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PAPER – 8: INDIRECT TAX LAWS

Question No. 1 is compulsory

Answer any five questions from the remaining six questions.

Question 1

(a) *Veena Ltd. has two factories and supplies you the following information:*

<i>Particulars</i>	<i>Factory 'A'</i>	<i>Factory 'B'</i>
<i>(i) Assessable value of clearances upto 31-12-2013</i>	<i>₹ 90 lac</i>	<i>₹ 60 lac</i>
<i>(ii) Assessable value of clearances from 01-01-2014 to 31-03-2014</i>	<i>₹ 60 lac</i>	<i>₹ 40 lac</i>
<i>(iii) Inputs purchased during the year 2013-14 (including excise duty)</i>	<i>₹ 112.36 lac</i>	<i>₹ 55.15 lac</i>
<i>(iv) Capital goods purchased on 14-09-2013 (including excise duty)</i>	<i>-</i>	<i>₹ 11.03 lac</i>
<i>(v) Effective rate of excise duty on inputs and capital goods purchased and output sold.</i>	<i>12.36%</i>	<i>10.3%</i>

Veena Ltd. is availing SSI exemption under Notification No. 8/2003-C.E. and inputs are used evenly throughout the year. There is neither any processing loss nor any inventory of input and output. You are required to calculate the amount of excise duty payable by Veena Ltd. in cash, if any, for the Financial Year 2013-14. (5 Marks)

(b) *Vipin Ltd. purchased raw material 'A' 10,000 kg @ ₹ 80 per kg plus excise duty. The said raw material was used to manufacture intermediate product 'P'. The said intermediate product was captively used for the manufacture of finished product 'Z', which was exempt from excise duty. The other informations are as under:*

- (i) Processing loss: 2% of inputs in manufacture of 'P'*
- (ii) Assessable value of 'P': ₹ 100 per kg.*
- (iii) Assessable value of 'Z' : ₹ 20 lac (for total output)*
- (iv) Other material 'M' used in the manufacture of 'Z': ₹ 2 lac plus excise duty.*
- (v) Duty on capital goods imported during the period and used in the manufacture of 'P':*

The Suggested Answers for Paper 8: Indirect Tax Laws are based on the provisions as amended by the Finance Act, 2013 and notifications/circulars issued up to 31.10.2013 which were relevant for May, 2014 examinations.

- Basic customs duty ₹ 20,000;
- Additional duty of customs under section 3(1) of the Customs Tariff Act, 1975 ₹ 10,000; and
- Additional duty of customs under section 3(5) of the Customs Tariff Act, 1975 ₹ 4,000.

(vi) Rate of central excise duty on 'A', 'M' and 'P': 12.36% (including education cess as applicable)

Vipin Ltd. is not eligible for SSI exemption under Notification No. 8/2003-C.E.

Compute:

- (i) Amount of CENVAT credit available, and
- (ii) Central excise duty payable by M/s. Vipin Ltd. (5 Marks)

(c) Reliable Agro Industries furnishes the details of its activities undertaken in the month of May, 2013 as under:

S. No.	Particulars	Amount (₹)
1.	Supply of farm labour	55,000
2.	Warehousing of refined vegetable oil	1,25,000
3.	Sale of wheat on commission basis	60,000
4.	Hiring of trucks for transport of minerals	2,50,000
5.	Leasing of vacant land to a stud farm	30,000
6.	Renting of farmhouse for marriage and birthday parties	45,000
7.	Dehusking of paddy in rice mill	32,000

Compute the service tax liability of company for the month of May, 2013. Assume that the point of taxation in respect of all the activities falls in the month of May, 2013 itself. Company had paid service tax of ₹ 3,18,000 during the Financial Year 2012-13. Give working notes as may be suitable. (Rate of service tax is 12% + education cess as applicable). (5 Marks)

(d) M/s. Virat Productions is manufacturing two products - 'R' and 'T' and provide you the following particulars:

	Amount (₹)
(i) Cost of raw material purchased (including VAT@ 12.5%)	2,25,000
(ii) Cost of other material purchased	
(a) Intra-State purchases (including VAT @ 12.5%)	45,000
(b) Inter-State purchases (including CST @ 2%)	81,600
(iii) Wages and other manufacturing expenses (for product 'R' and 'T' in ratio 3:1)	78,400
(iv) Profit margin on sales value 20%	

M/s. Virat Productions utilized inputs and manufactured 75% of production as 'R' and 25% of production as 'T'. While 'R' is subject to 12.5% VAT, 'T' is exempt from VAT.

All the materials were used in production and there was no opening or closing stock of any material. Compute the invoice value of sales and net VAT liability, if all the sales were made within the State. (5 Marks)

- (e) Vipul imported certain goods in December, 2013. An 'into Bond' bill of entry was presented on 14th December, 2013 and goods were cleared from the port for warehousing. Assessable value on that date was US \$ 1,00,000. The order permitting the deposit of goods in warehouse for four months was issued on 21st December, 2013. Vipul deposited the goods in warehouse on the same day but did not clear the imported goods even after the warehousing period got over on 20th April, 2014.

