

PAPER – 8: INDIRECT TAX LAWS

Question No. 1 is compulsory

Answer any **five** questions from the remaining six questions.

Question 1

- (a) CNC India Ltd. is engaged in the manufacture of machines. It has supplied one machine to M/s. Advait India Ltd. at a price of ₹ 11,25,000 (excluding excise duty & VAT). Cash discount @ 3% on price of the machinery is allowed to M/s. Advait India Ltd. Further, following additional amounts as indicated below have been charged from M/s. Advait India Ltd.

Sl. No.	Particulars	₹
(i)	Expenses pertaining to installation and erection of the machine at Advait India factory. (Machine was permanently affixed to earth)	40,000
(ii)	Pre-delivery inspection charges (charged separately by CNC India Ltd.)	11,250
(iii)	Cost of durable and returnable packing (such cost has been amortised and included in the cost of machine)	5,000
(iv)	Warranty Charges charged separately by CNC India.	1,00,000
(v)	Advertisement and publicity charges borne by Advait India Ltd.	60,000
(vi)	After sales service charges (charged separately by CNC India Ltd.)	20,000

Advait India has supplied material worth ₹ 50,000 free of charge to CNC India Ltd. for being used in production of machine.

Determine the assessable value for calculation of central excise duty payable thereon from the aforesaid information. There was no opening or closing inventory. CNC India is not eligible for exemption in terms of Notification 8/2003 dated 01-03-2003 during the current financial year 2016-17 when the clearance of the machine was effected.

Make required assumption and show the working notes separately. (Need not calculate central excise duty payable). (5 Marks)

The Suggested Answers for Paper 8: Indirect Tax Laws are based on the provisions as amended by the Finance Act, 2016 and notifications/circulars issued up to 31.10.2016 which were relevant for May, 2017 examinations.

- (b) Compute service tax liability (to be paid in cash) from the following particulars of services of M/s. Utkarsh & Co. for the month of October, 2016.

S. No.	Particulars	Amount (₹)
1.	Construction of road for general public	16,75,000
2.	Renovation service provided to Government relating to plant for sewerage treatment.	12,00,000
3.	Gross amount (excluding all taxes) charged for providing works contract service.	2,00,000
4.	Actual value of material transferred in the above works contract (i.e S. No. 3) (VAT under the relevant State VAT Law has been paid on this value)	1,40,000
5.	Service tax paid on input services (excluding SBC and KKC)	2,800
6.	SBC paid on input services	100
7.	KKC paid on input services	100
8.	Excise duty paid on the capital goods, purchased during the year, used in the provision of works contract service.	2,000
9.	Excise duty paid on inputs used in the provision of works contract service.	10,750

M/s. Utkarsh & Co. has paid service tax of ₹ 2,50,000 during the preceding financial year. Rate of service tax is 15.00% (14% + 0.50% Swachh Bharat Cess + 0.50% Krishi Kalyan Cess).

Working notes should form part of your answer.

(5 Marks)

- (c) Compute the Service Tax payable on independent services provided by "All in One Services Company Ltd." for the month of September 2016. Service tax @ 15% (including SBC & KKC) has been charged separately wherever applicable and not included in the service value. Ignore exemption for Small Service Provider under Notification No. 33/2012 dated 20-06-2012. Notes should form part of the answer.

Details of services provided are given below.

Sl. No.	Particulars of Service Provided	Amount in ₹
(i)	Service provided by way of repair or maintenance of an aircraft owned by Rajasthan State Government	5,00,000
(ii)	Exhibiting Movies on television channels.	3,00,000
(iii)	Transportation of goods by vessel from a place outside India up to the customs station of clearance in India.	4,00,000

(iv)	Construction and installation of original works pertaining to Bengaluru Metro [Contract entered on 05-06-2016]	9,00,000
(v)	Transportation of passengers with accompanied belongings by an Air conditioned state carriage other than motor cab.	6,00,000
	Total	27,00,000

(5 Marks)

- (d) M/s. AMTL Ltd., Kolkata imported CNC Grinding machine from Catalyst Inc. USA, complete with accessories and spares in October 2015 for use in the manufacture of high precision micro tools.

Basic cost of machine with accessories US \$ F.O.B. 50,000. Catalyst Inc. supplied one extra set of accessories valued at US \$ 2000 free of cost to cover for transit damage.

Other details available were as follows:

Sl. No.	Particulars	Amount
1.	Warranty Cost payable to Catalyst Inc. (not included in the cost of the Machine i.e., US \$ 50000)	US \$ 4,500
2.	Design & Development charges paid in USA (not included in the cost of the Machine i.e., US \$ 50000)	US \$ 6,000
3.	Licence Fee, AMTL is required to pay in USA	US \$ 1,000
4.	Value of Drawings supplied by AMTL Ltd. Kolkata free of cost and is necessary for customizing machine to the needs of AMTL Ltd. Kolkata	US \$ 1,000
5.	Freight by Air	US \$ 15,000
6.	Buying Commission paid to Indian Agent in India	₹ 30,000

Bill of Entry presented on 10-11-2015 and the rate of exchange notified by CBEC on this date was ₹ 66.25 per US \$ and rate of BCD was 7.5%.

Date of arrival of aircraft was 06-11-2015 and rate of exchange notified by CBEC on this date was ₹ 66.50 per US \$ and rate of BCD was 7.5%.

Machine was insured but Insurance premium was not shown /available in/from the invoice.

From the above particulars, compute the assessable value for purpose of customs duty payable. Make suitable assumptions wherever required.

Working notes should form part of your answer.

Note: Custom duty calculations need not be shown.

(5 Marks)

Answer**(a) Computation of Assessable Value**

Particulars	₹
Price of machine excluding excise duty and VAT	11,25,000
Add: Installation and erection expenses [Note 1]	-
Pre-delivery inspection charges [Note 2]	11,250
Durable and returnable packing [Note 3]	-
Warranty charges [Note 4]	1,00,000
Advertisement and publicity charges borne by Advait India Ltd. [Note 4]	60,000
After sale services charges [Note 2]	20,000
Material supplied free of charge by Advait India Ltd. [Note 5]	<u>50,000</u>
Total	13,66,250
Less: 3% cash discount on price of machinery = ₹ 11,25,000 × 3% [Note 6]	<u>33,750</u>
Assessable value	<u>13,32,500</u>

Notes:

1. Installation and erection expenses incurred to bring into existence a non-excisable final product (machine permanently affixed to the earth is an immovable property and hence, non-excisable) are not included in assessable value. [Circular No. 643/34/2002 CX dated 01.07.2002]
2. Since pre-delivery inspection charges and after sale services charges have been charged by the manufacturer, they are included in the assessable value. [Tata Motors Ltd. v. UOI 2012 (286) E.L.T. 161 (Bom.)]
3. Since cost of durable and returnable packing has been amortised and included in the cost of machine, same has not been added again. [Circular No. 643/34/2002-CX dated 01.07.2002]
4. The definition of the transaction value specifically includes warranty, advertisement and publicity charges payable by the buyer vide Section 4(3)(d) of the Central Excise Act, 1944 read with Circular No. 643/34/2002-CX dated 01.07.2002.
5. Explanation 1 to Rule 6 of the Central Excise (Determination of Price of Excisable Goods) Rules, 2000 provides that cost of material supplied free of charge by buyer forms part of assessable value as it is an additional consideration flowing from buyer to seller.

