

**INTERMEDIATE EXAMINATION
GROUP II
(SYLLABUS 2012)**

**SUGGESTED ANSWERS TO QUESTIONS
JUNE 2014**

Paper-11: INDIRECT TAXATION

Time Allowed : 3 Hours

Full Marks : 100

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

Wherever necessary, you may make suitable assumptions and state them clearly in your answer.

Working Notes should form part of answer.

GROUP - A

Answer Question No. 1 which is compulsory

1. Answer the following questions with suitable reasons: 2x10=20
- (i) 'Ownership of raw material is not relevant to determine excise duty liability'. Explain with reference to the condition for levy of excise duty.
 - (ii) State significance of single dash and double dash in classification of goods under Central Excise Tariff.
 - (iii) An assessee is selling 20% of his production through related persons and 80% is being sold to unrelated persons. How the goods sold to related persons should be assessed?
 - (iv) A unit in Special Economic Zone (SEZ) has manufactured and supplied some goods to Indian customer. Which duty will be payable on such supplies?
 - (v) Explain briefly when pilferage should have occurred for purpose of eligibility for remission from duty of customs under section 13 of the Customs Act, 1962.
 - (vi) A non-executive director of a company is receiving sitting fees and commission of ₹ three lakhs from a private limited company. Is service tax payable? Under which head? Who is liable to pay service tax?
 - (vii) A service was provided on 15th April, 2014. What would be point of taxation in each case, if invoice was raised on (a) 15th April, 2014 (b) 14th May, 2014 (c) 30th June, 2014?
 - (viii) State (a) restrictions on State Governments on imposing sales tax on 'goods of special importance' (b) Provision if goods of special importance are purchased within the State and sold inter-state.
 - (ix) List the goods which have been kept outside Vat provisions as per White Paper

Suggested Answer_Syl12_Jun2014_Paper_11

released on Vat.

- (x) Which entry in Seventh Schedule to Constitution of India is relevant for purpose of imposition of service tax?

Answer:

1. (i) The duty of Central Excise is levied if the following conditions are satisfied:
- The duty is on goods.
 - The goods must be excisable.
 - The goods must be manufactured or produced.
 - Such manufacture or production must be in India.

Excise duty is payable even if goods are manufactured by a job work basis, even if the raw material does not belong to him. The job worker is liable to pay excise duty on value including the value of raw material. That is why it is said that ownership of raw material is not relevant.

- (ii) Single dash (-) at the beginning of description of any article or group of articles in Tariff indicates a group, while two dashes (- -) at the beginning indicate a sub-group of a group with single dash. The single dash (-) indicates primary classification of article covered by the heading, while double dash (- -) is the sub-classification of the preceding article which has single dash (-) i.e. it is a sub-classification of primary classification.
- (iii) In case of 20% goods sold through related person, excise duty will be payable on the basis of price at which the related person is making sale to unrelated buyers.
- (iv) The duty payable is customs duty as if it is imported by the DTA unit (i.e. unit in Domestic Tariff Area). The DTA unit is required to file Bill of Entry and pay normal customs duty.
- (v) Section 13 of Customs Act provides that duty on pilfered goods is not payable if the imported goods are pilfered before order of clearance is made by proper officer for home consumption of deposit in a warehouse.
- (vi) Service tax is payable under 'Other Taxable Services' @ 12.36%. The company which is receiving the service of director is liable to pay service tax under reverse charge mechanism [RCM].
- (vii) (a) 15th April 2014 (b) 14th May 2014 (c) 15th April 2014.
- (viii) (a) State Government cannot impose sales tax exceeding 4% (b) If declared goods are sold inter-state, tax paid within the State is reimbursed to seller. Goods should be sold inter-state in same form.
- (ix) The goods which will be outside VAT will be liquor, lottery tickets, petrol, diesel, aviation turbine fuel and other motor spirit since their prices are not full market determined.
- (x) Entry 97 i.e. Residual Powers in List I of Seventh Schedule, which reads as follows - 'Any other matter not included in List II or List III including any tax not mentioned in list II or list III'.