A notice was issued under section 72 of the Customs Act, 1962, demanding duty, interest and other charges. Vipul cleared the goods on 14th May, 2014. Compute the amount of duty and interest payable by Vipul while removing the goods on the basis of following information:

Particulars	14-12-2013	20-04-2014	14-05-2014
Rate of exchange per US \$ (as notified by Central Board of Excise & Customs)	₹ 65.20	₹ 65.40	₹ 65.50
Basic Customs Duty	15%	10%	12%

No other customs duty is payable except basic customs duty. (5 Marks)

Answer

- (a) Computation of central excise duty payable in cash by Veena Ltd. for FY 2013-14

Particulars	Factory 'A'	Factory 'B'	Total (Factory A + Factory B)
	₹ (in lakh)	₹ (in lakh)	₹ (in lakh)
Assessable value of clearances up to 31.12.2013	90	60	150
Less: SSI exemption under Notification No. 8/2003 [Note 1 & 2]			<u>150</u>
Dutiable clearances up to 31.12.2013			Nil
Assessable value of clearances from 01.01.2014 to 31.03.2014	60	40	100
Excise duty payable	7.416 [60 x 12.36%]	4.12 [40 x 10.3%]	11.536
Less: CENVAT credit on inputs	4.944	2.06	7.004

used in dutiable clearances (computed on <i>pro rata basis</i> as the same have been used evenly throughout the year) [Note 3] (enlarge the font of equation)	$\left[112.36 \times \frac{12.36}{112.36} \times \frac{60}{150} \right]$	$\left[55.15 \times \frac{10.3}{110.3} \times \frac{40}{100} \right]$	
Less: CENVAT credit on capital goods [Note 4]		$\left[₹11.03 \times \frac{10.3}{110.3} \right]$	1.03
		<u>1.03</u>	
Excise duty payable in cash	2.472	1.03	3.502

Notes:

As per SSI exemption Notification No. 8/2003 CE dated 01.03.2003-

1. First clearances upto an aggregate value not exceeding ₹ 150 lakh made during a financial year are exempt from payment of excise duty.
2. Turnover of all factories belonging to same manufacturer have to be clubbed together for calculating SSI exemption limit of ₹ 150 lakh.
3. Units availing SSI exemption cannot avail CENVAT credit on inputs used in the manufacture of exempt clearances of ₹150 lakh.
4. Units availing SSI exemption can avail CENVAT credit on capital goods but can utilize the same only after crossing the exemption limit of ₹ 150 lakh.

Further, entire credit on capital goods can be taken in the same financial year in which such capital goods are received by such units [Third proviso of rule 4(2)(a) of CENVAT Credit Rules, 2004].

(b) (i) Computation of amount of CENVAT credit available

Particulars		₹
On inputs:	98,880	
Raw material 'A' (10,000 kg x ₹80 x 12.36%) [Note 1 and Note 2]		
Raw material 'M' [Note 3]	<u>Nil</u>	98,880
On capital goods:		
Basic customs duty	Nil	
Additional duty of customs under section 3(1) of Customs Tariff Act, 1975 [Note 4]	5,000	
Additional duty of customs under section 3(5) of Customs Tariff Act, 1975 [Note 5]	<u>4,000</u>	9,000
Total credit available		<u><u>1,07,880</u></u>

(ii) Computation of net central excise duty payable by Vipin Ltd.

Particulars	₹
Central excise duty payable on intermediate product 'P' (10,000 kg × 98% (2% processing loss) × ₹100 × 12.36%) [Note 1]	1,21,128
Central excise duty on exempt final product 'Z'	<u>Nil</u>
Total central excise duty payable	1,21,128
Less: CENVAT credit available	<u>1,07,880</u>
Net central excise duty payable (in cash)	<u>13,248</u>

Notes:

- Intermediate goods are exempt from payment of excise duty if the same are consumed captively for manufacture of dutiable final products vide *Notification No. 67/1995 CE dated 16.3.1995*. However, since in this case, final product 'Z' is exempt, intermediate product 'P' will be liable to duty.
- Since input 'A' is used in manufacture of dutiable intermediate product 'P', CENVAT credit will be available on the entire quantity of the same regardless of the processing loss as that quantity of inputs is also used in the manufacture of intermediate product.
- Since raw material 'M' is used in manufacture of final product 'Z' which is exempt from payment of duty, credit will not be available on the same [Rule 6(1) of CENVAT Credit Rules, 2004]
- Upto 50% of the credit in respect of additional duty of customs leviable under section 3(1) of Customs Tariff Act, 1975 can only be availed in the year in which capital goods are received in the factory of the manufacturer [Rule 4(2)(a) of CENVAT Credit Rules, 2004].
- CENVAT credit in respect of additional duty of customs leviable under section 3(5) of Customs Tariff Act, 1975 is allowed immediately on receipt of the capital goods in the factory of a manufacturer [Second proviso to Rule 4(2)(a) of CENVAT Credit Rules, 2004].

(c) Computation of service tax liability of Reliable Agro Industries for the month of May, 2013

Particulars	₹
Supply of farm labour [Note 1]	Nil
Warehousing of refined vegetable oil [Note 2]	1,25,000
Sale of wheat on commission basis [Note 3]	Nil
Trucks given on hire for transport of minerals [Note 4]	2,50,000
Leasing of vacant land to a stud farm [Note 5]	30,000

Renting of farmhouse for marriage and birthday parties (since not used for agricultural purposes)	45,000
Dehusking of paddy in rice mill [Note 6]	<u>Nil</u>
Total taxable services	4,50,000
Service tax payable @ 12.36% (inclusive of 3% education cesses) [₹ 4,50,000 × 12.36%] [Note 7]	55,620

Notes:

1. Supply of farm labour is covered in negative list of services under services relating to agriculture or agricultural produce and thus, will not be liable to service tax [Section 66D(d)(ii) of the Finance Act, 1994].
2. Since refined vegetable oil is not an agricultural produce, warehousing thereof will not be covered under negative list of services [Section 65B(5) read with section 66D(d)(v) of Finance Act, 1994].
3. Since, wheat is an agricultural produce, services provided for its sale on commission basis will be covered in negative list of services and thus, will not be liable to service tax [Section 65B(5) read with section 66D(d)(vii) of Finance Act, 1994].
4. It has been assumed that the trucks have been given on hire without transfer of right to use. Transfer of goods (trucks) by way of hiring without transfer of right to use such goods is a declared service as per section 66E(f) of the Finance Act, 1994 and hence, will be liable to service tax.
5. Services relating to agriculture or agricultural produce by way of renting or leasing of vacant land are covered in the negative list of services. However, since rearing of horses is specifically excluded from the definition of agriculture, leasing of vacant land to stud farm will not be covered thereunder [Section 65B(3) read with section 66D(d)(iv) of Finance Act, 1994].
6. It has been assumed that dehusking of paddy in rice mill is done on job-work basis. Carrying out an intermediate production process (dehusking of paddy) as job work in relation to agriculture is exempt from service tax [Notification No. 25/2012 ST dated 20.06.2012].
7. Since service tax of ₹3,18,000 had been paid during the preceding financial year, turnover of services would have been more than ₹10,00,000 during the preceding financial year. Hence, small service provider's exemption under Notification No. 33/2012 ST dated 20.06.2012 cannot be availed.

(d) Computation of invoice value of sales and net VAT liability of M/s. Virat Productions

Particulars	'R' (12.5% VAT)	'T' (Exempt)
	(₹)	(₹)
	(75%)	(25%)
Raw material $\left[₹ \frac{2,25,000}{112.5} \times 100 \right]$	1,50,000	50,000
VAT paid on the same $\left[₹ \frac{2,25,000}{112.5} \times 12.5 \right]$ =25,000 (*18,750+6250)	*Nil (Refer Note below)	6,250 (Refer Note below)
Other materials purchased Intra-State $\left[₹ \frac{45,000}{112.5} \times 100 \right]$	30,000	10,000
VAT paid on the same $\left[₹ \frac{45,000}{112.5} \times 12.5 \right]$ =5,000 (*3,750+1,250)	*Nil (Refer Note below)	1,250 (Refer Note below)
Other materials purchased Inter-State [Input tax credit is not available on CST and thus, it forms part of total cost]	61,200	20,400
Manufacturing expenses	<u>58,800</u>	<u>19,600</u>
Cost of goods sold	3,00,000	1,07,500
Add: Profit @ 20% on sales (i.e. 25% of cost)	<u>75,000</u>	<u>26,875</u>
Sale price	3,75,000	1,34,375
VAT payable @ 12.5% (rounded off)	<u>46,875</u>	<u>Nil</u>
Invoice value	4,21,875	1,34,375
Output VAT payable	46,875	
Less: Input tax credit - 75% of ₹30,000 [₹25,000 (raw materials) + ₹5,000 (other materials purchased within the State)]	*22,500	
Net VAT liability	24,375	

Note: VAT paid on raw materials used in manufacture of taxable goods is eligible for input tax credit and thus, does not form part of total cost. However, VAT paid on

raw materials used in manufacture of exempt goods is not eligible for input tax credit and thus, it forms part of total cost.

(e) **Computation of import duty payable by Vipul**

Particulars	Amount (US \$)
Assessable value	1,00,000
	Amount (₹)
Value in Indian currency (US \$ 1,00,000 x ₹ 65.20) [Note 1]	65,20,000
Customs duty @ 10% [Note 2]	6,52,000
Add: Education cess @ 2%	13,040
Add: Secondary and higher education cess @ 1%	<u>6,520</u>
Total customs duty payable	<u>6,71,560</u>

Notes:

- As per third proviso to section 14(1) of the Customs Act, 1962, assessable value has to be calculated with reference to the rate of exchange prevalent on the date on which the into bond bill of entry is presented for warehousing under section 46 of the Customs Act, 1962.
- Goods which are not removed within the permissible period are deemed to be improperly removed in terms of section 72 of the Customs Act, 1962 on the day they should have been removed [*Kesoram Rayon v. CC 1996 (86) ELT 464 (SC)*]. The applicable rate of duty in such a case is the rate of duty prevalent on the last date on which the goods should have been removed.
- It has been assumed that the term "no other customs duty" refers only to customs duties and not to education cesses.

As per section 61(2)(ii) of Customs Act, 1962, where any warehoused goods (not meant for being used in 100% EOU) remain in a warehouse beyond a period of ninety days, interest would be payable on the amount of duty payable at the time of clearance of the goods (in accordance with the provisions of section 15 on the warehoused goods), for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods.

As per *Notification No. 28/2002-Cus (NT) dated 13.05.2002*, interest is payable at the rate of 15% p.a.

Therefore, interest payable will be computed as under:

Period of ninety days commence from the date of deposit of the goods in the warehouse [<i>Circular No. 39/2013 Cus dated 01.10.2013</i>]	21.12.2013
Period of ninety days expire on	20.03.2014

No. of days for which interest shall be payable [11 days of March + 30 days of April + 14 days of May]	55 days
Interest payable = ₹ $\left[6,71,560 \times \frac{15}{100} \times \frac{55}{365} \right]$ (rounded off)	₹ 15,179

Question 2

- (a) (i) *What are the powers of the Tribunal (CESTAT) to grant extension of stay under section 35C(2A) of the Central Excise Act, 1944?* (3 Marks)
- (ii) *How can a decision, order, summon or notice be served on the intended person under section 37C(1)(a) of the Central Excise Act, 1944?* (3 Marks)
- (b) *Discuss the liability under service tax in the following cases during the month of July, 2013:*
- (i) *Transport facility provided by a School to its students through a fleet of buses owned by the School.* (2 Marks)
- (ii) *Service provided by a private transport operator to a School in relation to transportation of students to and from the School.* (2 Marks)
- (iii) *Exhibiting movies on television channels.* (2 Marks)
- (c) (i) *What is interest free period allowed under section 47(2) of the Customs Act, 1962 for payment of duty?*
- (ii) *What is the maximum period of storage allowed for warehousing without warehousing under section 49 of the Customs Act, 1962?*
- (iii) *What is the minimum monetary limit prescribed in the Customs law below which no refund shall be granted?* (1 x 3 = 3 Marks)

