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PAPER – 8: INDIRECT TAX LAWS

Question No. 1 is compulsory

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.

Question 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%.

- (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.
- (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.) (5 Marks)

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

		(₹)
(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 suggested answers for Indirect Tax Laws (Paper: 8) are based on the provisions as amended by the Finance Act, 2012 and notifications/circulars issued up to 30.04.2013 which are relevant for November, 2013 examinations.

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.) (5 Marks)

- (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.

- (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 for any exemption available to it under service tax law.

(Make suitable assumptions wherever required and show workings.) (5 Marks)

- (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.

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

(Make suitable assumptions wherever required and show the workings.) (5 Marks)

- (e) Compute export duty from the following data:

- (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.) (5 Marks)

Answer**(a) Computation of central excise duty payable by M/s. Dental Care Ltd.**

Particulars	(₹)	Amount (₹)
Retail sale price of 1,000 pieces ($1000 \times ₹ 70$)	70,000	
Less: Abatement @ 30%	<u>21,000</u>	
Assessable value (A) [Note 1]		49,000
Retail sale price of 2,500 pieces ($2,500 \times ₹ 70$)	1,75,000	
Less: Abatement @ 30%	<u>52,500</u>	
Assessable value (B) [Note 2]		1,22,500
Retail sale price of 50 pieces ($50 \times ₹ 70$)	3,500	
Less: Abatement @ 30%	<u>1,050</u>	
Assessable value (C) [Note 3]		2,450
Retail sale price of 200 muti-packs ($200 \times ₹ 130$) [Note 4]	26,000	
Less: Abatement @ 30%	<u>7,800</u>	
Assessable value (D)		<u>18,200</u>
Total assessable value (A) + (B) + (C) + (D)		1,92,150
Excise duty @ 12%		23,058
Education Cess @ 2%		461.16
Secondary and higher education cess @ 1%		<u>230.58</u>
Total excise duty payable (rounded off)		23,750

Notes:

1. The assessable value of products notified under section 4A of the Central Excise Act, 1944 is the retail sale price declared on the package less abatement, if any.
2. Provisions of section 4A override the provisions of section 4. Therefore, assessable value will be retail sale price declared on the package less abatement irrespective of the quantity discounts offered to the buyer [*Indica Laboratories v. CCE (2007) 213 ELT 20 (CESTAT 3 Member Bench)*].
3. Free samples of the products covered under MRP based assessment are valued under rule 4 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 by taking into consideration the deemed value under section 4A [*Circular No. 915/05/2010-CX dated 19.02.2010*].

4. Retail sale price (RSP) of the multi-pack (₹ 130) is considered and product supplied free (toothbrush) in the multi-pack is not assessed separately. Further, since scored out RSP cannot be considered as RSP either by seller or by buyer, the same (₹ 70) is not taken as the RSP for the purpose of valuation of excisable goods.
- (b) Computation of central excise duty by M/s. Honest Manufacturer for the month of October, 2013

Particulars	Amount (₹)
Excise duty payable on goods 'X' [₹150 lakh × 12.36%]	18,54,000
Excise duty payable on goods 'Y' [₹ 50 lakh × 2.06%]	1,03,000
Total central excise duty payable	19,57,000

As per rule 2(d) of the CENVAT Credit Rules, 2004, goods cleared by paying excise duty @ 2.06% under *Notification No. 1/2011 CE dated 01.03.2011* are exempted goods. Since, M/s. Honest Manufacturer uses common input 'R' in the manufacture of both dutiable goods 'X' and exempted goods 'Y', rule 6 of the CENVAT Credit Rules, 2004 will apply in its case.

Where common inputs are used for manufacture of both dutiable and exempted final products and separate accounts for the same are not maintained, rule 6(3)(i) of the CENVAT Credit Rules, 2004 provides an option to the manufacturer to avail full credit on common inputs by paying an amount of 6% of value of the exempted goods.

