

Roll No.

Total No. of Questions – 7

Total No. of Printed Pages – 11

Time Allowed – 3 Hours

MAY 2012

Maximum Marks – 100

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Answers to questions are to be given only in English except in the case of candidates who have opted for Hindi Medium. If a candidate has not opted for Hindi medium, his/her answers in Hindi will not be valued.

Working notes should form part of answer.

Question No. 1 is compulsory.

Attempt any five questions from the remaining six questions.

(Wherever appropriate, suitable assumption/s should be made and indicated in the answer by the candidate.)

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1. (a) Dharma Manufacturers, engaged in the manufacture of machines (and not availing small-scale concession) sold a machine to Asha Ltd., The cum-duty sale price of the machine excluding VAT is ₹ 5,80,000. Rate of excise duty is 10%, education cess is 2% and secondary higher education cess is 1%.

Sale price includes the following charges :

	₹
(i) Warranty charges	28,000
(ii) Secondary packing	6,000
(iii) Trade discount actually allowed	24,000
(iv) Design and development charges of machine	20,000
(v) Primary packing	10,000
(vi) Cost of return fare of vehicles	4,500
(vii) Advertisement and publicity charges borne by Asha Ltd.	16,000
(viii) Pre-delivery inspection charges	22,000
(ix) After sales service charges	18,000

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Determine the assessable value of the machine for purpose of Central Excise duty.

Provide notes in respect of the treatment for each of the items listed at (i) to (ix) above.

- (b) Choti Ltd., which is engaged in the manufacture of excisable goods started its business in May, 2011. It availed small scale exemption in terms of Notification No. 8/2003-C.E. dated 1-3-2003 as amended for the financial year 2011-2012. The following details are provided :

15,000 kg of inputs purchased @ ₹ 992.70 per kg. 1,48,90,500
(inclusive of central excise duty @ 10.3%)

Capital goods purchased on 28-6-2011 44,12,000
(inclusive of excise duty at 10.3%)

Finished goods sold (at uniform transaction value throughout the year) 2,50,00,000

Calculate the amount of excise duty payable by M/s. Choti Ltd. in cash, if any, during the year 2011-12. Rate of duty on finished goods sold may be taken at 10.3% for the year and you may assume that the selling price is exclusive of central excise duty. There is neither any processing loss nor any inventory of input and output. Show your workings and notes with suitable assumptions as required.

- (c) Justice & Co. (partnership) is a law firm engaged in providing legal consultancy services under Sec. 65 (105) (zzzm) of the Finance Act, 1994. Compute the service tax payable by Justice & Co. in respect of the following amounts received in the month of March, 2012. 5

Receipts (₹)

- | | |
|--|-----------|
| (i) Consultancy in relation to incorporation of XYZ Co. Ltd. | 10,00,000 |
| (ii) Advance towards assistance in filing service tax return of PQR Ltd. for the half year ending March, 2012. | 2,00,000 |
| (iii) Advice to MNO & Co. in July, 2011 with regard to compliance under Point of Taxation Rules, 2011. | 3,75,000 |
| (iv) Appearance before labour court on behalf of Mr. Worker (an individual) in the month of October, 2011. | 25,000 |

Note : All receipts are exclusive of service tax. Justice & Co. is not eligible for small scale service provider's exemption under Notification No. 6/2005-S.T. dated 1-3-2005 in the financial year 2011-12. Show working notes with assumptions as may be required.

- (d) PQR Industries Ltd, has imported certain equipment from Japan at an FOB cost of 2,00,000 yen (Japanese). The other expenses incurred by M/s. PQR Industries Ltd. in this connection are as follows : 5
- | | |
|---|------------|
| (i) Freight from Japan to Indian Port | 20,000 yen |
| (ii) Insurance paid to insurer in India (for the importation of the machine) | ₹ 10,000 |
| (iii) Designing charges paid to consultancy in Japan | 30,000 yen |
| (iv) M/s. PQR Industries Ltd. had expended ₹ 1,00,000 in India for certain developmental activities with respect to the imported machine. | |

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- (v) PQR Industries Ltd., had incurred road transport cost ₹ 30,000 from Mumbai port to their factory in Karnataka.
- (vi) CBEC had notified for purposes of Sec. 14 of the Customs Act, 1962 exchange rate of 1 yen = ₹ 0.3948. The interbank exchange rate as announced by the authorized dealer was 1 yen = ₹ 40
- (vii) M/s. PQR Industries Ltd. had effected payment based on exchange rate 1 yen = ₹ 0.4150
- (viii) The commission payable to the agent in India was 5% of the FOB cost of the equipment in Indian rupees

Arrive at the assessable value for purposes of valuation under the Customs Act, 1962 with brief notes wherever necessary for each of the adjustments at (i) to (viii) above.