Answer

- (a) (i) Finance Act, 2013 has amended third proviso to section 35C(2A) of the Central Excise Act, 1944 to provide that CESTAT may extend the period of stay, by not more than 185 days:-
- (i) on an application made in this behalf by a party and
- (ii) on being satisfied that the delay in disposing of the appeal is not attributable to such party.
- However, if the appeal is not disposed of within the total period of 365 days (180 days plus extended period of 185 days) from the date of the stay order, the stay order would, on the expiry of 365 days, stand vacated.
- (ii) As per section 37C(1)(a) of the Central Excise Act, 1944, a decision, order, summon or notice can be served to the intended person:-
- by tendering or sending by registered post with acknowledgment due or

- by tendering or sending by registered post with acknowledgment due or
- by courier approved by the Central Board of Excise and Customs.

- (b) (i) Mega Exemption *Notification No. 25/2012 ST dated 20.06.2012* was amended to withdraw the exemption granted to the auxiliary educational services provided BY an educational institution. Considering the transport facility provided by School to its students as auxiliary educational service, the same could be taken as taxable.

However, CBEC has clarified in its *Circular No 172/7/2013 ST dated 19.09.2013* that "by virtue of the entry in the negative list and by virtue of the portion of the exemption notification, it will be clear that all services relating to education are exempt from service tax". Therefore, the transport facility provided by the school may be treated as "bundled service" "relating" to education and thus, it would qualify for exemption.

Further, Mega Exemption Notification also provides exemption to transport of passengers, with or without accompanied belongings by, *inter alia*, a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire.

School buses generally fulfill the criteria of being a contract carriage. Therefore, it is also possible to take a view that the transport facility provided by the School to its students would be exempt from payment of service tax by virtue of the said exemption on the presumption that the buses owned by the School are contract carriages.

- (ii) Transport facility provided by a private transport operator to a School is an auxiliary educational service and auxiliary educational services provided to an educational institution are exempt vide *Notification No. 25/2012 ST dated 20.06.2012*. Thus, the service provided by the private transport operator to the School in relation to transportation of students to and from the School would be exempt from service tax.
- (iii) Mega Exemption *Notification No. 25/2012 ST dated 20.06.2012* has been amended to restrict the benefit of exemption, in relation to copyrights of cinematograph films, to only films exhibited in a cinema hall or theatre. Therefore, exhibition of cinematograph films in a place other than cinema hall or theatre will be taxable. Hence, exhibiting movies on television channels would be liable to service tax.
- (c) (i) The interest free period allowed under section 47(2) of the Customs Act, 1962 for payment of duty is 2 days (excluding holidays) from the date on which the bill of entry is returned to the importer for payment of duty.
- (ii) The maximum period of storage allowed for warehousing without warehousing under section 49 is 30 days which can be extended further by Commissioner of Customs for a period not exceeding 30 days at a time.
- (iii) As per third proviso to section 27(1) of the Customs Act, 1962, the minimum monetary limit below which refund cannot be granted is ₹ 100.

Question 3

- (a) (i) *Healthcare Ltd. is manufacturer of patent and proprietary medicines. Physician samples were distributed to medical practitioners as free samples. The Central Excise Department raised the demand of excise duty on such samples.*

The assessee contended that since the sale of the physician samples was prohibited under the Drugs and Cosmetics Act, 1940 and the rules made thereunder, the same could not be considered to be marketable and hence were not liable to excise duty.

Examine with the help of a decided case law whether the contention of the assessee is valid in law. (3 Marks)

- (ii) *A Ltd. was a manufacturer of two products 'X' & 'Y' falling under Chapter Heading 32 and 84 of the First Schedule to the Central Excise Tariff Act, 1985, respectively.*

The goods 'X' were dutiable but the goods 'Y' falling under Chapter Heading 84 were fully exempt from duty vide an exemption notification. However, the manufacturer, A Ltd., paid the excise duty on 'Y' by mistake and did not even claim refund of the same.

Since goods 'X' falling under Chapter heading 32 were eligible for SSI exemption, the manufacturer wished to claim the same.

For the purpose of computing the value of clearances for SSI exemption, the manufacturer excluded the turnover of goods 'Y' which was exempt although duty was paid mistakenly on them. However, the Department contended that the clearance of such goods should be included while computing the value of clearance for SSI exemption purposes.

With reference to a decided case law, you are required to find out whether the contention of the Department is correct or not. (3 Marks)

- (b) (i) *The petitioner, a charitable society, is engaged in running internationally renowned schools. It allowed other schools to use its name, logo and motto and as a consideration thereof received collaboration fees from such schools which comprised of a non refundable amount and annual fee. The schools were required to observe certain obligations / terms and in-impeachable confidentiality.*

Department contended that the petitioner was engaged in providing franchise service and accordingly issued show cause notice proposing to recover service tax along with interest and penalty.

