

MAY 2010

Tax Management Course
(Part-I) Examination
G-II-P-4 Indirect Taxes

Roll No.....

Total No. of Questions—7]

[Total No. of Printed Pages—10

Time Allowed—3 Hours

Maximum Marks—100

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Question Nos. 1 and 2 are compulsory.

Answer any other **four** questions.

Marks

1. (a) Prompt Delivery Company (PDC) has contracts with customers for managing 3×3=9 logistics activities such as distribution, transportation etc. which includes activities such as packing and/or labelling of goods belonging to various customers. The activities are carried out in the warehouse of the customers registered under Central Excise. Excise duty is paid by the customer on the MRP/ Transaction value of the product, as the case may be, which includes value of packing material and services provided by PDC when the same amounts to manufacture under the Excise Regulations. PDC undertakes packing activities under the direction and supervision of customers and procures packing materials for packing activity locally i.e. within the same state. PDC recovers material costs and management fees over and above the material costs. Specifically the activity consists of Packing : excess/faulty spare parts lying at site; equipment or promotional material; accessories dispatch to site and for repairs; Labelling on boxes containing details of customer with or without logo; Packing of equipment or promotional material.

Identify Excise duty implications on packing and/or labelling of various goods undertaken by PDC, under the Central Excise Act; and examine with a brief note the service tax and central sales tax implications where the material is procured by PDC and property in such packing or labelling material is subsequently transferred to customer.

- (b) A motor company's selling dealer "S1" sold vehicle to customer "C" at a price of Rs. 10,50,000. The Customer is given a free service coupon for servicing of the car. It may so happen that the customer "C" may not go to "S1" only for getting free services. He may go to another dealer or service stations authorized by the Motor Company say "S2". On giving the free service coupon, the dealer 5

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or the service station as the case may be, 'S2' would render free service on the vehicle. The dealer 'S2' who did the actual servicing of the vehicle would raise a bill for reimbursement on the selling dealer which the selling dealer would pay. Nowhere in the entire transaction any part of the labour cost is retained by or borne by the Motor Company. Explain briefly with respect to Section 4(3)(d) of the Central Excise Act, 1944 whether the cost of free servicing of the car reimbursed by dealer S1 to dealer S2 should be included in the assessable value for purpose of duty under Section 4 of the said Act. Illustrate your answer with decided case laws.

- (c) "BTI", has a manufacturing facility for the production of intermediates and speciality products for textiles, located in Baroda which is a fully owned subsidiary of Big Textile, USA. BTI would be engaged in the sale of goods to a group entity based in United States of America ("overseas group entity"). BTI would pay excise duty on such exports by utilizing their Cenvat credit balance and claim rebate of the same. You are required to provide your comments on the method for determination of value of goods to be sold by BTI to the overseas group entity for the payment of excise duty. 4
- (d) Define a Large Tax Payer as per provision of Central Excise Rules, 2002. 2
2. (a) Customs, Excise and Service Tax Appellate Tribunal has allowed the appeal filed by the Assessee against demand of Rs. 2 crores. The order of the Tribunal was received by the Commissioner on 20.11.2008. The Commissioner filed an appeal against the said order to the High Court on 19.6.2009. 5

The matter came up for admission of appeal before the High Court in November, 2009.

The respondent contended that the appeal has been filed beyond the period of 180 days from the date of receipt of the order which is specified in Section 35G(2) of the Central Excise Act. The Respondent relied upon the decision of the Larger Bench of the Supreme Court in the case of Commissioner of Customs and Central Excise vs. Hongo India (P) Ltd. 2009 (236) ELT 417 (SC) wherein the Supreme Court has held that the time limit prescribed under the Central Excise Act to file appeal is absolute and unextendable by High Court under Section 5 of the Limitation Act, and, therefore High Court has no power to condone the delay in filing the appeal beyond the prescribed period of 180 days.

Discuss whether the contention of the respondent is correct ?

- (b) M/s M.S. Ltd. manufacture motor vehicles which are cleared on payment of duty. They claim CENVAT Credit on input. They have installed three gas turbines in their factory for generation of electricity. All the three turbines have capacity to generate electricity of 20 MW each. They are using naphtha as fuel to run the turbines and they are availing CENVAT Credit on Naphtha. They also use diesel generating set (DG set) for generation of electricity with the use of diesel for which they had not availed any CENVAT Credit. In their factory, they have a common distribution point for electricity generated in turbines as well as DG set. 5

They cleared a part of electricity generated in the factory to their joint ventures, vendors, etc. who in turn manufacture final products. They met their requirement by electricity captively generated by them in their turbines.

