

Suggested Answer_Syll2008_Dec2014_Paper_10

INTERMEDIATE EXAMINATION

GROUP II

(SYLLABUS 2008)

SUGGESTED ANSWERS TO QUESTIONS

DECEMBER 2014

Paper- 10 : APPLIED INDIRECT TAXATION

Time Allowed : 3 Hours

Full Marks : 100

The figures in the margin on the right side indicate full marks.

Answer Question No. 1 which is compulsory and any five from the rest.

Wherever necessary, you may make suitable assumptions and state them clearly in the answers.

Working notes should form part of the answer.

1. (a) Fill up the blanks: 1x15=15
- (i) A certificate of CST registration issued by the concerned authority shall be in form _____.
 - (ii) A shipping bill or bill of entry filed through ICEGATE shall be digitally signed with digital signature issued by _____.
 - (iii) For ascertaining the assessable value of import for customs duty purposes, if the transit insurance amount is not known, the same is taken as _____ % of the FOB value.
 - (iv) Advance payment of service tax is _____.
 - (v) The VAT rate applicable for a product in West Bengal is 1%. When the same is sold from West Bengal to a dealer in Orissa, the CST rate applicable is _____.
 - (vi) Duties of customs including export duties are specified in item No. _____ of union List.
 - (vii) ARE-1 form is required to be prepared by _____.
 - (viii) At the time of payment of CST, VAT _____ be allowed as ITC.
 - (ix) The Negative List of services consists of _____ items.
 - (x) Goods on which excise duty is payable on the basis of MRP price, SAD under customs is _____.
 - (xi) In case of security bond in the form of cash deposit no _____ can be allowed.
 - (xii) Due date of payment of central excise duty for the month of March is _____.
 - (xiii) Interest _____ % will be levied if goods are cleared after 90 days from the warehouse.
 - (xiv) Under reverse charge mechanism _____ is liable to pay service tax.
 - (xv) Value added tax is a _____ of taxation.
- (b) State with reasons, whether the following are True or False. (No credit will be given for mere conclusion, not supported by any reason): 2 x 5 = 10
- (i) "Person should go through 'Green Channel' at Air Port if he have dutiable goods with him'.
 - (ii) "Service Tax is applicable on Stamp Duty and Security Transaction Tax".
 - (iii) If a service is rendered freely, service tax is not payable because the value of the

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service not received from the customer.

- (iv) SSI units opting the exemption notification benefit can pay duty if the dutiable goods cleared from the factory exceeds ₹ 150 lakhs and claim CENVAT credit on inputs.
- (v) Merchant exporter means a person engaged in manufacturing of goods for exporting or intending to export goods.

Answer:

1. (a) (i) B
(ii) ICERT
(iii) 1.125
(iv) Optional
(v) 1
(vi) 83
(vii) Exporter
(viii) Can
(ix) 17
(x) Exempted/Not payable
(xi) Interest
(xii) 31st March
(xiii) 15%
(xiv) Service recipient
(xv) Multipoint System
- (b) (i) False: For passing through Green Channel person should not have any dutiable goods and he has to make declaration that he does not have any dutiable goods with him.
(ii) False: Stamp duty and Security Transaction Tax is the liability of the buyer and the stock broker pays it acting as pure agent of the Customer. These are not includible.
(iii) True: If service is rendered freely service tax is not payable.
(iv) True: SSI units opted the exemption notification benefit can pay duty if the dutiable goods cleared from the factory exceeds ₹ 150 lakhs and claim CENVAT credit on inputs.
(v) False: Merchant exporter means a person engaged in purchase of excisable goods for the purpose of exporting or intending to export goods.
2. (a) HIYAKASH supplies raw materials to job worker HIYASTAB who later on completed the goods and putting the price ₹ 25 per packet. Hiyakash then sells it for ₹ 35 per packet, number of packets sold was 2000. This product is covered under Section 4A with 40% abatement. Calculate the Assessable value in this case. 3
- (b) Can a service receiver and service provider value service on different basis? 2
- (c) An importer imported goods from USA. CIF is 9000 US\$. Exchange rate as per RBI and CBSE are ₹ 45 and ₹ 43 respectively. Calculate the following:
- (i) FOB Value
 - (ii) Cost of Freight
 - (iii) Cost of Insurance
 - (iv) Assessable value under the Customs Act. 6
- (d) Explain with reason whether the following statements are True or False:
- (i) Tax is payable on the First Sale Price under VAT. 2
 - (ii) Insurance charges incurred prior to delivery of the goods to the buyer would form part of turnover under the CST Act. 2