Computation of amount payable under rule 6(3)(i)

	Amount (₹)
6% of value of the exempted goods (₹ 50 lakh × 6%)	3,00,000
Less: Duty of excise, if any, paid on the exempted goods [Note 1]	1,03,000
Amount payable under rule 6(3)(i) of the CENVAT Credit Rules, 2004	1,97,000

	Amount (₹)
<i>Excise duty payable on goods 'X':</i>	
Duty payable by availing CENVAT credit [Note 2]	16,00,000
Duty payable by GAR-7 challan (₹ 18,54,000 – ₹ 16,00,000) (A)	2,54,000
	18,54,000
<i>Excise duty payable on goods 'Y':</i>	
By GAR-7 challan [CENVAT credit cannot be utilized for discharging the excise duty liability on goods cleared under <i>Notification No. 1/2011-C.E. dated 01.03.2011</i>] (B)	1,03,000
Total central excise duty payable by GAR-7 challan (A) + (B)	3,57,000

Notes:

1. Any excise duty paid on exempted goods has to be reduced from the amount payable under rule 6(3)(i) [First proviso to rule 6(3) of the CENVAT Credit Rules, 2004].
2. Since input 'P' is used only in manufacture of dutiable goods 'X', full credit thereof (₹ 10 lakh) will be available. Further, since option under rule 6(3)(i) is being exercised, full credit of common input 'R' (₹ 6 lakh) will also be available.

Note: The words "for input 'P' and 'R'." in the question may be read as "for input 'R'."

(c) **Computation of service tax liability of Sudarshan Ltd. for the F.Y. 2012-13**

Particulars	Amount (₹)
Service tax payable on taxable services provided:	
Taxable services provided under its own brand name [Note 2]	9,00,000
Declared services [Note 3]	2,40,000
Services wholly exempt under Notification No. 25/2012 dated 20.06.2012	_____
Value of taxable services	11,40,000
Less: Exemption for small service providers [Note 1]	<u>10,00,000</u>
Taxable services liable to service tax	1,40,000
<i>Add: Services provided under brand name of other person [Note 2]</i>	<u>3,60,000</u>
Total taxable services	5,00,000
Service tax payable @ 12.36% (inclusive of 3% education cesses) [₹ 5,00,000 × 12.36%] (A)	61,800
Service tax payable on taxable services received under reverse charge:	
Freight paid to the goods transport agency	2,00,000
Less: Abatement @ 75% [₹ 2,00,000 × 75%]	<u>1,50,000</u>
Taxable services of goods transport agency [Note 4]	50,000
Service tax payable @ 12.36% (inclusive of 3% education cesses) [₹ 50,000 × 12.36%] (B)	6,180
Total service tax liability (A) + (B)	67,980

Notes:

1. Taxable services of aggregate value not exceeding ₹ 10 lakh in any financial year are exempted from service tax if the aggregate value of taxable services rendered does not exceed ₹ 10 lakh in the preceding financial year. Since Sudarshan Ltd.

has started rendering services in the financial year 2012-13, it will be eligible for the exemption for small service providers as the aggregate value of taxable services rendered in the preceding financial year 2011-12 is 'Nil' (less than ₹ 10 lakh) [Notification No. 33/2012 ST dated 20.06.2012].

2. Exemption for small service providers is not available in respect of taxable services provided under a brand name of another person. However, services provided under own brand name are eligible for such exemption [Notification No. 33/2012 ST dated 20.06.2012].
3. Service includes declared services [Section 65B(44) of the Finance Act, 1994]. Service tax is charged on the value of services determined as per section 67 of the Finance Act, 1994 read with Service Tax (Determination of Value) Rules, 2006. Therefore, value of declared services determined as per Valuation Rules will only be charged to service tax.
4. Abatement of 75% of the amount charged by the goods transport agency is given on the presumption that CENVAT credit on inputs, capital goods and input services has not been taken [Notification No. 26/2012 S.T dated 20.06.2012].

Further, entire service tax is payable by service receiver since the person liable to pay freight is a company (Sudarshan Ltd.) and small service providers' exemption is not available in respect of such services [Notification No. 30/2012 ST dated 20.06.2012 and Notification No. 33/2012 ST dated 20.06.2012].