Group B

Suggested Answer_Syl12_Jun2014_Paper_11

Answer any eight questions out of the ten questions given

2. (a) Cost of a machine manufactured by a manufacturer was ₹ 10 lakhs. It was high due to some factors beyond his control. Some of his competitors were selling the similar machine for ₹ 7 lakhs. Hence, the manufacturer decided to sale the machine at a loss to penetrate the market. Excise department contended that excise duty should be payable on basis of cost of production, even if the machine is sold at lower price. Advise the manufacturer about the correct legal position. **4**
- (b) Explain difference between duty drawback under section 74 of Customs Act and section 75 of Customs Act. **3**
- (c) A dealer claims that he has sent some goods out of State on stock transfer basis. What evidence he is required to produce before sales tax officer to prove the stock transfer? If he is unable to produce that evidence, what are the consequences? **3**

Answer:

2. (a) The facts of the case are similar to decision of Supreme Court. In CCEx. Mumbai v. Fiat India Pvt. Ltd. (2012) 283 ELT 161 (SC), it has been held that if goods are sold below the cost of production, the price would not be 'normal price'. The price charged would not be 'sole consideration'. Intention to penetrate the market or meet the competition would be the additional consideration. In that case, excise duty will be payable on the basis of cost of production plus profit and not on the basis of transaction value (selling price).

However, in this case, such sale was continuing for more than five years and not for temporary period. Hence, CBE&C has clarified that the decision of Fiat will apply when the facts are similar. In other words, if such sale is for temporary period for some reasons, the Fiat judgment will not apply and excise duty will be payable on basis of transaction value.

- (b) Difference between duty drawback under section 74 of Customs Act and section 75 of Customs Act:

- i. Section 74 is applicable when imported goods are re-exported as it is, and article is easily identifiable while section 75 is granted when imported materials are used in the manufacture of goods which are then exported.
- ii. Drawback, in relation to any goods exported out of India, means refund of duty paid on importation of such goods in terms of section 74. Thus, drawback is allowed only on import duties of customs.

As per section 75, "Drawback" in relation to any goods manufactured in India and exported, means the rebate of duty or other things, as the case may be, chargeable on imported materials or excisable materials used or taxable services used as input services in the manufacture of such goods.

- iii. As per section 74, the identity of the goods exported should be established as the one, which was imported on payment of duty.

The goods exported under section 75 are made of such inputs which are manufactured, processed or any operations are carried on them before their export.

Suggested Answer_Syl12_Jun2014_Paper_11

- iv. Drawback under section 74 is available on all goods (Identification is the only criterion) while Drawback under section 75 is available only on notified goods.
- v. Under the section 74, the exported goods should have been imported and customs duty be paid thereon. But under section 75, the goods to be exported may be manufactured or processed from imported or indigenous inputs or by utilizing input services.
- vi. As per section 74, the rate of drawback is 98% in case the goods are exported without use. The rate of drawback on goods taken into use is separately notified depending upon the period of use, depreciation in value and other relevant factors.

As per section 75, rate of drawback per unit of final article to be exported is fixed by taking into account — Mode of manufacture, Input-output ratio, Standardization of the products etc.

- vii. In case of section 74, the goods should be exported within two years from the date of payment of duty or such extended time as the board may allow. But there is no such restriction in case of section 75.
- viii. There is no criterion of minimum value addition, which is to be fulfilled before export for claim of drawback as per section 74.

It has been specifically provided that there should not be negative value addition and in case where minimum value addition is specified the same should be achieved for claim of drawback as per section 75.

- ix. As per section 75, the sale-proceeds in respect of such goods on which the drawback has been allowed, have to be received by the exporter or by any person on his behalf within the period as specified in the FEMA, 1999. In absence of this, such drawback shall be deemed never have been allowed and procedure for recovery or adjustment of the drawback amount will be initiated. But there are no such provisions in this behalf as per section 74.
- x. The drawback is governed by the Re-export of imported goods under the section 74. While the drawback, in section 75, is governed by the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995. The rules cover customs duty, central excise duty and service tax.

[Students can mention any 3 points]

(c) The dealer has to produce F form which is to be issued by the branch or depot which has received the goods despatched by dealer. If the dealer is unable to produce F form, the sale will be treated as sale within the State of dealer and will be liable to State Vat at applicable rate. Interest will also become payable for delayed payment.

