

## **INTERMEDIATE EXAMINATION (SYLLABUS 2012)**

### **SUGGESTED ANSWERS TO QUESTIONS**

**JUNE 2016**

#### **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 numbers 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: 1 × 20 = 20
- (a) State the constitutional provision which empowers Central Government to levy service tax.
  - (b) State basic distinction between composition scheme of payment of excise duty and payment of duty on basis of production capacity under section 3A of Central Excise Act.
  - (c) A manufacturer purchased oil in drums. He used the oil in his manufacture and sold the empty drums as scrap. Is excise duty payable on drums? State with reasons.
  - (d) State the periodicity for filing of excise return by a small scale manufacturing unit. What is the due date for filing of return?
  - (e) An assessee was providing a bus for transport of employees from nearest railway station to the factory and back. The bus operator charged service tax on his services. Is the assessee eligible to avail Cenvat credit of the service tax?
  - (f) Is customs duty payable on imported goods, which were pilfered before clearance from customs?
  - (g) What is the ceiling (upper limit) on quantum of duty drawback in relation to the market price of goods?
  - (h) What is "Entry" in respect of goods imported by post?
  - (i) Which is IEC code?
  - (j) Which authority administers Foreign Trade Policy?
  - (k) Which of the following services is in negative line:
    - i. Health care service by clinical tribunal
    - ii. Service provided by arbitral tribunal
    - iii. Supply of labour on farm
    - iv. Construction of public road
  - (l) A builder sold a residential flat of 1,600 sq. ft. at ₹90 lacs in October, 2015. He obtained building completion certificate in November, 2015. Calculate service tax payable. Ignore Swachh Bharat Cess.
  - (m) A service provider filed his return on 24-10-2015 for half year ending on October, 2015. Later he found that there was calculation mistake. Advise him with time limit within

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which he can take action.

- (n) A contractor was undertaking works contract for construction of public road. This activity is exempt from service tax. The contractor awarded some work to a sub-contractor. The sub-contractor can avail exemption from service tax only if he fulfils certain conditions. What are those conditions?
- (o) An assessee did not pay service tax on certain services as he was not aware of the liability. During EA-2000 audit in November, 2015, the mistake was pointed out. The assessee immediately, on his own, paid service tax of ₹1,00,000 with interest of ₹36,000 in December, 2015. Calculate the penalty payable by assessee.
- (p) A manufacturer purchased 20,000 litres of raw material @ ₹50 per liter. Vat rate was 15%. During transit from place of supplier to the factory of manufacturer, 100 liters were lost due to spillage and only balance quantity was received in factory. However, payment was made by manufacturer for the full quantity. Calculate the input tax credit of Vat that is available to manufacturer.
- (q) State with reasons whether export of goods in “zero rated transaction” or “exempt transaction” in Vat.
- (r) In Central Sales Tax, subsequent sale during movement of goods is exempt from sales tax if prescribed forms are issued. Which are those forms? Name the form which the first seller of goods is required to issue to intermediate buyer, so that the intermediate buyer can claim the subsequent sale as exempt from Central Sales Tax.
- (s) ABC Inc. USA, has given guarantees in respect of borrowings by JKF Ltd., India. Such guarantees account for 8.5% of total borrowings of JKF Ltd. Are ABC Inc. and JKF Ltd. “associated enterprises”?
- (t) Name two intangibles where determination of Arm’s Length Price(ALP) is often required.

Answers:

- (a) Service tax is imposed under Entry 97 of List I of Seventh Schedule to Constitution of India.
- (b) Basic distinction is that composition scheme is optional while payment of duty under section 3A is mandatory.
- (c) Excise duty is not payable on drums as he is not manufacturer of the drums.
- (d) SSI unit is required to file return on quarterly basis within 10 days from the end of quarter.
- (e) Services provided by way of renting of a motor vehicle are not eligible for Cenvat credit as per definition of “input service”.
- (f) Customs duty is payable by port authorities and not by the importer of goods.
- (g) Duty drawback shall not exceed 33% of market piece of export goods.
- (h) “Entry” means an Entry made in “Bill of Entry” in case of imports and “Shipping Bill” in case of exports. In case of post parcels, Label/ declaration accompanying goods which contain description, quantity and value of the goods will be deemed to be an “Entry” for purposes of Customs Act, vide section 82 of Customs Act.
- (i) IEC code is Import Export Code which every exporter or importer of goods is required to obtain before exporting or importing good. However, there are certain exceptions.
- (j) Director General of Foreign Trade(DGFT) is the authority to administer the Foreign Trade Policy.
- (k) (c) Supply of farm labour.
- (l) Service tax is payable on 25% of ₹90 lakhs i.e. on ₹22.50 lakhs @ 14%. Thus, service tax payable is ₹3,15,000.

