

**FINAL EXAMINATION  
GROUP - IV  
(SYLLABUS 2016)**

**SUGGESTED ANSWERS TO QUESTIONS**

**DECEMBER - 2017**

**Paper-18 : INDIRECT TAX LAWS AND PRACTICE**

**Time Allowed : 3 Hours**

**Full Marks : 100**

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

*All the questions are compulsory in Question No. 1 and 8,  
All the sub questions are compulsory.*

*In Question Nos. 2 to 7, students may answer any four questions.  
In Question Nos. 9 to 10, students may answer any one questions.*

*Wherever necessary, you may make suitable assumptions and  
State them clearly in your answer*

*Working Notes should form part of the answer*

**Section – A**

*[All sub-divisions in this Section to be answered.]*

1. Give brief reason or justification for the following: **2×8=16**
- (a) Is recovery of tax from the buyer is an essential condition for levy of indirect taxes?
  - (b) In case of certain jewellery, are certain persons required to pay excise duty, say in the month of March, 2016, regarded as “Manufacturer” or producer for the purpose of central excise levy?
  - (c) Can a gold jewellery manufacturer with turnover of ₹ 11.2 crores during the year ended 31.03.2016, claim Cenvat credit at 100% on capital goods during the FY 2016-17?
  - (d) Is a manufacturer desirous of claiming Cenvat credit in November, 2016, required to attach photocopies of the railway receipts with STTG for getting such credit?
  - (e) A product manufactured is sold to outsiders at ₹ 70,000 per unit; few units are also captively used by the manufacturer himself, in the next process for manufacturing final product. The cost of production is ₹ 60,000 per unit. What is the assessable value, the value adopted for the captively used product?
  - (f) Are manufacturers required to submit Form ER-1 under Central Excise Law on quarterly basis?
  - (g) Can the SSI units make the central excise duty payment on quarterly basis?

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- (h) Anil, who started new business in August, 2016, wants to import certain articles and as first stage dealer, wants to pass on Cenvat credit also. Is he required to take two registrations?

### Answer 1.

- (a) No. This is not true.

In certain situations like reverse charge in service tax, tax can be levied from the seller or service provider also.

- (b) This is a true statement.

The definition of manufacturer or producer under clause (naq) of rule 2 has been amended [vide *Notification No. 36/2016 CE (NT) dated 26.07.2016*]. As per the amended definition, "manufacturer or producer in relation to articles of jewellery or parts of articles of jewellery or both, falling under heading 7113 of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under sub-rule (1) of rule 9 of the Articles of Jewellery (Collection of Duty) Rules, 2016

- (c) Yes.

With effect from 01.03.2016, explanation to rule 4(2)(a) had been amended to provide that a manufacturer of articles of jewellery [excluding silver jewellery, other than studded with diamonds/ ruby/ emerald/ sapphire] will be allowed to take 100% CENVAT credit on capital goods in the year of purchase, if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year, did not exceed ₹ 12 crore.

- (d) No.

It is not required. *Notification No. 45/2016 CE (NT) dated 20.09.2016* has amended rule 9(1)(fa) to do away with the requirement of enclosing photocopies of the railway receipts with Service Tax Certificate for Transportation of Goods by Rail (STTG), as a document for availing CENVAT credit. As per the amended rule 9(1)(fa), Service Tax Certificate for Transportation of Goods by Rail issued by the Indian Railways will be an eligible document for availing CENVAT credit.

- (e) It has to be valued at 110% of the cost of production. Since the cost of production is ₹ 60,000, the assessable value will be ₹ 66,000.

- (f) No.

The manufacturers are required to submit the ER-1 Form on a monthly basis to the excise department.

- (g) Yes,

SSI units are allowed to make the excise duty payments on a quarterly basis, whilst the Non-SSI units are required to pay on monthly basis.

- (h) Where the importer wants to act as first stage dealer and pass on Cenvat credit, it is not essential that he should take two registrations. Single registration is sufficient [Vide *Notification No. 30/2016 CE (NT) dated 28.06.2016*]

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### Section-B

[Answer any four questions out of six questions given.

Each question carries 16 Marks.]

2. (a) Vaibhav Cookwares, a partnership firm, is a leading manufacturer of mixes. Legal Metrology Act, 2009 requires declaration of Retail Sale Price (RSP) on the package of pressure cookers and pressure cookers are also notified under section 4A of Central Excise Act, 1944 Retail Sale Price (RSP) based valuation with notified date of abatement of 20%.

