

# Suggested Answer\_Syll2012\_Dec2014\_Paper\_11

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## INTERMEDIATE EXAMINATION

### GROUP II

(SYLLABUS 2012)

## SUGGESTED ANSWERS TO QUESTIONS

DECEMBER 2014

### Paper- 11: INDIRECT TAXATION

Time Allowed : 3 Hours

Full Marks : 100

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

All questions are compulsory. In question No. 1, all sub questions are compulsory. In question number 2 to 8, student may answer any two of the three sub-questions (a), (b) and (c).

1. Answer the following questions with suitable reasons: 1x20=20
- (a) Normally, if tax is levied by law of Parliament, it is administered by Central Government. However, there is one tax which is levied by law of Parliament, but administered by State Government. Which is that Tax?
  - (b) CESTAT (Tribunal) has passed an order on issue relating to classification of goods. An assessee is aggrieved with the order. Where he should file appeal?
  - (c) A manufacturer in India is exporting goods to Nepal. He is getting payment from the Nepalese customer in Indian Rupees. Value of goods is ₹ 1,00,000. The excise duty rate is 12%. Education cess is as applicable. How much excise duty is payable by the manufacturer?
  - (d) In which form and at what periodicity an SSI unit registered under Central Excise is required to file return in respect of manufacture and clearance of excisable goods and excise duty payable?
  - (e) A manufacturer utilized 1,000 Kg of inputs on which excise duty of ₹ 1,00,000 was paid to supplier of those goods. He manufactured 950 Kg of final product out of input goods used and balance 50 Kg. was process loss. How much Cenvat credit can be availed by the manufacturer?
  - (f) Is currency 'goods' for purpose of Customs Act?
  - (g) Shipping Bill was presented electronically on 26.02.2014, when foreign exchange rate was ₹ 59 = One US Dollar. Let Export Order was passed by Customs Officer on 3.3.2014, when exchange rate was ₹ 59.50 = One US dollar. The ship crossed territorial waters of India on 10.03.2014 when exchange rate was ₹ 59.75 = One US Dollar. Which exchange rate should be considered for valuation of export goods?
  - (h) Excise duty payable on an article is 12% as per Central Excise Tariff. However, as per an exemption notification, the excise duty payable is 6%. If such goods are imported, at what rate additional customs duty will be payable under section 3(1) of Customs Tariff Act?
  - (i) There is difference of opinion about interpretation of a provision in Foreign Trade Policy among following authorities:
    - (i) Principal Chief Commissioner of Customs
    - (ii) Director General of Foreign Trade
    - (iii) Revenue Secretary, Ministry of Finance

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- (iv) Chairman, Central Board of Excise and Customs (CBE&C). Whose interpretation will be held as final and binding?
- (j) Jeevan Exporters exported 1,000 Kg of metal of FOB value of ₹ two lakhs. the rate of duty draw back on such exports is ₹ 120 per Kg. Market price of the goods is ₹ 80,000. Calculate the duty draw back receivable by Jeevan Exports.
- (k) Kamal has entered into franchise agreement with a leading franchisor for providing service under the brand name of franchisor. The details of business of Kamal are as follows:
- (i) Started business on 1.5.2014
  - (ii) Reached value of service provided ₹ 5 lakhs on 1.7.2014
  - (iii) Reached value of service provided ₹ 9 lakhs on 1.8.2014
  - (iv) Reached value of service provided ₹ 10 lakhs on 1.9.2014. Advise Kamal when he should apply for registration under service tax.
- (l) ABC Co. Ltd. filed half yearly service tax return on 24<sup>th</sup> April 2014. Later, during internal audit, it was discovered that there was short payment of ₹ one lakh. The mistake came to notice on 2<sup>nd</sup> July 2014. Advise ABC Co. Ltd. about the course of action.
- (m) A service provider is required to pay service tax for month of March, 2014 before 31.03.2014. He is not able to correctly calculate service tax payable. Advise him course of action to be adopted to avoid interest liability.
- (n) An auditor has provided auditing services to a company. He has issued invoice and charged service tax. Can the company avail the Cenvat credit of service tax charged by the auditors?
- (o) Hotel Greenview is having a non-air conditioned restaurant serving food. The value of food provided in the restaurant during April 2014 to June 2014 was ₹ 60 lakhs. Calculate service tax payable by Hotel Greenview..
- (p) A manufactured goods within State of Odisha. The Vat paid on inputs was ₹ 1,30,000. The goods were sold in inter-state for ₹ 20 lakhs by charging Central Sales Tax 2%. How much Input Tax Credit can be availed by the manufacturer?
- (q) As per definition of Central Sales Tax Act, the 'turnover' is inclusive of Central Sales Tax or exclusive of Central Sales Tax?
- (r) What is the maximum rate at which State Vat can be imposed on 'declared goods'?
- (s) What is the maximum period allowable for Advance Pricing Agreement (APA) can be got approved from CBDT in International transactions?
- (t) If the difference between actual transaction value and the average of arms length price determined by most appropriate method is below specified limit, the actual transaction value is accepted for income tax purposes without any adjustment. What is the limit?