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- (m) He can file revised return within 90 days from filing the original return.
- (n) The sub-contractor can avail exemption only if the service he is providing is a works contract leviable to State Vat.
- (o) Assessee is not liable to pay any penalty.
- (p) The input tax credit available =  $(19,900 \times 50 \times 15)/100 = ₹1,49,250$ .
- (q) Exports are termed as zero rated transaction as Vat/sales tax is not payable on sales but input tax credit of Vat/sales tax paid on purchases is available.
- (r) The forms are E-I and E-II. The first seller of goods is required to issue E-I form to the intermediate buyer.
- (s) As per section 92A(2) (d) of Income Tax Act, if one enterprise guarantees not less than per cent of the total borrowings of the other enterprise, these will be "associated enterprises. Since the guarantee amount is less than 10% of total borrowings of JKF Ltd., these two enterprises are not "associated enterprises".
- (t)
- Allocation of R&D expenditure.
  - Rate of royalties for technical knowhow
  - Allocation of cost of development of market and brand
  - Intellectual Property Rights (IPR) like patent, design, copyright, trade mark.

**2. Answer any two of the three sub-questions (a), (b) and (c):** **2 × 2 = 4**

- (a) State reason why indirect taxes are termed as "regressive" and direct taxes as "progressive".** **2**
- (b) Explain the Constitutional provisions which restrict the powers of State Government in respect of rate of state sales tax(Vat).** **2**
- (c) What is meant by "charging section"? What is charging section for levy of service tax?** **2**

Answers:

- (a) Indirect taxes do not depend in paying capacity. Since the indirect tax is uniform, the tax payable on commodity is same, whether it is purchased by a poor man or a rich person. Hence, the indirect taxes are termed as "regressive". Direct taxes are "progressive", as they depend on paying capacity. Rich person is taxed more compared to poor person.
- (b) Article 286(3)(a) of Constitution of India authorizes Parliament to declare some goods as of "special importance" and to impose restrictions and conditions in regard to power of States in regard to levy, rates and other incidence of tax on such goods. Parliament can restrict powers of State Government to tax such "declared goods".
- (c) A section in any tax law which imposes a tax is termed as "charging section". Section 66B of Finance Act, 1994 is the charging section for levy of service tax.

**3. Answer any two of the three sub-questions (a), (b) and (c):** **8 × 2 = 16**

- (a)**
- A job worker manufactured goods for a trader. The raw materials were supplied by the trader. The value of raw material was ₹10 per piece. Transport charges for bringing the raw material in factory was ₹0.30 per piece. The job worker charged ₹3 per piece as job charges. Transport charges for returning the final product to the place of trader was ₹0.20 per piece. The trader sold the goods in market at ₹21 per piece excluding State Vat @ 13.5%. Excise Duty rate is 12.5%. Ignore education cess. Calculate (A) Excise duty payable (B) who is the person liable to pay excise duty?** **3 + 1 = 4**

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- ii. Final products manufactured in a factory were lost in fire. Advise the manufacturer steps he should take in respect of his liability of excise duty on final product. Also advised him about his eligibility in respect of Cenvat credit taken by him on inputs which were used in manufacture of final product which lost in fire. What will be your answer if the manufacturer had obtained full compensation from insurance company for the loss, including excise duty and Vat which was paid on inputs?