- 3. (a) 'Narima Business Services', a proprietary firm, is a labour contractor supplying manpower to Garmil Interiors Pvt. Ltd. (Principal Employer). During October 2014, the wages paid to the labourer by Narima Business Services were ₹ 1,40,000. They had paid employer's provident fund contribution of ₹ 12,000 and ESIC contribution of ₹ 6,500. They also charged ₹ 14,000 as their service charges. Calculate the service tax to be charged and payable by Narima Business Services. 5**

(b) XYZ Ltd., a small scale manufacturer, purchased machine on 1.7.2010 for ₹ 10,00,000 on which excise duty paid @ 10.30% was ₹ 1,03,000. He availed the Cenvat credit and

Suggested Answer_Syl12_Jun2014_Paper_11

utilised the capital goods. On 2.10.2014 he sold the machinery as second hand goods for ₹ 7,00,000. At the time of sale, the excise duty payable was 12.36%. State what steps he is required to take to comply with statutory provisions. 5

Answer:

3. (a) Service tax is payable on total amount i.e. inclusive of wages ₹1,40,000, PF ₹12,000, ESIC contribution ₹6,500 and service charges of ₹14,000. Thus, service tax is payable on ₹1,72,500. Service tax @ 12.36% is ₹21,321. The service provider is proprietary firm and service receiver is company. Hence, partial reverse charge is applicable. Narima Business Services will be liable to pay 25% of service tax i.e. ₹5,330.25. Balance 75% of service tax i.e. ₹15,900.75 will be payable by service receiver i.e. Garmil Interiors Pvt. Ltd.

(b) Since the manufacturer is SSI unit, it can avail entire 100% Cenvat credit in the first year. Hence, it can avail Cenvat credit of ₹1,03,000. The capital goods have been utilised by XYZ Ltd. for following quarters - Year 2010 - 2, Year 2011 - 4, Year 2012 - 4, Year 2013 - 4, Year 2014 - 4. Total 18 quarters. Thus, it can keep Cenvat credit @ 2.5% per quarter i.e. 45%. Thus, it can retain Cenvat credit of ₹46,350 and is required to reverse balance Cenvat credit of ₹ 56,650.

The capital goods were sold for ₹7,00,000. Excise duty payable on the transaction value is ₹86,520.

XYZ Ltd. is required to pay 'amount' equal to higher of the above. Thus, they are required to pay 'amount' of ₹86,520 under rule 3(5A) of Cenvat Credit Rules.

He should prepare invoice giving details of 'amount' paid under rule 3(5A) of Cenvat Credit Rules.

4. (a) Determine liability of Vat of X Ltd. for the month of December 2013, using invoice method of computation, from the following data:

(i) Purchase price of goods acquired from local market (including State Vat @ 4%)
₹ 104 lakhs

(ii) Manufacturing cost including transportation, insurance, handling and warehousing cost incurred by X Ltd. ₹ 8,50,000

(iii) Goods sold at a profit margin of 14% of cost

(iv) Vat rate on sale of goods 12.50%. 4

(b) State salient features of EPCG scheme under Foreign Trade Policy. 3

(c) Discuss relevance of customs valuation in transfer pricing mechanism. 3

Answer:

4. (a) The purchase price includes Vat @ 4%. Hence, net purchase price is ₹100 lakhs. The Vat of 4 lakhs is not to be considered as cost as Vat credit is available.

The total cost of production is ₹108,50,000. Profit margin @ 14% is ₹15,19,000. Hence, selling price will be ₹1,23,69,000. Vat @ 12.50% on selling price will be ₹15,46,125.

X Ltd. has Vat credit of ₹4,00,000. Hence, net Vat payable is ₹11,46,125.

(b) Export Promotion Capital Goods (EPCG) scheme enables an Indian manufacturer to obtain capital goods at Nil rate of customs duty against commitment of export obligation.

Importer will be issued 'EPCG Authorisation' for this purpose.

EPCG scheme allows import of capital goods (including CKD/SKD thereof as well as

Suggested Answer_Syl12_Jun2014_Paper_11

computer software systems) for pre-production, production and post-production at zero Customs duty, subject to an export obligation equivalent to 6 times of duty saved on capital goods imported under EPCG scheme, to be fulfilled in 6 years reckoned from Authorization issue-date [para 5.1 (a) of FTP w.e.f. 18-4-2013]

Import of capital goods shall be subject to Actual User condition till export obligation is completed.