Examine the validity of the Departmental action with reference to a decided case, if any. (3 Marks)

- (ii) *The assessee received some taxable services from Ramesh. A formal contract was entered into between them. As per the terms of the contract, Ramesh had to bear all the taxes, duties and other liabilities in connection with discharge of his obligations.*

Subsequently, liability to pay service tax in case of such taxable services was shifted from service provider to service receiver retrospectively, owing to an amendment in law. Therefore, the assessee deducted service tax in the bills raised by Ramesh. Ramesh refused to accept the said deduction saying that the contractual clause could not alter the liability placed on the service recipient (i.e. the assessee) by law.

Discuss whether the contention of Ramesh stands to reason with the help of a decided case law, if any. (3 Marks)

- (c) The assessee, an importer, filed a refund application under section 27 of the Customs Act, 1962. In support of the refund claim, the assessee submitted a Chartered Accountant's certificate giving the various facts ruling out unjust enrichment under the Customs Act. The Department denied the refund on the ground of Chartered Accountant certificate being an insufficient evidence.

Examine the validity of Departmental action citing a decided case, if any. (3 Marks)

Answer

- (a) (i) The facts of the given case are similar to the case of *Medley Pharmaceuticals Ltd. v. CCE & C., Daman 2011 (263) E.L.T. 641 (S.C.)*. In the instant case, the Supreme Court observed that merely because a product was statutorily prohibited from being sold would not mean that the product was not marketable. Sale is not a necessary condition for charging duty as excise duty is payable in case of free supply also. The Supreme Court observed that since physician samples were capable of being sold in open market, the same were marketable and thus, liable to excise duty.

Moreover, since the Drugs and Cosmetics Act, 1940 (Drugs Act) and the Central Excise Act, 1944 operated in two different fields, the restrictions imposed under Drugs Act could not lead to non-levy of excise duty under the Central Excise Act.

Therefore, in view of the above-mentioned ruling of the Supreme Court, the contention of the assessee is not valid in law.

- (ii) The facts of the given case are similar to the case of *Bonanzo Engg. & Chemical P. Ltd. v. CCEx. 2012 (277) E.L.T. 145 (S.C.)*. In the instant case, the Supreme Court opined that value of exempted goods needs to be excluded while computing the value of clearances for the purposes of claiming SSI exemption.

The Apex Court observed that if an assessee had mistakenly paid duty on the goods which were exempted from duty under some other notification; it would not mean that such goods had become liable to duty.

Further, the benefit of SSI exemption could not be denied to the assessee merely because he had not claimed a refund of the duty paid by him on such goods.

Therefore, in view of the above-mentioned ruling of the Supreme Court, the contention of the Department of including the clearances of goods 'Y' is not correct.

- (b) (i) The facts of the given case are similar to the case of *Mayo College General Council v. CCEX. (Appeals) 2012 (28) STR 225 (Raj)*. In the instant case, the High Court held that when the petitioner permitted other schools to use their name, logo as also motto, it clearly tantamounted to providing 'franchise service' to the said schools and if the petitioner realized the 'franchise' or 'collaboration fees' from the franchise schools, the petitioner was duty bound to pay service tax to the Department.

Therefore, in view of the above-mentioned ruling of the High Court, the action of the Department is valid in law.

- (ii) The facts of the given case are similar to the case of *Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran 2012 (26) S.T.R. 289 (S.C.)*. On the issue of submission of shifting of service tax liability, the Supreme Court, in the instant case, held that service tax is an indirect tax which may be passed on. Thus, assessee can contract to shift its liability.

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. There is nothing in law to prevent them from entering into agreement regarding burden of tax arising under the contract between them.

Therefore, in view of the above-mentioned ruling of the Supreme Court, the contention of Ramesh does not stand to reason.

- (c) The facts of the given case are similar to the case of *CCus., Chennai v. BPL Ltd. 2010 (259) E.L.T. 526 (Mad.)*. In the instant case, the High Court noted that section 27 of the Customs Act mandates the importer to produce such documents or other evidence, while seeking refund, to establish that the burden of duty in relation to which such refund is claimed, has not been passed on by him to any other person. However, the assessee had not produced any document other than the certificate issued by the Chartered Accountant to substantiate its refund claim.

The High Court held that the assessee could not be granted refund only on the basis of Chartered Accountant's certificate which is merely a piece of evidence acknowledging certain facts. Production of documents or other evidence was necessary for this purpose.

Therefore, in view of the above-mentioned ruling of the High Court, the Department's action of denying refund to assessee is valid in law.

Question 4

- (a) (i) *M/s. Vinay Industries is engaged in manufacture of a product 'B' which is obtained by certain process. The adjudicating authority concluded that the process amounts to manufacture and levied excise duty on it. Aggrieved by the order, the assessee carried an appeal before the Commissioner (Appeals), who accepted the assessee's stand and held that the above process did not amount to manufacture.*

Department did not appeal against it and the above order of the Appellate Authority attained finality.

For subsequent period, the assessee took the same stand but the Department issued demand notice to the assessee to pay the duty, but for a time period different from the period covered in the said appeal.

Discuss with the help of a decided case law, whether the Revenue could contend this issue further on the same grounds when the appellate order for earlier period was not challenged by the Department? (3 Marks)

- (ii) *The assessee was carrying on construction of metro railway. He manufactured pre-fabricated components of metro rail at one site to be used at different inter-connected metro construction sites. The assessee claimed exemption under Notification No. 1/2011-C.E.(N.T.) dated 17-2-2011 which exempts the goods covered under specified chapter headings for a specified period, manufactured at the site of construction for use in construction work at such site.*

Department contended that the assessee was not entitled to exemption as he did not fulfil the condition of manufacture at the site of the construction.

Examine the validity of the Departmental contention citing a decided case, if any.