The Department is of the view that the CENVAT Credit should be reversed proportionately to the extent of power wheeled out by the Company to its vendors and joint ventures.

The company has contended that the expression "within the factory of production" stands attached only to one category of goods in the inclusive part of the definition, namely, "goods used for generation of electricity or steam" and that the said expression "within the factory of production" was not attached to any previous items, mentioned in the inclusive part of the definition and, therefore, the said expression "within the factory of production" was not applicable to input "naphtha" used as fuel. Therefore, so long as naphtha received in the factory was used as fuel, the same stood covered by the definition of "input" irrespective of the fact that some portion of electricity generated by use of naphtha stood cleared outside. Even if the expression "within the factory of production" stood attached to the expression "goods used for generation of electricity" it would only mean that goods used for generation of electricity should be used within the factory of production of final product(s) and since naphtha stood used within the factory of production, it falls within the definition of "input".

Consequently, the Company was entitled to the credit of duty paid on the entire quantity of naphtha used as fuel.

The contention of the Department is that the basic idea of CENVAT credit is that it is admissible so long as the inputs are used in or in relation to the manufacture of final products, whether directly or indirectly and, therefore, the CENVAT scheme was not designed to grant windfall benefits by way of

credit to inputs not used ultimately in or in relation to manufacture of the final products but are used in or in relation to the production of electricity which is not even excisable. The scope of the inclusive part was merely to illustrate certain inputs in respect of which a possible doubt existed as to whether or not they stood used in or in relation to the manufacture of final product(s) and further the inclusive part stood qualified by the fact that all the items mentioned therein had to be used within the factory of production. In the alternative, Department contended that the Company had used naphtha in the generation of electricity, part of which had been consumed outside the factory of production; that the said input had not been used as fuel per se but it had been used for the specific purpose of generation of electricity consumed outside the factory of production and consequently the said naphtha would not fall within the definition of input.

Examine with the help of decided case law whether the contention of M/s M.S. Ltd. is correct.

- (c) ABC Interactive, a web-portal service provider has entered into an agreement with Big bite (sing) Ltd. (hereinafter "B" for brevity) based in India, wherein ABC has agreed to provide to B, a limited, non-transferable, non-exclusive licence for provisioning of ABC's mobile services to end users through telecommunications service providers (carrier). B will make available to end users, through the telecommunications service providers, access to material comprising inter alia text based services, picture messages, logos, monotonies etc. of the mobile services provided by ABC. This license would allow B to burn the hyperlink for ABC's mobile services, on to the SIM cards of the telecommunications service providers, hence allowing access to the ABC mobile services content. Consequently, the end-users (i.e., subscribers of the telecommunications service provider, wishing to access ABC mobile services) may access the ABC mobile services data through the hyperlink available on their handsets. Consideration shall be based on B's report to ABC specifying the total number of mobile originating SMSs for all the ABC mobile service, at an agreed percentage. Based on these, ABC would raise an invoice to B ?

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ABC has sought your views on the applicability of service tax.

- (d) The importer M/s PNA & Co. Ltd. Represented by its Managing Director Mr. PNA was charged of having committed an offence under Section 132 regarding importation of goods under the Customs Act, 1962. Mr. PNA approached the High Court for an anticipatory bail and the High Court granted the

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prayer with a direction to the authorities that he should not be arrested for any non-bailable offence without giving ten day's prior notice to Mr. PNA. Discuss briefly in the light of decided case law whether the order passed by the High Court is sustainable in law.

3. (a) Dyes and Chemicals Ltd. (DC) has imported polyvinyl pyrrolidone (herein referred as the "product") from their associated group companies located overseas. The said product is liable to Anti-dumping Duty ("ADD") if the same is imported from USA, Japan, the European Union and Singapore and the price of such goods is below the normal value specified vide Customs Notification issued in this regard. In order to avoid the ADD on such products, DC had imported the product at the normal value from the group company. By importing the product at this price, DC has incurred a loss since the sale price of the finished goods is lower than the cost of sales. 5

In order to meet the requirement of transfer pricing regulations, DC has issued a debit note to the overseas group (towards discount allowed for purchases of the product). This has resulted in the reduction of the net purchase price of the product below the normal value set under the Customs provisions.

Issue :

Based on the above understanding, you are required to provide your comments on whether the specified consignment of product to be imported by DC would be liable to ADD.