6. Since transaction value is the assessable value, cash discount actually passed on to the buyers is allowed as deduction vide Section 4(3)(d) of the Central Excise Act, 1944 read with *Circular No. 643/34/2002 CX dated 01.07.2002*.

(b) Computation of service tax liability to be paid in cash by M/s. Utkarsh & Co. for October, 2016

Particulars	₹
Construction of road for general public (Note-1)	Nil
Renovation service provided to Government relating to plant for sewerage treatment (Note-1)	Nil
Gross amount charged	2,00,000
Less: Actual value of goods transferred (Note-2)	<u>1,40,000</u>
Value of service portion in the execution of works contract as per Rule 2A(i) of Service Tax (Determination of Value) Rules, 2006 (hereinafter referred as Valuation Rules)	<u>60,000</u>

Particulars	Service tax @ 14% (₹)	SBC @ 0.5% (₹)	KKC @ 0.5% (₹)
Service tax on ₹ 60,000 (Note-3)	8,400	300	300
Less: CENVAT credit on inputs (Note-4)	-	-	-
CENVAT credit on input services ¹ (Note-5)	2,800		100
CENVAT credit on capital goods (50%) (Note-6)	<u>1,000</u>	<u>-</u>	<u>-</u>
Service tax liability	<u>4,600</u>	<u>300</u>	<u>200</u>
Total service tax liability to be paid in cash including cesses – ₹ 5,100			

Notes:

1. Construction of road for general public and renovation service provided to Government relating to plant for sewerage treatment are exempt from service tax vide *Mega Exemption Notification No. 25/2012 ST dated 20.06.2012*.

¹ It has been presumed that input services have been used exclusively in the provision of works contract services and thus credit reversal provisions under rule 6 of CENVAT Credit Rules, 2004 are not attracted.

2. Since VAT has been paid on the actual value of material transferred in the works contract, such value is taken as the value of property in goods transferred in the execution of the said works contract as per clause (c) of explanation to rule 2A(i) of the Valuation Rules.
3. As M/s. Utkarsh & Co. has paid service tax of ₹ 2,50,000 during the preceding financial year, it is not eligible for small service providers' exemption under Notification No. 33/2012 ST dated 20.06.2012 in the current financial year.
4. Explanation 2 to rule 2A of the Valuation Rules provides that CENVAT credit of duties or cess paid on any inputs, used in or in relation to the works contract, is not available.
5. Since SBC is not CENVATable, CENVAT credit of SBC paid on input services is not allowed.
6. As per rule 4(2)(a) of the CENVAT Credit Rules, 2004, only 50% of the duty paid on the capital goods is available as CENVAT credit, in the year of purchase.

(c) Computation of service tax payable on independent services provided by All In One Service Company Ltd. for September, 2016

Particulars	Value of taxable service [₹]	Service tax @ 15% (including SBC & KKC) [₹]
Service provided by way of repair or maintenance of an aircraft owned by Rajasthan State Government [Note-1]	5,00,000	75,000
Exhibiting movies on television channels [Note-2]	3,00,000	45,000
Transportation of goods by vessel from a place outside India up to the customs station of clearance in India [Note-3] ²	4,00,000	[4,00,000 x 30% x 15%] 18,000
Construction and installation of original works pertaining to Bengaluru Metro [Note-4]	9,00,000 x 40% =3,60,000	54,000
Transportation of passengers with accompanied belongings by an air-conditioned stage carriage other than motor cab [Note-5] ³	6,00,000	[6,00,000 x 40% x 15%] = 36,000

² It has been presumed that All in One Company Ltd. does not avail CENVAT credit on inputs and capital goods, used for providing the taxable service under the provisions of the CENVAT Credit Rules, 2004.

³ It has been presumed that All in One Company Ltd. does not avail CENVAT credit on inputs, capital goods and input services, used for providing the taxable service under the provisions of the CENVAT Credit Rules, 2004.

Notes:

1. Repair or maintenance service provided to the Government are exempt vide Mega Exemption *Notification No. 25/2012 ST dated 20.06.2012* only when such repair & maintenance is for a vessel. Such services provided for an aircraft are not exempt.
2. Services provided by way of temporary transfer or permitting the use or enjoyment of a copyright of cinematograph films for exhibition in a cinema hall or cinema theatre are exempted vide Mega Exemption *Notification No. 25/2012 ST dated 20.06.2012*. Thus, exhibition of movies is exempted only when movie is exhibited in cinema hall/theatres.
3. Inbound transportation of goods has been removed from the negative list [Entry (p)(ii) of section 66D] with simultaneous exemption for transportation of goods only by an aircraft. Thus, service tax is payable on transportation of goods by vessel from a place outside India up to the customs station of clearance in India. [Mega Exemption *Notification No. 25/2012 ST dated 20.06.2012*]
Further, Abatement *Notification No. 26/2012 ST dated 20.06.2012* provides 70% abatement in case of transportation of goods in a vessel.
4. As per Mega Exemption *Notification No. 25/2012 ST dated 20.06.2012*, construction and installation of original works pertaining to metro is exempt only if the contract has been entered prior to 01.03.2016 with payment of stamp duty.
Further as per rule 2A(ii)(A) of Service Tax (Determination of Value) Rules, 2006, in case of original works contracts, service tax is payable on 40% of total amount charged for the works contract.
5. Transportation of passengers with accompanied belongings by stage carriage other than motor cab has been removed from the negative list [Section 66D(o)(i)] with simultaneous exemption for passenger transportation by only a non-air conditioned stage carriage. Thus, passenger transportation in air conditioned stage carriage other than motor cab will be liable to service tax. [Mega Exemption *Notification No. 25/2012 ST dated 20.06.2012*]
Further, Abatement *Notification No. 26/2012 ST dated 20.06.2012* provides 60% abatement in the said case.

