

Roll No.

FINAL
GROUP-II PAPER-8
INDIRECT TAX LAWS

NOV 2013

Total No. of Questions – 7

Total No. of Printed Pages – 11

Time Allowed – 3 Hours

Maximum Marks – 100

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Answer 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.

Question No. 1 is compulsory.

Candidates are also required to answer any five questions from the remaining six questions.

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

Working notes should form part of the answer.

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1. (a) M/s. Dental Care Ltd. has introduced a new product 'CLOVE' toothpaste, notified under Section 4A of the Central Excise Act, 1944, with a notified abatement of 30%. Determine the central excise duty payable if rate of duty is 12%, education cess is 2% and secondary and higher education cess is 1% : 5
- (i) 1,000 pieces having retail sale price (RSP) ₹ 70 per piece are sold in retail packages to wholesale dealer at ₹ 50 per piece.
- (ii) 2,500 pieces having RSP ₹ 70 per piece are sold in retail packages, but buyer is charged for 2,400 pieces only at ₹ 50 per piece (100 pieces have been given free as quantity discount).
- (iii) 50 pieces were given away as free samples, without any RSP on the pack.

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- (iv) 200 multi-packs were cleared at ₹ 90 per pack, each containing two toothpaste tubes and one tooth-brush free (without any RSP on it). Each tooth paste tube was having RSP ₹ 70, which was scored out and each multi-pack had RSP of ₹ 130.

(Make suitable assumptions wherever required and show the calculations with appropriate notes.)

- (b) M/s. Honest Manufacturer furnishes the following information for the month of October, 2013 : 5

(i) Assessable value of goods 'X' cleared (effective rate of duty 12.36%)	₹ 150 Lakh
(ii) Assessable value of goods 'Y' cleared (effective rate of duty 2.06% under Notification No. 1/2011-CE, dated 1-3-2011)	₹ 50 Lakh
(iii) CENVAT credit of input 'P' (used only in manufacture of goods 'X')	₹ 10 Lakh
(iv) CENVAT credit of input 'R' (used in manufacture of goods 'X' and 'Y' both)	₹ 6 Lakh

The assessee does not maintain separate accounts for input 'P' and 'R'. Calculate the central excise duty payable by him. Also calculate the amount payable, if any, under Rule 6(3)(i) of CENVAT Credit Rules, 2004. Duty payable by availing CENVAT credit and by GAR-7 challan, if any, should be shown separately.

(Show the workings with explanation wherever required.)

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- (c) Sudarshan Ltd. commenced its business on 21st June, 2012 in Kolkata. It has provided/availed following services upto 31st March, 2013. Determine its service tax liability for the Financial Year 2012-13 : 5

- (i) Taxable services provided under its own brand name : ₹ 9,00,000
- (ii) Declared services (Sum charged ₹ 4 lakh, but value determined as per valuation rules is 60% i.e. ₹ 2,40,000)
- (iii) Services wholly exempt under Notification No. 25/2012, dated 20-06-2012 : ₹ 6,00,000
- (iv) Services provided under brand-name of other person : ₹ 3,60,000 (fully taxable)
- (v) Availed services of goods transport agency and paid freight of ₹ 2,00,000

The assessee is ready to opt any exemption available to it under Service Tax Law.

(Make suitable assumptions wherever required and show workings.)

- (d) A manufacturer purchased raw material for ₹ 2,25,000 (inclusive of 12.5% VAT – Value Added Tax) and capital equipment for ₹ 8,32,000 (inclusive of 4% VAT). Other cash expenses of manufacture (excluding depreciation) are ₹ 4,00,000. He sells the final product at 50% mark-up above cost. VAT on sales is 12.5%. The capital equipment is to be depreciated @ 25% straight line. 5

Ascertain the amount of VAT payable in cash as per income variant.

(Make suitable assumptions wherever required and show the workings.)