From the following information furnished by the assessee, compute the excise duty payable on 70 pieces cleared during April, 2016 using assuming the rate of excise duty as 12.5%:

No. of pieces	Particulars
20	RSP printed on the package of mixes are ₹ 5,000 and ₹ 4,500.
40	RSP printed on the package of 30 pieces sold in Chennai is ₹ 4,000 per piece.
	RSP printed on the package of 10 pieces sold in Pondicherry is ₹3,800 per piece.
10	RSP printed on the date of removal of package from factory is ₹ 3,900 per unit. However, after removal from factory RSP is increased to ₹4,200.

Would the provisions of section 4A of Central Excise Act, 1944 apply had the goods not been notified by Central Government and manufacturer voluntarily affixed RSP on the products? 8

- (b) Examine whether central excise duty is leviable in the following situations: 4
- (i) Poorni Builder constructed an office building for M/s Shankar & Co.
- (ii) Anantha Computer Services Ltd. provided maintenance services for computers and laptops.
- (c) Examine the validity of following statements, with brief reasons: 4
- (i) Central Government is empowered to make laws in respect of excise duty leviable on liquors (meant for human consumption) containing alcohol.
- (ii) Taxes on intra-state sale or purchase of goods are covered under Entry 92A of Union List of the Constitution.

**Answer 2.**

**(a) Computation of excise duty payable: AV based on RSP**

Since Legal Metrology Act, 2009 requires declaration of retail sale price on the package of pressure cooker and pressure cookers are also notified under section 4A of Central Excise Act, 1944 (RSP based valuation provisions), excise duty will be payable on the basis of RSP less abatement.

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Particulars	₹	₹
RSP of 20 pieces (20 × ₹ 5,000)(Note-1)	1,00,000	
Less: Abatement @ 20%	20,000	
Assessable value(A)		80,000
RSP of 30 pieces sold in Chennai (30 × ₹4,000)(Note-2)	1,20,000	
Less: Abatement @ 20%	24,000	
Assessable value(B)		96,000
RSP of 10 pieces sold in Pondicherry (10 × ₹ 3,800)(Note-2)	38,000	
Less: Abatement @ 20%	7,600	
Assessable value (C)		30,400
RSP of 10 pieces (10 × ₹ 4,200)(Note-3)	42,000	
Less: Abatement @ 20%	8,400	
Assessable Value(D)		33,600
Total Assessable Value (A)+(B)+(C)+(D)		2,40,000
Excise duty @12.5% [12.5% on the above AV]		30,000

### Notes:

1. Where more than one RSP is declared on the package of excisable goods, the maximum of such price will be deemed to be the RSP.
2. If different RSP on different packages are declared for different areas, each such RSP is deemed to be the RSP.
3. If RSP on the package is increased after removal from factory, increased RSP would be deemed to be the RSP.

All goods on which RSP has been declared will not be covered under the provisions of section 4A. Only when the declaration of RSP on the goods is mandatory under the Legal Metrology Act, 2009 or under any other law and such goods have been notified by the Central Government for the purpose of section 4A, then the goods be valued under section 4A. Thus, provisions of section 4A of Central Excise Act, 1944 would not apply if the goods had not been notified by Central Government and manufacturer voluntarily affixed RSP on the products.

### (b)

#### (i) Not leviable.

Excise duty is leviable only when manufacture results in goods that are excisable. For being called goods, item sought to be movable and marketable. Since office building is marketable but not movable, it is not "goods" but an immovable property. Hence, excise duty is not leviable on construction of office building.

#### (ii) Not leviable.

Excise duty is leviable on manufacture of excisable goods. However, activity of maintenance of computers and laptops is not "manufacture" as it does not result into emergence of a new article having different name, character or use. Thus, since the activity is not "manufacture", excise duty is not leviable on the same.

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(c)

(i) **Invalid statement.**

Duties of excise on alcoholic liquors meant for human consumption are covered under Entry 51 of State List (List II). Thus, only State Governments are authorized to make laws in respect of such excise duty.

(ii) **Invalid statement.**

Taxes on intra-state sale or purchase of goods are covered under Entry 54 of State List of the Constitution. Entry 92A of Union List of the Constitution covers central sales tax.