2 + 1 + 1 = 4

(b)

- i. A manufacturer procured certain parts and components and manufactured machinery within his factory for his own use using those parts and components. State provisions relating to liability of excise duty on the capital goods. Further, explain provision relating to eligibility of Cenvat credit of excise duty charged by supplier-manufacturers of the components in their invoices. 2 + 2 = 4
- ii. CKL Pharma Ltd. is engaged in manufacture tablets. The tablets are sold in market marking MRP of ₹18 per tablet. The MRP includes 12.50% Excise duty. The company sales the goods in market to wholesalers at ₹9.00 (excluding excise duty and CST). The product is covered under section 4A of Central Excise Act. Abatement of 30% is available on MRP on drugs. The Company manufactured and cleared 2,000 tablets and distributed as physician's samples free of cost. The package was marked "Free samples". No MRP was marked as samples were free. Cost of production of the tablet as per CAS-4 is ₹7.50 per tablet. Determine the total duty payable. 4

(c)

- i. A manufacturer had supplied his manufactured goods to a customer. His price was FOR destination, inclusive of outward freight. Department contended that place of customer is "place of removal" and hence, it is includible in assessable value for purpose of excise duty. Discuss with reference case law, if any. Also explain the impact of this judgment on eligibility of Cenvat credit of service tax paid on outward freight i.e. from place of manufacturer to the place of the customer. 2 + 2 + 2 = 6
- ii. A manufacturer procured certain inputs for ₹10,000. On 01-02-2015. Excise duty charged by supplier of inputs was 1,236 @ 12.36% (including education cess @ 3%). The manufacturer took Cenvat credit of ₹1,200. Later, the inputs were found to be in excess of his requirements. Hence he sold those inputs in market on 11-11-2015 for ₹11,000 when excise duty rate was 12.5% (education cess was exempted). Advise manufacturer action he should take. 2

Answers:

(a)

- i.
- A. Excise duty is payable on basis of selling price of the trader. The selling price of ₹21 is to be taken as inclusive of excise duty. Hence, assessable value =  $(21 \times 100) / 112.50 = ₹18.67$ . Excise duty @ 12.50% = ₹2.33 [check that  $18.67 + 2.33 = 21$ ].  
Alternatively, if it is assumed that selling price of ₹ 21 is exclusive of excise duty then, excise duty will be —  $(12.5\% \text{ on } ₹ 21) = ₹ 2.63$
- B. The job worker is the actual manufacturer and he is liable to pay excise duty.
- ii. He should inform excise department as soon as possible. He should apply for remission of excise duty under rule 21 of Central Excise Rules.  
The manufacturer is required to reverse the Cenvat credit which he had taken on the inputs if excise duty is remitted by authorities.  
This position is same even if the manufacturer obtains full compensation from insurance company.

(b)

- i. As per notification No. 67/1995-CE dated 16-3-1995, capital goods(as defined in

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Cenvat Credit Rules) manufactured in a factory and used within the factory of production are exempt from excise duty.

Capital goods except when used as parts or components in the manufacture of a final product are excluded from definition of "input" under rule 2(k) of Cenvat Credit Rules. Thus, parts or component of machinery are included in the definition of "input". Hence, the manufacturer can avail Cenvat credit of excise duty paid on parts and components which were used within the factory for manufacture of machinery.

- ii. In case of sale of samples, price should be on basis of price of similar goods. As per Tribunal decisions, if the product is covered under MRP provisions, price of similar goods should be calculated on basis of "deemed value" as per MRP valuation provisions.

Hence, excise duty will be on basis of MRP value i.e. on 70% of ₹12.60. Thus, value per tablet is ₹12.60. Excise duty per tablet @ 12.50% of ₹12.60 = 1.575.

Hence, excise duty on 2,000 pieces =  $1.575 \times 2,000 = ₹3150$ .

(c)

- i. In CCE v. Ispat Industries Ltd. [2015] 324 ELT 670 (SC), it has been held that the place or premises from where excisable goods are to be sold can only be the manufacturer's premises or premises referable to the manufacturer. Premises of buyer can never be "place of removal".

Effect of SC decision on the valuation under Central Excise: The effect of Supreme Court decision is that even if the price of goods is FOR destination inclusive of outward freight, the outward freight is not required to be included in the assessable value of goods.

In case where excise duty is paid on basis of MRP or on basis of production capacity, assessee has no choice as outward freight element has no relation with the excise duty payable by him.

No Cenvat Credit of service tax on outward freight: In view of clear decision of Supreme Court, place of buyer cannot be "place of removal" of goods. Hence, Cenvat credit of service tax paid on outward freight and outward insurance of final products from place of factory of manufacturer to place of customer will not be available to manufacturer even if he pays excise duty on FOR price including outward freight.