(d) **Computation of Net VAT payable**

Particulars	Amount (₹)
Raw material [(₹ 2,25,000 × 100)/112.5]	2,00,000
Manufacturing expenses	4,00,000
Depreciation [₹ 8,00,000 × 25%]	<u>2,00,000</u>
Total cost	8,00,000
Add: 50% mark up	<u>4,00,000</u>
Sale price	<u>12,00,000</u>
VAT payable @ 12.5% [₹ 12,00,000 × 12.5%]	1,50,000
Less: Input tax credit (ITC)	
ITC on raw material [(₹ 2,25,000 × 12.5)/112.5]	₹ 25,000
ITC on capital equipment proportionate to depreciation i.e. 25% of ₹ $\left[8,32,000 \times \frac{4}{104} \right]$	<u>₹ 8,000</u>
Net VAT payable (in cash)	1,17,000

Note: Under income variant of VAT, deduction is allowed for tax paid on capital goods in proportion to the depreciation charged on the same and the tax paid on inputs.

(e) **Computation of export duty**

Particulars	Amount (US \$)
FOB price of goods [Note 1]	1,00,000
	Amount (₹)
Value in Indian currency (US \$ 1,00,000 x ₹ 55) [Note 2]	55,00,000
Export duty @ 8% [Note 3]	4,40,000

Notes:

- As per section 14(1) of the Customs Act, 1962, assessable value of the export goods is the transaction value of such goods which is the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation.
- 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 notified by the CBEC on the date of presentation of shipping bill of export.
- As per section 16(1)(a) of the Customs Act, 1962, in case of goods entered for export, the rate of duty prevalent on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation, is considered.

Question 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.*
- (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.*

(3 x 2 = 6 Marks)

- (b) *Following the comprehensive approach of taxing services, the term 'service' has been defined for the first time by inserting a new section 65B(44) in the Finance Act, 1994 w.e.f 01-07-2012. Mention briefly the specific exclusions from the definition of the term 'service' given in section 65B(44) of the Act.* (6 Marks)
- (c) *Which class of importers are 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 Marks)

Answer

- (a) (i) Rule 7(5) of the Central Excise Rules, 2002 has been amended vide *Notification No. 2/2013 CE (NT)* dated 01.03.2013 to provide that where the assessee is entitled to a

refund consequent to an order of final assessment, interest shall be paid on such refund as provided under section 11BB of the Central Excise Act, 1944.

Thus, interest @ 6% will be paid from the date immediately after the expiry of three months from the date of receipt of refund application till the date of refund of such duty.

- (ii) Section 9 of the Central Excise Act, 1944 enumerates the acts that constitute an offence. Section 9(1)(i) of the Act provides that an offence relating to any excisable goods on which the duty leviable exceeds ₹ 30 lakh are punishable with a term of imprisonment extending to 7 years and with fine.

However, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, such imprisonment cannot be for a term of less than 6 months.

- (b) As per section 65B(44) of the Finance Act, 1994, service does not include:-

- (a) an activity which constitutes merely,—
 - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
 - (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or
 - (iii) a transaction in money or actionable claim;

It has been clarified vide Explanation 2 to clause (44) that transaction in money shall not include any activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

- (b) a provision of service by an employee to the employer in the course of or in relation to his employment;
- (c) fees taken in any Court or tribunal established under any law for the time being in force.

Further, it has been provided by way of Explanation 1 to clause (44) that the following are not services—

- (A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or
- (B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
- (C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State

Governments or local authority and who is not deemed as an employee before the commencement of this section.

- (c) *Notification No. 83/2012 Cus. (NT) dated 17.09.2012 has made e-payment of customs duty mandatory for-*
 - (i) Importers paying customs duty of ₹ 1,00,000 or more per bill of entry
 - (ii) Importers registered under Accredited Client Programme

The dedicated payment gateway set up by the Board is called 'ICEGATE'. The full name of the ICEGATE is Indian Customs Electronic Commerce/Electronic Data interchange (EC/EDI) Gateway.