## Answer:

1. (a) Central Sales Tax Act is passed by Parliament but administered by State Government.
- (b) He should file appeal before Supreme Court.
- (c) No excise duty is payable if goods are exported to Nepal, even if payment is received in Indian rupees.
- (d) The SSI unit is required to file return in Form ER-3 on quarterly basis within 10 days of end of quarter.
- (e) He can utilize entire ₹ 1,00,000 as Cenvat credit.
- (f) Yes - Currency has been specifically included in definition of 'goods' under Section 2(22) of Customs Act.
- (g) The relevant exchange rate is ₹ 59 = One US Dollar, as per third proviso to section 14(1) of Customs Act.
- (h) The additional customs duty (CVD) will be payable @ 6%.
- (i) Interpretation of Director General of Foreign Trade (DGFT) will be final and binding.

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- (j) Duty drawback eligibility is ₹ 1,20,000 (1,000 Kg. x 120 per Kg). However, as per section 76(1)(b) of Customs Act, Duty drawback shall not be allowed in respect of any goods, the market price of which is less than the amount of drawback due thereon. Hence, the exporter is not entitled to get any duty drawback.
- (k) Exemption is not available when service is provided under brand name of other person. Hence, application for registration is to be made within 30 days i.e., before 31.05.2014.
- (l) ABC Co. Ltd. should pay amount of service tax with interest and file revised return as revised return can be filed within 90 days from the date of submission of the return under rule 7 of the Service Tax Rules, 1994.
- (m) The service provider can estimate his probable liability and pay the estimated liability with some additional amount before 31.03.2014. Whatever amount has been paid in excess can be adjusted in subsequent months or quarters as per rule 6(4A) of Service Tax Rules.
- (n) Auditing service have been specifically included in the definition of input service and hence company can avail the Cenvat Credit.
- (o) There is no service tax if the restaurant is not air conditioned.
- (p) Entire input tax credit of ₹ 1,30,000 is available.
- (q) 'Turnover' is exclusive of Central Sales Tax.
- (r) The maximum Rate for State Vat on declared goods is 5%.
- (s) Maximum period permissible for APA is five years.
- (t) If the difference between the price of actual transaction and average of the arm's length price determined is within the range of three percent (plus or minus), the transaction price shall be accepted without any adjustment [The limit was five per cent (plus or minus) up to 1-4-2013].

- 2. Answer any two of the following; 2x2=4**
- (a) State any two transactions which are both 'deemed sale of goods' for purpose of levy of State Vat and 'declared service' for levy of service tax. 2**
  - (b) Can State Government impose sales tax on sale of newspapers? Answer with relevant provision in Constitution of India. 2**
  - (c) What is 'taxable event' for purpose of levy of Central Excise Duty? 2**

**Answer:**

2. (a) (i) Works Contract  
(ii) Hire purchase and financial leasing  
(iii) Supply and service of food or any other article of human consumption or any drink (whether or not intoxicating).
- (b) Entry 54 of List II of Seventh Schedule to Constitution of India reads as follows – 'Tax on sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I.  
Thus, Constitution of India prohibits levy of sales tax on sale of newspapers by State Government.
- (c) The 'taxable event' for the purpose of levy of Central Excise Duty is the manufacture or production in India of an excisable goods and the goods should be movable and marketable but it excludes goods which are manufactured or produced in SEZ of India. Manufacture or production of excisable goods in India is the taxable event for levy of Central Excise Duty, as per entry 84 of List I of Seventh Schedule to constitution of India.