Even when manufacturer pays excise duty on basis of MRP valuation or production capacity, the Cenvat credit of service tax paid on outward freight or outward insurance will not be available.

- ii. The inputs or capital goods can be removed as such from the factory of manufacturer or premises of service provider on payment of an "amount" equal to Cenvat credit availed when the credit was taken. In other words, it amounts to reversal of Cenvat credit taken [rule 3(5) of Cenvat Credit Rules]

Thus, the manufacturer is required to pay an "amount" of ₹1,236 while clearing inputs as such.

#### 4. Answer any two of the three sub-questions (a), (b) and (c):

6 × 2 = 12

(a)

- i. **Tista Limited imported a machine for an invoice value of USD 8,000. It includes USD 500 which are charges for erecting and commissioning the machinery in India. Tista Ltd. had supplied some raw materials outside India, which were supplied to the foreign supplier. The value of material was USD 300. The machinery was imported through vessel and cost of transport was. USD 800. Tista Ltd. paid demurrage charges of ₹15,000 to port authorities as imported goods were not cleared from port within specified time.**

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Transportation charges of ₹20,000 were incurred for transportation of goods from port to ICD (Inland Container Depot). Calculate assessable value. The foreign exchange rate was one USD= ₹65. 4

- ii. When can “export of goods” be treated as complete under customs law. i.e. what is taxable event for export of goods? 2
- (b)
- i. State distinctions and similarities between “identical goods” and “similar goods” under Customs Valuation provisions. 4
- ii. What is “injury margin” with reference to anti-dumping duty? 2
- (c)
- i. Explain provisions relating to On Site Post Clearance Audit (OSPCA) under customs. 4
- ii. Define “smuggling” under customs law. 2

Answers:

(a)

- i. Deduction of post importation charges of USD 500 is available. Cost of raw material of USD 300 supplied is required to be added.

Thus FOB value of imported machine is USD 7,800 [8,000 – 500 + 300]. Since, exchange rate is 1 USD = ₹ 65, the value of imported machine is ₹ 5,07,000. Ocean freight of USD 800 is required to be added. Thus, total sum in Indian ₹ will be = [5,07,000+(800×65)] = ₹ 5,59,000.

Demurrage charges of ₹ 15,000 are includible but transportation charges from Port to ICD of ₹ 20,000 are not includible. Therefore, CIF value will be — ₹ 5,59,000+₹ 15,000 = ₹ 5,74,000. 1% landing charges of ₹ 5,740 are to be added to the CIF value to arrive at the assessable value. Thus, the assessable value will be = (₹ 5,74,000+₹ 5,740) = ₹ 5,79,740.

- ii. In case of exports, taxable event occurs when goods cross territorial waters of India - UOI v. Rajindra Dyeing and Printing Mills (2005) 180 ELT 433 (SC)

(b)

- i. The major distinction between “identical goods” and “similar good” is that the “identical goods” should be same in all respects, except for minor differences in appearance, while in case of “similar goods”, it is enough if they have like characteristics and like components and perform same functions. In both the case:

- A. Quality and reputation (including trade mark reputation) should be same.  
B. Goods should be from same country.  
C. Goods produced by another manufacturer can be considered if price of goods produced by same manufacturer are not available. However, brand reputation and quality of other manufacturer should be comparable.  
D. If engineering, development work, art work, design work, plan or sketch undertaken in India were completed by the buyer on these imported goods free of charge or at reduced rate for use in connection with the production and sale for export of these imported goods, the price cannot be considered

- ii. “Injury margin” means difference between fair selling price of domestic industry and landed cost of imported product. The landed cost will include landing charges of 1% and basic customs duty. Only anti-dumping duty enough to remove injury to domestic industry can be levied.

(c)

- i. Since imported goods are normally cleared under self assessment basis, a system of

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On Site Post Clearance Audit (OSPCA) has been introduced.

"On Site Post Clearance Audit" (PCA) programmed is for verification of assessment at the premises of exporter/importer.

OSPCA is a single point audit combining Customs, Central Excise and Service Tax.

On-site Post-Clearance Audit at the Premises of Importers and Exporters Regulations, 2011 make provisions for such audit. 15 days' notice should be given for such audit.

The superintendent of Customs and Central Excise or Appraiser shall obtain prior information relating to importer/exporter. If importer/exporter fails to comply with provisions of the regulations, penalty upto ₹50,000 can be imposed.