3. (a) **Shine Limited imports certain goods from France, at Cochin Port at a cost \$150,000 FOB. The following are the other details,**

(i) **Packing Charges — \$10,000**

(ii) **Transit Insurance — \$ 5,000**

(iii) **Air Freight —\$35,000**

(iv) **Royalty and License Fee — \$ 3,000**

(v) **Exchange Rate notified by CBEC -US\$1 = ₹ 65**

**Compute the assessable value for purpose of determination of customs duty. 6**

(b) **A manufacturer has purchased new machinery costing ₹ 10 lakhs plus 10% excise duty and installed the same in the premises of a job worker working for him, on 11.02.2017. Can he take Cenvat credit relating to this machinery? Mention the other aspects, if any, relating to Cenvat credit on such machinery. 4**

(c) **Two exporters namely, Sunlight Exports Pvt. Ltd. and Moonlight Exports Pvt. Ltd. have achieved the status of Status Holders (One Star Export House) in the financial year 2016-17. Every year, both the companies have been regularly exporting goods to approved nations. To achieve such status, what would have been the minimum export performance of the two exporters?**

**Both the companies are desirous of establishing export warehouses in accordance with the applicable guidelines. What should be their minimum export turnover to enable to establish export warehouses? 6**

**Answer 3.**

(a)

### Computation of Assessable Value

	Amount in US \$
FOB Value	1,50,000
Packing Charges	10,000
Royalty and License Fee	3,000
FOB Value of the Customs	1,63,000
Air Freight [should not exceed 20% of FOB]	32,600
Insurance	5,000
CIF Value	2,00,600
Add: 1% of loading and unloading on CIF	2,006

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Assessable Value	2,02,606
	Value in ₹
Assessable Value	1,31,69,390

**(b)** Cenvat credit on machinery installed at premises of job worker

CENVAT credit in respect of the central excise duty paid on capital goods can be taken [50% in same FY and balance 50% in subsequent FY] in the instant case. Thus he will get Cenvat credit of ₹ 50,000 in February, 2017.

Immediately on receipt of the same in job worker's premises where manufacturer has directed the goods to be sent directly to the job worker,

Provided the capital goods are received back by manufacturer within 2 years of their being received by job worker

Manufacturer will have to pay an amount equivalent to the CENVAT credit attributable to capital goods by debiting the CENVAT credit or otherwise and can be retaken only when capital goods are received back in the factory.

**(c)**

Status Holders are business leaders who have excelled in international trade and have successfully contributed to country's foreign trade. All exporters of goods, services and Technology having an import-export code (IEC) number shall be eligible for recognition as a status holder. Status recognition depends upon export performance.

In order to be categorized as One Star Export House, an exporter needs to achieve the export performance of 3 million US \$ [FOB/FOR (as converted)] during current and previous three financial years. Thus, export performance of the two given companies would have been at least 3 million US \$ [FOB/FOR (as converted)] during current and previous three financial years.

Further, Two Star Export Houses and above are permitted to establish export warehouses. Therefore, Sunlight Pvt. Ltd. and Moonlight Pvt. Ltd. can establish export warehouses in India only if they achieve the status of Two Star Export House and above. In order to achieve said status, export performance of the exporters during current and previous three financial years should be as indicated below:

Status Category	Export Performance [FOB/FOR (as converted) value in US \$ million]
Two Star Export House	25
Three Star Export House	100
Four Star Export House	500
Five Star Export House	2,000

**4. (a) Mr. Ranjit, providing taxable services furnishes the following information and asks you to find out the service tax liability for the quarter ended 31.03.2017: 8**

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Particulars		₹
(i)	Advances received from Clients for which no service has been rendered so far	2,00,000
(ii)	Reimbursement of Travelling Expenses received from Clients (as per bill)	52,000
(iii)	Reimbursement of taxes paid on behalf of the Client (as per Challan)	70,000
(iv)	Free Services rendered to Old Age Home [Value of similar services —₹20,000]	Nil
(v)	Rent received from Commercial Complex	3,00,000
(vi)	Rent received from Residential Complex	1,00,000

It may be noted that all figures are exclusive of Service tax@15% and Mr. Ranjit is not eligible for Small Service Provider's exemption.

- (b) Ms. Poorva is a registered dealer in Patna. She provides the following information to compute the Taxable Turnover and Central Sales Tax payable by her: 8

Particulars		₹
(i)	Total inter-state sales including CST	88,00,000
(ii)	Deposits for returnable containers	1,00,000
(iii)	Excise Duty	4,50,000
(iv)	Dharmada	70,000
(v)	Goods rejected by the customers after six months	2,50,000
(vi)	Goods returned by the customers after six months	3,50,000

Items given in point (ii) to (vi) are not included in the inter-state sales of ₹ 88,00,000.

Buyers have issued C Form for all purchases.