(d) Computation of assessable value

Particulars	Amount (\$)
FOB value of machine with accessories	50,000.00
Add: Extra set of accessories supplied free of cost to cover for transit damage [Note-1]	Nil
Buying commission [Note-2]	Nil
Warranty cost [Note-3]	4,500.00

Design and development charges [Note-3]	6,000.00
License fee [Note-3]	1,000.00
Value of drawings supplied by AMTL Ltd. [Note-3] ⁴	<u>1,000.00</u>
Total FOB Value	62,500.00
Add: Air freight restricted to 20% of ₹ 62,500 in terms of second proviso to rule 10(2) of the Customs Valuation Rules	12,500.00
Insurance (Unascertainable insurance charges added @ 1.125% of ₹ 62,500) [Clause (iii) of first proviso to rule 10(2) of Customs Valuation Rules]	703.12
CIF Value	75,703.12
Add: Landing charges @ 1% [Note-4]	<u>757.03</u>
Assessable value in US \$	76,460.15
	₹
Exchange rate is ₹ 66.25 per \$[Note-5]	
Assessable value in rupees	50,65,484.94

Notes:-

- (1) Sale price of machine is deemed to include the value of such accessories.
- (2) Buying commission is not includible in the assessable value. [Rule 10(1)(a)(i) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007]
- (3) As per rule 10(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the following are includible in the assessable value:-
 - (a) Payment made as a condition of sale is includible in the assessable value. So, warranty cost is includible in the assessable value. [Rule 10(1)(e)]
 - (b) Design and development charges [Rule 10(1)(b)(iv)]
 - (c) License fees- [Rule 10(1)(c)]
 - (d) Value of drawings supplied by AMTL Ltd. [Rule 10(1)(b)(iv)]
- (4) Landing charges @ 1% of CIF value are includible in the assessable value, whether actually incurred or not. [Clause (ii) of first proviso to rule 10(2) of Customs Valuation Rules]
- (5) Rate of exchange notified by CBEC on the date of filing of bill of entry to be considered. [Third proviso to Section 14 of the Customs Act, 1962]

⁴ Since the value for such drawings is given in US \$, it is presumed that the same has been developed outside India.

Question 2

- (a) M/s. RGH Ltd., manufacturer of excisable goods, have cleared their manufactured final products during October 2016 and the excise duty payable for the month is ₹ 7,30,000, without considering the following details of excise duty/service tax paid by them during the month at the time of purchase of goods /procurement of input services respectively:

Sl. No.	Particulars	Amount ₹	Remarks
(i)	On inputs "VK"	2,50,000	(Inputs pertaining to all purchases have been received by M/s RGH Ltd., in October 2016 in the factory except invoice dated 1 st November, 2016 for excise duty of ₹ 35,000 paid on Inputs "A" was received on 3 rd November, 2016.)
(ii)	On input service used in (excluding KKC and SBC) the manufacture of the final product	50,000	(Includes one invoice issued by clearing agent for clearance of inputs or capital goods for ₹ 10,000)
(iii)	On welding electrodes for repairs and maintenance of capital goods.	25,000	Received in the factory in Oct. 2016
(iv)	Inputs used for pumping of water for captive use	32,000	-Do-
(v)	Tubes and pipes (used in factory) (Price per tube- ₹ 2,000 Price per pipe- ₹ 4,000)	42,000	-Do-
(vi)	Special purpose motor vehicle (falling under tariff heading 8705) for use in the factory of manufacturer	2,00,000	-Do-
(vii)	Tools of Chapter 82 of the Central Excise Tariff directly sent to another manufacturer (job worker) for production of goods	50,000	

Note: M/s RGH Ltd. is not eligible to avail exemption under the notification based on value of clearance in a financial year. Calculate the duty payable in cash by M/s RGH Ltd. for the month of October 2016 taking into account the CENVAT credit available.

You are also required to provide working notes and explanations which will form part of the answer. (4 Marks)

- (b) *From the following information, determine (with brief reasons to be provided as part of the answer) the person liable to pay service tax and extent of service tax payable if all sums are exclusive of service tax and both service provider and service recipient are located in India.*

- (1) *Infrastructural support services provided by Government to a business entity: ₹ 16 lakhs; Previous year turnover of the business entity was ₹ 9,50,000.*
- (2) *Renting of immovable property services provided by Government to business entity: ₹ 25 lakh.*
- (3) *Service provided by a Director of a company (not in the course of employment) to the company: ₹ 21 lakh;*
- (4) *Mr Rahul is Director of a ACH Ltd., also appointed as a Nominee Director of ING Ltd. Services provided by Mr. Rahul to ING Ltd. is ₹ 5 lakh.* (4 Marks)

- (c) *Compute the service tax liability in each of the following independent cases:-*

Particulars	₹
Services provided by Government to various individuals for issuing passport	85,000
Transportation of passengers by Cable car	5,00,000
Speed post services provided by Mumbai Post office to various individuals (Amount charged does not exceed ₹ 5,000 in any of the transaction.)	10,00,000
Services provided by bio-incubators recognized by Biotechnology Industry Research Assistance Council (BIRAC)	8,00,000

Notes:

- (1) *Ignore the small service provider exemption under Notification No. 33/2012 ST dated 20-06-2012.*
- (2) *Service Tax and cesses have been charged separately, wherever applicable.*
- (3) *All transactions have been undertaken in month of August 2016.*
- (4) *Make suitable assumption whenever required.*
- (5) *Brief reasons and working notes should form part of the answer.* (4 Marks)

- (d) *Ganga Ltd., an Indian company located at Jaipur, imported into India certain commodities in July, 2016 from a country which is covered by a Notification issued under Section 9A of the Customs Tariff Act, 1975. The relevant particulars relating to import are as follows:*

- (1) *CIF value of the consignment – US \$ 35,000*
- (2) *Quantity imported – 700 kgs.*
- (3) *Exchange rate applicable – US \$ 1 – ₹ 62*
- (4) *Basic Customs Duty (BCD) - 20%*
- (5) *As per the Notification, the anti-dumping duty leviable will be 75% of the difference between the cost of the commodity calculated @ US \$ 80 per kg. and the landed value of the commodity as imported.*

You are required to calculate the amount of total Customs duty (including anti-dumping duty) payable by Ganga Ltd.

Note: *Assume Additional duty payable under Section 3(1) and 3(5) of the Customs Tariff Act, 1975 are exempt but Education Cess and Secondary & Higher Education Cess may be adopted, wherever applicable. Working notes with brief reasons should form part of the answer.*
(4 Marks)

Answer

- (a) **Computation of excise duty payable in cash by RGH Ltd. for the month of October, 2016**

Particulars	Excise duty/ Service Tax (₹)
Inputs 'VK'	2,50,000
Inputs 'A' ⁵ [Note-1]	-
Input service [Note-2]	50,000
Welding Electrodes [Note-3]	25,000
Inputs for pumping water for captive use [Note-4]	32,000
Tubes and Pipes [Note-5]	42,000
Special purpose motor vehicle [Note-6]	1,00,000
Tools of Chapter 82 directly sent to another manufacturer (job worker) [Note-7]	<u>25,000</u>
Total credit available	5,24,000
Excise duty payable for the month of October	<u>7,30,000</u>
Excise duty payable in cash after set off of the credit	<u>2,06,000</u>

⁵ It has been presumed that there are two different inputs namely, 'VK' and 'A'.