- (c)** Concept of transfer pricing is mainly for taxation of international transaction. Sections 92 to 92F of Income Tax Act provide a statutory framework for computation of reasonable, fair and equitable profit and tax in India so that the profits chargeable to tax in India do not get diverted elsewhere by altering the prices charged and paid in intra-group transactions. Any income arising from an international transaction shall be computed having regard to arm's length price. International transaction is subjected to the arm's length price only in case of transaction between two entities called associate enterprises.

One of the mechanism that can be adopted is that the goods are supplied by foreign associated enterprise at higher rates (if they want to reduce profit of Indian associated enterprise) or at lower price (if they want to reduce profit of the foreign enterprise). Same thing can happen if Indian associated enterprise exports the goods to foreign associated enterprise.

Customs Valuations make provisions for valuation in case of related party transactions. Customs also have data for this purpose. These provisions will be very helpful in determining that the transfer of goods is taking place at arm's length prices.

- 5. (a) Explain the method to be adopted for distribution of Cenvat credit by Input Service Distributor (ISD) under Cenvat Credit Rules. 4**
- (b) What is meant by 'Indian customs water' under section 2(28) of Customs Act, 1962? 3**
- (c) State the time limit for filing appeal before Commissioner (Appeals) in service tax. Can he condone delay in filing appeal? How much? If appeal is filed even beyond that limit, which authority can grant further condonation of delay in filing appeal? 3**

Answer:

- 5. (a)** Rule 7 of Cenvat Credit Rules has been revamped w.e.f. 1-4-2012. As per revised rule 7 of Cenvat Credit Rules, the distribution should be as follows -
- (a) Credit distributed should not be more than credit of input service tax available.
 - (b) Credit of service tax attributable to services used in a unit exclusively engaged in manufacture of exempted goods or providing exempted services shall not be distributed.
 - (c) Credit of service tax attributable to service used wholly in a unit shall be distributed only to that unit.
 - (d) Credit of service tax attributable to service used in more than one unit shall be distributed pro-rata on the basis of turnover during the relevant period of the concerned unit to the sum total of turnover of all the units to which the service relates, during the same period [i.e. on the basis of turnover ratio during the 'relevant period1].

Tutorial Note:

'Relevant Period' means (a) the month previous to the month during which Cenvat credit is distributed, (b) In case if any of its unit pays tax or duty on quarterly basis as

Suggested Answer_Syl12_Jun2014_Paper_11

provided in rule 6 of Service Tax Rules, 1994 or rule 8 of Central Excise Rules, 2002 then the relevant period shall be the quarter previous to the quarter during which the CENVAT credit is distributed (c) In case of an assessee who does not have any total turnover in the said period, the input service distributor shall distribute any credit only after the end of such relevant period wherein the total turnover of its units is available - Explanation 3 to rule 7 of Cenvat Credit Rules inserted w.e.f. 1-7-2012.

Thus, if Cenvat Credit for July 2012 is distributed in August 2012, the turnover for July 2012 should be considered.

- (b) As per section 2(28) of Customs Act, 'Indian Customs Waters' means the waters extending into the sea up to the limit of contiguous zone of India under section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and includes any bay, gulf, harbour, creek or tidal river.

As per provisions of that Act, contiguous zone of India comes immediately after territorial waters. The outer limit of contiguous zone is 24 nautical miles from the nearest point of base line. Thus, area beyond 12 nautical miles and upto 24 nautical miles is "contiguous zone of India.

Thus, 'Indian Customs Waters' extend upto 12 nautical miles beyond territorial waters. The significance of the definition is that powers of customs officers extend upto 12 nautical miles beyond territorial waters.

- (c) The time limit for filing appeal before Commissioner (Appeals) is two months from date of receipt of order of adjudicating authority, as per section 85(3A) of Finance Act, 1994. The Commissioner (Appeals) can condone delay upto one month. This limit cannot be further increased and further condonation cannot be granted by any other authority also.