Sales tax rate within the state is 1%.

### Answer 4.

(a)

#### Computation of service tax liability of Mr. Ranjit for the quarter ended 31.03.2017

	Amount in ₹
Advances received from Client - Liable to tax as per Point of Taxation	2,00,000
Reimbursement of Travelling Expenses - Liable to tax as per Sec 67	52,000
Reimbursement of tax paid - Not taxable being pure agent	Nil
Free services rendered - No consideration - Not liable to tax	Nil
Rent received from commercial complex - Liable to tax	3,00,000
Rent received from residential complex - Not Liable to tax - Negative List	Nil
Value of Taxable Services	5,52,000
Service tax @ 14%	77,280

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SBC @ 0.50%	2,760
KKC @ 0.50%	2,760
<b>Total Service Tax Payable</b>	<b>82,800</b>

(b)

### Computation of taxable turnover and CST payable

	Amount in ₹
Interstate Sales	88,00,000
Add: Deposit for returnable container - not includible	Nil
Add: Excise Duty	4,50,000
Add: Dharmada	70,000
	93,20,000
Add: Goods Rejected even after six months eligible for deduction no adjustment	Nil
Add: Goods Returned after six months not eligible for deduction add to turnover	3,50,000
Turnover including CST	96,70,000
CST Payable [₹ 96,70,000 × 1/101]	95,742.57
Taxable Turnover	95,74,257

Note: Item (ii) to (vi) are not included in ₹ 88,00,000/-. Hence only items which are liable to CST to be added back out of (ii) to (vi), and for those not liable, no adjustment is required.

CST on transactions covered by Valid C Form is 2% or sales tax rate within the state whichever is lower. Since in this case sales tax rate is lower than 2% the rate of CST is taken as 1%.

5. (a) **Harivallabh & Co., a Partnership firm, who had provided taxable services of ₹ 23 lakhs during the FY 2015-16, furnishes the following particulars for the quarter ended 31.12.2016:**

Sl. No.	Particulars	Amount
1	Services rendered to charitable trusts registered u/s 12AA of the Income-tax Act, 1961	3,40,000
2	Advance received on 28.12.2016 No services were rendered till 31.03.2017; the amount was refunded on 12.04.2017	60,000
3	Reimbursement of expenses: Travelling and out of pocket expenses Received as pure agent for payment on behalf of Clients	42,000 1,20,000
4	Free services rendered to friends had been billed to a third party, the amount billed would have been	18,000
5	Other receipts towards taxable services rendered	6,78,000



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All amounts are exclusive of service tax. Ascertain the value of taxable services and the amount of service tax payable. 7

- (b) Vasudevan Consultants Ltd. was liable to make e-payment of service tax of ₹ 8,00,000, which it had collected from its customers, for the month of July, 2016. However, it electronically paid the tax on 06.11.2016.

Calculate the amount of interest payable by the assessee under section 75 of the Finance Act, 1994. The value of taxable services provided by Vasudevan Consultants Ltd. during the financial year 2015-16 was ₹ 98.30 lakhs and during the FY 2014-15 was ₹ 75 lakhs.

Will your answer be the same, if the value of services provided by it during the financial year 2015-16 was ₹ 54.80 lakhs? 4

- (c) Discuss the prosecution implications under section 89 of the Finance Act, 1994, if any, in respect of the following cases:

(i) Mr. Keshavji, a service tax assessee, willfully evades payment of service tax of ₹ 7 crores.

(ii) Mr. Chandanmala taxable service provider, collects ₹ 5.2 crores as service tax from its Clients in May, 2016, but deposits only ₹ 1.2 crores with the Central Government by January, 2017.

In the above question, what will be the prosecution implications, if Mr. Keshavji and Mr. Chandanmala reconvicted for subsequent offences? 5

Answer 5.

(a)

### Computation of service tax liability of Harivallabh & Co.

Sl. No.	Particulars	Amount (₹)
1	Services rendered to charitable trusts registered u/s 12AA of the Income-tax Act, 1961 [No exemption is provided in respect of such services and they are chargeable to service tax]	3,40,000
2	Advance received on 28-12-2016 [Since services agreed to be provided are also chargeable to service tax in terms of section 66B of the Finance Act, 1994, advance received is liable to service tax. Further, as per Explanation to Rule 3 of the Point of Taxation Rules, 2011, the point of taxation for advance received is the day when it is received.] It is immaterial that no services were rendered till 31-3-2017; the amount was refunded on 12-4-2017	60,000
3	Reimbursement of expenses: Travelling and out of pocket expenses [Reimbursable expenditure incurred and charged by the service provider is a part of the consideration for taxable services and hence includible in the value of taxable service] Received as pure agent for payment on behalf of clients	42,000   Nil