Notes:

1. Since invoice for inputs worth ₹ 35,000 was not received in October, 2016, credit thereon has not been considered. [First proviso to rule 3(4) read with rule 9(1) of the CENVAT Credit Rules, 2004 (hereinafter referred to as CCR)]
2. CENVAT credit of clearing agent services for clearance of inputs or capital goods is available as the same are eligible input services.
- *3. Welding Electrodes are eligible for credit as inputs as decided by High Court in *Hindustan Zinc Ltd. v. UOI 2008 (228) ELT 517 (Raj.)*.
4. Inputs for pumping water for captive use are specifically included in the definition of inputs. [Rule 2(k)(iii) of the CCR]
5. Though tubes and pipes are eligible capital goods as per Rule 2(a)(A)(vi) of CCR, definition of inputs under rule 2(k)(v) of the CCR specifically includes capital goods of value upto ₹ 10,000 per piece; hence full credit is available on tubes and pipes as inputs.
6. Special purpose motor vehicles are eligible capital goods as the same are not the ones which are specifically excluded from the definition of capital goods [Rule 2(a)(A)(viii) of the CCR]. Further, as per Rule 4(2) of the CCR, only 50% of CENVAT credits is available on capital goods since RGH Ltd. is not eligible for SSI exemption.
7. Tools of Chapter 82 are specifically included in the definition of capital goods [Rule 2(a)(A)(i) of the CCR]. Further, CENVAT credit on tools of Chapter 82 of Central Excise Tariff sent to another manufacturer/job-worker is allowed [Rule 4(5)(b) of CCR]. As per Rule 4(2) of the CCR, only 50% of CENVAT credit is available on capital goods since RGH Ltd. is not eligible for SSI exemption.

***Note:** *The Rajasthan High Court in the case of Hindustan Zinc Ltd. v. UOI 2008 (228) ELT 517 (Raj.) allowed the credit on welding electrodes as both inputs and capital goods. In the above solution, credit of welding electrodes used for repair and maintenance of capital goods [Sl. No. (iii)] has been allowed taking the same as eligible inputs.*

However, Allahabad High Court, in case of Dwarikesh Sugar Industries Ltd. v. CCE 2016 (334) ELT 58, has held that CENVAT credit on welding electrodes is not available as capital goods while in case of CCE v. Kesar Enterprises Ltd. 2016 (344) E.L.T. 809, the said Court has held that CENVAT credit on welding electrodes is neither available as capital goods nor available as inputs.

- (b) (1) Services provided by Government to a business entity with a turnover up to ₹ 10 lakh in the preceding financial year are exempt from service tax vide Mega Exemption Notification No. 25/2012 ST dated 20.06.2012. Hence, in the instant case, services provided by Government to a business entity with a turnover not exceeding ₹ 10 lakh are exempted.
- (2) In relation to service provided by the Government, service recipient is liable to pay service tax with certain exceptions wherein service provider is liable to pay service

tax. Renting of immovable property is one such exception where service tax is payable by the service provider i.e., Government. [Rule 2(1)(d)(i)(E)(a) of the Service Tax Rules, 1994]

Therefore, in the given case, entire service tax ($\text{₹ } 25 \text{ lakh} \times 15\% = \text{₹ } 3,75,000$) is payable by service provider – the Government. [Reverse Charge Notification No. 30/2012 ST dated 20.06.2012]

- (3) As per Rule 2(1)(d)(i)(EE) of the Service Tax Rules, 1994, in relation to services provided by a director of a company to the said company, service recipient is liable to pay service tax. Therefore, in the given case, entire service tax ($\text{₹ } 21 \text{ lakh} \times 15\% = \text{₹ } 3,15,000$) is payable by service recipient – the company. [Reverse Charge Notification No. 30/2012 ST dated 20.06.2012]

- (4) In relation to services provided by director of a company to said company, service recipient is liable to pay service tax. [Rule 2(1)(d)(i)(EE) of the Service Tax Rules, 1994]

Therefore, in the given case also, entire service tax ($\text{₹ } 5 \text{ lakh} \times 15\% = \text{₹ } 75,000$) on services provided by the nominee director – Mr. Rahul, is payable by the service receiver - ING Ltd. [Reverse Charge Notification No. 30/2012 ST dated 20.06.2012]

(c)

Computation of service tax liability

Particulars	Amount charged (₹)	Service tax (including SBC and KKC) [₹]
Services provided by Government to various individuals for issuing passport [Note-1]	Nil	Nil
Transportation of passengers by cable car [Note-2]	5,00,000	$5,00,000 \times 15\% = 75,000$
Speed post services provided by Mumbai Post Office to various individuals [Note-3]	10,00,000	$10,00,000 \times 15\% = 1,50,000$
Services provided by bio-incubators recognised by BIRAC [Note-4]	Nil	Nil

Notes:

- Services provided by Government by way of issuance of passport are exempted from service tax vide Mega Exemption Notification No. 25/2012 ST dated 20.06.2012.
- The exemption with respect to transportation of passengers by cable car has been withdrawn.
- The exemption available under Mega Exemption Notification No. 25/2012 ST dated 20.06.2012 to services provided by Government where gross amount charged is up

to ₹ 5,000 is not applicable to speed post services provided by the Department of Post to a person other than Government.

4. Services provided by bio-incubators recognised by BIRAC are exempted from service tax provided the conditions prescribed thereof have been fulfilled [Notification No. 32/2012 ST dated 20.06.2012]. It has been presumed that the prescribed conditions have been fulfilled in the given case.

(d) **Computation of total customs duty payable**

Particulars	₹
Computation of Landed Value	
Total CIF value in INR = US \$ 35,000 x ₹62	21,70,000
Add: Landing charges @1% [Note-1]	<u>21,700</u>
Assessable value (AV)	<u>21,91,700</u>
Basic customs duty (BCD) @ 20% (A)	4,38,340
EC @ 2% on BCD (B) (rounded off) [Note-2]	8,767
SHEC @ 1% on BCD (C) (rounded off) [Note-2]	<u>4,383</u>
Landed value of imported goods [(AV) + (A) + (B) + (C)]	<u>26,43,190</u>
Computation of anti – dumping duty payable	
Cost of commodity = 700 Kg x US \$ 80 x ₹62	34,72,000
Less : Landed value of goods	<u>26,43,190</u>
Difference(D)	<u>8,28,810</u>
Anti-dumping duty [(E) = 75% of (D)] (rounded off)	6,21,608
Computation of total customs duty payable	
Total customs duty payable [(A) + (B) + (C) + (E)]	10,73,098

Notes:-

- 1 Landing charges @ 1% of CIF value are includible in the assessable value, whether actually incurred or not. [Clause (ii) of first proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007]
- 2 Education Cess and Secondary and Higher Education Cess are not leviable on anti-dumping duty.

Question 3

- (a) M/s. Vishwas Packers purchased duty paid GI paper from the market and carried out printing on it according to the design and specifications of the customer. The printing was done on jumbo rolls of GIP twist wrappers. Logo and name of the product was printed on

the paper in colourful form and the same was delivered to the customers in jumbo rolls without slitting.

The customer intended to use this paper as a wrapping/packing paper for packing of their goods.

Department issued a demand-cum show cause notice claiming that “printing on jumbo rolls of GI paper as per design and specification of customers with logo and name of product in colourful form, amounts to manufacture” and Vishwas Packers is liable to pay excise duty thereon.