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Answer:

2. (a) If the product is covered under MRP provision then assessee must affix the price MRP on the package which is inclusive of all taxes and Section 4A has an overriding effect over Section 4.

MRP is ₹ 25 Less abatement of ₹ 10 (40% of ₹ 25) = ₹ 15 Per packet.

Assessable Value = 2000 x 15 = ₹ 30,000.

- (b) No. In case of works contract service when both service provider and service receiver is the person liable to pay tax, the service recipient has the option of choosing the valuation method as per his choice. The service provider may value as per independent valuation.

- (c) Where Cost of Insurance, Cost of Freight is not known they have to be calculated as follows:

CIF Value in Indian Rupees = 9000 x 43 = ₹ 3,87,000

Cost of Transport = 20% (FOB + Cost of Insurance):

CIF x 20/120 = ₹ 3,87,000 x 20/120 = ₹ 64,500.

Cost of Insurance = 1.125 (FOB + Cost of Transport):

CIF x 1.125 / 101.125 = 3,87,000 x 1.125 / 101.125 = ₹ 4,305.

FOB Value = CIF Value – Cost of Transport – Cost of Insurance:

= 3,87,000 – 64,500 – 4,305

= ₹ 3,18,195.

Assessable Value = CIF + 1% Landing Charges = (3,87,000 + 3,870) = ₹ 3,90,870.

- (d) **False**

VAT is a multipoint tax where tax is imposed at each and every stage of sales and tax paid at the earlier stage is allowed to be set off.

True

Sale price includes any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof by the buyer. So insurance charges prior to delivery would definitely form part of turnover.

3. (a) "Indirect tax is a tax on enjoyment". Whether this statement is true or false? 2
 (b) "Belated return under Service Tax cannot be revised". Do you agree? 2
 (c) Calculate the CENVAT credit available from the following information in respect of a manufacturer of power generators: 4

Particulars	₹
Food items consumed by the employee	32,000
Raw material purchase	1,15,000
Air Conditioner purchased for use in the office of CFO	38,000
Grease & Oil	29,000
Storage tank	55,000
Light diesel oil	15,000

The purchases given above are all duty paid purchases.

- (d) "Transaction Value cannot be rejected under the Customs Valuation Rules" - Explain 2
 (e) The following details have been given in respect of a Company "TTC & Co" a registered dealer for the year ended 31.03.2014.

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Particulars	₹
Inter State purchase of raw materials (CST inclusive 2%)	1,02,000
Import of raw material on which customs duty paid was ₹ 15,000	2,08,000
Other manufacturing expenses	70,000
Purchase of raw material inclusive of tax within the State (VAT rate 5%)	5,25,000
Capital goods purchased on 02.05.2013 inclusive of VAT 10% (Input Credit to be spread over 2 financial years)	3,30,000
Sale of taxable goods within the State (inclusive of VAT 4%)	6,24,000

Calculate the net VAT liability by "TTC & Co".

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Answer:

3. (a) This statement is FALSE.

Indirect tax is a tax where impact is on one person and incidence is on other, it is on consumption not on enjoyment. Unless the consumer consumes or takes the service of this tax he need not pay anything.

(b) Belated Return under Service Tax can be revised, but there is a provision that this revised return is to be submitted within 90 days of the submission of the original return. So I disagree with this statement.