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	[Reimbursable expenditure incurred and charged by the service provider is assumed as a PURE AGENT and hence NOT includible in the value of taxable service]	
4.	Free services rendered to friends, had been billed to a third party, the amount billed would have been [Service is an activity carried out, <i>inter alia</i> , for a consideration. Therefore, in case of free services, no service tax is payable thereon.]	Nil
5.	Other receipts towards taxable services rendered	6,78,000
	Value of taxable services	11,20,000
	Service tax at 15%	1,68,000

### (b) Interest for delayed payment of service tax

Due date for payment of service tax for the month of July, 2016                      06.08.2016

Date when service tax was actually paid    06.11.2016

Section 75 of Finance Act, 1994 read with Notification No. 13/2016 ST dated 01.03.2016 provides for charging impel interest where any amount has been collected as service tax but not paid to the credit of the Central Government on or before the date on which such payment becomes due. The interest is payable @24% p.a. for the period by which such credit in got tax or any part thereof is delayed. However, in all other cases, 21% simple interest p.a. is payable.

Since in the given case, the assessee has collected service tax but failed to deposit the same on/before the due date with Central Government and its turnover was more than ₹ 60 lakhs in the preceding financial year, interest under section 75 will be payable @ 24% as follows:

Period	Delay	Interest (₹)
07.08.2016 to 06.11.2016	92 days	$\text{₹ } 8,00,000 \times 24\% \times 92/365$ = 48,395

However, if the value of taxable services provided by the assessee, in the preceding financial year is less than ₹ 60 lakhs, interest payable will be computed at 21% as follows:

Period	Delay	Interest (₹)
07.08.2016 to 06.11.2016	92 days	$\text{₹ } 8,00,000 \times 21\% \times 92/365$ = 42,345

### (c) Prosecution under service tax

As per section 89 (1)

- (i) Of Finance Act, 1994, whoever will fully evades payment of service tax would be punishable with imprisonment for a period of 6 months to 3 years if the amount involved in the offence exceeds ₹ 2 crore.

Since in the given case, Mr. Keshavji has willfully evaded payment of service tax of ₹ 7 crores, which is more than the prescribed limit (₹ 2 crores), he will be liable for imprisonment for a period of 6 months to 3 years.

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- (ii) As per section 89(1)(ii) of Finance Act, 1994, failure to pay the amount collected as service tax to the credit of Central Government beyond period of six months from the date on which such payment becomes due, constitutes an offence punishable with imprisonment for a period of 6 months to 7 years, if the amount exceeds ₹ 2 crore.

In the given case, the amount collected but not paid is ₹ 4 crores and the same has not been paid beyond the period of six months. Therefore, Mr. Chandanmala will be liable for imprisonment for a period of 6 months to 7 years.

If Mr. Keshavji and Mr. Chandanmala are convicted for subsequent offences, then as per section 89(2) of the Finance Act, 1994, Mr. Keshavji would be liable for imprisonment for a period which may extend to 3 years, where as Mr. Chandanmala would be liable for imprisonment for a period which may extend to 7 years.

- 6. (a) (i) An assessee claimed depreciation on CENVAT portion as well as claimed CENVAT credit in Excise returns. Preventive unit of the Excise Department detected double claim and issued show cause notice. The assessee filed an application for rectification u/s 154 of the Income-tax Act, 1961 and filed revised return forgoing depreciation on CENVAT portion.**

However, Excise department passed an Order-in Original, directing the recovery of the CENVAT credit together with interest and penalty for an equivalent amount.

Discuss in light of the decided case law if any, whether the action of the department is correct. 6

- (ii) Mr. Gopal improperly imported gold bars of foreign origin. Commissioner of Customs (Preventive) had imposed penalty under section 112 of the Customs Act, 1962 on the basis of a clause in the relevant provision that permits a penalty not exceeding the value of the goods or five thousand rupees, whichever is greater to be imposed for improperly bringing into the country goods in respect of which any prohibition is in force under this Act or any other law for the time being in force.**

Mr. Gopal argued that penalty imposed on the basis of the value of the smuggled gold could not have been made as gold is not a prohibited item nor is the import thereof prohibited by virtue of any notification or order under the Customs Act, 1962.