Question 3

- (a) *M/s. Amar Ltd. is a 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?* (2 Marks)
- (ii) *What are the major conditions for levy of duty on waste & scrap?* (2 Marks)
- (iii) *Whether waste & scrap resulting from repair/maintenance of plant is excisable and liable to duty?* (2 Marks)

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 software/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 downloaded 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 Marks)*
- (ii) *Whether the transaction is liable to service tax? If yes, show the category of the service also. (3 Marks)*
- (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 Marks)*

Answer

- (a) The facts of the given case are similar to the case of *Grasim Industries Ltd v. UOI 2011 (273) ELT 10 (SC)* decided by the Supreme Court.
 - (i) As per clause (i) and (ii) of section 2(f) of the Central Excise Act, 1944, manufacture includes any process-
 - (i) incidental or ancillary to the completion of a manufactured product;
 - (ii) which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture.
 - (ii) The Supreme Court in the case of *Grasim Industries Ltd.* held that the following conditions must be satisfied conjunctively for levy of excise duty on waste and scrap:-
 - (i) Waste and scrap ought to be excisable goods under section 2(d) of the Central Excise Act, 1944; and
 - (ii) Waste and scrap should be manufactured goods i.e., they should arise as a result of manufacture in terms of section 2(f) of the Central Excise Act, 1944. In other words, it ought to be a by-product of the final product.
 - (iii) The Supreme Court in the *Grasim Industries Ltd.* case observed that a process incidental or ancillary to manufacture can be a process in manufacture or process in relation to manufacture of the excisable end product, which involves bringing some kind of change to the raw material at various stages by different operations.

The Apex Court held that since the repair and maintenance of plant has no contribution/effect on the process of manufacturing of cement (the end product), the same cannot be called as part of manufacturing activity in relation to the production of end-product. Thus, the metal scrap and waste generated from repair/maintenance of plant cannot be said to be a by-product of the final product but the by-product of repairing process.

Therefore, in view of the above discussion, it can be inferred that waste and scrap resulting from repair/maintenance of plant (not being a process incidental to the manufacture of end-product) is not liable to excise duty.

- (b) The facts of the given case are similar to the case of *Infotech Software Dealers Association (ISODA) v. Union of India 2010 (20) STR 289 (Mad.)*.

- (i) No, the transaction cannot be called as sale or deemed sale.

The High Court, in *ISODA case*, observed that whether a transaction amounts to sale or service depends upon the nature of individual transaction and the dominant intention of the parties.

Since the developer retained the copyright of each software, the dominant intention was to transfer, to the subscribers or the members, only the right to use with copyright protection. However, the transactions in the instant case could not be treated as deemed sale as that requires a transfer of right to use any goods but in the instant case, the goods as such are not transferred.

- (ii) Yes, the transaction is liable to service tax.

The High Court, in *ISODA case*, held that in the transactions taking place between the assessee and its customers, the software is not sold as such, but only the contents of the data stored in the software are sold which would only amount to service and not sale.

Such service is liable to service tax as a declared service under clause (d) of section 66E of the Finance Act, 1994.

- (c) The said issue came up for consideration before the High Court in case of *CCus v. Shreeji Overseas (India) Pvt. Ltd. 2013 (289) E.L.T. 401 (Guj.)*. The High Court noted that though section 46 of the Customs Act, 1962 does not provide any time-limit for filing a bill of entry by an importer upon arrival of goods, section 48 of the Act permits the authorities to sell the goods after following the specified procedure if the same are not cleared for home consumption/ warehoused/ transshipped within 30 days of being unloaded at the customs station.

The High Court, however, held that the time-limit prescribed under section 48 for clearance of the goods within 30 days cannot be read into section 46 and it cannot be inferred that section 46 prescribes any time-limit for filing of bill of entry.

Question 4

- (a) *The assessee was engaged in the manufacture and sale of cookies from branded outlets of "Cookies 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 the benefit of small scale exemption. (6 Marks)

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

- (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 their import. M/s. Decent Laminates sought an extension of the warehousing period, which was granted. However, even after the expiry of 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. (3 Marks)

Answer

- (a) Yes, 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.

The facts of the given case are similar to the case of *CCE vs. Australian Foods India (P) Ltd. 2013 (287) ELT 385 (SC)* wherein the Supreme Court held, that it is not necessary for goods to be stamped with a trade or brand name to be considered as branded goods for the purpose of SSI exemption, after making following observations:

- (i) Physical manifestation of the brand name on goods is not a compulsory requirement as such an interpretation would lead to absurd results in case of goods, which are incapable of physically bearing brand names viz., liquids, soft drinks, milk, dairy products, powders etc. Such goods would continue to be branded good, as long as its environment conveys so viz. packaging/wrapping, invoices, accessories etc.
- (ii) The test of whether the goods is branded or unbranded, must not be the physical presence of the brand name on the goods, but whether it is used in relation to such specified goods for the purpose of indicating a connection in the course of trade between such specified goods and some person using such name with or without any indication of the identity of the person.
- (iii) Once it is established that a specified good is a branded good, whether it is sold without any trade name on it, or by another manufacturer, it does not cease to be a branded good of the first manufacturer. Therefore, soft drinks of a certain company

do not cease to be manufactured branded goods of that company simply because they are served in plain glasses, without any indication of the company, in a private restaurant.