OSPCA is viewed as trade facilitation measure.

Audit will be done by Commissioner (Audit), who is also responsible for audit of excise duty and service tax.

- ii. As per section 2(39) of Customs Act, smuggling, in relation to any goods, means any act or omission which will render such goods liable for confiscation under section 111 or 113 of Customs Act. Thus, attempting improper importation or attempting improper export will amount to smuggling.

- 5. Answer any two of the three sub-questions (a), (b) and (c):** **4 × 2 = 8**
- (a) Explain provisions relating to post export EPCG scheme.** **4**
- (b) What is meant by SION in Foreign Trade Policy? What is its purpose? Who fixes SION?** **2+1+1=4**
- (c) Write a brief note on special Economic Zones (SEZ).** **4**

Answers:

- (a) Under this scheme, export obligation (EO) is fulfilled first and then capital goods are imported. The EO is 85% of the export obligation which is required for pre export EPCG scheme.

Post Export EPCG Duty Credit Scrip (S) shall be available to exporters who intend to import capital goods on full payment of applicable duties in cash and choose to opt for this scheme. Basic Customs duty paid on Capital Goods shall be remitted in the form of freely transferable duty credit scrip(s), similar to those issued under Chapter 3 of FTP.

Duty remission shall be in proportion to the Export Obligation fulfilled. These Duty Credit Scrip(S) can be used for payment of applicable custom duties for imports and applicable excise duties for domestic procurement. All provisions of the existing EPCG Scheme shall apply insofar as they are not inconsistent with this scheme.

The advantage of the scheme is that the exporter does not have any specific export obligation when he imports capital goods on payment of full customs duty. Later, he gets remission on the basis of exports made by him.

- (b) The imports of raw materials under Advance Authorisation and DFIA are on the basis of standard input-output norms (SION). The SION are finalized and quantity allowed to be imported will be based on quantity exported.

SION means Standard Input Output Norms notified by DGFT- para 9.53 of FTP 2015-2020.

SION is fixed by "Norms Committee" at DGFT.

These norms are technical norms set on the basis of data submitted to DGFT.

These indicate the quantity of goods which can be imported duty free against each item of export. The norms cover different products, say chemical and allied products, electronics, Engineering products, leather and leather products, sports goods, textiles, readymade garments, hosiery and knitwear and misc. items. The norms are reviewed/revised from time to time.

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(c) SEZ are like a separate island within country. These are treated as if they are outside India for customs purposes. Goods can be brought in SEZ without payment of customs duty or excise duty. Supplies to SEZ from other parts of India are treated as "exports" and are entitled to all export benefits. On the other hand, supplies from SEZ unit to any person outside SEZ is treated as "import" by that person and normal customs duty is payable. SEZ have full freedom of operations within SEZ and all facilities of import and export are provided within the zone itself.

SEZ units may be set up for manufacture of goods and rendering services. Trading units are also permitted.

SEZ and SEZ units will be exempt from all taxes like customs duty, excise duty, Central sales tax, State Vat, Income tax etc.

SEZ are regarded as being outside Customs Territory of India, so far as duties of customs are concerned.

**6. Answer any two of the three sub-questions (a), (b) and (c):** **10 × 2 = 20**

**(a)**

- i. Explain the method of calculation by which the Input Service Distributor should distribute its cenvat credit of input services to its various manufacturing units or units providing taxable service.** **6**
- ii. Explain provisions relating to liability of service tax in respect of services provided by a director to a company or body corporate.** **4**

**(b)**

- i. JKB Ltd., manufacturer from Kolkata exported a consignment of its excisable final products to Nairobi, Kenya. It had deployed Benguela Ltd. from Nairobi, a clearing Agent, to clear the consignment from Nairobi port for onward dispatch of the same to the concerned buyer in Nairobi. Benguela Ltd. provided the service and raised invoice on JKB Ltd. Discuss the service tax liability in respect of service provided by Benguela with reference to applicable provisions of Place of Provision of Service Rules.** **3**
- ii. Mr. A. Sansayi Rao, a senior executive in a company, was transferred from Bengaluru to Chennai. He packed his personal belongings and booked them with a Goods Transport Agency (GTA) for transport of goods to Chennai in December, 2015. The freight charged by GTA was ₹40,000. How much service tax is payable if service tax rate is 14% plus Swachh Bharat Cess(SBC) as applicable? Who is liable to pay service tax?** **2+1=3**
- iii. Calculate liability of service tax in following cases (all cases are independent of each other). Service tax rate is 14%. All services were provided in September, 2015 -**
  - A. Commission received on sale of rice - ₹75,000.**
  - B. Hotel room charges for two days - ₹1,800**
  - C. Ambulance services provided by a private company on chargeable basis - ₹20,000.**
  - D. Sale of packaged software with MRP of ₹20,000(which includes value of the DVD ₹100)** **4**