Discuss in light of the decided case law if any, whether the action of the department is correct. 6

- (b) An order was passed against an assessee, who is a service provider, with penalty under section 74 and 78 of the Finance Act, 1994. The assessee did not file any appeal. However, the assistant commissioner issued a notice proposing rectification of the earlier order for enhancement of the penalty imposed.**

The assessee appealed against such rectification enhancing the penalty. Discuss in light of the decided case law if any, whether the action of the department is correct. 4

**Answer 6.**

**(a)**

- (i)** The assessee was entitled to either claim depreciation on machinery including CENVAT portion or avail CENVAT credit and forgo depreciation to that extent.

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Once Depreciation is claimed on CENVAT portion, CENVAT credit is not allowed.

In the given case, since the assessee claimed both, after detection by the Dept the assessee had forgone the depreciation claim on CENVAT portion and filed revised return.

The High Court held that once the mistake is detected and assessee filed revised returns, deprivation of the benefit of CENVAT credit could only be punitive.

The action of the department is not correct

This issue was reported in **S.L. Lumax Ltd. v. Commissioner of Central Excise, Chennai-IV 2016 (337) ELT 368 (MAD)**.

(ii) Section 112 of the Customs Act, 1962 prescribes penalty for improper import.

For prohibited goods, it is not exceeding the value of prohibited goods or ₹ 5000 whichever is higher.

For other than prohibited goods, it is not exceeding 10% of the duty sought to be evaded or ₹ 5000 whichever is higher.

The Court held that the expression goods in respect of which any prohibition is in force in the context of Section 112 of the Act would imply goods which are prohibited from being imported and not goods which have been smuggled into the country in contravention of the procedure established by law for the import thereof.

The action of the department is not correct

This issue was reported in **Gopal Saha v. Union of India 2016 (336) ELT 230 (CAL)**.

(b)

Section 74 of the Finance Act, 1994 provides for the rectification of mistake.

The Court observed that in the guise of rectification of mistake, the entire complexion of the order cannot be altered under section 74 of the Finance Act.

The action of the department is not correct

This issue was reported in **CCE & CUS. v. Capt. K.P. Dinakaran 2016 (44) STR 374 (KER-HC)**.

7. Write short notes on any four of the following:

4×4=16

(a) Advance ruling, when treated as void under the Central Excise Act, 1944.

(b) Payment of interest by the importer in case of provisional assessment under the Customs Act, 1962.

(c) M/s. XYZ Co. Ltd., a taxable service provider, provides the following information:

Financial Year	Aggregate value of Taxable Services rendered in ₹
2014-15	12,00,000
2015-16	9,50,000
2016-17	15,00,000

From the information given above, you are required to

(i) Determine the eligibility to Small Service Provider's Exemption if any for the financial year 2015-16 and 2016-17.

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(ii) Value of Taxable Services for the financial year 2015-16 and 2016-17. Your answers should be supported by reason.

(d) Payment of service tax on quarterly basis by One Person Company

(e) Service tax on bundled services.

**Answer 7.**

**(a) Advance ruling, when treated as void under the Central Excise Act, 1944**

Where on an presentation from the Principal Commissioner of Central Excise or Commissioner of Central Excise or otherwise, it is proved that an advance ruling was obtained by the concerned applicant by fraud or misrepresentation of facts, the authority for advance ruling can declare the advance ruling as void *ob initio*.

Consequently, all the provisions of the Central Excise Act shall apply to the applicant as if such ruling had never been made. Copy of such order is sent to the applicant and the Principal Commissioner of Central Excise or Commissioner of Central Excise [Section 23 for the Central Excise Act, 1944].

**(b) Payment of interest by the importer in case of provisional assessment under the Customs Act, 1962**

The provisions of the Customs Act, 1962 relating to payment of interest in case of provisional assessment are as under:

- (i) The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order /re-assessment order under section 18(2).
- (ii) The interest shall be payable at the rate prescribed under section 28AA of the Customs Act, 1962. Presently, the rate of interest has been fixed @ 15% p.a.
- (iii) The interest shall be payable from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

**(c)** Section 66B of the Finance Act, 1994 exempts taxable services of aggregate value not exceeding ₹ 10 lakhs in any financial year from the whole of the service tax leviable thereon in case the aggregate value of taxable services rendered by the service provider from one or more premises, does not exceed ₹ 10 lakhs in the preceding financial year.

Since the aggregate value of taxable services rendered in the Previous FY 2014-15 exceed ₹ 10 Lakhs, no SSP exemption is available for the FY 2015-16.