Examine with the help of decided case law, if any, whether the Department is justified in issuing show cause notice for the recovery of duty. (4 Marks)

- (b) *A city municipal corporation rented various properties owned by it and received rental income. When the Department demanded service tax on the rental income, it was contended by the corporation that as per the rental agreement the tenant is liable to pay any tax / levy directly to the concerned authority and requested the department to recover the tax dues from the tenants.*

Write a brief note whether the stand of the corporation is correct? You can take the help of the case law in support of your answers. (4 Marks)

- (c) *The adjudication order was passed and was forwarded to the assessee. However, assessee did not receive the same. It learnt about the order only after receipt of a letter from the Superintendent, nearly after two years, directing it to pay the dues as per said order. Thereafter, a copy of that order was made available to the assessee.*

The appeal filed by the assessee against the said order was rejected by Commissioner (Appeals) as well as by the Tribunal, as being barred by limitation.

The assessee contended that the appeal could not be held to be barred by limitation as no order was received by it.

Write a brief note with the help of decided case law, if any, whether under the provisions of Service Tax Law (i.e., Finance Act, 1994) the period of limitation can be computed from the date of forwarding of the order where such order has not been received by the assessee? (4 Marks)

- (d) *Whether a notice issued to an Importer under Sec. 110 of Customs Act, 1962 is legally valid if the same is issued to the Customs Broker of the importer instead of the importer himself?*

Write a brief note with reference to the relevant provisions and case law if any. (4 Marks)

Answer

- (a) *The facts of the given case are similar to a case decided by the Supreme Court in CCE v. Fitrite Packers 2015 (324) ELT 625 (SC). In that case, the Supreme Court observed that GI paper was meant for wrapping and its use did not undergo any change even after*

printing - the end use thereof was still the same namely wrapping / packaging. However, whereas the blank paper could be used as wrapper for any kind of product, after the printing of logo and name of the specific product thereupon, its end use got confined to only that particular and specific product of the particular company / customer. The printing, therefore, was not merely a value addition, but had transformed the general wrapping paper to special wrapping paper.

The Supreme Court held that the process of aforesaid particular kind of printing resulted into a product i.e., paper with distinct character and use of its own which it did not bear earlier. The Court emphasized that there has to be a transformation in the original article and this transformation should bring out a distinctive or different use in the article, in order to cover the process under the definition of manufacture.

Since these tests were satisfied in the said case, the Apex Court held that the process amounted to manufacture. In view of the aforesaid decision, it can be concluded that the process undertaken by M/s. Vishwas Packers amounts to manufacture and thus Department is justified in issuing the show cause notice for recovery of duty.

- (b) The issue in the given case is that whether the service provider can pass on the burden of service tax as also the statutory liability to pay service tax to the service recipient by virtue of a contractual obligation.

On the issue of shifting of service tax liability, the Supreme Court in the case of *Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran* 2012 (26) STR 289 (SC) has held that service tax is an indirect tax which may be passed on. The Finance Act, 1994 is relevant only between assessee and the tax authorities and is irrelevant in determining rights and liabilities between service provider and service recipient as agreed in a contract between them. Similar view was also taken in *Kishore K.S. v. Cherthala Municipality* 2011 (24) STR 538 (Ker.). There is nothing in law to prevent them from entering into agreement regarding burden of tax arising under the contract between them. Therefore, assessee can contract to shift its liability.

Thus, City Municipal Corporation can pass on the burden of service tax to the tenants by a rental agreement.

However, the Delhi High Court in the case of *Delhi Transport Corporation v. CST* 2015 (038) STR 673 (Del), has held that though service tax burden can be transferred by contractual arrangement to the other party, statutorily the service provider is required to discharge the service tax liability. The assessee cannot ask the Revenue to recover the tax dues from a third party or wait for discharge of the liability by the assessee till it has recovered the amount from its contractors.

Thus, City Municipal Corporation is not correct in requesting the Department to recover the tax dues from the tenants.

(c) The facts of the given case are similar to the case *Enestee Engineering Pvt. Ltd. v. UOI 2016 (41) STR 0061 (Bom.)* decided by the Bombay High Court wherein the High Court noted that-

- (i) the period of limitation prescribed under the Finance Act, 1994 to prefer an appeal against adjudication order is 2 months and the said period begins from the date of receipt of the decision/ order of adjudicating authority.
- (ii) Section 37C(2) of the Central Excise Act, 1944 stipulates that every decision/order passed or any summons/notice issued under the said Act is deemed to have been served on the date on which such decision/ order/summons is tendered or delivered by post or is affixed in the prescribed manner.

Thus, a perusal of Section 37C(2) of Central Excise Act supported by provisions of section 85(3A) of Finance Act, 1994 shows insistence upon the service of such adjudication order upon the assessee.

In view of the afore-mentioned observation of the High Court, it can be concluded that period of limitation for preferring an appeal cannot be computed from the date of the forwarding of the adjudication order but from the date of receipt of the said order.

(d) The Delhi High Court in *Santosh Handlooms v. CCus. 2016 (331) ELT 44 (Del.)* has addressed the issue that whether in case of seizure of goods under section 110 of the Customs Act, 1962, the show cause notice required to be issued under section 124(a) of the Customs Act, 1962 within six months of seizure can be issued to the Customs Broker of the importer instead of importer.

The High Court made the following significant observations in that case:

- (i) Section 153 of the Customs Act, 1962 had been consciously amended to do away with the service of orders, decisions, summons and notices on the agent.
- (ii) The Custom Broker is an agent, who operates under a special contract with an importer or exporter, and in this context is authorized to perform various functions to clear the goods from customs.
- (iii) It is no part of the general duty cast upon the CHA to accept service of notices, summons, orders or decisions of the customs authorities, unless he has been specially authorized to do so. In case CHA represents that he has such an authority, he would have to produce the same before the concerned statutory authority.
- (iv) The CHA has no general authority to act in respect of every act that the owner, importer/exporter is called upon to do or may be required to do under the provisions of the Act.

Therefore, in view of the afore-mentioned observations of the High Court, in the ordinary course, in case of seizure of goods, the notice issued to the Customs Broker is not legally valid.

Note: Section 110 in the question may be read as section 124.

Question 4

- (a) A manufacturer of excisable goods paid duty of ₹ 2 lakhs provisionally under Rule 7 of Central Excise Rules, 2002 on 6th February, 2016 for the month of January 2016 electronically, after following prescribed procedure. They further paid ₹ 50,000 on 15th April, 2016 and submitted documents for final assessment on the same day. After finalization of provisional assessment by the department on 30.06.2016, they were required to pay a further sum of ₹ 5,000 which was paid on 30th July, 2016.

Calculate the interest payable, if any, by the manufacturer on the finalization of provisional assessment under section 11AA of Central Excise Act, 1944. (4 Marks)

- (b) With reference to the amendments made by the Finance Act, 2016 and position of law as existing on 31st October, 2016, briefly write a note on the following:

- (i) Implication on passengers' transportation service by metered cab.
- (ii) One person company can pay service tax on quarterly basis. (4 Marks)

- (c) With reference to the provision of law as on 6-6-2016, briefly explain as to who is the person responsible to pay service tax in the following cases:

- (i) Legal services are provided by Senior Advocates to business entities.
- (ii) Representational services are provided by Senior Advocates to any business entity.
- (iii) Where contract for representational services provided by the Senior Advocates to any business entity has been entered into through another advocate or firm of advocates.