- 3. Answer any two of the following; 8x2=16**
- (a) (i) A manufacturer had sent his inputs for job work under rule 4(5)(a) of Cenvat Credit Rules. What is the time limit within which the goods should be returned to factory after job work? Explain the consequences if goods are not returned with the specified**

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- period. 3
- (ii) A manufacturer sold the goods on 6<sup>th</sup> July 2014 for ₹ One lakh, on which he charged excise duty @ 12.36%. Later, after negotiations, the customer agreed to give price rise of 5%. The manufacturer raised supplementary invoice on 25<sup>th</sup> October, 2014 charging differential price. How much excise duty and interest is payable by the manufacturer? Assume that assessee paid excise duty electronically in both the cases on due dates. 3
- (iii) An assessee received a show cause notice. The demand of excise duty was confirmed against him by Commissioner (Appeals). He feels that his case is not very strong and hence he is in two minds whether to approach Settlement Commission or file appeals before CESTAT. Advise him. 2
- (b) (i) A manufacturer produced 2,500 pieces of excisable goods during October 2014. All the pieces were in packed condition. The MRP as printed on package is ₹ 400 (inclusive of all taxes and duties). The product is covered under MRP valuation provisions under section 4A of the Central Excise Act and abatement available under the relevant notification is 40% on MRP. The excise duty rate is 12% plus education cess as applicable. The Sale of manufacturer was as follows:
- (a) 500 pieces to wholesalers at ₹ 200 per piece in the same package (excluding taxes and duties);
- (b) 1,000 pieces to semi-wholesalers at ₹ 220 per piece in the same package (excluding taxes and duties);
- (c) 600 pieces at ₹ 360 in retail sale (inclusive of all taxes and duties) in the same package;
- (d) 50 pieces were distributed as free samples. Balance 350 pieces were in stock at the month end. How much excise duty is payable for the month of October, 2014? 4
- (ii) State briefly treatment of each 5 of the following items below in arising at cost of production as per CAS-4, for valuation under rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.
- (a) Central Excise duty on direct material charged by the supplier-manufacturer of the raw materials;
- (b) Research and Development Costs;
- (c) Administrative costs relating to office management;
- (d) Sale of scrap and value realized from sale of such scrap;
- (e) Cost incurred on major break down of machinery;
- (f) Interest and finance charges. 4
- (c) (i) An EOU unit is selling goods to Indian customer. He is using wholly indigenous raw materials for manufacturing those goods. He is selling the goods at ₹ 200 per piece. Customs duty rate is 10% and excise duty rate is 12%. Education cess is as applicable. How much duty is payable by the EOU unit? 3
- (ii) Excise duty is normally payable by manufacturer, but there are some exceptions. State the exceptions. 3
- (iii) Explain admissibility of remission of excise duty in following cases:
- (a) Finished Goods stored in store room were found to be stolen;
- (b) Finished Goods were cleared from factory by preparing excise invoice and during transit to place of customer, the goods were damaged due to road accident. 2

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Answer:

3. (a) (i) The inputs must be returned to factory after job work, within 180 days. If the inputs are not so returned, the manufacturer is required to reverse the Cenvat credit on those inputs. Later, when the inputs are returned after job work, he can take back the Cenvat credit which he had reversed.
- (ii) The excise duty payable on ₹ 5,000 @ 12.36% is ₹ 618. As per section 11AA of Central Excise Act, interest is payable @ 18% from due date on which the duty became due till actual payment of excised duty. The amount was due on 6-8-2014 but he paid the duty on 6-11-2014. Thus, he is liable to pay interest for three months i.e., ₹ 27.81  $(618 \times 18 \times 3)/(100 \times 12)$
- (iii) An assessee can approach Settlement Commission only when case is pending before original adjudicating authority. In this case, after issue of order, no case is pending. Hence, assessee cannot approach Settlement Commission. Thus, he has no option but to file appeal before Tribunal.
- (b) (i) Since the product is covered under MRP valuation, excise duty is payable on MRP valuation basis on all the packages, as MRP valuation provisions are overriding provisions. Thus, value for purpose of excise duty is 240 per piece. Excise duty payable per piece @ 12.36% is ₹ 29.664. Hence, excise duty payable on 2,150 pieces is ₹ 63,777.60. On 350 pieces in stock, no excise duty is payable as duty will be payable only when goods are cleared from the factory.
- (ii) (1) Not includible  
(2) Includible  
(3) Not includible  
(4) To be deducted from the cost  
(5) Not includible as it is abnormal cost  
(6) Not includible
- (c) (i) Normal excise duty is payable if goods are manufactured wholly with indigenous raw materials. Hence, excise duty payable @ 12.36% is ₹ 24.72 per piece.
- (ii) There are only three exceptions to basic provision that duty liability is of manufacturer-
- (a) In case of goods stored in ware house under rule 20, duty liability is of person who stores the goods.  
(b) The procurer is liable in case of molasses produced in khandsari sugar factory  
(c) In case of job work under Notification No. 214/86-CE, the raw material supplier undertakes liability of duty.
- (iii) (a) Remission not eligible as good must have been used somewhere else;  
(b) Once goods are cleared from factory, there is no provision to obtain remission of excise duty.
4. Answer any two of the following: 6x2=12
- (a) (i) An importer submitted Bill of Entry electronically on 22.08.2014. Bill of Entry was returned from customs on 29.08.2014 for payment of customs duty of ₹ 1,00,000. Customs office was closed on 30.08.2014 and 1.9.2014 due to Saturday and Sunday. The importer paid customs duty on 10.09.2014. He cleared the goods from customs on 13.09.2014 after obtaining 'Out of customs charge' order from customs authorities. How much interest is payable by the importer? 4
- (ii) State the various purposes for which goods warehoused in customs warehouse. 2
- (b) (i) State definition of 'margin of dumping'. 2
- (ii) Compute the Assessable Value of a machine imported from USA by PQR Pvt. Ltd.,