- (b) Section 35G of the Central Excise Act, 1944 which contains the provisions in respect to appeals to High Court has been made applicable in case of service tax vide section 83 of the Finance Act, 1994.

As per section 35G, every order passed in appeal by the Appellate Tribunal is appealable to the High Court if the High Court is satisfied that the case involves a substantial question of law. However, orders of Tribunal relating, among other things, to the determination of any question having a relation to the rate of service tax or to the value of services for purposes of assessment are not appealable to the High Court. In respect of such issues, the appeal lies to the Apex Court under section 35L (also made applicable to service tax vide section 83 of the Finance Act, 1994), which alone has exclusive jurisdiction to decide the same.

The High Court, in case of *CCE & ST v. Volvo India Ltd.* 2011 (24) S.T.R. 25 (Kar.) held that the question as to whether the assessee is liable to pay service tax falls squarely within the exception carved out in section 35G of the Central Excise Act, 1944, viz. 'an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment', and thus, the High Court has no jurisdiction to adjudicate the said issue.

- (c) No, the application for remission of duty filed by M/s Decent Laminates is not valid in law.

The facts of the given case are similar to the case of *CCE v. Decorative Laminates (I) Pvt. Ltd.* 2010 (257) E.L.T. 61 (Kar.) wherein the High Court held that the circumstances made out under section 23 were not applicable in the instant case as the destruction/loss of the goods had not occurred before the clearance for home consumption.

Remission can be granted under section 23 only when the imported goods have been lost or destroyed at any time before clearance for home consumption.

The High Court clarified that the expression "at any time before clearance for home consumption" as provided in section 23 means the time period as per the initial order during which the goods are warehoused or before the expiry of the extended date for clearance and not after the lapse of such periods. The said expression cannot extend to a period after the lapse of the extended period merely because the goods were not cleared within the stipulated time. Instead, it would be a case of goods improperly removed from the warehouse.

Question 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.

(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.

(3 x 2 = 6 Marks)

(b) (i) Based on the Place of Provision of Service Rules, 2012, determine the place of provision of service as well as their taxability in each of the following independent cases:

(1) A Mumbai based builder provides construction services to Gujarat based company in respect of construction of its new building in Afghanistan.

(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?

(3 x 2 = 6 Marks)

(c) When shall the safeguard duty under section 8B of the Customs Tariff Act, 1975 be not imposed? Discuss briefly. (3 Marks)

Answer

(a) (i) As per Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, when price is not the sole consideration for sale, the value of excisable goods is deemed to be the aggregate of the transaction value and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee, provided all the other conditions of section 4(a) of the Central Excise Act, 1944 are fulfilled.

As per Explanation 1 to rule 6, the value of following goods and services supplied free or at reduced cost by the buyer should be added to the transaction value of the finished goods:

- (i) value of materials, components, parts and similar items relatable to such goods;
- (ii) value of tools, dies, moulds, drawings, blue prints, technical maps and charts and similar items used in the production of such goods;
- (iii) value of material consumed, including packaging materials, in the production of such goods;
- (iv) value of engineering, development, art work, design work and plans and sketches undertaken elsewhere than in the factory of production and necessary for the production of such goods.

Explanation 2 to rule 6 lays down that notional interest on advance payment received against delivery of any excisable goods should not be added to the value of the goods unless the price of the goods has been reduced under the influence of such advance deposit

- (ii) As per rule 16 of the Central Excise Rules, 2002, when duty paid goods are returned to the factory for being re-made, refined etc., the assessee can avail and utilize CENVAT credit of the duty paid if he states the particulars of such return in his records.