- (e) Strong Constructions undertakes works contracts and maintains sufficient records to quantify the labour and other service charges. From the details given below, calculate the taxable turnover, input tax credit and net VAT payable under the State VAT Law.

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(i) Total contract price (excluding VAT)	₹ 1,80,00,000
(ii) Materials purchased and used for the contract taxable at 12.5% VAT (inclusive of VAT)	33,75,000
(iii) Labour charges paid for execution of the contract	40,00,000
(iv) Other service charges paid for the execution of the contract	20,00,000
(v) Cost of consumables used not involving transfer of property in goods	10,00,000

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Strong Constructions also purchased a plant for use in the contract for ₹ 20,80,000 (inclusive of VAT). In the VAT invoice relating to the same VAT was charged at 4% separately. Assume 100% input tax credit is available on capital goods immediately. Make suitable assumptions where required and show the workings.

2. (a) With reference to the amendments effected by the Finance Act, 2011, briefly explain the following : 2×3
=6
- (i) State the three conditions upon fulfilment of which penalty under Sec. 11A of the Central Excise Act, 1944 may be halved and the extended period of limitation of five years may be invoked.
- (ii) State the three conditions upon fulfilment of which no interest would become payable under Sec. 11AA of the Central Excise Act, 1944.
- (iii) Briefly explain the condition when accessories and goods used for providing free warranty are eligible as 'input' under Rule 2 (k) of the Cenvat Credit Rules, 2004.
- (b) Answer the following with brief reasons and reference to the Finance Act, 1994 as amended relating to applicability of service tax. 2×3
=6
- (i) Delayed payment charges collected by stock brokers.
- (ii) Practising chartered accountant representing a client before Income Tax Officer in assessment proceedings.
- (iii) Personal liability of a director or other officer of a company for offences under the Finance Act, 1994 relating to service tax.
- (c) Discuss briefly the provisions relating to manner of computation of limitation period of one year in three situations contemplated under Sec. 27 (1B) of the Customs Act, 1962 for purpose of refund of duty. 3

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3. (a) Happy Ltd., cleared certain goods to P. Ltd., paying higher rate of excise duty in the month of March, although the rate of duty on the said goods had been reduced in the Budget of the same financial year. However, P Ltd., refused to pay the higher duty which Happy Ltd., had paid by mistake. P Ltd., raised a debit note in the month of June of the same year. Happy Ltd., applied for refund of the excess excise duty paid in August. The department rejected the claim on the ground that the incidence of duty has been passed by Happy Ltd. to P. Ltd. 6

While claiming refund Happy Ltd., relied on the debit note raised by P Ltd., in the month of June to demonstrate that its customer P Ltd, had not paid the excess duty to Happy Ltd. The department contended that since the debit note was issued in the month of June and not March it could not be the basis for refund.

With a brief note :

- (i) Examine with the help of decided case law whether the contention of the department is correct in law.
 - (ii) State whether in the above case assuming that the issue is decided in favour of Happy Ltd., by the Commissioner of Central Excise (Appeals) and the duty involved is ₹ 4,80,000 the revenue could file an appeal before the CESTAT against such an order.
- (b) Briefly explain with reasons whether in the following cases service tax would be applicable besides Value Added Tax (VAT) or Excise duty on the same transaction as indicated herein below with reference to decided case law : 6
- (i) SIM card supplied as part of mobile telecommunication services could be subjected to service tax and VAT.

- (ii) Manufacture and sale of products where the sale price is inclusive of erection installation and commissioning services could be subjected to excise duty and service tax on the services involved.
- (c) Write a brief note on the following with reference to decided case law and the provisions of the Customs Act, 1962. 3
- (i) Whether it is mandatory for the revenue officer to make available copies of seized documents to the person from whom they are seized.
- (ii) Whether benefit of exemption notification meant for 'imported goods' could be extended in case of "smuggled goods".
4. (a) Gaseous Ltd., purchased helium gas in bulk from the open market and its quality control officer had conducted various tests and issued test reports stating the results of the tests. The bulk purchase was packed and filled in cylinders of various sizes and certificates were issued along with quantities. The purchases from the open market were of generic description and after test and analysis were sold to different customers based on their specific requirements with a profit margin of 40 to 60%. The central excise department claimed that duty had to be paid on the sale price as there was "deemed manufacture" in terms of Note 9 to chapter 28 of the Central Excise Tariff 1985 which reads as follows :
- "In relation to products of this chapter labelling or relabelling of containers or repacking from bulk packs to retail packs or adoption of any other treatment to render the product marketable to the consumer shall amount to manufacture."
- Briefly explain with a note based on case law if any whether :
- (i) the process of filling the bulk gas into cylinders of smaller quantities after tests and quality processes with distinct grades would amount to 'treatment' as per the said chapter note. 2