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under Customs Act, 1962 –

- (a) FOB Value of Machine – 15,000 US dollars;
- (b) Air freight paid – 4,000 US dollars;
- (c) Insurance for transit of machine – not ascertainable;
- (d) Cost of design work of the machine done in India – ₹ 45,000;
- (e) Indian Local Agent's Commission- ₹ 15,000;
- (f) Cost of transport of goods from port of factory in India – ₹ 5,000. Exchange rate is one US dollar = ₹ 60. 4

- (c) (i) State any five circumstances under which export goods are liable to confiscation under section 113 of Customs Act, 1962. 3
- (ii) A trader has imported goods. After imports, he approached a customer who was manufacturer in India for sale of 60% of imported goods. The price quoted by trader was agreeable to the Indian manufacturer. However, the manufacturer in India stated that he will purchase the imported goods from the trader only if he (i.e., Indian manufacturer) can avail Cenvat credit of import duties paid by the trader. Advise the trader whether and how this can be done and which duties are eligible for Cenvat credit by the Indian manufacturer? 3

**Answer:**

4. (a) (i) The importer is required to pay customs duty within two working days after Bill of entry is returned to him. Thus he has required to pay customs duty before 02.09.2014. Since he paid customs duty on 01.09.2014, he is required to pay interest @15% for eight days. Hence interest payable =  $(₹ 1,00,000 \times 8 \times 15) / (365 \times 100) = ₹ 328.77$
- (ii) Section 71 of Customs Act allows clearance of goods from customs warehouse for following purposes – (a) home consumption, (b) re-exportation or (c) removal to another warehouse.
- (b) (i) 'Margin of dumping' means the difference between normal value and export price (i.e., the price at which these goods are exported). [section 9A(1)(a) of Customs Tariff Act].
- (ii)

FOB Value of Machine	15,000 US Dollars
Add Insurance @ 1.125% of FOB value	169 US Dollars
Air freight (restricted to 20% of FOB value)	3,000 US Dollars
Total value	18,169 US Dollars
Value in Indian Rupees	₹ 10,90,140
Add - Local Agent's Commission	₹ 15,000
CIF Value in Rupees	₹ 11,05,140
Add Landing charges @ 1%	₹ 11,051
Assessable value for customs purposes	₹ 11,16,191

- (c) (i) As per section 113 of Customs Act, following export goods are liable to confiscation. These are 'goods attempted to be improperly exported':
- Goods attempted to be exported by sea or air from place other than customs port or customs airport appointed for the loading of such goods. [section 113(a)].
  - Goods attempted to be exported by land or inland water through unspecified route [section 113(b)].
  - Goods brought near land frontier or coast of India or near any bay, gulf, creek or tidal river for exporting from place other than customs port or customs station



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appointed for the loading of such goods. [section 113(c)].

- Goods attempted to be exported to prohibition under Customs Act or any other law [like FEMA etc.] [section 113(d)]
- Good concealed in any conveyance brought within limits of customs area for exportation [section 113(e)].
- Goods loaded or attempted to be loaded for eventual export out of India, without permission of proper officer, in contravention of section 33 and 34. [section 113(f)].
- Goods stored at un-approved place or loaded without supervision of Customs Officer. [section 113(g)].
- Goods not mentioned or found excess of those mentioned in Shipping Bill or declaration in respect of baggage [section 113(h)].
- Any goods entered for exportation not corresponding in respect of value or any other particular in Shipping Bill or declaration of contents of Baggage [section 113 (h) (i)].
- Goods entered for export under claim for duty drawback which do not correspond in any material particulars with any information provided for fixation of duty drawback [section 113 (h) (ii)].
- Goods imported without duty but being re-exported under claim for duty drawback [section 113(j)].
- Goods cleared for exportation which are not loaded on account of willful act, negligence or default, or goods unloaded after loading for exportation, without permission of proper officer. [section 113(k)].
- Provisions in respect of 'Specified Goods' are contravened. [section 113(l)].