If the duty paid goods returned to the factory are subjected to a process which:-

- (i) does not amount to manufacture, the manufacturer shall pay an amount equal to the CENVAT credit taken at the time when such goods are returned. Such amount shall be allowed as CENVAT credit as if it was a duty paid by the manufacturer who removes the goods.
- (ii) amounts to manufacture, the manufacturer shall pay duty on such returned goods at the rate applicable on the date of removal and on the value as determined under the relevant provisions.

- (b) (i) (1) In this situation, if rule 5 of the Place of Provision of Service Rules, 2012 [PoPS Rules] is applied, then place of provision of service would be location of property which is Afghanistan. Since Afghanistan falls within non-taxable territory, the foregoing construction services will not be taxable.

However, if rule 8 of the PoPS Rules is applied, the place of provision of service will be the location of the service receiver i.e., Gujarat [which falls within the taxable territory] and resultantly, construction services will be taxable.

As per rule 14 of the PoPS Rules, if the place of provision of service is determinable in terms of more than one rule, the same is determined as per the rule that occurs later. Therefore, the place of provision in this case will be Gujarat and the service will be taxable (as per rule 8).

- (2) In this case, since specific sites in respect of which mineral exploration is to be carried out are located in Zimbabwe, the place of provision of service as per rule 5 of the PoPS Rules will be Zimbabwe which does not fall within the ambit of 'taxable territory' and resultantly these services will not be taxable. The fact that service providing company is located in UK and service recipient is located in Chennai (India) is not significant.

- (ii) Levy of VAT on value of goods at each stage of supply chain with corresponding set-off of the VAT paid at earlier stages is known as VAT chain.

VAT chain gets broken when the persons to whom the goods are sold cannot issue VATable invoices due to which credit cannot be passed on to the buyer. This happens when goods are sold to -

- (a) a dealer registered under composition scheme; or
- (b) an unregistered dealer; or
- (c) a dealer who sells exempted goods; or
- (d) the ultimate consumer.

- (c) The safeguard duty under section 8B of the Customs Tariff Act, 1975 is not imposed on the import of the following types of articles:
- Articles originating from a developing country, so long as the share of imports of that article from that country does not exceed 3% of the total imports of that article into India;
 - Articles originating from more than one developing country, so long as the aggregate of imports from developing countries each with less than 3% import share taken together does not exceed 9% of the total imports of that article into India;
 - Articles imported by a 100% EOU or units in a Free Trade Zone or Special Economic Zone unless the duty is specifically made applicable on them.

Question 6

- (a) (i) *Which restrictions can be imposed or the facilities be withdrawn by the Central Government under rule 12CCC of the Central Excise Rules, 2002 in case of misuse of CENVAT credit or evasion of duty by a manufacturer?*
(ii) *With reference to the provisions of CENVAT Credit Rules, 2004, briefly explain:*
(1) exempted goods and
(2) exempted services

(3 x 2 = 6 Marks)

OR

- (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.*
(ii) *Is there any provision for submission of revised return under central excise? If yes, how can it be submitted and if no, what can be done?*
(iii) *How can the adjustments be made for over/under payment of duty or non-availment of CENVAT credit?*
- (6 Marks)
- (b) (i) *Under reverse charge mechanism, which services have been notified, where service tax is jointly payable by both the service provider and the service receiver?*
(ii) *Distinguish between addition method and subtraction method of VAT computation.*
- (3 x 2 = 6 Marks)
- (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:*
- What is the time limit for re-exportation of goods as such?*
 - What is the rate of duty drawback if the goods are exported without use?*
 - Is duty drawback allowed on re-export of wearing apparel without use?*
- (3 Marks)

Answer

- (a) (i) As per *Notification No. 5/2012 CE (NT)* dated 12.03.2012, following restrictions can be imposed or facilities can be withdrawn by the Central Government under Rule 12CCC of the Central Excise Rules, 2002:-
- (a) The facility of monthly payment of duties may be withdrawn and the assessee will be required to pay excise duty for each consignment at the time of removal of goods;
 - (b) Payment of duty by utilisation of CENVAT credit may be restricted and the assessee will be required to pay excise duty without utilising the CENVAT credit;
 - (c) The assessee may be required to maintain records of receipt, disposal, consumption and inventory of the principal inputs on which CENVAT credit has not been taken;
 - (d) The assessee may be required to intimate the Superintendent of Central Excise regarding receipt of principal inputs in the factory on which CENVAT credit has or has not been taken, within a period specified in the order and the said inputs will be made available for verification up to the period specified in the order.
 - (e) Where a person knowingly commits the notified offences for the second time or subsequently, the invoice may be ordered to be countersigned by the Inspector/Superintendent of Central Excise before each removal of goods from his factory.