(c)

Computation of Cenvat Credit Available

Particulars	Duty
Food items consumed by the employees	Not allowed
Raw material purchase	₹ 1,15,000
Air Conditioner purchased for use in the office of CFO	Not allowed
Grease & Oil	₹ 29,000
Storage tank	₹ 55,000
Light Diesel Oil	Not allowed

Total CENVAT credit available ₹ 1,99,000

(d) There are some special circumstances in Section 14(1) of the Customs Act, for determining the Transaction Value. Two special circumstances have to be fulfilled. One is Buyer and Seller should not be related and second one is price should be the sole consideration for sale. If this circumstances or condition not satisfied then Transaction Value can be rejected.

(e) Computation of Vat Liability for the year ended 31/03/2014

PARTICULARS	Rs.
Intra State Purchase of Raw Materials (5,25,000*5/105)	25,000
Inter State Purchase of Raw Materials (On which CST paid, no Input Tax Credit)	NIL
Import of Raw Material (Customs Duty will not be allowed as Input Tax Credit)	NIL
Other Manufacturing Expenses (No Input Tax Credit allowed)	NIL
Purchase of Capital Goods (330000*10/110*2)	15,000
TOTAL INPUT CREDIT	40,000

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LESS: OUTPUT TAX	
Sale of Taxable Goods within the State (624000*4/104)	24,000

4. (a) Vaibhav Plastic Industries are selling a component for gross price of ₹ 80 per unit. The price includes packing charges of ₹ 2, loading charges within the factory of ₹ 1, Excise Duty @ 10%, Education cess as applicable and State VAT @ 5%. Calculate Excise Duty and VAT payable per unit. 3
- (b) State the goods which are specifically excluded from the scope of the “Inputs” for claim of Cenvat Credit. 2
- (c) Briefly explain the provisions relating to provisional assessment of Customs Duty. 4
- (d) What are the purposes for which Advance Authorisation can be issued? 4
- (e) In respect of stock/branch transfers, can input tax credit be claimed under VAT laws? 2

Answer:

4. (a) Assume that Assessable Value = 'Y'
 Deduction of packing cost and loading charges within the factory is not available.
- | | |
|--|---------------|
| Assessable Value | = Y |
| Excise duty @ 10.30% | = 0.103 * Y |
| Sub-total | = 1.103 * Y |
| Add: State VAT @ 5 % | = 0.05515 * Y |
| Total Price (i.e., inclusive of excise duty and sales tax) = 1.15815 * Y | |
- Now:
- | | |
|----------------------------|----------------------------|
| 1.15815 * Y | = Rs.80 |
| Hence 'Y' | = Rs.80/1.15815 |
| i.e., Y | = Rs.69.07568 or Rs. 69.08 |
| Excise Duty @ 10.3% of 'Y' | = Rs. 7.11 |
| Sub-total | = 76.19 |
| VAT @ 5% of Rs.76.19 | = Rs.3.81 |
| Total Sale Price | = Rs.80 |
- (b) LDO, HSD and Petrol, goods used for construction of a building, capital goods except when used as component parts, motor vehicles and goods for personal use or consumption of employee have been specifically excluded.
- (c) Provisional Assessment of Customs Duty
 Section 18 of the Customs Duty Act, 1962 deals with the same.
 (1) Notwithstanding anything contained in the Act, but without prejudice to the provisions contained in Section 46 –