6. (a) '3C' is a firm of consulting engineers. The value of services provided by them during 2012-13 was ₹ forty five lakhs. They raised a bill dated January 25, 2014 for ₹ 1,12,360 (inclusive of service tax at 12.36%). The client made part payment of ₹ 56,180 on 4th February, 2014. How much service tax should be paid by '3C'? What would be the due date of payment of service tax? Will there be any change in your answer if value of services provided by them during 2012 -13 was ₹ 60 lakhs? 5

- (b) Which dealers are not eligible to opt for composition scheme under Vat regime? 5

Answer:

6. (a) Since turnover of 3C was less than 50 lakhs in 2012-13, they can pay service tax on receipt basis. They received an amount of ₹56,180 on 4-2-2014. By making back calculations, the service tax amount is ₹6,180. $[56,180 \times 12.36/112.36]$ The amount is payable on 31-3-2014.

If their turnover during 2012-13 was ₹60 lakhs, they are liable to pay service tax on accrual basis i.e. billing basis. Hence, they are liable to pay service tax on 12,360 $[1,12,360 \times 12.36/112.36]$. This service tax is payable before 31-03-2014. Since 3C is a partnership firm, they are required to pay service tax on quarterly basis.

- (b) Small dealers having gross turnover exceeding ₹5 lakhs but upto ₹50 lakhs have option of composition scheme. They will have to pay a small percentage of gross turnover.

They will not be entitled to any input tax credit
Following dealers are not eligible for composition scheme -

Suggested Answer_Syl12_Jun2014_Paper_11

- (i) Dealers who make inter-state purchases
- (ii) Dealers who make inter-state sales
- (iii) Dealers who import the goods and then sale in India
- (iv) Dealers who stock transfer goods outside the State
- (v) Dealers who export the goods
- (vi) Dealers who want to show Vat in their Invoice.
- (vii) Dealers whose turnover exceeds ₹50 lakhs.

7. (a) Compute assessable value and excise duty payable under Central Excise Act, 1944 in respect of following transactions during March 2014:
- (i) Opening stock - Nil. Production - 2,000 units in March, 2014
 - (ii) Quantity sold - 450 units @ ₹ 200 per unit on 5.3.2004 and 650 units @ ₹ 190 per unit on 15.3.2014 (exclusive of excise duty and Vat)
 - (iii) Free Samples cleared on 17.3.2014 - 50 units
 - (iv) Balance in stock on 31.3.2014 - 850 units
 - (v) Cost of production – ₹ 100 per unit.
- General rate of excise duty is applicable without any exemption. What is due date of payment of excise duty? 4
- (b) In what circumstances safeguard duty can be imposed by Central Government? 3
- (c) Briefly explain provisions relating to 'educational service' covered under the negative list of services. 3

Answer:

7. (a) In case of samples, excise duty is payable on the basis of price of similar goods. As per rule 4 of Central Excise Valuation Rules, value of such goods sold by assessee at any other time nearest to the time of removal is required to be considered. Hence, samples have to be valued @ ₹ 190 per unit. Cost of production is not relevant.

Hence, total value is as follows - (a) 450 units x ₹200 = 90, 000 (b) 650 units x ₹190 = 1,23,500 (c) 50 units x 190 = 9,500. Total value - ₹2,23,000. General excise duty rate is 12.36%. Hence, total excise duty payable is ₹27,562.80. The due date of payment of duty is 31-3-2014.

- (b) Central Government is empowered to impose 'safeguard duty' on specified imported goods if Central Government is satisfied that the goods are being imported in large quantities and under such conditions that they are causing or threatening to cause serious injury to domestic industry. Such duty is permissible under WTO agreement. The only condition under WTO is that it should not discriminate between imports from different countries having Most Favoured Nation (MFN) status.

Safeguard duty is a step in providing a need based protection to domestic industry for a limited period, with ultimate objective of restoring free and fair competition. Safeguard duty is targeted at remedying or preventing serious injury to domestic industry with a view to making it competitive and to enable it to stand on its own. Government has to conduct an enquiry and then issue a notification.

- (c) Following service is in negative list - Services by way of— (i) pre-school education and education up to higher secondary school or equivalent (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force (iii) education as a part of an approved vocational education course.

