution for the offences made by HUF under Income Tax Act?

**(viii)** Can a CIT revise the order of the Income Tax Officer even if the same has been passed with the directions of the superior authorities?

**(ix)** Is commission earned by a co-operative society from public distribution of controlled commodities exempt?

**(x)** A, B, & C are the partners of a firm sharing profits and losses in the ratio 1:1:1 respectively. The firm has brought forward business loss of ₹2,50,000 and unabsorbed depreciation of ₹1,80,000. During the previous year 2012-13, B retired from the firm w.e.f. 1st July, 2012. Compute the business loss which will not be allowed to be carried forward in the hands of firm if the firm has earned business income of ₹4,00,000 during the previous year 2012-13.

**(xi)** The Assessing Officer made an assessment for A.Y. 2012-13, in the name of the trust. But, during the assessment proceedings of A.Y. 2013-14 the Assessing Officer found that the assessment in the hands of the beneficiaries would be more beneficial to the revenue than the assessment in the hands of the trust. Accordingly, he made the assessment for A.Y. 2013-14 in the hands of the beneficiaries. Was the Assessing Officer justified in doing so?

**[1+1+1+1+1+3+2+1+1+2+1]**

**Question 6**

**(a)** Where the building is grossly under-valued, is penalty leviable, when the building itself was disposed and is it possible to reassess wealth for undervalued building with reference to Valuation Officer?

**(b)** Azan received a vacant site under his father's will which was purchased by his father at a cost of ₹15 Lakhs. The value of the site on 31.3.2013 is ₹25 Lakhs. As per terms of the 'Will' in the event Azan wants to sell the site he should offer it to his brother for sale at ₹20 Lakhs. Azan, therefore, claims that the value of the site should be taken at ₹20 Lakhs as at 31.3.2013. Is the claim correct?

**(c)** Can the provisions relating to compensation for acquisition of land under Urban Land (Ceiling and Regulation) Act, 1976 be applicable in valuation of urban land?

**[2+2+1]**

**Question 7**

**(i)** Discuss the procedure to deal with requests for bilateral or multilateral advance pricing agreements.

**(ii)** M Ltd. operating in India, is the dealer for the goods manufactured by SJ Ltd. of Japan. SJ Ltd. owns 57% of shares of M Ltd. and out of 7 directors of the company, 4 were appointed by them. The Assessing Office after verification of the transaction of ₹2,00,00,000 of M Ltd. for the relevant year and by noticing that the company had failed to maintain the requisite records and had also obtained the accountant's report adjusted its income by making an addition of ₹35,00,000 to the declared income and also issued a show case notice to levy various penalties. M Ltd. seeks your advice.

**(iii)** Can Assessing Officer complete the assessment of an income from international transactions in disregard of the order passed by the Transfer Pricing Officer by accepting the contention of the assessee?

**[4+4+2]**

**or**

**(i)** Eastern Oil Corporation (EOC) imports crude oil for its requirements on a regular basis. Its requirements are estimated at 100 tonnes per month.

Of late, there has been a surge in the prices of oil. The current price (month of July) of crude oil is ₹5,600 per barrel. The firm expects the price to rise in coming months to ₹5,900 by September. It wants to hedge against the rising prices for its requirements of the month of September.

Multi Commodity Exchange (MCX) in India offers a futures contract in crude oil. The contract size is 100 barrels and September contract is currently traded at ₹5,700 per barrel.

(a) How can EOC hedge its exposure against the rising price of crude oil?
(b) If EOC hedges its exposure at MCX, how many contracts it must book?
(c) Analyse the position of EOC if in the month of September (I) the spot price is ₹5,950 and futures price is ₹5,780, (II) the spot price is ₹5,800 and futures market were matched?

Ignore marking-to-the-market and initial margin on futures contracts.

**(ii)** What are the consequences of non-compliance with regulations on international transactions? State with the exceptions.