(4 Marks)

- (d) (i) Mr. Devendra, an Indian Entrepreneur, went to China to explore new business opportunities on 05-04-2016. The following details regarding imports are submitted by him with the Customs authorities on return to India on 20-02-2017.

(a) 2 Music systems each worth ₹ 23,000.

(b) Jewellery brought by Mr. Devendra worth ₹ 49,000. (18 Grams)

Write a brief note on his eligibility with regards to duty free baggage allowances as per the Baggage rules, 2016.

- (ii) Write a brief note on the changes made by Finance Act, 2016 with reference to amount of Warehousing Bond and Security under Section 59 of Customs Act, 1962.

(2 + 2 = 4 Marks)

Answer

- (a) Rule 7(4) of the Central Excise Rules, 2002 provides that interest, at the rate notified under section 11AA of the Central Excise Act, 1944 [viz. 15% p.a.], is payable on amount paid/payable on the goods under provisional assessment, but not paid on the prescribed

due date for the period starting with the first day after the due date till the date of actual payment, whether such amount is paid before/after the issue of order for final assessment.

Accordingly, interest payable by the manufacturer, on finalisation of assessment, will be as follows:

Date on which duty is paid	Amount of duty (₹)	Amount of interest (₹)
06.02.2016	2,00,000	Due date for payment of duty for January, 2016 is 06.02.2016. Therefore, no interest is payable as duty is paid on due date
15.04.2016	50,000	Interest is payable from 07.02.2016 till 15.04.2016 = ₹ 50,000 × 15% × 69/366 = ₹ 1,414 (rounded off)
30.07.2016	5,000	Interest is payable from 07.02.2016 till 30.07.2016 = ₹ 5,000 × 15% × 175/366 = ₹ 359 (rounded off)

Note: Since students are expected to be aware of the position of law as existing six months prior to the examination, interest has been computed by taking rate as 15%, the rate of interest existing on 31.10.2016, the cut-off date for May, 2017 examination.

- (b) (i) Since service of transportation of passengers by a metered cab is covered in the negative list of services under section 66D(o)(vi) of the Finance Act, 1994, it is not taxable.
- (ii) As per first proviso to rule 6(1) of the Service Tax Rules, 1994, the benefit of quarterly payment of service tax is available to a One person company whose aggregate value of taxable services provided from one or more premises is up to ₹ 50 lakh in the previous financial year.

(c)

	Situation	Person liable to pay service tax
(i)	Where legal services are provided by senior advocates to business entities	Recipient of service. [Rule 2(1)(d)(i)(D)(II) of Service Tax Rules, 1994]
(ii)	Where representational services are provided by the senior advocates to any business entity	Recipient of service which is the business entity who is litigant, applicant, or petitioner. [Rule 2(1)(d)(i)(DD) of Service Tax Rules, 1994]
(iii)	Where the contract for representational services provided by the senior advocates to any business	Recipient of service which is the business entity who is litigant, applicant, or petitioner [Rule

entity has been entered through another advocate or a firm of advocates	2(1)(d)(i)(DD) of Service Tax Rules, 1994]
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- (d) (i) Mr. Devendra, being an Indian resident returning from China (country other than Nepal, Bhutan or Myanmar) is eligible for general duty free baggage allowance of ₹ 50,000 under rule 3(b) of the Baggage Rules, 2016.

However, since his period of stay abroad does not exceed 1 year, he will not be eligible for additional jewellery allowance under rule 5 of the Baggage Rules, 2016.

Hence, out of the goods brought by Mr. Devendra worth ₹ 95,000 [Music systems (₹ 23,000 × 2) + Jewellery (₹ 49,000)], he has to pay customs duty on a value of ₹ 45,000 [₹ 95,000 – ₹ 50,000].

- (ii) The Finance Act, 2016 has enhanced the amount of warehousing bond executed under section 59 of the Customs Act, 1962 from twice the amount of the duty involved to thrice the amount of duty amount involved.

Further, in addition to the bond, importer will also be required to furnish security as may be prescribed.

Question 5

- (a) *M/s. Sudarshan and Sons is a small scale unit manufacturing plastic name plates for motor vehicles as per specifications provided to them by their customers, who are vehicle manufacturers. For purpose of classification under the first schedule to the Central Excise Tariff Act, 1985 the assessee has claimed that the plastic name plates are "parts and accessories of motor vehicles".*

The Central Excise Department did not agree with the assessee and has proposed classification as "other plastic products". The Department's view is that the motor vehicle is complete without the affixation of name plates and cannot be treated as a part of the motor vehicle.

Briefly explain, whether the stand taken by the department is correct in law? (4 Marks)

- (b) *MXN Laboratories are in the business of testing of drug samples in India for the customers located in India and abroad. They receive testing charges in foreign currency for testing done for both categories of customers and have not paid service tax treating it as export of service.*

Write a brief note whether the stand of the MXN Laboratories is correct? (4 Marks)

- (c) *The services provided by Mr. X was brought into service tax net for the first time from 01-04-2016. Explain with a brief note the taxability of the following transactions:*

- (i) *Service rendered on 23-03-2016 but invoice was issued and payment was received on 02-04-2016.*

- (ii) Service rendered on 02-04-2016 but invoice was issued and payment was received on 23-03-2016.
- (iii) Payment received on 28-03-16 but invoice was issued on 10-04-16 and service is yet to be provided. (4 Marks)
- (d) With reference to Customs Act, 1962, explain briefly the “relevant date” for determination of rate of duty leviable on the imported material content in the waste or refuse. (4 Marks)

Answer

- (a) No, the stand taken by the Department is not correct in law.

The plastic name plates should be classified as parts and accessories of motor vehicles on following grounds:

- (i) name plates are solely and exclusively used for motor vehicles.
- (ii) classification as parts and accessories of motor vehicles is more specific while the classification as other plastic products is residuary and more general in nature.

The Department has only examined whether the name plates can be considered ‘parts’ of motor vehicles, it has not considered whether these name plates can be considered ‘accessories’ of motor vehicle - an ‘accessory’ by its very definition is something supplementary or subordinate in nature and need not be essential for the actual functioning of the product.

The Supreme Court in the case of *Pragati Silicons Pvt. Ltd. v. CCEx. Delhi* (2007) 211 ELT 534 (SC) applied the test laid down in the case of *Mehra Bros. v. Joint Commercial Officer* (1991) 51 ELT 173 (SC) and held that name plates add to convenient use of motor vehicle and give an identity to it. They add effectiveness and value to vehicle and are at very least accessories of vehicles. Thus, even if there was any difficulty in the inclusion of the name plates as ‘parts’ of the motor vehicles, they would most certainly have been covered by the broader term ‘accessory’ as car seat covers and upholstery etc.

- (b) No, the stand taken by MXN Laboratories is not correct.

As per rule 6A(1) of Service Tax Rules, 1994, a service can be treated as being exported if, *inter alia*, the service receiver is located outside India and the place of provision of the service is outside India.

Therefore, testing services provided to customers located in India cannot be treated as export of services (even though the payment for the same has been realized in foreign exchange) as the service recipients are located in India.