["Approved vocational education course" means,— (i) a course run by an industrial training institute or an industrial training centre affiliated to the National Council for

Suggested Answer_Syl12_Jun2014_Paper_11

Vocational Training or State Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961 (52 of 1961); or (ii) a Modular Employable Skill Course, approved by the National Council of Vocational Training run by a person registered with the Directorate General of Employment and Training, Union Ministry of Labour and Employment.]

8. (a) A dealer purchased goods within Maharashtra for ₹ 10,00,000 during 2013-14. He paid State Vat @ 5%. The dealer sold the goods in inter-state sale for ₹ 12,50,000 against C form. Can the dealer claim any refund? How much? What is the condition? 3
- (b) Explain provisions relating to service tax on restaurant service. 4
- (c) What is meant by export of service? 3

Answer:

8. (a) The tax paid on purchases is ₹ 50,000 (5% of ₹ 10,00,000). This is input tax credit available to the dealer. CST paid on inter-state sale is ₹ 25,000. Thus, he has excess Vat credit of ₹ 25,000. He can claim refund of this amount, if he cannot utilise the excess credit for his sale within the State.
- (b) Service tax provisions apply to restaurants air conditioned or having central air-heating in any part of establishment.
The restaurants with AC/central heating and bar are required to pay service tax on 40% amount. They can avail Cenvat credit of input services, capital goods and input goods other than food items.
However, services provided in relation to serving of food or beverages by a canteen maintained in factory covered under Factories Act having facility of air conditioning or central air heating at any time during the year is exempt from service tax.
- (c) Rule 6A of Service Tax Rules, as inserted w.e.f. 1-7-2012 states as follows -
The provision of any service provided or agreed to be provided shall be treated as export of service when-
- (a) the provider of service is located in the taxable territory,
 - (b) the recipient of service is located outside India,
 - (c) the service is not a service specified in the section 66D of the Finance Act, 1994,
 - (d) the place of provision of the service is outside India,
 - (e) the payment for such service has been received by the provider of service in convertible foreign exchange, and
 - (f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act.
9. (a) Assessee imported certain items from USA and the CIF value is ₹ 70,000. The imported items are in a package containing 500 individual packages with RSP (Retail Sale Price) of ₹ 200 per package. The items of import are subject to valuation under section 4A of Central Excise Act, 1944 based on RSP with an abatement of 30% on the RSP for purpose of duty. The rate of excise duty is 12% ad valorem and education cess as applicable. The items are subject to basic customs duty at 10%. Calculate the additional duty of customs (CVD) under section 3(a) of the Customs Tariff Act, 1975. 4
- (b) P Ltd. of Mumbai has provided service of beautification of a flat located in Mumbai. The flat belongs to a person who is resident of Kashmir. What is the place of provision of service? Whether service tax will be payable by P Ltd.? Explain with reference to Place of Provision of Service Rules. 3

Suggested Answer_Syl12_Jun2014_Paper_11

(c) Enumerate transactions which are defined as 'deemed sale of goods' under Constitutional provisions.

3

Answer:

9. (a) If the product is covered under MRP valuation provisions, CVD is payable on the basis of RSP (MRP). In this case, MRP is ₹200 and abatement of 30% is available. Hence, assessable value is ₹140 (70% of ₹200). CVD @ 12% of ₹140 = ₹16.80 per unit. Education cess and SAHE cess on CVD has been exempted. Hence, education cess is not payable.

(b) Even if the service recipient is located in Kashmir, the immovable property is located in taxable territory (i.e. India excluding J&K). Hence, as per rule 5 of Place of Provision of Services Rules, 2012 the place of provision of service is taxable territory. Hence, P Ltd. will be liable to pay service tax @ 12.36%.

(c) As per Article 366(29A) of Constitution of India, 'following are deemed sale of goods -

- (a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;
- (b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- (c) a tax on the delivery of goods on hire-purchase or any system of payment by installments;
- (d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
- (e) a tax on supply of goods by any un-incorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;
- (f) a tax on supply, by way of or as part of any service or in any manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration.