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- (a) Where the proper officer is satisfied that an importer or exporter is unable to produce any document or furnish any information necessary for the assessment of duty on the imported goods or the export goods as the case may be; or
- (b) Where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test for the purpose of assessment of duty thereon; or
- (c) Where the importer or the exporter has produced all the necessary documents and furnished full information for the assessment of duty but the proper officer deems it necessary to make further enquiry for assessing the duty, the proper officer may direct that the duty leviable on such goods may, pending the production of such documents or furnishing of such information or completion of such test or enquiry, be assessed provisionally, if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty finally assessed and the duty provisionally assessed.
- (d) Advance Authorisation:
Advance Authorisation can be issued to a manufacturer exporter or merchant exporter tied to a supporting manufacturer for
- (1) Physical export
 - (2) Intermediate supplies
 - (3) Main contractor for supply of goods under deemed export (except for export under advance authorization and marine freight containers).
 - (4) Supply of stores on board of foreign going vessel / aircraft and
 - (5) Supply of UNO or under an aid programme of UN.
- (e) Stock/Branch Transfer Under VAT Law:
Stock/Branch Transfers i.e., transfer of stock from head office to the branch or vice-versa (viz. Inter-State transfers) do not involve sale. However, if –
- (i) Inputs are used in the manufacture of finished goods, which are stock/branch transferred; or
 - (ii) Goods purchased for resale are stock/branch transferred,
- Then, tax paid on such inputs/goods will be available as input tax credit subject to retention of 2% out of such tax by the State Governments.
5. (a) Explain Cenvat Credit Audit u/s 14AA of Central Excise Act. 5
- (b) What are the laws relating to central excise? 2
- (c) Compute taxable value and service tax from following sums received by M/s. DSS medical centre (exclusive of service tax) (ignore small service provider's exemption): 8
- (i) Testing (with transmission of medical samples between laboratories): ₹ 10 lakhs;
 - (ii) Medicine consumed as a part of health care service: ₹ 5 lakhs;
 - (iii) Preventive health care services: ₹ 4 lakhs;
 - (iv) Treatment along with facilities provided such as TV, AC, room rent, medal to patients (as a part of package): ₹ 33 lakhs;
 - (v) Genetic affinity examination for determining biological father: ₹ 4 lakhs;
 - (vi) Hair transplant services due to injury in a fire accident: ₹ 7 lakhs;
 - (vii) Cosmetic surgery of a film star: ₹ 16 lakhs;
 - (viii) Conduction medical examinations of individual: ₹ 1 lakh.

Answer:

5. (a) CENVAT Credit Audit (Section 14AA of Central Excise Act)
- (i) The authority for ordering the CENVAT Credit Audit is the Commissioner of Central

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Excise.

- (ii) Only a practicing Cost Accountant or Chartered Accountant can carry out the audit.
- (iii) The Cost Accountant or Chartered Accountant has to be nominated by the commissioner of Central Excise.
- (iv) The Cost Accountant or Chartered Accountant has to submit his audit report within the time specified by the Commissioner of Central Excise.
- (v) The expenses and fees for conducting the audit shall be paid by the Excise department to the Cost auditor.

Note: Finance Act 2009, amendment of Section 1 4A and 1 14AA, for the words "cost accountant", the words "cost accountant or chartered accountant" shall be substituted.

- (b) (i) Central excise Act, 1944 (CEA): The basic act which provides the constitutional power for charging of duty, valuation, power of officers, provisions of arrests, penalty, etc.
 - (ii) Central Excise tariff act, 1985 (CETA): This classifies the goods under 96 chapter with specific codes assigned.
 - (iii) Central excise rules, 2002: The procedural aspects are laid therein. The rules are implemented after issue of notification.
 - (iv) Central excise valuation (Determination of price of Excisable Goods) Rules, 2000: The provisions regarding the valuation of excisable goods are laid down in this rule.
 - (v) Cenvat credit rules, 2004: The provision relating to cenvat credit available and its utilization is mentioned.
- (c) (i) Testing (with transmission of medical samples between laboratories) – Exempt;
 - (ii) Medicine consumed as a part of health care service – such medicines are never sold – dominant nature is health care services, which is exempt – fully exempt;
 - (iii) Preventive health care services : ₹ 4 lakh – Exempt ('care' is also exempt);
 - (iv) Treatment along with facilities provided such as TV, AC, room rent, medal to patients (as a part of package): ₹ 33 lakh – Natural bundling in ordinary course of business – essential character is 'health care services', which is exempt – fully exempt;
 - (v) Genetic affinity examination for determining biological father : ₹ 4 lakh – not related to 'diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy' – not exempt – Taxable;
 - (vi) Hair transplant services due to injury in a fire accident: ₹ 7 lakh – Exempt, as it has been done to restore damage due to fire accident;
 - (vii) Cosmetic surgery of a film star: ₹ 16 lakh – not exempt – taxable;
 - (viii) Conduction medical examinations of individual: ₹ 1 lakh – Exempt;
- Taxable value = 4+16 = 20 lakh and service tax thereon @ 12.36 = ₹ 2,47,200.