**[5+5]**

**Section B – Tax Practice and Procedure [30 marks]**

**Question 8**

**Suggest your answers with the help of case laws (Any Four)**

**(i)** Whether the theoretical possibility of product being sold is sufficient to establish the marketability of a product?

**(ii)** Whether the clearances of two firms having common brand name, goods being manufactured in the same factory premises, having common management and accounts etc. can be clubbed for the purposes of SSI exemption?

**(iii)** Whether time-limit under section 11A of the Central Excise Act, 1944 is applicable to recovery of dues under compounded levy scheme?

**(iv)** Whether the carpet, in which jute is predominant by weight, but the surface is entirely of polypropylene, should be classified as jute carpet or polypropylene carpet?

**(v)** Can the Settlement Commission decline to grant immunity from prosecution after confirming the demand and imposing the penalty?

**(vi)** Whether remission of duty is permissible under section 23 of the Customs Act, 1962 when the remission application is filed after the expiry of the warehousing period (including extended warehousing period)?

**[5x4]**

**Question 9**

**Suggest your answers with the help of case laws (Any Two)**

**(i)** Where the provision for bad and doubtful debts under section 36(1)(viia) relates to rural advances, can deduction for actual write off under section 36(1)(vii) in respect of urban advances be restricted to the amount in excess of the credit balance in the provision for bad and doubtful debts made under section 36(1)(viia)?

**(ii)** Can the expenditure incurred by the assessee on techno-economic feasibility report for the manufacture of a new product be eligible for deduction under section 35D?

**(iii)** Can an assessee be deprived of claiming exemption under section 54EC, if bonds of assessee's choice are not available or are available only for a broken period within the period of six months after the date of transfer of capital asset and the bonds are purchased shortly after it became available next time after the expiry of the said six months?

**(iv)** In a case where the partnership deed does not specify the remuneration payable to each individual working partner but lays down the manner of fixing the remuneration, would the assessee-firm be entitled to deduction in respect of remuneration paid to partners?

**[5x2]**

**Test Paper—III/16/TMP/2012/T-2**

**Time Allowed-3hours** **Full Marks-100**

**Section A-Tax Management [70 Marks]**

**Question 1**

**(i).** X Ltd. manufactures fan regulators and sells them in corrugated boxes under their own brand name which is affixed/ printed on such boxes. However, after some time M/s. X Ltd. starts printing hexagonal artistic design of its marketing company 'Super Sales' on such boxes along with its brand name. The said hexagonal shape/design is only printed on the visiting cards of the two executives of the 'Super Sales'. The design printed on the letterheads and sales invoices of the 'Super Sales' is different. 'Super Sales' has not claimed that the hexagonal design belongs to them and that they have permitted M/s. X Ltd. to use the same on their corrugated boxes.

The Commissioner of Excise contends that the benefit of small scale exemption would not be available to M/s. X Ltd. as they are using a brand name of another person on their goods.

You are required to examine the veracity of the Commissioner's claim with the help of a decided case law, if any.

**(ii)** Discuss whether remission of central excise duty will be granted in the following cases under the Central Excise Rules, 2002:

(a) Goods were not fully manufactured and lost by natural causes before entry in the "Daily Stock Account".

(b) Goods (fully manufactured) were lost during transportation of the same to the customer's business premises due to unavoidable accident.

(c) (iii) Goods (fully manufactured) were lost by fire before removal from the factory and the assessee has received a claim from the insurance company.

**(iii)** Explain the scope of duty demanded under explanation to section 35F of the Central Excise Act, 1944.

**[5+3+2]**

**Question 2**

**(i)** Ronald Chemicals obtained a chemical in Zimbabwe for an exceptionally low price. While the market price was an equivalent of ₹ 800 per kg, Ronald Chemicals got it at a low price of ₹ 400 per kg. In determining the customs valuation, the Assistant Commissioner of Customs contends that price to be adopted should be ₹ 800 per kg even though the purchase is bona fide and supported by genuine purchase bill. Do you think the stand taken by the Assistant Commissioner of Customs is valid? Discuss.