10. (a) State whether Cenvat credit can be availed on the following input services:

- (i) Works contract service relating to construction of factory building;**
- (ii) Goods transport service for inputs;**
- (iii) Sales promotion expenses;**
- (iv) Rent-a-cab service utilised to carry employees from home to factory and back. 4**

(b) Following particulars are available in respect of certain goods imported into India by air -
FOB Price - US\$ 30,000. Exchange rate notified by RBI 1 USD = ₹ 60.70. Exchange rate notified by CBE&C- 1 USD = ₹ 60.90. Compute the assessable value of goods as per Customs Act, 1962. The importer is unable to give details of freight and insurance expenses. **4**

(c) Write a note on 'penultimate sale' under Central Sales tax Act.

2

Answer:

10. (a) The eligibility of Cenvat is as follows - (i) Not eligible as excluded from definition of input service (ii) Eligible as specified in definition of input service (iii) Eligible as specified in definition of input service (iv) Not eligible as excluded from definition of input service.

(b) If air freight is not available, it should be taken as 20% FOB value i.e. 6,000 US dollars.

Suggested Answer_Syl12_Jun2014_Paper_11

Insurance is to be taken as 1.125% of FOB price i.e. 337.5 US dollars. Hence, CIF price is USD 36,337.5. Add landing charges @ 1% of CIF i.e. 363.375. Hence assessable value is USD 36,700.875.

The relevant exchange rate is 1 USD = ₹ 60.90. Hence, assessable value is ₹ 22,35,083.29 rounded to ₹ 22,35,083.

Alternatively Answer:

If air freight is not available, it should be taken as 20% FOB value i.e. 6,000 US dollars. Insurance is to be taken as 1.125% of FOB price i.e. 337.5 US dollars. Hence, CIF price (in USD) is USD 36,337.5. The relevant exchange rate is 1 USD = ₹ 60.90. Hence, CIF price (in ₹) is ₹ 22,12,953.75. Add landing charges @ 1% of CIF i.e. ₹ 22,129.54. Hence, assessable value is ₹ 22,35,083.29 rounded to ₹ 22,35,083.

(c) In some cases, a manufacturer supplies goods to final exporter (termed as merchant exporter), who then actually exports the goods. This is indirect export by the manufacturer. The sale made by manufacturer to the exporter is termed as penultimate sale.

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 sales tax.

The merchant exporter is required to issue H form to the manufacturer to establish that the sale is in the course of export and is exempt.

11. (a) Speedway Works Ltd. have carried out following works which are liable to sales tax as it is works contract involving transfer of property in goods during the course of performance of work. You are required to calculate value of the service and the service tax payable from the following particulars:

(i) New construction of work – ₹ 5 lakhs;

(ii) Supply, erection and commissioning of new plant and machinery – ₹ 150 lakhs;

(iii) Repairs and maintenance of immovable property – ₹ 3 lakhs.

These amounts are excluding service tax and Vat.

4

(b) Explain purpose of Advance Authorisation under Foreign Trade Policy.

4

(c) Distinguish between yellow bill of entry and green bill of entry under Customs Act.

2

Answer:

11. (a) The service tax will be payable on following value

(i) New construction work on 40% of ₹ 5,00,000 i.e. ₹2,00,000

(ii) Supply, erection and commissioning of new plant and machinery on 40% of ₹150,00,000 lakhs i.e. ₹ 60,00,000

(iii) Repairs and maintenance of immovable property on 60% of ₹3,00,000 i.e. ₹1,80,000.

Hence total value (i) + (ii) + (iii) = ₹63,80,000.

Service tax @ 12.36% of ₹63,80,000 = 7,88,568.

(b) Inputs required to manufacture export products can be imported without payment of customs duty under Advance Authorisation.

Advance Authorisation can be granted to merchant exporter or manufacturer exporter to import inputs, fuel, oil and catalysts. Since the raw materials can be imported before exports of final products, the Authorisation issued for this purpose is called 'advance Authorisation'.

Suggested Answer_Syl12_Jun2014_Paper_11

The imports of raw materials is on the basis of standard input-output norms (SION). The SION are finalised and quantity allowed to be imported will be based on quantity exported.

- (c)** Yellow Bill of Entry is for warehousing. It is also termed as 'into bond Bill of Entry' as bond is executed. Duty is not paid and imported goods are transferred to warehouse where these are stored.
Green Bill of Entry is for clearance from warehouse on payment of customs duty. It is for ex-bond clearance.