Note: Restrictions are imposed/facilities are withdrawn in case of misuse of CENVAT credit under rule 12AAA of the CENVAT Credit Rules. Under rule 12CCC of the Central Excise Rules, 2002, restrictions are imposed/facilities are withdrawn for evasion of duty by a manufacturer.

- (ii) (1) As per rule 2(d) of the CENVAT Credit Rules, 2004, exempted goods:
- means excisable goods which are exempt from the whole of the duty of excise leviable thereon, and
 - includes goods which are chargeable to "Nil" rate of duty and
 - goods in respect of which the benefit of exemption is availed under *Notification No. 1/2011 CE* dated 01.03.2011 or under entries at serial numbers 67 and 128 of *Notification No. 12/2012 CE* dated 17.03.2012.
- (2) As per rule 2(e) of the CENVAT Credit Rules, 2004, exempted service means a:
- (i) taxable service which is exempt from the whole of the service tax or service on which no service tax is leviable under section 66B of the Finance Act, 1994; or

- (ii) taxable service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken; but shall not include a service which is exported in terms of Rule 6A of the Service Tax Rules, 1994.

[OR]

- (a) (i) Yes, as per third proviso to rule 8(1) of the Central Excise Rules, 2002, it is mandatory to pay duty electronically under Central Excise.

Exception carved out in third proviso to rule 8(1) - An assessee who has paid excise duty of less than ₹ 10 lakh including the amount of duty paid by utilization of CENVAT credit in the preceding financial year.

Yes, rule 12(5) of the Central Excise Rules, 2002 requires every assessee to mandatorily file various returns electronically under central excise.

Exceptions carved out in rule 12(5) - Assessees availing exemption with respect to specified goods cleared from a unit:-

- in the State of Uttarakhand or Himachal Pradesh [*Notification No. 49/2003 CE dated 10.06.2003*].
- located in the Industrial Growth Centre or Industrial Infrastructure Development Centre or Export Promotion Industrial Park or Industrial Estate or Industrial Area or Commercial Estate or Scheme Area in the above two States [*Notification No. 50/2003 CE dated 10.06.2003*].

- (ii) There is no specific provision for submission of revised return under central excise law.

If the assessee finds that he has made short payment of duty, he should pay the amount by GAR-7 challan and inform the Department suitably. In case of excess payment of duty, he can file a refund claim.

- (iii) Unlike service tax, self adjustment cannot be made in case of over/under payment of duty under central excise.

If the assessee has not availed the CENVAT credit, he can avail the same in any subsequent period as there is no time-limit for availing CENVAT credit.

- (b) (i) The following services have been notified vide *Notification No. 30/2012 ST dated 20.06.2012* under reverse charge mechanism where service tax is jointly payable by both, service provider and service receiver:-

- (i) services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non abated value to any person who is not engaged in the similar line of business.
- (ii) services provided or agreed to be provided by way of supply of manpower for any purpose or security services

- (iii) services provided or agreed to be provided in service portion in execution of works contract.

Service tax will be jointly payable only if the above services are provided by any individual, HUF or partnership firm including association of persons, located in the taxable territory to a body corporate, located in the taxable territory.

(ii)

	Addition Method of VAT computation		Subtraction Method of VAT computation
(i)	This method aggregates all the factor payments including profits to arrive at the total value addition on which the rate is applied to calculate the tax.	(i)	Under this method for imposing tax, 'value added' is simply taken as the difference between sales and purchases.
(ii)	This method can be used with income variant of VAT.	(ii)	This method is suitable for gross product variant of VAT where purchases of capital goods are ignored.