If brief, attempting to export goods in violation of law, mis-declaring goods, export under false claim of duty drawback or violating rules regarding movement, storage or loading of export goods will make them liable for confiscation under section 113. This is all covered in the definition of 'smuggling'.

- (ii) The trader is required to register with Central Excise as importer. Then he can issue Invoice giving details of CVD and Special CVD paid on imported goods on proportionate basis. The Indian manufacturer can avail Cenvat credit on basis of this invoice.

5. **Answer any two of the following:** **4x2=8**
- (a) (i) **A regular exporter of goods intends to apply for Advance Authorization for annual requirements. What is the maximum value for which he is entitled to get Annual Advance Authorisation?** **2**
- (ii) **When an exporter can apply for Special Brand Rate of duty drawback?** **2**
- (b) **Explain salient features of Served from India scheme.** **4**
- (c) **Enumerate various supplies which are eligible as 'deemed exports' for purpose of certain benefits.** **4**

**Answer:**

5. (a) (i) Annual Advance Authorisation will be granted upto 300% of FOB value of physical exports in preceding financial year and / or FOB value of deemed exports in preceding year or ₹ one crore whichever is higher.
- (ii) The conditions of eligibility are:
- (a) The All Industry Rate fixed should be less than 80% of the duties paid by him;
  - (b) Rate should not be less than 1% of FOB value of product except when amount of drawback per shipment is more than ₹ 500.
  - (c) Export value is not less than the value of imported material used in them – i.e.,

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there should not be 'negative value addition'.

(b) Object of the Served from India scheme is to accelerate growth in export of services.

All service providers including healthcare and educational service providers as well as EPO (Engineering Process Outsourcing) and KPO(Knowledge Process Outsourcing) service providers are eligible.

Indian Service providers who have foreign exchange earnings of at least ₹ 10 lakhs are eligible for duty credit scheme. For individual service provider, minimum free foreign exchange earning would be ₹ 5 lakhs. Only services listed in Appendix 41 of HBP Vol. 1 are eligible.

Duty credit will be 10% of net free foreign exchange earned during the current financial year.

Duty credit entitlement can be used for import of capital goods, spares, furniture, office equipment, professional equipment, office furniture and consumables that are otherwise freely importable and restricted items under ITC (HS) classification. In case of hotels, clubs with residential facility of minimum 30 rooms, and stand-alone restaurants, duty credit entitlement can be utilized for import of food items and alcoholic beverages.

The goods imported are not transferrable, except within group company and managed hotels.

(c) Specified categories of supplies made by a Contractor/Sub-Contractor shall be regarded as 'Deemed Exports' provided the goods are manufactured in India -

(ii) Supply of goods against Advance Authorization/Advance Authorization for Annual Requirement /DFRC/DFIA under Duty Exemption/ Remission Scheme,

(iii) Supply of goods to Export Oriented Units (EOUs) or units located in or Software Technology Parks (STPs) or to Electronic Hardware Technology Parks (EHTPs) or Bio Technology Parks (BTP),

(iv) Supply of Capital Goods to holders of licences under the Export Promotion Capital Goods (EPCG) Scheme,

(v) Supply of goods to projects financed by multi-lateral or bilateral agencies/funds as notified by the Department of Economic Affairs, Ministry of Finance under international competitive bidding in accordance with the procedures of those agencies/funds, where the legal agreements provide for tender evaluation without including the customs duty. [List of agencies/Funds has been notified for this purpose in the Hand Book of Procedures. Further, supply and installation of goods (single responsibility turnkey projects) to projects financed by multilateral or bilateral agencies/funds as notified by DEA, MOF under ICB, in accordance with the procedures of these agencies/funds, where bids may have been invited and evaluated on the basis of delivered duty paid prices for goods manufactured abroad.]

(vi) Supply of goods to any project or purpose in respect of which the Ministry of Finance, by a Notification, permits the import of such goods at zero customs duty,

(vii) Supply of Marine Freight Containers by 100% EOU (Domestic Freight Containers-Manufacturers) provided the said containers are exported out of India within 6 months or such period as permitted by the Customs Authorities,

(viii) Supply to projects funded by UN Agencies,

(ix) Supply of goods to nuclear projects through competitive bidding as opposed to international competitive bidding.