- (b) Can the Commissioner of Custom order the confiscation of goods which have already been cleared on payment of duty after final assessment of Bills of Entry and subsequently a case of under valuation has been made against the importer ? The goods have not been seized by the Customs Department. Discuss. 5
- (c) Write a brief note on the following with reference to the Customs and Exim Policy provisions : 5
- (i) Advance Authorisation Scheme
 - (ii) DEPB
 - (iii) DFIA Scheme.

4. (a) What is DTA Sale ? What are the benefits available to a domestic exporter of goods under the Central Excise Rules ? 5
- (b) Explain with a brief note the provisions relating to setting up and operation of a EOU versus SEZ unit comparing the relative fiscal and other benefits of each of these schemes. 5
- (c) M/s NALCO, Orissa placed order for machinery on M/s Bharat Heavy Electricals Ltd. (BHEL). BHEL had factories in various States. Some parts were manufactured in the Hyderabad factory of BHEL and were sent directly to site in Orissa. Some parts were sent from BHEL, Hyderabad to factory of BHEL at Tiruchi in Tamil Nadu. 5

These parts were used at Tiruchi in further manufacture and the final assembly was sent by BHEL, Tiruchi to NALCO, Orissa. The Andhra Pradesh Government collected Central Sales Tax on the entire quantity of parts sent by BHEL, Hyderabad. M/s BHEL contested the collection of tax on the parts sent by BHEL, Hyderabad to BHEL, Tiruchi on the ground that the same was stock transfer.

Examine the contention of BHEL with the help of decided case law.

5. (a) AHK Company (hereinafter referred to as "Vendor") desire to set up garment unit in India. For the purpose of setting up of a unit, Vendor desires to manage their manufacturing activity in India. In this context, Vendor would import the raw material in India and re-export the final goods after manufacturing the same. All goods manufactured by Vendor would be exported and therefore, no goods will be sold in India. 5

Advice on the Customs facility available for duty suspension/relief involved in :

Bonded Warehouse; Chain Processing (for export); Drawback Claims.

- (b) Do Well Engineering (DWE) has a subsidiary company in India, Do Doubly Well Engineering (DDWE). DWE will be entering into a contract with an Indian customer to sell equipment and engineering services for construction of the power plant having a capacity of 1050 MW. 5

The contract between DWE and the Indian customer consists of 3 parts which are onshore supply of equipments, onshore supply of services and offshore supply of equipments.

Offshore supply of equipment will be subcontracted by DWE to another overseas company Do Well Honkong (DWHK). The title on the offshore equipments to be supplied from DWHK to DWE and then DWE to Indian customer will be transferred outside the territorial waters of India.

State some of the key considerations under the Customs Act, 1962 with respect to the implications for offshore supply arrangements that will have to be taken into consideration including those under Project Import Regulations.

- (c) The Agile group has two subsidiaries in India in the graphics and healthcare businesses respectively. The subsidiary engaged in the graphics business purchases products from overseas Agile group entities and sells them to its Indian customers. 5

The EBIT of the subsidiary engaged in the graphics business is approximately 9.5% and exceeds the interquartile range determined on the basis of a transfer pricing study. It is accordingly proposed that a debit note is raised retroactively on the Indian subsidiary to increase the transfer prices and bring the EBIT within the interquartile range.

Examine the implications from the Customs duty point of view if the above scheme is implemented and what suggestions would you offer to deal with this problem from a Customs and Service tax perspective.

6. (a) Sureways has entered into a Time Charter Party contract (hereinafter referred to as 'the contract') dated July 1, 2009 with Port Private Limited ('PPL'). PPL is registered under the Indian Ports Act, 1908 as 'Other Port' for rendering services to importers as well as exporters. Under the Time Charter Party Contract between Sureways and PPL, the following arrangements have been agreed upon : 5

Clause 1 of the contract states :

"Owners ('Sureways') agree to let and Charterers ('PPL') agree to hire the Vessels for the purpose of all lawful activities associated with operations as Charterers shall direct, including but not limited to, berthing and unberthing of LNG tankers, container vessels, bulk carriers and general cargo vessels; transport of materials and personnel, towing, escorting, providing fire fighting cover and oil pollution response, laying and repositioning of navigation buoys, and standby duties and other ancillary services."

The crew and masters for providing the above mentioned services are also employed by Sureways.

As per Clause 13 of the contract, PPL is required to pay for the use and hire of the vessels.

Advice on Service tax implications of services provided in the contract whether the same would fall under the category of Port services.