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(e) Compute export duty from the following data :

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- (i) FOB price of goods : US \$ 1,00,000.
- (ii) Shipping bill presented electronically on 26-02-2013.
- (iii) Proper officer passed order permitting clearance and loading of goods for export on 04-03-2013.
- (iv) Rate of exchange and rate of export duty are as under :

	Rate of Exchange	Rate of Export Duty
On 26-02-2013	1 US \$ = ₹ 55	10%
On 04-03-2013	1 US \$ = ₹ 56	8%

- (v) Rate of exchange is notified for export by Central Board of Excise and Customs.

(Make suitable assumptions wherever required and show the workings.)

2. (a) (i) Explain briefly the provision made for payment of interest on refund under rule 7(5) of the Central Excise Rules, 2002, where the assessee is entitled to a refund consequent to finalization of provisional assessment. 3×2
=6
- (ii) Discuss briefly the provision made for punishment that can be imposed under section 9(1)(i) of the Central Excise Act, 1944 for criminal offences under the Act.

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- (b) Following the comprehensive approach of taxing services, the term 'service' has been defined for the first time by inserting a new section 65 B in the Finance Act, 1994 w.e.f-01-07-2012. Mention briefly the specific exclusions from definition of the term 'service' given in Section 65 B (44) of the Act. 6
- (c) What are the classes of importers required to pay customs duty electronically ? What is the full name of dedicated payment gateway set up by the Board (CBEC) to use e-payment facility easily by an importer ? 3
3. (a) M/s. Amar Ltd. is manufacturer of cement. It carried out repair and maintenance of its worn out cement manufacturing plant by use of welding electrodes, mild steel, cutting tools, angles etc. In this process of repair/maintenance, some metal scrap and waste were generated, which were cleared by the assessee without paying any excise duty.
- The Department issued a notice demanding excise duty on such metal scrap and waste contending that these were 'excisable goods' as these were marketable and movable and since it arose during a process incidental/ancillary to manufacture viz. repair of plant, the process of generation of scrap and waste amounted to manufacture in terms of section 2 (f) of the Central Excise Act, 1944.
- You are required to answer the following questions :
- (i) What is 'manufacture' in Central Excise as per section 2(f)(i) and (ii) of the Act ?
- (ii) What are the major conditions for levy of duty on waste & scrap ?
- (iii) Whether waste & scrap resulting from repair/maintenance of plant is excisable and liable to duty ?

Answer briefly citing case law, if any.

(b) M/s. Neem Infotech is selling information technology software as :

- (i) Shrink wrap software
- (ii) Multiple user/Paper license and
- (iii) Internet download ; retaining the copyright with it.

In terms of End User License Agreement (EULA), the contract is given for customized development of software, delivered online or down loaded on the internet.

The assessee is of the view that since it has been settled by the Supreme Court ruling in TCS case [2004(178)ELT 22(SC)] that software (branded as well as unbranded) is goods, there is no element of service, and hence service tax cannot be levied in this case -

Discuss, in the light of case law, if any, the following questions that arise –

- (i) Whether the transaction may be called as sale or deemed sale ? 3
 - (ii) Whether the transaction is liable to service tax ? If yes, show the category of the service also. 3
- (c) Can the time-limit prescribed under section 48 of the Custom Act, 1962 for clearance of the goods within 30 days be read as time-limit for filing of bill of entry under section 46 of the Customs Act, 1962. You may take the help of case law, if any, for your decision. 3

4. (a) The assessee was engaged in the manufacture and sale of cookies from 6
branded outlets of "Cookie Man". The assessee had acquired this brand name
from a foreign company. The assessee was selling some of these cookies in
plastic pouches/containers on which the brand name described above was
printed. No brand name was affixed or inscribed on the cookies. Excise duty
was duly paid, on the cookies sold in the said pouches/containers. However,
on the cookies sold loosely from the counter of the same retail outlet, with
plain plates and tissue paper, duty was not paid. The retail outlet did not
receive any loose cookies nor did they manufacture them. They received all
cookies in sealed pouches/containers. Those sold loosely were taken out of
the containers and displayed for sale separately. The assessee contended that
SSI exemption would be available on cookies sold loosely as they did not
bear the brand name.