Hence Value of Taxable Services for the FY 2015-16 - ₹ 9.50 Lakhs.

Since the aggregate value of taxable services rendered in the Previous FY 2015-16 do not exceed ₹ 10 Lakhs, SSP exemption is available for the FY 2016-17.

Hence value of taxable services for the FY 2016-17 = ₹ 15 Lakhs

Less: SSP Exemption = ₹ 10 Lakhs

Net Taxable Value of Services for the FY 2016-17 = ₹ 5 Lakhs

### (d) Payment of service tax on quarterly basis by One Person Company

Prior to 01.04.2016, rule 6(1) of the Service Tax Rules, 1994 required a company including a One Person Company (OPC) and a Hindu Undivided Family (HUF) to pay service tax on monthly Basis. However, an individual or proprietary firm or partnership firm could pay service tax on quarterly basis.

With effect from 01.04.2016, proviso to rule 6(1) has been amended to lay down that a OPC whose aggregate value of taxable services provided from one or more premise sis ₹ 50 lakhs or less in the previous financial year or an HUF can also pay service tax on quarterly basis.

Therefore, it has to be understood that every OPC cannot pay service tax on quarterly basis. Only that OPC is eligible for quarterly payment of service tax whose aggregate value of taxable services provided from one or more premises is ₹50 lakhs or less in the earlier financial year. Where the turnover in the earlier financial year has exceeded ₹ 50 lakhs, such OPC should pay service tax on monthly basis only.

### (e) Bundled service

"Bundled service" means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services.

Each service involves differential treatment as a manner of determination of value of two services for the purpose of charging service tax is different.

Two Rules have been prescribed for determining the taxability of such services in clause (3) of section 66F of the Act. These rules are explained below:

1. Services which are naturally bundled in the ordinary course of business

The rule is-'If various elements of a bundled service are naturally bundled in the ordinary course of business, it shall be treated as provision of a single service which gives such bundle its essential character'.

2. Services which are not naturally bundled in the ordinary course of business

The rule is - 'If various elements of a bundled service are not naturally bundled in the ordinary course of business, it shall be treated as provision of a service which attracts the highest amount of service tax.'

### Section-C

**[Answer Question No. 8 which is compulsory  
and any one question from the rest in this Part.]**

### 8. Choose the correct alternative and give brief justification for your answer:

(a) Following is not a tax which has been substituted by GST:

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- (i) Central Excise Duty
- (ii) Service tax
- (iii) State VAT

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(iv) Profession tax

(b) In an intra-state supply, following are levied under GST: 2

(i) SGST and GGST

(ii) Only IGST

(iii) Only CGST

(iv) CGST and IGST

**Answer 8.**

(a) (iv).

Profession tax is levied by Municipalities, Corporations and local bodies. This tax is not replaced by GST. All other taxes mentioned in the alternatives are covered by GST.

(b) (i).

In case of supply within the State, both SGST and CGST will be levied at the applicable rates. IGST is applicable only in case of inter-state supply.

9. (a) Give a brief introduction to GST in India. 5

(b) What is the impact of GST on Centre-State relations and how are they streamlined? 4

(c) How is the concept of "Consideration" understood for levy of GST? 4

(d) State the benefits of GST to the customers. 3

**Answer 9.**

(a)

### Introduction to GST in India

The introduction of Goods and Services Tax (GST) is a very significant step in the field of indirect tax reforms in India. By amalgamating a large number of Central and State taxes into a single tax, it has mitigated cascading or double taxation in a major way and paved the way for a common national market. From the consumer point of view, the biggest advantage would be in terms of a reduction in the overall tax burden on goods or services, which was estimated to be around 25%-30%. Introduction of GST would also make Indian products competitive in the domestic and international markets. Studies show that this would have a boosting impact on economic growth. Because of its transparent and self-policing character, GST would be easier to administer.

The idea of moving towards the GST was first mooted by the then Union Finance Minister in his Budget for 2006-07. Initially, it was proposed that GST would be introduced from 1st April, 2010. The Empowered Committee of State Finance Ministers (EC) which had formulated the design of State VAT was requested to come up with a roadmap and structure for the GST. Joint Working Groups of officials having representatives of the States as well as the Centre were set up to examine various aspects of the GST and draw up reports specifically on exemptions and thresholds, taxation of services and taxation of inter-state supplies.

Based on discussions within and between it and the Central Government, the EC released its First Discussion Paper (FDP) on GST in November, 2009. This spells out the features of the



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proposed GST and has formed the basis for discussion between the Centre and the States so far.