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6. Answer any two of the following:

10x2=20

- (a) (i) ABC Co. Ltd. provided various services during 2014-15. Out of the services provided, services of ₹ 30,00,000 were subject to service tax @ 12.36% and services of ₹ 15,00,000 were exempt. Services of ₹ 5,00,000 were eligible as export of service. If the service was provided in India, service tax rate was 12.36%. The company had received input services on which service tax charged by service providers was ₹ 1,00,000. The company utilized the Cenvat credit of service tax paid on these input services. The input services are common to both taxable and exempt services. ABC Co. Ltd. had not intimated any option to department under rule 6 of Cenvat Credit Rules. Calculate the total amount payable by ABC Co. Ltd. to Government. Which option was available to ABC Co. Ltd. to reduce the amount payable? 5
- (ii) Deepak Global Tours organize tours all over the world. They arrange a tour to Singapore. Mr. Jairam, from Mumbai participated in the tour. Mr. Jairam is of the view that no service tax is chargeable by the Tour Operator as the tour is outside India. Is the contention of Mr. Jairam correct? State with reasons. 3
- (i) A recognized educational institution is providing bus services to its students for which separate charges are recovered. Is the school liable to pay service tax? State with reasons. 2
- (b) (i) Distinguish between 'negative list of service' and 'exempted service'. 3
- (ii) Name any two services where the service provider will be considered as 'intermediary' for purpose of Rule 9(c) of Place of Provision of Service Rules. 2
- (iii) Mrs. Paramita has provided interior decoration service including material to design jewellery shop owned by Bob Jewellers P Ltd. The breakup of value of material and value of services is not available. M/s. Bob Jewelers paid ₹ 11,00,000 to Mrs. Paramita for the work. In addition, in appreciation of good work done by Mrs. Paramita, Bob Jewellers P Ltd. presented a necklace to Mrs. Paramita values at ₹ 1,00,000. Calculate service tax payable by Mrs. Paramita. She is not eligible for exemption available to a small service provider. Service tax is to be charged extra. 5
- (c) (i) A service was provided by Deepa Traders, a partnership firm, on 15.06.2014 when service tax rate was 10%. Invoice was raised on 10.07.2014 when service tax rate was 12%. Payment for the invoice was received on 15.10.2014 when service tax rate was 11%. State the rate at which the service provider would be liable to pay service tax, if the value of services provided by him in previous financial year was ₹ 45 lakhs. What would be due date for payment of service tax? 3
- (ii) A whole-time director of a company is receiving salary of ₹ twenty two lakhs from a private limited company. Is service tax payable? If payable, who is liable to pay service tax? 2
- (iii) State the provisions regarding payment of service tax by service receiver in case of service of security agency. 3
- (iv) A service provider has provided service on 10.4.2014 and issued invoice on 5.5.2014. The service receiver made payment to service provider on 20.03.2015. State how and when the service receiver can avail Cenvat credit. 2

**Answer:**

6. (a) (i) Since assessee has not intimated his option under rule 6 of Cenvat Credit Rules, he is required to pay an amount equal to 6% of value of exempted services. Thus, ABC Co., Ltd. is required to pay an 'amount' of ₹ 90,000 [6% of ₹ 15,00,000], as per Rule 6(3)(i) of Cenvat Credit Rules.  
If ABC Co. Ltd. had exercised its option to pay 'amount' on proportionate basis as per

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Rule 6(3)(ii) of Cenvat Credit Rules and intimated the same to department, ABC Co. Ltd. was required to pay an amount in the ratio of (15,000/50,000) i.e., 30% of ₹ 1,00,000 i.e., only ₹ 30,000.

Note that if service is exported, any payment of 'amount' or proportionate reversal is not required.

- (ii) Since location of both service provider and service receiver is 'Taxable Territory' (i.e., India), place of provision of service is taxable territory (i.e., India) as per rule 8 of Place of Provisions of Service Rules. Hence, service tax will be payable even if service is actually performed outside India.
  - (iii) The service is a naturally bundled service of education. Hence, it is not taxable even if separate charge is made.
- (b) (i) Negative List of services are specified in section 66D of Finance Act, 1994. Service tax is not payable in these services. Exempted services are specified in Notification No. 25/2012- ST date 20-6-2012, effective from 1-7-2012.

Distinction between negative list and exempt service is that services in negative list are not taxable at all as they have been excluded from the charging section 66B of Finance Act, 1994 itself, while exempted services are taxable but are exempted by Central Government by issue of a notification issued under powers delegated vide section 93(1) of Finance Act, 1994.

Change in negative list will require Parliamentary approval, while change in list of exempted services can be effected by Central Government by simply issuing a notification in gazette.