- (c) (i) As per section 74 of the Customs Act, 1962, the duty paid imported goods are required to be entered for export within two years from the date of payment of duty on the importation. This period can be extended by CBEC if the importer shows sufficient reason for not exporting the goods within two years.
- (ii) If duty paid imported goods are exported without use, then 98% of such duty is repaid as drawback.
- (iii) Yes, duty drawback is allowed when wearing apparels are re-exported without being used. However, *Notification No. 19/65 Cus. dated 06.02.1965* as amended provides that if wearing apparels have been used after their importation into India, drawback of import duty paid thereon shall not be allowed when they are exported out of India.

Question 7

- (a) (i) *Which jurisdictional powers regarding rectification of mistakes are given to Appellate Tribunal under section 35C(2) of the Central Excise Act, 1944? Can it review its own order?*
- (ii) *Can goods meant for export kept in the warehouse be diverted for home consumption? What is the procedure to be followed in this regard? (3 x 2 = 6 Marks)*
- (b) (i) *As per Point of Taxation Rules 2011, what will be the point of taxation in case services are received from "Associated Enterprises" located outside India?*
- (ii) *Discuss the provisions contained in the White Paper with regard to carry over of tax credit and refund under VAT scheme. (3 x 2 = 6 Marks)*

- (c) *Explain briefly the offences which are cognizable and bailable under section 104 of the Custom Act, 1962.* (3 Marks)

Answer

- (a) (i) As per section 35C(2) of the Central Excise Act, 1944, the Appellate Tribunal may, at any time within six months from the date of order, with a view to rectifying any mistake apparent from the record, amend any order passed by it.

The Tribunal shall make such amendments if the mistake is brought to its notice by the Commissioner of Central Excise or the other party to the appeal.

However, an amendment which has the effect of increasing the liability of the other party will not be made without giving a notice to him and allowing him a reasonable opportunity of being heard.

The Supreme Court in the case of *CCE v. Steel Co. Gujarat Ltd.* 2004 (163) ELT 403 (SC) has held that the Appellate Tribunal cannot review the orders passed by it. It can only rectify any mistake apparent from the record.

- (ii) Yes, the goods meant for export kept in the warehouse can be diverted for home consumption. The following procedure as specified in *Chapter 10, para 6 of CBEC's Excise Manual of Supplementary Instructions, 2005* is to be followed in this regard:-

(i) With the permission of the Deputy or Assistant Commissioner of Central Excise, the goods can be cleared for home consumption on invoice after payment of duty, interest and any other charges. Necessary entries are to be made in the export warehouse register maintained by the exporter in the warehouse.

(ii) Credit will be permitted in the Running Bond Account equivalent to the duty involved in the goods so diverted. If entire quantity is not diverted, calculation shall be done on *pro-rata* basis.

(iii) Goods can be diverted for home-consumption even after the clearance from the warehouse on ARE.1. For cancellation of documents, provisions of *Notification No. 46/2001-CE (NT) dated 26.6.2001* shall be followed. The intimation shall be given to Deputy/Assistant Commissioner having jurisdiction over the warehouse. Credit in Running Bond Account will be permitted in the same manner as mentioned above.

(iv) The exporter has to pay interest @ 24% p.a on the amount of duty payable on such goods from the day of clearance from the factory of production or any other premises approved till the date of payment of duty and clearance.

- (b) (i) As per second proviso to rule 7 of the Point of Taxation Rules, 2011, in case of services received from "associated enterprises" located outside India, point of taxation shall be:-

(a) the date of debit in the books of account of the person receiving the service
or

- (b) date of making the payment whichever is earlier.
- (ii) As per the White Paper, the input tax credit is first to be utilized for payment of VAT liability during the period and the excess credit can be then adjusted against the central sales tax (CST) liability for the said period. After the adjustment of VAT and CST, excess credit, if any, will be carried over to the end of the next year. If there is any excess unadjusted input tax credit at the second year, then the same will be eligible for refund. The White Paper provides that in case of goods exported out of the country, refund is to be granted within 3 months from the end of the period in which the export takes place. Units located in SEZ and EOU should also be granted refund of the input tax paid within three months.
- (c) As per section 104(4) of the Customs Act, 1962, following offences are cognizable offences:
- (a) offences relating to prohibited goods; or
 - (b) offences relating to evasion or attempted evasion of duty exceeding ₹ 50 lakh.
- As per section 104(6) of the Customs Act, 1962, all offences under the Customs Act, 1962 are bailable offences.