**(c)**

- i. Amita Enterprise, a proprietary firm, provided works contract service to Marvin Pvt. Ltd. Amita Enterprise raised invoice on 01-10-2015 charging service tax of ₹10,000 towards their portion of service tax liability, as per law. The invoice was received by Marvin Pvt. Ltd. on 07-10-2015. M/s. Marvin Pvt Ltd. deposited their portion of liability tax on 06-11-2015. Marvin Pvt. Ltd. paid the invoice amount to Amita Enterprise (including service tax charged by Amita Enterprise) on 10-02-2016. State the following:**
  - A. Date on which Marvin Pvt. Ltd. can avail Cenvat of service tax charged by Amita**



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- Enterprise in their invoice.
- B. Quantum of service tax payable by Marvin Pvt. Ltd., if any, directly to Government.
- C. Date on which Marvin Pvt. Ltd. can avail Cenvat credit of service tax paid by themselves to Government.
- D. Is any action needed by Marvin Pvt. Ltd. in respect of amount paid by them to Amita Enterprise on 10-02-2016? **4**
- ii. With reference to Swachh Bharat Cess (SBC), answer the following:
- A. Date from which SBC became payable.
- B. Value for calculation of SBC.
- C. Effective Rate of SBC.
- D. Can Cenvat credit be utilized for payment of SBC?
- E. Can input tax credit of SBC be utilized for payment of SBC on output service?
- F. Are provisions relating to reverse charge applicable to payment of SBC? **3**
- iii. An air conditioned restaurant made a bill date 16-11-2015 as follows:
- Charges for food - ₹4,000.
- Service charges @ 10% of food charges - ₹400
- State vat was charged separately in invoice.
- Calculate service tax payable. **3**

Answers:

(a)

- i. As per rule 7 of Cenvat Credit Rules, the manner of distribution of Cenvat credit by ISD (input Service Distributor) was 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 by one or more units 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 by a unit shall be distributed only to that unit.
- D. Credit of service tax attributable to service used by more than one unit shall be distributed pro-rata on the basis of turnover of such units the relevant period to the total of turnover of all the units which are operational in the current year, during the "relevant period" [i.e. on the basis of turnover ratio during the "relevant period". The turnover of only those units which are operational is required to be considered].
- Meaning of 'relevant period'- 'Relevant Period' means:
- A. If the assessee has turnover in the 'financial year' preceding to the year during which credit is to be distributed for the month or quarter, as the case may be, the said financial year or,
- B. If the assessee does not have turnover for some or all the units in the preceding financial year, the last quarter for which details of turnover of all the units are available, previous to the month or quarter for which credit is to be distributed.
- Thus, if Cenvat Credit for July 2014 is to be distributed and if all the units of assessee were working in financial year 2013-14, then distribution should be on basis of turnover of each unit during 2013-14. However, if some of the units started operations after April 2014, then turnover for April 2014- June 2014 will have to be considered for distributing the Cenvat credit to various units.
- ii. Service tax is payable on services provided by non -executive, nominee and

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independent directors to the company or body corporate w.e.f. 1-7-2012.

Reverse charge is applicable when service is provided by director to company or body corporate. The company or body corporate is liable to pay service tax under reverse charge.

No service tax in case of whole time director in employment of company- Section 65B(44) of Finance Act, 1994 as introduced w.e.f. 1-7-2012 reads as follows-“Service” means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include - (a) -- (b) a provision of service by an employee to the employer in the course of or in relation to his employment (c)--.

Thus, services provide by employee to employer have been excluded from the definition of 'service' itself.