- (b) Elevate India (EI) is engaged in the business of supply, installation and maintenance of various types of escalators/elevators. EI has obtained centralized registration under the taxable category of 'Erection, Commissioning or Installation Service' and 'Management, Maintenance or Repair Service' as an output service provider. 5

EI has entered into the following agreements with the group companies located outside India :

- Agreement with a group company Inventor AG, Germany for providing access to intranet based Product Data Management System ('PDM') containing various designs, drawings and technical catalogues.
- Agreement with another group company Inventic Inc, USA for providing Information Technology services and management and operation of complete information technology.

EI is desirous of assessing the Service tax implications on such services availed from group companies located outside India. Write a brief note.

- (c) Prompt Strategy Inc, USA provides strategic advisory and investment services mainly in United States and United Kingdom. 5

Prompt Strategy has set up its Asian headquarters in Mumbai, India is registered under the taxable service category of 'Management or Business Consultant's Services'.

Prompt Strategy, Mumbai has entered into agreements with Nova, Singapore, Efficient Management Mauritius, and Know all strategy, USA.

The key features of the aforesaid agreements are given below :

- To provide a data driven actionable strategic plan to assess and achieve the specified objectives, provide a data driven view on realizable growth potential of the higher education institution in the States of India Quantification of the market size, competitive landscape and growth in South East Asian Repair and Refurbishment market.
- The deliverable would be in the form of report covering an evaluation of various alternatives on different parameters and suggestions on feasible options and the implementation plan. The said report would be sent to clients located outside India.
- In all of the aforesaid agreement, consideration is payable in Indian Rupees.

The aforesaid services will be provided through staff located at Mumbai office however such activities may also involve visits of personnel outside India.

Based on the aforesaid description of services, examine the Service tax implication.

7. (a) Pure Biscuit has factories in various States in India. In addition to this, the company also has contract manufacturing units. 5

The company transfers goods from its factory at Bangalore to Depots, wherefrom they are distributed to the Wholesalers. The distribution of goods takes place in pursuance to an agreement entered into between Pure Biscuit and the concerned wholesale distributor.

As per the terms of the agreement, transfer of title of property in goods passes to the wholesale dealer at factory gate/depot. But by virtue of specific clause provided for in the agreement in certain cases Pure Biscuit undertakes to transport the goods to the destination of wholesale dealer on condition that the freight incurred thereon will be reimbursed by them on actual basis. Freight charges are also shown separately in the invoice.

The sale price takes into account primary freight incurred for transport of goods from factory to depot and Central Sales Tax is also discharged on the same. However no CST is collected on secondary freight collected on actual basis from wholesale dealers.

Write a brief note on whether Freight charges (secondary freight) collected separately as reimbursements on actual basis would form part of taxable turnover under the Central Sales-tax Act, 1956.

- (b) Steelage Company Ltd. (SCL) is engaged in executing mega projects in Power Generation, Transmission and Distribution and other Infrastructure Sectors. SCL has entered into an agreement with Ready Steel Co. (RSC) for setting up of Blast Furnace facility inside the factory of RSC. 5

However, in view of huge quantity of fabrication involved the building steel structures are fabricated from outside the State of Orissa and brought inside the State. However, RSC has since expressed some doubt about the legality of issue of C Forms for the supply of these fabricated structures. These structures, referred to as four poster structures will be required to hold and support various machineries which are necessary for the functioning of the blast furnace.

In the background of the aforesaid facts and circumstances, SCL has sought your opinion on the following :

- Whether or not the sale of the fabricated steel structures from outside the State of Orissa would be eligible for concessional rate of sales under the Central Sales-tax Act, 1956 against declaration in Form C to be issued by RSC.

- (c) L & Co. is a leading developer, manufacturer and supplier of printing solutions including laser and inkjet printers, associated supplies and services in many countries. 5

It has entered into a Master Services Agreement ('MSA') and Statement of Work ('SOW') with C Inc., another global corporation, for provision of Hardware, supplies and services to C Inc. on a worldwide basis.

Consequently, the affiliated entities of the parties mentioned above L (India) Pvt. Ltd. ('L India') and C India Limited ('C India') have entered into a Country Participation Agreement ('CPA') for provision of the above mentioned products and services to C India.

Based on the above, you are required to examine the implication on supply, installation and maintenance of printers at premises of C India under the Central Sales-tax Act if L India is based in Pune and the contract is to be implemented at the offices of C India based in Tamil Nadu and Goa.