- (ii) Whether it could be said that the helium gas purchased in bulk is already marketable and hence the chapter note will not be attracted in this case. 4
- (b) PQR & Co. was involved in the services of unloading of coal from wagon tripping system, stacking/reclaiming of coal to stacker reclaimer system and feeding of coal to boiler bunkers through conveyor system. The department had taken a view that the charges received by PQR & Co. for such activity were taxable under the category of 'Cargo Handling Services' in terms of Sec. 65 (105) (zr) read with Sec. 65(23) of the Finance Act, 1994. However PQR & Co. claimed that the services rendered by them cannot be brought under 'Cargo handling services' as it is engaged only in the handling of coal from railway wagons to the required destination of the thermal power station wherein machines are used with the aid of some man power. 6
- Briefly explain :
- (i) with reference to relevant provisions and case law, if any, whether the stand taken by the department is correct in law;
- (ii) Whether in the above matter, against an adverse order passed by the Commissioner of Central Excise in adjudication proceedings against PQR & Co and thereafter confirmed by the CESTAT, PQR & Co. could file an appeal against the order of the CESTAT before the High Court under Sec. 35G of the Central Excise Act, 1944.
- (c) Explain with reference to decided case law whether clearances from Domestic Tariff Area (DTA) to Special Economic Zone is chargeable to export duty under the SEZ Act, 2005 or the Customs Act, 1962. 3

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5. (a) (i) Explain briefly whether "assembly" would tantamount to 'manufacture' under the Central Excise Act, 1944. 3x2
=6

(ii) Briefly explain the situations where transaction value under Sec. 4 of the Central Excise Act, 1944 does not apply.

(b) (i) Major Ltd., imports business support services from Wilfred Ltd., of USA on 18-8-2011. The relevant invoice for \$ 1,50,000 is raised by Wilfred Ltd., on 20-9-2011. Assuming that Major Ltd. makes the above mentioned payment on the dates as indicated in the following table, determine the point of taxation under the Point of Taxation Rules, 2011 in each case giving reasons for your answer :

CASE I 10-12-2011

CASE II 15-04-2012

(ii) Write a brief note on Tax Payer's Identification Number (TIN) for purpose of VAT. 2

(c) What is the purpose of the interpretation rules regarding customs tariff ? Do they form part of the tariff schedule ? Briefly explain Akin rule of interpretation. 3

6. (a) Briefly explain the procedure to be followed by the Authority for Advance Rulings on receipt of application for Advance Ruling under the Central Excise Act, 1944. 6

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- (i) Briefly specify under what circumstances it may be beneficial to pay duty and claim rebate under Rule 18 of the Central Excise Rules, 2002. $3 \times 2 = 6$
- (ii) Can the department file an appeal in respect of the same assessee if in respect of some years no appeal was filed in matters involving identical dispute. Write a brief note with reference to the Central Excise Act, 1944.
- (b) Dwarka Ltd. is engaged in providing taxable services under the Finance Act, 1994.
- (i) For the half year ending on 30-9-2011, it furnished the return on 24-12-2011. On the basis of information provided answer the following :
- (i) Specify the due date and form for filing the return. 1
- (ii) Compute the amount of late fee payable by Dwarka Ltd., under the Finance Act, 1994 and Rules made there under. 2
- (ii) Explain the system of cross-checking under VAT Laws. 3
- (c) Write a brief note on self assessment in customs under the Customs Act, 1962. 3
7. (a) (i) Briefly explain the provisions in respect of waiver of physical warehousing in case of exigency in respect of export goods under the Central Excise Act, 1944. $3 \times 2 = 6$
- (ii) Under Excise Audit 2000, the selection of the unit is based on "risk factors". Explain in brief the expression 'risk factors' giving any two examples.

- (b) (i) KPL Ltd. did not pay its service tax dues of ₹ 30 lakhs for the period ending 30-9-2011. Can the department create first charge on the property of KPL Ltd. ? If the answer is in the affirmative, whether there are any limitations in respect of creation of such first charge ? Briefly explain with reference to the Finance Act, 1994. 3×2
=6
- (ii) Who are not eligible for composition scheme under the VAT regime. Write a brief note.
- (c) What are the ways that would constitute circumvention of antidumping duty imposed on an article that may warrant action by the Central Government based on inquiry as it may consider necessary for purpose of Sec 9A(1A) of the Customs Tariff Act, 1975. 3