A director can be employee of the company. This has been recognized in cases like CIT v. Gautam Sarabhai (1984)19 Taxman 353 (Guj HC).

Hence, if service is provided by whole time director who is employee to company or body corporate, service tax is not payable. Hence, reverse charge will not apply.

(b)

- i. As per rule 4(a) of POPS Rules, the place of provision of following services shall be the location where the services are actually performed, in respect of goods that are required to be made physically available by the service receiver to the service provider, in order to provide the service. However, when such services are provided from a remote location by way of electronic means the place of provision shall be the location where goods are situated at the time of provision of service.

In view of this, the performance of service is taking place in Nairobi. Hence, Place of provision of service is outside India. Thus, no service tax is payable.

- ii. Service tax is payable on 30% of ₹40,000 i.e. on ₹12,000. Hence, service tax is payable @14% of ₹12,000 i.e. ₹1,680. SBC is payable @0.5% of ₹12,000 i.e. ₹60.

The service receiver here is individual. Hence, service tax is payable by Goods Transport Agency itself.

- iii. All these services are exempt from service are exempt from service tax. Hence service tax payable is Nil in all the cases.

(c)

- i. (A) 7-10-2015 (B) ₹10,000 (C) 6-11-2015 (D) Since payment was not made to Amita Enterprise within three months from date of invoice, Marvin Pvt Ltd. should reverse the Cenvat credit of ₹10,000 (service tax charged by Amita Enterprise in their invoice) on 1-1-2016. Later, when they make payment to Amita Enterprise on 10-2-2016, they can take again Cenvat credit of ₹10,000.

- ii. (A) 15-11-2015 (B) Value is same on which service tax is payable (C) Effective rate of SBC is 0.5% of value of service (D) No (E) No (F) Yes.

- iii. Service tax is payable on 40% of ₹4,400 i.e. on ₹1,760. Service tax @14% of ₹1,760 = 246.40. Swachh Bharat Cess @0.5% of ₹1,760 = ₹8.80. Total service tax - ₹255.20.

**7. Answer any two of the three sub-questions (a), (b) and (c):**

**6 × 2 = 12**

**(a)**

- i. Deepa Enterprise, a trader from Kolkata furnishes following information:**

**1. Gross interstate sales for quarter ending December, 2015 - ₹92,50,000 (including CST).**

**2. The above sale includes the following:**

**A. Central Excise Duty - ₹9,00,000**

**B. Outward freight on goods sold charged separately in invoice - ₹1,50,000.**

**C. Installation and Commissioning charges charged separately in invoice - ₹50,000.**

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Valid C forms were received in respect of all sales.

Calculate:

Central Sales Tax (CST) payable. 4

ii. State in brief why Vat is termed as 'consumption based tax'. 2

(b)

i. Alpha Traders furnishes you the following information for January, 2016:

A. Opening stock of finished goods and raw materials - Nil.

B. Purchas of raw material within State (including Vat @ 13.5%) - ₹4,54,000.

C. Inter-state Purchase of raw materials (including CST @ 2%) - ₹2,04,000.

D. Manufacturing expences - ₹1,30,000.

E. Sales (excluding Vat 13.5%) - ₹11,00,000.

F. Closing stock of finished goods and raw materials which was purchased within State (including Vat @ 13.5%) - ₹1,70,250.

Compute the net VAT liability for January, 2016. 4

ii. A dealer claims a particular transaction as stock transfer as per section 6A of CST Act. The assessing officer did not accept the contention and passed order treating the transaction as sale of goods. Advise provisions relating to appeal against his assessment order. 2

(c) State the purpose of composition scheme under Vat and salient provisions of composition scheme. State which types of dealers are not eligible for composition scheme. 6

Answers:

(a)

i. Deduction of outward freight of ₹1,50,000 and installation and commissioning charges of ₹50,000 is available. Hence, 'aggregate sale price' (i.e. including CST) is ₹90,50,000. This is inclusive of CST @2%.

Hence, turnover (i.e. excluding CST) =  $(90,50,000 \times 100)/102 = ₹88,72,549.00$

Hence CST @ 2% = ₹1,77,451.00

ii. Vat works on system of Input Tax Credit. Thus, input tax credit paid by the seller is available to buyer. In effect, Government gets no revenue. Tax is received by Government only when goods are finally consumed as after that input tax credit of Vat paid cannot be passed on. Hence, Vat is termed as consumption based tax.