**(ii)** Briefly state the law relating to demand for payment of duty under section 28 of the Customs Act, 1962.

**(iii)** With reference to section 48 of the Customs Act, 1962, explain the procedure for disposal of goods not cleared within the specified period.

**[2+2+2]**

**Question 3**

**(i)** Explain provision of Special Audit under section 72A.

**(ii)** A Ltd. provided services valuing ₹ 8 lakhs during the financial year 2011-12. During 2012-2013, it has provided taxable services valuing ₹ 10 lakhs and has received payments towards payable services ₹ 8.5 lakhs. It has also received services in the nature of transport of goods by road on 1-4-2012, valuing ₹ 50,000 (exclusive of service tax), in respect of which it is the person liable to pay service tax. Freight has been paid on 10-6-2012. Compute the service tax, if any, payable by A Ltd. for the financial year 2012-2013. It is given that goods transport service is exempt to the extent of 75% of value thereof

**[4+4]**

**Question 4**

**(i)** What are the incentives and benefits allowed to the exporter for exporting goods outside India?

**(ii)** What are the silent features of EOU scheme?

**(iii)** Briefly explain the special procedure to be adopted for removal of excisable goods for carrying out certain purposes in terms of the Central Excise Rules, 2002.

**[5+2+2]**

**Question 5**

**(i)** What are the different Forms under CST and their use?

**(ii)** Compute net VAT liabilities of Balram from the under-mentioned information:

(a) Raw material purchase from foreign market (including duty paid on imports @ 20%)- ₹ 47,000

(b) Raw material purchase from local market (including VAT charges on the material @ 1%)- ₹ 10,000

(c) Raw material purchased from another state (excluding CST) - ₹ 20,000

(d) Storage, transportation cost and insurance - ₹ 3,000

(e) Other manufacturing expenses incurred - ₹ 600.

Balram sold the goods to Krishna adding margin of profit @ 19% on the selling price. VAT rate on sale of such goods is 10%.

**[4+3]**

**Question 6**

**(a) Answer any Six of the following:**

**(i)** Where there is more than one trustee, is it permissible to adopt the status of the trust as AOP?

**(ii)** Does an inherited property always entail assessment as HUF?

**(iii)** What is the liability of a non-working partner as regards liability of firm after dissolution?

**(iv)** What are the consequences if a person fails to comply with the provisions of Sec.139A?

**(v)** A resident pays for electronic purchase of business information reports. Is the payment to be taxed as royalty?

**(vi)** Can Department make fresh computation, once the assessment is made final?

**(vii)** Is a person entitled to interest for the delay in refunding the seized cash?

**(viii)** Can voluntary foregoing be taken as partition of HUF?

**(ix)** Smt. Asha carried on business with the gifted funds of her husband Mr. Pravat. For the Previous Year ended 31.3.2013, Asha incurred loss of ₹10 lakhs which Pravat wants to set-off from his taxable income. Can he do so?

**(x)** Can business loss be set-off against income from undisclosed sources?

**[6×1]**

**(b) (i)** What is the present position as regards availability of processing of living things?

**[3]**

**or**

**(ii)** Adi did not file any return of income for the Assessment Year 2012-13. The Assessing Officer assessed his income at ₹4,80,000 under section 144 after giving him show cause notice to which Adi did not respond. Besides the tax, the interest was charged under sections 234A, 234B and 234C. The notice of demand of ₹33,750 (including interest) was sent to Adi on 5-3-2013 which was received by him on 7-3-2013. Advise Adi, the procedure of filing an appeal?

**[3]**

**Question 7**

**Answer any Two of the following:**

| | |
|---|---|
| **(A)** Value of asset declared in the return | ₹3,00,000 |
| Fair market value of asset, estimated by the Assessing Officer: | |
| Situation A | ₹3,50,000 |
| Situation B | ₹4,50,000 |

Can a reference be made to the Valuation Officer in the above cases?