(3 Marks)

- (b) *A co-operative society rendered rent-a-cab service to M/s. JITO. The members of the society were essentially agriculturists who formed the society after they lost their land when JITO plant was being set up and the society was operating without any profit model.*

When the society started rendering the service to JITO, there was no service tax levy on rent-a-cab service. However, service tax was imposed on it subsequently. A show cause notice was issued to the society proposing to recover service tax with applicable penalty.

The society paid the entire disputed amount of service tax and thereafter regularly paid the service tax but did not pay the penalty contending that it was a case of new levy and also there were divergent views of different Benches of Tribunal, which had added to the confusion. The issue was debated also with JITO, the service receiver, who first denied to pay the amount of tax.

Decide, with the help of a case law, whether the contention of the assessee is acceptable in law. Discuss in brief the various observations which can be made on the issue. (6 Marks)

- (c) *M/s. Vijay Exports, an EOU, is purchasing electricity generated by the captive power plant of its sister unit. The furnace oil required for running the captive power plant was imported by the assessee (M/s. Vijay Exports) and supplied to sister unit for generation of electricity. The assessee claimed exemption on import of furnace oil under the relevant exemption notification.*

The assessee sought a clarification from the Development Commissioner seeking as to whether import of furnace oil and receipt of electricity would be liable to duty. The

Development Commissioner replied in favour of the assessee and thereafter, the assessee claimed the exemption.

A show cause notice demanding duty was issued on the assessee invoking extended period of limitation of 5 years on grounds that the entitlement of duty free import of fuel for its captive power plant lies with the owner of the captive power plant, and not with the consumer of electricity generated from that power plant.

Is the action of the Department justified in light of the provisions of the Customs Act, 1962? Discuss with the help of a decided case law. (3 Marks)

Answer

- (a) (i) The facts of the given case are similar to the case of *Commissioner of C. Ex., Mumbai-III v. Tikitar Industries 2012 (277) E.L.T. 149 (S.C.)*. The Supreme Court, in this case, held that since the Revenue had not questioned the correctness or otherwise of the findings on the conclusion reached by the first Appellate Authority, it might not be open for the Revenue to contend this issue further by issuing show cause notice on the same issue for further periods.

Therefore, in view of the above-mentioned ruling of the Supreme Court, when Revenue has accepted the appellate order on an issue for one period, it cannot contend the same issue for another period.

- (ii) No, the contention of the Department is not valid in law. The assessee is entitled to exemption under *Notification No. 1/2011 CE (NT) dated 17.02.2011* as all the metro construction sites were inter-connected.

This view has been endorsed by the High Court in the case of *CCEx v. Rajendra Narayan 2012 (281) E.L.T. 38 (Del.)*.

In the instant case, the assessee constructed pre-fabricated components at the construction site allotted to it by the metro railway from where the components had been moved to different inter-connected metro construction sites. The High Court observed that construction site was not located at one place but spread all over.

- (b) The facts of the given case are similar to the case of *Ankleshwar Taluka ONGC Land Losers Travellers Co. OP. v. C.C.E., Surat-II 2013 (29) STR 352 (Guj.)*. In this case, the High Court made the following three important observations:
- (i) Service tax levy was comparatively new and therefore, both unawareness and confusion were quite possible particularly considering the strata to which the members of the society (assessee) belonged to. They were essentially agriculturists, who lost their lands when plant of service receiver was set up, and therefore, had created society and for many years they were providing rent-a-cab service to the service receiver.
- (ii) There were divergent views of different Benches of Tribunal, which may have added to such confusion.

- (iii) The fact that the assessee had persuaded their right of reimbursement of payment of service tax with the service receiver by way of conciliation and arbitration cannot deprive them of the defence of *bona fide* belief of applicability of service tax.

The High Court held that even if the assessee was aware of the levy of service tax and was not paying the amount on the ground of dispute with the service receiver, there could be no justification in levying the penalty in absence of any fraud, misrepresentation, collusion or wilful mis-statement or suppression.

Moreover, when the entire issue for levying the tax was debatable, that also would surely provide legitimate ground for not imposing the penalty.

Therefore, in view of the above-mentioned ruling of the High Court, the contention of assessee is acceptable in law.

- (c) The facts of the given case are similar to the case of *Uniworth Textiles Ltd. vs. CCE. 2013 (288) ELT 161 (SC)*, wherein the Supreme Court noted that section 28 of the Customs Act, 1962 clearly contemplates that for invoking extended period of limitation, the intention to deliberately default is a mandatory pre-requisite.

However, the assessee acted *bona fide* and claimed exemption by seeking clarification from the Development Commissioner. Hence, it could be inferred that assessee made efforts to adhere to the law rather than its breach.

The Apex Court held that mere non-payment of duties could not be equated with collusion or wilful misstatement or suppression of facts as then there would be no form of non-payment which would amount to ordinary default. Something more must be shown to construe the acts of the assessee as fit for applicability of extended period of limitation.

Therefore, in view of the above-mentioned ruling of the Supreme Court, the action of the Department of invoking extended period of limitation is not justified in the light of the provisions of the Customs Act, 1962.

Question 5

- (a) *With reference to central excise law, briefly explain the following terms:*
- (i) *Specific duty*
 - (ii) *Tariff value*
 - (iii) *Ad-hoc exemption* (2 x 3 = 6 Marks)
- (b) (i) *With reference to the Finance Act, 1994, discuss the taxability of following activities relating to a bank:*
- (a) *Bank extended housing loan of ₹ 50 lac to Mr. A.*
 - (b) *Bank received ₹ 50,000 as loan processing fee from Mr. A.*
 - (c) *Bank received ₹ 6 lac as interest on loan from Mr. A.* (1 x 3 = 3 Marks)

- (ii) Explain briefly whether VAT is leviable on sale of leased asset after lease period? If yes, in which State, will it be exigible to tax? (3 Marks)
- (c) Write a short note on applicability of penal provisions in customs law on attempt of improper exportation of goods. (3 Marks)

Answer

- (a) (i) **Specific duty:** Specific duty is payable on the basis of certain units like weight, length, volume, etc. For instance, in respect of cigarettes specific duty is payable on the basis of length.