The Central Government notified 1st July, 2017 as the date from which the much awaited indirect tax reform in India, i.e. Goods and Services Tax (GST) will be implemented. Accordingly, Goods and Services Tax (GST) has been implemented in India w.e.f. 1st July, 2017.

**(b)**

### **GST and Centre State relations**

Before GST regime, fiscal powers between the Centre and the States were clearly demarcated in the Constitution/with almost no overlap between the respective domains. The Centre had the powers to levy tax on the manufacture of goods (except alcoholic liquor for human consumption, opium, narcotics etc.) while the States had the powers to levy tax on sale of goods. In case of inter-state sales, the Centre had the power to levy a tax (the Central Sales Tax) but, the tax was collected and retained entirely by the originating States.

As for services, it was the Centre alone that was empowered to levy service tax. Since the States were not empowered to levy any tax on the sale or purchase of goods in the course of their importation into or exportation from India, the Centre levied and collected this tax as additional duties of customs, which was in addition to the Basic Customs Duty. This additional duty of customs {commonly known as Counter Veiling Duty (CVD) and Special Additional Duty (SAD)} counter balances excise duties, sales tax, State VAT and other taxes levied on the like domestic product. Introduction of GST was requiring amendments in the Constitution so as to concurrently empower the Centre and the States to levy and collect the GST.

The assignment of concurrent jurisdiction to the Centre and the States for the levy of GST required a unique institutional mechanism that would have ensured that decisions about the structure, design and operation of GST are taken jointly by the two. For it to be effective, such a mechanism also needed to have Constitutional force.

### **(c) Consideration under GST Act**

Consideration in relation to the supply of goods or services or both includes—

- (a) Any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;
- (b) the monetary value of any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

Provided that a deposit, whether refundable or not, given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

From the above definition, it is evident that even if the consideration for the supply of goods or services or both is not received in cash, still it has to be treated as consideration for the supply.



### (d) Benefits of GST to the customers

- (i) Final price of goods is expected to be lower due to seamless flow of input tax credit between the manufacturer, retailer and service supplier;
- (ii) It is expected that a relatively large segment of small retailers will be either exempted from tax or will suffer very low tax rates under a compounding scheme- purchases from such entities will cost less for the consumers;
- (iii) Average tax burden on companies is likely to come down which is expected to reduce prices and lower prices mean more consumption.

- 10. (a) Write a brief note on the liability under GST. 5**
- (b) What is the taxable event under GST? What are the four broad parts under which the same may be considered? 5**
- (c) Briefly explain the concepts of composite supply and mixed supply under GST, with an illustration for each. 6**

### Answer 10.

#### (a) Liability under GST

Under the GST regime, liability to pay tax arises when a person crosses the turnover threshold of ₹20 lakhs (₹ 10 lakhs for North Eastern & Special Category States) except in certain specified cases where the taxable person is liable to pay GST even though he has not crossed the threshold limit.

The CGST / SGST is payable on all intra- state supply of goods and/or services and IGST is payable on all inter- state supply of goods and/or services.

A Composition Scheme, which is mainly devised for small taxpayers, provides concessional rate of tax and filing of quarterly returns instead of monthly return. To be eligible for registration under composition scheme it is required that the aggregate turnover of a registered tax payer should not exceed ₹ 75,00,000/- in the preceding financial year. (The limit is ₹ 50,00,000/- for North Eastern & Special Category States)

North Eastern and Special Category States are Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Tripura, Sikkim, and Himachal Pradesh.

According to section 2(6) of the CGST Act, 2017, aggregate turnover means the aggregate value of all taxable supplies(excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-state supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, state tax, union territory tax, integrated tax and cess.

#### (b) Taxable event under GST

Under GST, the taxable event is "supply" of goods or services or both. Supply has been very subjectively and inclusively defined in the Act and section 7 of the Central Goods and Services Act, 2017 specifies the scope of supply.

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Supply under GST can be divided into following parts;

- (a) Supply in the form of sale, transfer, barter, exchange, licence, rental, lease or disposal made for a consideration by a person in the course or furtherance of business;
- (b) import of services for a consideration (whether or not in the course or furtherance of business);
- (c) the activities specified in Schedule I, (made or agreed to be made without a consideration);  
and
- (d) the activities specified in Schedule II (to be treated as supply of goods or supply of services)

### (c)

**Composite Supply:** This means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration — Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

**Mixed Supply:** This means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

Illustration — A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.