**[5]**

**(B)** Net wealth of firm consisting of three partners Bidyut, Kingshuk and Deepak in 2:3:1 and a capital contribution of ₹20 Lakhs, ₹23 Lakhs, and ₹12 Lakhs respectively is as under -

(a) Value of assets located outside India ₹30,00,000

(b) Value of assets located in India ₹90,00,000

(c) Debts incurred in relation to assets outside India ₹50,00,000

Determine the value of interest of the partners in the firm under the Wealth Tax Act, 1957.

**[4]**

**(C) (i)** Is non-filing of return liable for concealment penalty?

**(ii)** In respect of liability for wealth tax on taxable wealth held by a trust, whether it should be the trust itself or beneficiaries, who should be assessed?

**(iii)** Can the Assessing Officer make reference to the Valuation Officer after the assessment is over?

**[1+1+1]**

**Question 8**

**(A)** Briefly describe the information and documents to be maintained in respect of International Transaction.

**(B)** Does the assessee have any duty in relation to International Transaction? If yes, what are they?

**(C)** For imports from UK, G Ltd. of USA owes £ 6,60,000 to L Ltd., payable on May, 2013. It is now 12 February, 2013.
The following future contracts (contract size £ 60,000) are available on the US exchange:

| Expiry | Current futures rate |
|---|---|
| March | 1.4910 $/£ 1 |
| June | 1.4970 1 |

(i) Illustrate how G Ltd. can use future contracts to reduce the transaction risk if, on 20 May the spot rate is 1.5130 $/£ 1 and June futures are trading at 1.5220 $/£. The spot rate on 12 February is 1.4800 $/£ 1.
(ii) Calculate the "hedge efficiency" and comment on it.

**(D)** What will happen if avoidance arrangement is impermissible?

**[2+1+2+1]**

**Section B – Tax Practice and Procedure [30 marks]**

**Question 9**

**Suggest your answers with the help of case laws (Any Three)**

**(i)** Whether the charges towards pre-delivery inspection and after-sale-service recovered by dealers from buyers of the cars would be included in the assessable value of cars?

**(ii)** In case of combo-pack of bought out tooth brush sold alongwith tooth paste manufactured by assessee, is tooth brush eligible as input under the CENVAT Credit Rules, 2004?

**(iii)** Merely because assessee has sustained loss more than the refund claim, is it justifiable to hold that it is not a case of unjust enrichment even though the assessee failed to establish non-inclusion of duty in the cost of production?

**(iv)** Where a classification (under a Customs Tariff head) is recognized by the Government in a notification any point of time, can the same be made applicable in a previous classification in the absence of any conscious modification in the Tariff?

**(v)** Whether subsequent increase in the market price of the imported goods due to inflation would lead to increase in customs duty although the contract price between the parties has not increased accordingly?

**[5x3]**

**Question 10**

**Suggest your answers with the help of case laws (Any Two)**

**(i)** Can subsidy received by the assessee from the Government of West Bengal under the scheme of industrial promotion for expansion of its capacities, modernization and improving its marketing capabilities be treated as a capital receipt?

**(ii)** Can the Assessing Officer reassess issues other than the issues in respect of which proceedings were initiated under section 147 when the original "reason to believe" on basis of which the notice was issued ceased to exist?

**(iii)** Is it permissible under section 147 to reopen the assessment of the assessee on the ground that income has escaped assessment, after a change of opinion as to a loss being a speculative loss and not a normal business loss, consequent to a mere re-look of accounts which were earlier furnished by the assessee during assessment under section 143(3)?

**(iv)** Where the hotel industry was established based on subsidy announced by the State Government, can such subsidy received be treated as a revenue receipt solely due to the reason that the same is received by the assessee after completion of the hotel projects and commencement of the business?

**[5x3]**