In case of services provided to customers located abroad, the place of provision of service will have to be determined. As per Rule 4(a) of Place of Provision of Services Rules, 2012, in case of services provided in respect of goods that are required to be made physically available to the service provider, the place of provision of service is the location where such service is actually performed.

Therefore, the place of provision of testing service provided to customers located outside India will be in India. Hence, the same can also not be treated as export of services even though the payment for the same has been realized in foreign exchange.

- (c) As per Rule 5 of Point of Taxation Rules, 2011 (POTR), where a service is taxed for the first time, then, no tax will be payable if -
- (a) issuance of invoice and receipt of payment happen before the service becomes taxable;
 - (b) payment has been received before the service becomes taxable and invoice has been issued within 14 days of the service becoming taxable.
 - (i) Taxable since both the events namely, issuance of invoice and receipt of payment occurred after the service became taxable.
 - (ii) NOT taxable since both the events occurred before the service became taxable.
 - (iii) NOT taxable as payment was received before the service became taxable and the invoice had been issued within 14 days of the service becoming taxable.
- (d) Section 65 of the Customs Act, 1962 provides that:-
- (i) if the finished goods manufactured in warehouse are exported, import duty shall be remitted on the quantity of the warehoused goods contained in so much of the waste/refuse as has arisen from the operations carried on in relation to the goods exported if such waste or refuse is either destroyed or duty is paid on such waste/refuse as if it had been imported into India in that form.
 - (ii) if the finished goods manufactured in warehouse are cleared for home consumption, import duty will be charged on the quantity of the imported material contained in the waste or refuse.

Section 15(1) of the Customs Act, 1962 lays down that the rate of duty applicable to any imported goods, is the rate in force on the date of -

- (a) presentation of bill of entry or the date of entry inwards of the vessel/arrival of the aircraft, whichever is later, in case of goods entered for home consumption under section 46 of the Customs Act, 1962,
- (b) presentation of bill of entry for home consumption in case of goods cleared from a warehouse under section 68 of the Customs Act, 1962,
- (c) payment of duty in case of any other goods.

Therefore, the relevant date for rate of duty leviable on the imported material content in the waste or refuse would be the date of filing of ex-bond bill of entry or date of payment.

Question 6

- (a) *Discuss briefly whether following cases can be settled in the Settlement Commission under Central Excise Act, 1944.*

- (i) Case where appeal is pending in CESTAT against the order issued by the Commissioner of Central Excise as adjudicating authority.
- (ii) Case where a notice has been issued involving evasion of ₹ 2.5 crore pending adjudication and the applicant fully accepts the duty liability.
- (iii) Case where the applicant accepts additional duty liability of ₹ 50 lakhs but not filed any return during the relevant period.

OR

XY Ltd., were issued with a demand notice of ₹ 50 lakhs which was confirmed by the adjudicating authority with penalty equally to duty demanded. Their appeal to Commissioner (Appeals) after payment of required pre deposit was dismissed. Now they wish to file an appeal before CESTAT.

Write a brief note on the amount they are required to pay towards pre deposit for filing the appeal under Sec. 35F of Central Excise Act, 1944 before CESTAT: (i) if they dispute the order of the adjudicating authority demanding duty and penalty, and (ii) if they accept the duty liability but dispute the imposition of equal penalty. (4 Marks)

- (b) What is the time limit for issue of show cause notice to a person by the department for recovery of service tax not levied or short levied or not paid or short paid or erroneously refunded under Section 73 of Finance Act, 1994? Under what circumstances the department is not required to issue show cause notice to demand service tax under Sec. 73 for the pending dues?

Write a brief with reference to the relevant provisions. (4 Marks)

- (c) Write a brief note on the following:
 - (i) What is the late fee payable for delay of 45 days in furnishing of returns under Sec. 70 of Finance Act, 1994?
 - (ii) Whether Goods Transport Agency is eligible for Small Service Provider Exemption? In what circumstances is the GTA liable to pay service tax? (2 + 2 = 4 Marks)
- (d) The objective of MEIS scheme is to neutralize the customs duties paid on inputs used in the export goods. Whether the statement is correct? What are the ineligible categories for MEIS scheme? Write a brief note with reference to the Foreign Trade Policy. (4 Marks)

Answer

- (a) (i) No application can be entertained by the Settlement Commission in cases which are pending with the Appellate Tribunal or any court in terms of third proviso to section 32E(1) of Central Excise Act, 1944.
- (ii) Since the additional amount of duty accepted by the applicant exceeds ₹ 3,00,000, the case can be settled. [Clause (c) of first proviso to section 32E(1) of Central Excise Act, 1944]

- (iii) As per section 32E(1) of Central Excise Act, 1944, the case cannot be settled as even though the additional amount of duty accepted by the applicant exceeds ₹ 3,00,000, no return has been filed in the relevant period. However, the Settlement Commission, if it is satisfied that circumstances exist for not filing the return, may after recording the reasons therefor, allow such application.

Alternate

- (a) As per section 35F of the Central Excise Act, 1994, an appeal against the order of Commissioner (Appeals) cannot be filed with the Tribunal unless the appellant has deposited 10% of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute.

The amount of such pre-deposit, however, cannot exceed ₹10 crores.

- (i) Though both duty and penalty are in dispute, quantum of pre-deposit will be 10% of only the disputed duty amount i.e., 10% of ₹ 50,00,000 which is ₹ 5,00,000.
- (ii) 10% of the penalty will be paid as pre-deposit where only penalty is in dispute i.e., 10% of ₹ 50,00,000 which is ₹5,00,000.
- (b) Under section 73(1) of FA, 1994, where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by
- (a) **reason of fraud, collusion etc.**- time limit for issuing show cause notice is 5 years from the relevant date
- (b) **any reason other than fraud, collusion etc.** - time limit for issuing show cause notice is 30 months from the relevant date

The Department is not required to issue show cause notice under section 73 for pending dues where the amount of service tax payable has been self-assessed in the return but not paid either in full or in part. In such a case, recovery will be made in any of the modes specified in section 87, without service of notice under section 73(1B).

- (c) (i) As per rule 7C(1)(iii) of Service Tax Rules, 1994 read with section 70 of the Finance Act, 1994, the late fee for furnishing a delayed return in case the delay is beyond 30 days from the due date of filing the return, is ₹ 1,000 plus ₹100 for every day from the 31st day till the date of furnishing the said return subject to a maximum of ₹ 20,000.

In case of delay of 45 days, late fee payable = ₹ 1,000 + (₹ 100 x 15) = ₹ 2,500

- (ii) Yes, Goods Transport Agency (GTA) is eligible for small service provider exemption but only for the services where service tax is payable by the GTA and not by the person paying the freight.

As per Rule 2(1)(d)(i)(B) of Service Tax Rules, 1994, GTA is liable to pay service tax when the person liable to pay freight is:

- (i) a person other than a factory, society, co-operative society, first/second stage dealer of excisable goods, body corporate, partnership firm;

(ii) located in a non-taxable territory.

- (d) According to Foreign Trade Policy, the objective of MEIS scheme is to compensate infrastructural inefficiencies and associated costs involved in export of goods/products, which are produced or manufactured in India, especially goods having high export intensity, employment potential and thereby enhancing India's export competitiveness.