Department denied exemption on cookies sold loosely as claimed by the
assessee.

Examine, with the help of a decided case law whether the manufacture and
sale of specified goods not physically bearing a brand name, from branded
sales outlets would disentitle an assessee to avail benefit of small scale
exemption.

- (b) Can appeal be filed to High Court against order of Tribunal, for deciding the 6
question relating to the taxability of service tax ? Explain briefly with
reference to decided case law, if any. What are the orders that are appealable
to the High Court ?

- (c) M/s. Decent Laminates imported resin impregnated paper and plywood for the purpose of manufacture of furniture. The said goods were warehoused from the date of its import. M/s. Decent Laminates sought an extension of the warehousing period which was granted. However, even after the expiry of the extended period, it did not remove the goods from the warehouse. Subsequently, it applied for remission of duty under section-23 of the Customs Act, 1962 on the ground that the imported goods had become unfit for use on account of non-availability of orders for clearance and had lost their shelf life also.

Explain, with the help of a decided case law, if any, whether the application for remission of duty filed by M/s. Decent Laminates is valid in law ?

5. (a) (i) Discuss the procedure outlined for valuation of excisable goods when the price is not the sole consideration by referring to rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. 3×2
=6
- (ii) State the procedure for availment of Cenvat credit when the duty paid goods returned to the factory are put through a process not amounting to manufacture and a process amounting to manufacture under rule 16 of Central Excise Rules, 2002.

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- (b) (i) Based on the Place of Provision of Services Rules, 2012, determine the place of service as well as their taxability in each of the following independent cases : 3×2
=6
- (1) A Mumbai based builder provides construction services to Gujarat based company in respect of construction of its new building in Afganistan.
- (2) A UK based company has been awarded mineral exploration contract in respect of specific sites in ZIMBABWE by a Chennai based corporation.
- (ii) What is meant by VAT chain ? When is the VAT chain broken or interrupted ?
- (c) When shall the safeguard duty under section 8B of the Customs Tariff Act, 1975, not be imposed ? Discuss briefly. 3
6. (a) (i) What are the restrictions which can be imposed or the facilities which may be withdrawn by the Central Government Under Rule 12 CCC of the Central Excise Rules, 2002 in case of misuse of CENVAT credit or evasion of duty by a manufacturer. 3×2
=6
- (ii) With reference to the provisions of CENVAT Credit Rules, 2004, briefly explain :
- (1) exempted goods and
- (2) exempted services

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- (a) (i) Is it mandatory to pay duty and / or file various returns electronically under Central Excise ? Also mention the exceptions to it, if any. 6
- (ii) Is there any provision for submission of revised return under Central Excise ? If yes, how can it be submitted and if no, what has to do ?
- (iii) How can the adjustments be made for over/under payment of duty or non-availment of CENVAT Credit ?
- (b) (i) Under reverse charge mechanism, which services have been notified, where service tax is jointly payable by the both, service provider and service receiver ? 3×2 =6
- (ii) Distinguish between addition method and subtraction method of VAT computation.
- (c) With reference to drawback on re-export of duty paid imported goods, under section 74 of the Customs Act, 1962, answer in brief the following questions : 3
- (i) What is the time limit for re-exportation of goods as such ?
- (ii) What is the rate of duty drawback, if the goods are exported without use ?
- (iii) Is duty drawback allowed on re-export of wearing apparel without use ?

7. (a) (i) What are the jurisdictional powers regarding rectification of mistakes given to Appellate Tribunal under Section 35C(2) of the Central Excise Act, 1944 ? Can it review its own order ? 3×2
=6
- (ii) Can the goods meant for export kept in the warehouse be diverted for home consumption ? What is the procedure to be followed in this regard ?
- (b) (i) As per point of Taxation Rules 2011, when the point of taxation will be there in case services are received from "Associated Enterprises" located outside ? 3×2
=6
- (ii) Discuss the provision contained in the white paper with regard to carry over of tax credit and refund under VAT scheme.
- (c) Explain briefly the offences which are cognizable and bailable under section 104 of the Customs Act, 1962. 3
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