(b)

i. The input tax credit available-

A. Vat paid in raw materials - ₹54,000  $[(4,54,000 \times 13.50)/113.50]$

B. Input Tax Credit of Central Sales Tax is not available.

C. Even if there is closing stock of raw material, its input tax credit is available.

Thus, total input tax credit = ₹54,000.

Vat payable on final product -  $(13.5 \times 11,00,000)/100 = ₹1,48,500.$

Hence, Net Vat payable by cash = ₹1,48,500 - 54,000 = ₹94,500.

ii. In case of dispute under 6A of CST Act(whether a particular transaction is inter state sale or stock transfer), first appeal has to be filed with Highest Appellate Authority in the State. Appeal against order of Highest Appellate Authority in the State (excluding High Court) can be filed with CST Appellate Authority.

(c) Vat requires heavy compliance cost due to detailed accounting and paper work involved. Small dealers do not have sufficient knowledge and expertise to comply with the requirements relating to records and accounts.

Hence, for them, a simplified composition scheme has been provided. It is optional.

Small dealers having gross turnover less than prescribed limit 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.

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Dealers whose all purchases and sales are within the State are alone eligible for the simplified scheme.

Dealers who opt for composition scheme cannot charge Vat in their invoice and cannot show Vat in their invoice.

Dealers not eligible for composition scheme - Following dealers are not eligible for composition scheme-

- A. Dealers who make inter-state purchases
- B. Dealers who make inter-state sales
- C. Dealers who import the goods and then sale in India
- D. Dealers who stock transfer goods outside the State
- E. Dealers who export the goods
- F. Dealers who want to show Vat in their Invoice.
- G. Dealers whose turnover is beyond prescribe limit (which is ₹50 lakhs in many States)

**8. Answer any two of the three sub-questions (a), (b) and (c):** **4 × 2 = 8**

**(a) "Concept of 'arm's length price' has been incorporated in Customs Valuation provisions"- Comment on this statement and explain relevant provisions.** **4**

**(b) Explain which enterprise can be termed as 'associated enterprises'. Your answer need not contain provisions relating to 'deemed associated enterprise'.** **4**

**(c) Gama Pharmaceuticals Ltd. is an Indian subsidiary of a UK Company Gama Pharma Ltd. The UK parent company sales its products to unrelated buyers at 300 UK pounds per unit. What would be the Arms Length Price (ALP) in following two independent situations-**

- i. The UK Parent company sales its product to Indian subsidiary at 250 UK pounds per piece.**
- ii. The product is sold to Indian subsidiary at 320 UK pounds per unit.** **4**

Answers:

(a) In customs, Transaction value is not acceptable as customs value if buyer and seller are 'related'.

Rule 2(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and Rule 2(2) of Customs Valuation (Determination of Value of Export Goods) Rules, 2007 define that persons shall be deemed to be 'related' only if one of the specified conditions is satisfied .

As per rule 3(3) of Customs Valuation (Determination of Value of imported Goods) Rules, 2007 [earlier rule 4(3) upto 10-10-2007], transaction Value can be accepted even if buyer and seller are related if (a) examination of circumstances show that the relationship has not affected the selling price or (b) buyer demonstrates that the price is similar to identical or similar goods sold to unrelated buyers in India, or deductive value or computed value of identical or similar goods.

(b) As per section 92A(1) of Income Tax Act, an enterprise would be regarded as an associated enterprise of another enterprise, if

- A. It participates directly or indirectly, or through one more intermediaries, in the management or control or capital of the other enterprise; or
- B. In respect of it, one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

Section 92A(1) (a) applies when there is participation by one enterprise into other enterprise.

Section 92A(1) (b) of Income Tax Act applies when there is participation by a third

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enterprise into both the enterprises.

(c)

- i. The price of 250 UK pounds is accepted as with the price, profit of Indian subsidiary will be higher. Hence, there is no loss of income tax revenue to Indian Government
- ii. In this case, the price taken for computing income of Indian subsidiary would be 300 UK pounds per unit, as accepting price of 320 UK pounds means the profit of Indian subsidiary will be lower. The difference is more than 3%. Hence, transaction price of 320 UK pounds cannot be accepted. Hence, ALP will be 300 UK Pounds.