However, this method of levying duty demands frequent revisions in order to increase revenue since while the prices may be increasing, the duty would remain the same when based on units like weight, length etc.

- (ii) **Tariff Value:** It is a notional value fixed by the Central Government, under section 3(2) of the Central Excise Act, 1944, for the purpose of calculating the duty payable. For example, Central Government has fixed tariff values for jewellery (other than silver jewellery) under heading 7113 and branded readymade garments under Chapter 61 and 62.

Central Government may fix different tariff values for different classes of same goods. Different tariff values may also be fixed for same class of goods manufactured by different classes of manufacturers/producers or sold to different classes of buyers. Such tariff values may be fixed on the basis of wholesale price of various manufacturers as the Central Government may consider appropriate.

- (iii) **Ad-hoc Exemption:** Central Government exempts excisable goods from payment of duty, by issuing an exemption notification, if it is satisfied that it is necessary in the public interest to do so [Section 5A(1) of the Central Excise Act, 1944].

However, when such an exemption is granted by special order under circumstances of an exceptional nature which are to be stated in such order, it is known as ad-hoc exemption [Section 5A(2) of the Central Excise Act, 1944].

- (b) (i) (a) Housing loan of ₹ 50 lakh extended by the bank to Mr. A will not be taxable as the same being a transaction in money, does not represent the value of taxable services.
- (b) ₹ 50,000 received as loan processing fees by the bank from Mr. A will be taxable as any charges or amounts, collected in respect of a loan. The same being over and above the interest or discount amounts are not covered in the negative list [Section 66D(n)(i)] and thus, represent taxable consideration.
- (c) ₹ 6 lakh received by bank from Mr. A as interest on loan will not be taxable as services by way of extending loans in so far as the consideration is represented by way of interest are covered in the negative list [Section 66D(n)(i)].

- (ii) Yes, VAT is leviable on sale of leased asset after lease period. Sale of a leased asset after the expiry of the lease period is taxable in the same manner in which normal sale of such asset would have been taxed.

Normally, such sale is effected to the same lessee and hence, would be a local sale exigible to tax under the VAT laws of the State in which the asset is located.

- (c) As per section 113 of the Customs Act, 1962, goods attempted to be exported improperly are liable to confiscation. Further, section 114 stipulates that any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable to penalty as under:

	Goods	Maximum Penalty
	In case of prohibited goods	(a) Three times the value of the goods declared by the exporter or (b) Value as determined under the Customs Act, whichever is greater
	In case of dutiable goods, other than prohibited goods	(a) Duty sought to be evaded on such goods or (b) ₹ 5,000, whichever is greater
	In case of any other goods	(a) Value of the goods declared by the exporter or (b) Value as determined under the Customs Act, whichever is greater.

Question 6

- (a) *An assessee is barred from making an application for settlement of cases under section 32E of Central Excise Act, 1944 in certain circumstances. Briefly enumerate these circumstances.* (6 Marks)

OR

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 Marks)

- (b) (i) *What is the time limit for issuance of show cause notice for demand of service tax under section 73 of the Finance Act, 1994 ?* (3 Marks)
- (ii) *What is VAT invoice? What are the mandatory provisions to be complied with while issuing a VAT invoice by a registered dealer?* (3 Marks)
- (c) *What is the relevant date for determining the rate of duty and tariff valuation in respect of goods imported or exported by post?* (3 Marks)

Answer

- (a) An assessee is barred from making an application for settlement of cases under section 32E of Central Excise Act, 1944 under the following circumstances:-
- (i) Where the assessee has filed the application for settlement in respect of a case relating to him after the adjudication thereof;
 - (ii) Where the applicant has not filed returns showing production, clearance and central excise duty paid;
 - (iii) Where the applicant has not received a show cause notice issued by the Central Excise Officer for recovery of excise duty;
 - (iv) Where the case is pending before the Appellate Tribunal or any Court;
 - (v) Where the dispute relates to interpretation of classification of excisable goods;
 - (vi) In case of excisable goods/books/documents getting seized, if the assessee makes an application before the expiry of 180 days from the date of seizure;
 - (vii) Where the additional amount of duty accepted by the applicant in his application does not exceed ₹ 3,00,000.
 - (viii) Where the applicant, while filing the application, has not deposited the additional amount of excise duty accepted by him along with interest due under section 11AA.

OR

As per section 23D of the Central Excise Act, 1944, the procedure to be followed by the Authority for Advance Rulings on receipt of application for advance ruling is :-

1. On receipt of application for advance ruling, the Authority will forward a copy to the Commissioner.
2. The Authority may accept or reject the application. Application can be rejected in the following cases, but only after giving an opportunity of being heard to the applicant:
 - (i) where the question raised in the application is already pending before any Central Excise Officer, the Appellate Tribunal or any Court; or
 - (ii) where the question raised is the same as in a matter already decided by any Appellate Tribunal or any Court.

Where the application is rejected, reasons for such rejection have to be given in the order.

3. The Authority will pass an order of admission or rejection of the application and send a copy of such order to the applicant and the Commissioner.
4. After admission of the application, the Authority can further examine any material placed before it and on request can provide an opportunity of being heard to the applicant.