- (ii) Service of travel agent, recovery agent, commission agent (an agent for buying selling of goods is excluded) arranging services of Principal will be 'intermediary' for the purpose of rule 9(c) of Place of Provision of Service Rules.
  - (iii) Service tax is payable on 60% of ₹ 12,00,000 i.e., on ₹ 7,20,000 @ 12.36%. Thus, service tax payable is ₹ 88,992. Since service provider is individual and service receiver is company, the service provider is liable to pay 50% of service tax. Thus, Mrs. Paramita is required to pay service tax of ₹ 44,496 and balance ₹ 44,496 is payable by Bob Jewellers Pvt. Ltd. under reverse charge.
- (c) (i) The service tax is payable @ 10%, since as per section 67A of Finance Act, 1994, the date on which service is provided is relevant to determine rate of service tax. The due date of payment is 6-1-2015, as electronic payment is mandatory.
- (ii) When there is employer employee relation, the transaction is outside the definition of 'service' itself, as per section 65B(44) of Finance Act, 1994. Hence, no service tax is payable. Since, no service tax is payable, there is no reverse charge.
  - (iii) In case of security service, if the service provider is Individual, HUF, proprietary or partnership firm, AOP located in taxable territory and service receiver is Business entity registered as body corporate located in the taxable territory, 25% of the service tax is payable by service provider and balance 75% service tax is payable by the service receiver – Sr. No. 8 of Notification No. 30/2012 – ST dated 20-6-2012 inserted w.e.f. 7-8-2012.  
If security service is provided by CISF or Police, 100% service tax is payable by service receiver.
  - (iv) The service receiver can avail Cenvat credit on 5-5-2014 on receipt of invoice. However, if payment is not made within three months i.e., before 5-8-2014, he is required to pay 'amount' equal to Cenvat credit. Later, when he makes payment to service provider on 20-3-2015, he can again taken back Cenvat credit of the amount he had reversed on 5-8-2014.

# Suggested Answer\_Syll2012\_Dec2014\_Paper\_11

7. Answer any two of the following: 6x2=12
- (a) (i) State various purposes for which goods can be purchased at concessional rate under Central Sales Tax Act, by issuing C form. 2
- (ii) Compute Vat payable on works contract when the dealer does not intend to pay Vat under any composition scheme – Contract Price (excluding Vat) – ₹ 1,00,000. Input materials used in contract including Vat @ 14.5% - ₹ 11,450, Cost of labour in execution of the works contract – ₹ 25,000. Cost of other services in the execution of works contract – ₹ 10,000, Consumables used in the works contract – ₹ 5,000, Plant and machinery purchased including Vat @ 4% - ₹ 26,000, Vat rate on output – 14.5%. Assume that 100% input tax credit on capital goods is available. 4
- (b) (i) A sold goods to B in inter-state sales. A is registered under Central Sales Tax Act but B is not registered. What will be the rate of central sales tax if
- (a) State Vat rate for Goods sold within the State is 1%. 2
- (b) State Vat rate for Goods sold within the State is 15%. 2
- (ii) Mr. X, a dealer located in the State of Maharashtra, dealing in machinery used is rolling mills furnishes following information for the financial year 2013-14.
- (a) Total inter-state Sales during in the financial year (CST not shown separately) – ₹ 2,29,50,000
- (b) Trade Commission for which credit notes have been issued separately – ₹ 5,78,125
- (c) Freight and Transportation charges charged separately in invoice – ₹ 4,00,000
- (d) Freight charges included in value but not shown separately – ₹ 2,00,000
- (e) Insurance for transport of machinery upto destination – ₹ 75,000
- (f) Installation and commissioning charges levied separately in invoice – ₹ 1,00,000
- (g) The buyers have issued C form in respect of machinery bought by them from Mr. X. Compute the tax liability under CST Act 4
- (c) (i) Distinguish between 'zero rated sale' and 'exempted sale'. 3
- (ii) A is selling goods to B in inter-state sales. Later, B is exporting the goods. State conditions subject to which the sale made by A to B is exempt from Central Sales Tax. 3

## Answer:

7. (a) (i) As per section 8(3) of CST Act, goods (i) intended for resale, (ii) for use in manufacture or processing for sale (iii) for use in telecommunications network (iv) for use in mining (v) for use in power generation/distribution, or (vi) containers and packing materials are only eligible for concessional rate of CST.
- (ii) Vat can be paid after deducting value of services and consumables. Thus, deduction of ₹ 40,000 is available [₹ 25,000 + 10,000 + 5,000]. Hence, Vat is payable on ₹ 60,000 @ 14.5%. Thus, Vat payable on the contract is ₹ 8,700.
- Input tax credit available – (a) On input material – ₹ 1,450 [(11,450 x 14.5)/114.5] (b) On plant and machinery – ₹ 1,000 [(26,000 x 4)/104]. Thus, total Vat credit available = ₹ 2,450.
- Hence, net Vat payable by cash = 8,700 – 2,450 = ₹ 6,250.
- (b) (i) (a) 1%.  
(b) 15%.