- 6. (a) Explain the procedures related to removal of goods as such in the context of cenvat credit as such. 5
- (b) What are the contents of invoice under Service Tax? 3
- (c) Determine interest and penalty under Section 75 and 76 respectively in the following case:
Service Tax of ₹ 10 lakhs (E-payment mandatory) for Feb., 2014 was paid on 16.03.2014 (₹ 60 lakhs above turnover) 3
- (d) Explain compounded Levy Scheme. 4

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Answer:

6. (a) Rule 3(5) Removal Goods as such
When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacture of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to the rule 9 of the Cenvat Credit Rules, 2004.

Exceptions:

- (i) Cenvat Credit not required to be reversed if input goods or capital goods removed outside the premises of the provider of output service for providing the output service;
- (ii) Cenvat Credit shall not be required to be reversed where any inputs are removed outside the factory for providing free warranty for final products.

- (b) The invoice must be serially numbered and shall contain the following details, namely;
- (i) Name, Address and the registration number of such person;
 - (ii) Name and address of the person receiving taxable service;
 - (iii) Description of service provided or agreed to be provided;
 - (iv) Value of the taxable service provided or agreed to be provide and
 - (v) Service tax payable thereon.

(c)

- No. of days in delay = 10 days
- Interest @ 18%
- Interest = $10,00,000 \times 18\% \times 10 / 365 = ₹ 4,931$
- Penalty = ₹ 1000 or $10,00,000 \times 1 / 100 \times 10 \text{ days} / 31 \text{ days} = ₹ 3,226$, whichever is higher.
- Interest = ₹ 4,931, Penalty = ₹ 3,226.

- (d) Compounded Levy Scheme – Normal excise procedures and controls are not practicable when there are numerous small manufactures. Rule 15 of Central Excise Rules provides that central Government may, by notification, specify the goods in respect of which an assessee shall have option to pay duty of excise on the basis of specified factors relevant to production of such goods and at specified rates this scheme is presently applicable only to stainless steel pattas/pattis & aluminium circles. These articles are not eligible for SSI Exemption.

7. (a) How will the value be determined in the case of the excisable goods are sold at a place other than the place of removal? 5
 (b) When does taxable event take place in case of imported goods under Customs Law? 5
 (c) Virat & Co., is engaged in works contract and is registered VAT dealer. Proper records are maintained relating to the year ended 31.03.2014.

The Under mentioned details are made available to you.

Particulars	₹
Total Contract Price (without considering VAT)	160
Cost of consumables used not involving transfer of property in goods	12
Labour charges incurred for execution of works contract	38
Local goods inclusive of 5% VAT	63
Stock transfer from neighbouring State	21
Output VAT rate 12.5%	

Ascertain the net liability of the dealer.

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Answer:

7. (a) Determination of Value of excisable goods sold at a place different from its removal.

In case of all requirements of Section 4(1)(a) are satisfied except one, that is, if the excisable goods are sold for delivery at the place other than the place of removal, then the value shall be determined as per Rule 5 of the Central Excise Valuation Rules, 2000. Accordingly, in such circumstances the value of such Excisable goods shall be determined to the transaction value excluding the cost of transportation from the place of removal upto the place of delivery of such excisable goods.

The term cost of transportation includes –

- (i) Actual cost of transportation and
- (ii) In case where freight is average, the cost of transportation calculated in accordance with generally accepted principles of costing.

Thus, exclusion shall be available not only on account of actual cost of transportation but also on average freight or equalized freight from the place of removal to the place of delivery. Provided the same is computed as per the principles of costing. However, the cost of transportation is excludable from the transaction value irrespective of whether the same is separately shown in the invoice or not.

However the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded from the assessable value of the goods.

Thus, where the goods are sold from a depot, premises of consignment agent or any other place or premises from where the goods are sold after the clearance from the factory, the cost of transportation from the factory to the point of depot or any other place from where the goods are sold shall be included in the transaction value.

(b) Taxable event as per customs law

In the case of Kiran Spinning Mills (1999) the Hon'ble Supreme Court of India held that import is completed on when goods crosses the Customs barrier. The taxable event is the day of crossing of Customs barrier and not on the date when goods landed in India or had entered territorial waters of India.