Ineligible exports categories/sectors under MEIS Scheme:

- (1) EOUs / EHTPs / BTPs/ STPs who are availing direct tax benefits / exemption
- (2) Supplies made from DTA units to SEZ units
- (3) Exports through trans-shipment, i.e., exports that are originating in third country but trans-shipped through India
- (4) Deemed Exports
- (5) SEZ/EOU/EHTP/BPT/FTWZ products exported through DTA units
- (6) Export products which are subject to Minimum export price or export duty
- (7) Ores and concentrates of all types and in all formations
- (8) Cereals of all types
- (9) Sugar of all types and all forms unless specifically notified.
- (10) Crude / petroleum oil and crude / primary and base products of all types and all formulations
- (11) Export of milk and milk products and meat and meat products unless specifically notified.
- (12) Service Export.
- (13) Red sanders and beach sand.
- (14) Diamond Gold, Silver, Platinum, other precious metal in any form including plain and studded jewellery and other precious and semi-precious stones.

Note: Any six points may be given.

Question 7

- (a) Explain briefly the provisions relating to Special Audit under section 14A of the Central Excise Act, 1944. (4 Marks)
- (b) (i) The registration certificate may be revoked by the Deputy/Assistant Commissioner if no documents are received within 14 days of the date of filling the registration application.

Write a brief note on the validity of the above statement with reference to provisions of the Finance Act, 1994.

- (ii) Write short note on the provisions relating to filing of service tax return by input service distributor. (2 + 2 = 4 Marks)
- (c) An assessee collected ₹ 1.5 crores as Service Tax in the financial Year 2014-15 and ₹ 2.00 crores in the financial Year 2015-16 but deposited only ₹ 1.00 crore during financial year 2014-15 and ₹ 1.00 crore during financial year 2015-16 with the Government till 30-09-2016. He was arrested on 25-10-2016. The assessee did not dispute the liability to pay the service tax to the Government but he submitted that only the amount collected between 01-10-2015 to 31-03-2016 should be considered while calculating the amount for applying the penal provision u/s 89(1)(ii) of Finance Act 1994. Revenue contended that since failure to deposit Service Tax with Central Government after collecting it from the customers was a continuing offence, entire amount of arrears of Service Tax was required to be taken as liable to be deposited.
- Discuss with the help of decided case law (if any) whether the contention of assessee is maintainable or Revenue with succeed in its contention.
- If Revenue succeeds in its contention, what could be the term of imprisonment as per amended Section 89 of Finance Act 1994.
- Write a brief note with reference to the relevant provisions. (4 Marks)
- (d) CBZ Ltd. has exported following goods to Germany. Write a brief note with reasons whether any duty drawback is admissible under Section 75 of the Customs Act, 1962 in each of the following cases:

Product	FOB value of Exported Goods (Amount in ₹)	Market Price of Goods (Amount in ₹)	Duty drawback rate
A	4,30,000	3,50,000	30% of FOB
B	6,00,000	7,00,000	3.50% of FOB
C	1,20,000	60,000	0.75% of FOB
D	3,00,000	3,50,000	1,50% of FOB

Note:

- Imported value of Product B is ₹ 8,00,000
- Product D is manufactured out of duty free inputs.
- Working notes should form part of the answer. (4 Marks)

Answer

- (a) Section 14A of the Central Excise Act, 1944 provides that if at any stage of enquiry, investigation or any other proceedings before him, any Central Excise Officer not below the rank of an Assistant/Deputy Commissioner of Central Excise having regard to the

nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or determined by a manufacturer or any person, he may, with the previous approval of the Principal Chief Commissioner/ Chief Commissioner of Central Excise, direct such manufacturer of such person to get the accounts of his factory, offices, depots, distributors or any other place, as may be specified by the said Central Excise officer, audited by a Cost/Chartered Accountant, nominated by the Principal Chief Commissioner / Chief Commissioner of Central Excise in this behalf.

The Cost/Chartered Accountant shall submit the audit report duly signed and certified to the said Central Excise Officer within the period specified by him or the period further extended on an application made to him. However, in any case the aggregate of the original and extended period cannot exceed 180 days. The expenses of audit and audit fees for special audit shall be paid by excise department.

The manufacturer shall be given an opportunity of being heard in respect of any material gathered on the basis of audit and proposed to be utilized in any proceedings under the Central Excise Act or Rules. This special audit can be conducted notwithstanding that the accounts of the manufacturer or the person have been audited under any other law for the time being in force or otherwise.

- (b) (i) The said statement is not valid.

The registration certificate can be revoked if no documents are received within 15 days of the date of filing the registration application. However, the registration can be so revoked only after giving the assessee an opportunity of being heard. [Order No. 1/2015 ST dated 28.02.2015]

- (ii) As per rule 9(10) of the CENVAT Credit Rules, 2004, the input service distributor, shall furnish a half yearly return in the prescribed form giving details of credit received and distributed during the said half year to the jurisdictional Superintendent of Central Excise.

The return must be filed by the end of the month following the half year, i.e.,

Half year	Due date
1 st April to 30 th September	31 st October
1 st October to 31 st March	30 th April

- (c) Section 89(1)(ii) of the Finance Act, 1994 stipulates that failure to pay any amount collected as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due is punishable with imprisonment for a term which may extend to 7 years provided such amount exceeds ₹ 2 crores.

The Department's contention that failure to deposit service tax with Central Government after collecting it from the customers is a continuing offence and hence, entire amount of arrears of service tax should be taken as liable to be deposited, is correct. Therefore, in the instant case, on the date of arrest of the assessee viz. 25.10.2016, the amount of

service tax collected but not deposited with the Central Government beyond a period of six months from the date on which such payment becomes due, will be ₹ 1.5 crores [₹ 0.5 crore for FY 2014-15 & ₹ 1 crore for FY 2015-16]. However, since the amount of service tax outstanding is less than ₹ 2 crores, the assessee cannot be prosecuted and arrested.

(d) Duty drawback under section 75 of the Customs Act, 1962-

- (i) is allowed on imported materials used in the manufacture of export goods
- (ii) is not allowed if rate of drawback is less than 1% of FOB value, except where drawback amount per shipment exceeds ₹ 500 under rule 8(1) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995.
- (iii) cannot exceed 1/3rd of market price of export product under rule 8A of the said rules.

A	Drawback amount = 30% of ₹ 4,30,000 = ₹ 1,29,000 Duty drawback is allowed, but amount is restricted to 1/3 rd of ₹ 3,50,000 = ₹ 1,16,667 (rounded off).
B	No duty drawback is admissible. Product B is imported and the same product is exported without any manufacturing operation being carried out on the same. However, in such a case, drawback on Product B may be allowed under section 74 of the Customs Act, 1962 which allows drawback on re-export of duty-paid good.
C	Duty drawback is admissible. Even though drawback is less than 1% of FOB value, the amount of drawback per shipment ($₹ 1,20,000 \times 0.75\% = ₹ 900$) exceeds ₹ 500.
D	No duty drawback is allowed if exported goods are manufactured out of duty free inputs.