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(ii)

Gross Sales Turnover (including CST)		₹ 2,29,50,000
Less:		
(i) Trade Commission	₹ 5,78,125	
(ii) Freight charged separately	₹ 4,00,000	
(iii) Installation and Commissioning	₹ 1,00,000	₹ 10,78,125
Aggregate Sale Price for CST		₹ 2,18,71,875
Less: CST payable - $(2,18,71,875 \times 2)/102$		₹ 4,28,860
Turnover for year 2013-14		₹ 2,14,43,015

- (c) (i) Certain sales are 'zero rated' i.e., tax is not payable on final product in certain specified circumstances. In such cases, credit will be available on the inputs i.e., credit will not have to be reversed. Distinction between 'zero rated sale' and 'exempt sale' is that in case of 'zero rated sale', credit is available on tax paid on inputs, while in case of exempt goods, credit of tax paid on inputs is not available.

Exports are zero rated. Inter-state sales will be zero rated when CST is brought down from present 2% to Nil or when GST is introduced.

- (ii) Export is often effected through specialized agencies like Export Houses etc., termed as 'Merchant Exporters' under Foreign Trade Policy. Such indirect exports also need exemption from taxes to make the products competitive. Hence, such penultimate sale, i.e., sale preceding the sale occasioning export is also deemed to be in the course of export under section 5(3) of CST Act and is exempt from tax.

Exemption to penultimate sale is subject to the condition that the penultimate sale (i.e., last but one sale) is

- (a) For purpose of complying with agreement or order in relation to export, and
- (b) Such sale is made after the agreement or order in relation to export, and
- (c) Same goods which are sold in penultimate sale should be exported, though may not be in same form

The buyer i.e., B is required to issue H form to A under CST Act.

**8. Answer any two of the following: 4x2=8**

- (a) (i) **An Indian company had placed purchase order for import of cement machinery from Germany. The contract envisaged that two engineers from Germany will be deputed to India for erection, commissioning and commissioning of the equipment in India. The German company will charge separately for such services. Advise whether the amount paid to foreign company will be considered as 'fees for technical services'.**

- (ii) **Flip Laboratories Ltd. is 100% subsidiary of a US Company. The parent company sales its products to unrelated buyers at US dollars 150 per unit. Compute the Arms Length Price (ALP) in following two situations –**

- (a) **The product is sold to Indian subsidiary at 120 USD per piece;**
- (b) **The product is sold to Indian subsidiary at 180 USD per unit. 2+2=4**

- (b) **India has entered into Double Taxation Avoidance Agreement (DTA) with. In case of a particular transaction, income tax is found to be payable as per provisions of Income Tax Act but that transaction is exempt under Double Taxation Avoidance Agreement (DTAA) with USA. The Income Tax Officer (ITO) is of the view that since income Tax Act is passed by Parliament, it overrides provisions of DTA, as DTA is not approved by Parliament. State whether the view taken by ITO is correct. You may take support of case law decided on this issue. 4**

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- (c) What is the significance of 'safe harbor rule' while considering arm's length price? Explain with one illustration. 4

**Answer:**

8. (a) (i) This transaction is directly linked with the installation of machinery supplied by the same manufacturer from outside India. It is not a separate transaction. Hence, this will not be considered as 'fees for technical services'.
- (ii) (a) The price is accepted as with the price, profit of Indian subsidiary will be higher  
(b) In this case, the price taken for computing income of Indian subsidiary is US dollars 150 per unit, as accepting price of 180 US dollars means the profit of Indian subsidiary will be lower.
- (b) DTAA are signed under sovereign powers of Government conferred under Entry 14 Schedule seven List I of Union List. Hence, DTAA have overriding powers. Provisions of DTAA prevail over provisions of Income Tax Act – CBDT circular No. 333 dated 2-4-1982. This view has been confirmed in UOI v. Azadi Bachao Andolan (2003) 132 Taxman 373 (SC).
- (c) Determination of Transfer price requires many details. Transfer Pricing Audit is required and issue of determination of transfer price usually leads to disputes between income tax department and assessee, which leads to litigation. To reduce such disputes, provision of 'safe harbour' has been made in section 92CB of Income Tax Act. 'Safe Harbour' means circumstances in which Income Tax Authorities shall accept transfer price declared by assessee without requiring him to submit all data for determination of transfer price. Rules relating to 'Safe Harbour' were inserted w.e.f. 18-9-2013 in Income Tax Rules. For example, in case of international transactions of software development exceeding ₹ 500 crores in a financial year, if the operating margin as declared by assessee is 22% or more, the transfer price as declared by assessee will be accepted.