Crossing Customs barrier:

When the goods are imported into India even after the goods are unloaded from the ship, and the event after the goods are assessed to the duty subsequent to the filing of a bill of entry, the goods cannot be regarded as having, crossed the Customs barrier until the duty is paid and the goods are brought out of the limits of the Customs station.

Hence, taxable event in case of imported goods can be summed up in the following lines:

The taxable event occur in the course of imports under the Customs Law with reference to the principles laid down by the Supreme Court in the case of Garden Silk Mills Limited Vs. Union of India and Kiran Spinning Mills Vs. CC

- Unloading of imported goods at the customs port – is not a taxable event
- Date of entry into the Indian Territorial Water – is not a taxable event
- Date on which the goods crosses the Customs barrier – is a taxable event
- Date of presentation of bill of entry – is not a taxable event.

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(c)

Determination of Vat Payable by Virat & Co.

Particulars	₹ in lakhs
Total Contract price (without considering VAT)	160
Less:	
Cost of consumables used not involving transfer of property in goods	12
Labour charges incurred for execution of the works contract	38
Taxable Turnover	110
Output VAT at 12.5%	13.75
Less: ITC on local goods purchased (63 x 5 / 105)	3.00
Net Vat liability of the dealer	10.75

Note: ITC is not available on stock transfer from other State.

8. (a) Ananda Textiles Limited wish to know whether there is any provisions under the Customs Act, 1962 for claiming refund of import duty paid where the imported goods are found to be defective or not in accordance with agreed specifications? Please advise them briefly. **3**
- (b) Mr. Thrivikram is providing taxable services in the arena of renting out commercial property. He has omitted to claim deduction of property tax paid in respect of some buildings, due to delay payment of property tax. How can he avail deduction of the property tax paid subsequently? Is there any time limit for the same? **4**
- (c) Name any four duty credit schemes which are being used as Export Promotional Measures. **4**
- (d) State any three circumstances in which VAT registration can be cancelled. **4**

Answer:

8. (a) Refund of Import Duty U/S 26A

A new Section 26A has been inserted by the Finance (No. 2) Act, 2009 to provide for refund of import duty paid at the time of clearance for home consumption on imported goods found to be defective or otherwise not in accordance with specification agreed upon between the importer and the supplier of goods. Refund under this provision would be available only if the importer either exports the goods or relinquishes title and abandons them to customs or if the goods are destroyed so that they become commercially valueless.

There are other conditions prescribed in the provision.

It has been clarified that these may be examined carefully and in case any operational difficulties are envisaged, the matter may be taken up with Director (Customs), CBEC.

Advice should be tendered on the above lines.

- (b) Availment of Property Tax deduction from service tax payable.

Where a person is engaged renting of immovable property service, the person liable to pay service tax is entitled to adjust any amount paid by him in excess of the amount required to be paid towards service tax liability for a month /quarter, on account of non-availment of deduction of property tax paid from the gross amount charged for such service for the said period at the time of payment of service tax.

The property tax so paid subsequently can be adjusted against the service tax payable for the month/quarter of adjustment.

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It should however be adjusted within one year from the date of payment of the property tax.

Intimation of adjustment should be given to the jurisdictional Superintendent of Central excise within 15 days from the date of such adjustment.

(c) Four promotional schemes

- Focus Product Scheme (FPS)
- Market Linked Focus Products Scrip (MLFPS)
- Focus Market Scheme (FMS)
- Served From India Scrip (SFIS), Vishesh Krishi and Gram Udyog Yojana (VKGUY)
- Agri. Infrastructure Incentive Scrip (AIS) and Status Holders Incentive Scrip (SHIS)

(d) Cancellation of Vat Registration

Circumstances under which the authority can cancel the VAT registration are as under:

- Discontinuance of the assessee's business.
- Disposal of the assessee's business
- Transfer of the business of the assessee to a new location falling within the jurisdiction of some other authority.
- Where the turnover of the assessee falls below the minimum prescribed limit.