5. The Authority will pronounce the advance ruling in writing within 90 days of receipt of application.
 6. Duly signed copies of the advance ruling will be sent to the applicant and the Commissioner of Central Excise.
- (b) (i) The time-limit for issuance of show cause notice for demand of service tax under section 73 of the Finance Act, 1994 -
- (a) in case of fraud, collusion, wilful mis-statement, suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of service tax, is **5 years** from the relevant date.
 - (b) for any other reason, is **18 months** from the relevant date.

If the service of the notice is stayed by an order of a Court, the period of such stay should be excluded in computing the aforesaid period of 5 years or 18 months.

- (ii) VAT invoice is a document listing details of goods sold along with price, tax charged and other details as may be prescribed. VAT invoice is issued by a dealer authorized under the VAT law.

Mandatory provisions to be complied with while issuing a VAT invoice by a registered dealer are:

- (i) Every registered dealer whose turnover of sales exceeds the specified amount shall issue to the purchaser a serially numbered tax invoice, cash memo or bill containing following particulars:-
 - (a) the words 'tax invoice' in a prominent place;
 - (b) name and address of the selling dealer and purchasing dealer;
 - (c) registration number of the selling dealer and some VAT legislations may also require to mention registration number of purchasing dealer;
 - (d) date of issue;
 - (e) description, quantity and value of goods sold;
 - (f) rate and amount of tax charged in respect of taxable goods.
 - (ii) The VAT invoice shall be dated and signed by the dealer or his regular employee, showing the required particulars.
 - (iii) The dealer shall keep a counterfoil or duplicate of such VAT invoice duly signed and dated.
- (c) Section 83 of the Customs Act, 1962 provides the relevant date for rate of duty and tariff valuation in respect of goods imported or exported by post as under:

S.No.	Particulars	Relevant date for determining rate of duty and tariff valuation
1.	Goods imported by post	Date on which postal authorities

		present to the proper officer a list containing the particulars of such goods for the purpose of assessing the duty thereon. or Date of arrival of vessel or date of presentation of list to the proper officer, whichever is later (in case of imports by vessel).
2.	Goods exported by post	Date on which the exporter delivers such goods to the postal authorities for exportation.

Question 7

- (a) Which are the different types of bonds in vogue and executed for various purposes under Central Excise Act, 1944? (6 Marks)
- (b) (i) On the basis of following information, determine the 'Point of Taxation' as per Rule 3 of Point of Taxation Rules, 2011:-
- | | |
|--|------------|
| (1) Commencement of providing of service on | 05-06-2013 |
| (2) Completion of service on | 10-10-2013 |
| (3) Invoice issued on | 20-10-2013 |
| (4) Payment received by cheque and entered in the books on | 15-10-2013 |
| (5) Amount credited in bank A/c on | 25-10-2013 |
| (6) Service became taxable for the first time on | 01-07-2013 |
- (3 Marks)
- (ii) Explain how do sales tax incentives cause problems for VAT system. (3 Marks)
- (c) Explain briefly the meaning of entry inward and entry outward in the customs law. (3 Marks)

Answer

- (a) The following types of bonds are presently in vogue:
- (i) B-1 Surety/ Security (General Bond) - for export of excisable goods without payment of duty under rule 19 of Central Excise Rules, 2002.
 - (ii) B-2 Bond Surety/ Security (General Bond) - for provisional assessment.
 - (iii) B-3 Bond (General Bond) - for due dispatch of excisable goods removed for re-warehousing and export therefrom without payment of duty.
 - (iv) B-11 Bond - for provisional release of seized goods.

- (v) B-17 Bond (General) Surety / Security - composite bond of EPZ/ 100% EOUs for assessment, export, accounting and disposal of excisable goods obtained free of duty.
- (vi) General Bond with Surety / Security - A manufacturer, who intends to receive goods at concessional rate of duty under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 has to execute a general bond with surety or security with jurisdictional Assistant Commissioner/Deputy Commissioner.
- (b) (i) In the given case, since the invoice is issued within the prescribed period of 30 days from the date of completion of provision of service, the point of taxation, as per rule 3 of the Point of Taxation Rules, 2011, shall be:
- (a) Date of invoice (i.e. 20.10.2013)
- or
- (b) Date of receipt of payment (i.e. 15.10.2013) [Refer note below]
whichever is earlier, i.e. 15.10.2013
- Note:** As per rule 2A of the Point of Taxation Rules, 2011, date of payment is:-
- (a) dates on which the payment is entered in the books of account (i.e. 15.10.2013)
- or
- (b) dates on which the payment is credited to the bank account of the person liable to pay tax (i.e. 25.10.2013)
whichever is earlier, i.e. 15.10.2013.
- (ii) VAT system works on the basis of tax credit passed at each stage of production and distribution through issuance of tax invoices. Sales tax incentives like fiscal exemption from tax or subsidy are against the principles of VAT as dealers effecting exempted sales are not allowed to avail input tax credit and they cannot pass on the credit. Thus, VAT chain gets broken which leads to cascading of taxes.
- (c) **Entry inwards** is a permission granted by the proper officer to a vessel after which the master of the vessel permits unloading of the imported goods. Such entry inwards is granted only after master of the vessel delivers import general manifest to the proper officer or the proper officer is satisfied that there was sufficient cause for not delivering it. Entry inwards, however, is not required for unloading of baggage accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods [Section 31 of the Customs Act, 1962].
- Entry outwards** is a permission granted by the proper officer to a vessel to go on a foreign voyage to the port of consignment. The master of the vessel permits loading of export goods only after the proper officer grants entry outwards to the vessel. However, entry outwards is not required for loading of baggage and mail bags [Section 39 of the Customs Act, 1962].