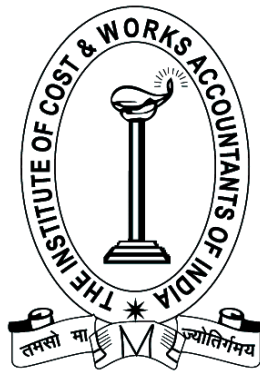


REVISIONARY TEST PAPER

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GROUP III

PAPER - 14 : INDIRECT & DIRECT - TAX MANAGEMENT



**THE INSTITUTE OF
COST AND WORKS ACCOUNTANTS OF INDIA**

12, SUDDER STREET, KOLKATA-700 016

FINAL EXAMINATION

(REVISED SYLLABUS - 2008)

GROUP - III

Paper-14 : INDIRECT & DIRECT – TAX MANAGEMENT

PART - A

[INDIRECT TAX]

Q1. Discuss the Rules for Classification of Excisable Goods.

Answer 1.

The rules of classification of Excisable Goods are:

General Rules for Interpretation of Schedule to Central Excise Tariff and Customs Tariff are given in First Schedule to the Tariff. The rules are same for excise and customs. The highlights of rules are given below.

Rule 1

Classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or Notes do not otherwise require, according to other provisions of the rules.

First part of rule 2(a)

Any reference to complete goods also includes incomplete or un-finished goods, if such incomplete or un-finished goods have the essential characteristic of finished goods.

Second part of rule 2(a)

Heading will also include finished goods removed un-assembled or disassembled i.e. in SKD or CKD packs.

Second part of rule 2(b)

Any reference in heading to material or substance will also include the reference to mixture or combination of that material or substance with other materials or substance. The classification of goods consisting of more than one material or substance shall be according to the principles contained in rule 3.

Rule 3

When by application of sub-rule (b) of rule 2 or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as given in rule 3(a), 3(b) or 3(c).

Rule 3(a)

The heading which provides most specific description shall be preferred to heading providing a general description.

3(b)

If Mixture and Composite goods consisting of different materials or different components cannot be classified based on above rule i.e. rule 3(a), it should be classified as if they consisted of the material or component which gives it their essential character.

3(c)

If two or more headings seem equally possible and the dispute cannot be resolved by any of the aforesaid rules, if both the headings appear equally specific, the heading which occurs last in numerical order is to be preferred (i.e. latter the better).

Rule 4

If the classification is not possible by any of the aforesaid rules 1, 2 and 3, then it should be classified under the heading appropriate to goods to which they are most akin. [This is only a last resort and a desperate remedy to resolve the classification issue]

Rule 5

Cases for camera, musical instruments, drawing instruments, necklaces etc. specially shaped for that article, suitable for long term use will be classified along with that article, if such articles are normally sold along with such cases. Further, packing materials and containers are also to be classified with the goods except when the packing is for repetitive use (This provision is obviously made to ensure that the packing and the goods are charged at same rate of duty).

Rule 6

Classification of goods in sub-headings shall be determined in terms of those sub-headings. Only sub-headings at the same level are comparable.

Q2. State the rules of Valuation of Excisable Goods.

Answer 2.

The important rules of Central Excise Valuation Rules, 2000.

Rule 2(b): "Normal transaction value" means the transaction value at which the greatest aggregate quantity of goods are sold.

If goods are not sold at the time of removal, then value will be based on the value of **such goods** sold by assessee at any other time nearest to the time of removal, subject to reasonable adjustments.

Rule 5: Some times, goods may be sold at place other than the place of removal e.g. in case of FOR delivery contract. In such cases, actual cost of transportation from place of removal upto place of delivery of the excisable goods will be allowable as deduction. Cost of transportation can be either on actual basis or on equalized basis.

Rule 6: If price is not the sole consideration for sale, the 'Assessable Value' will be the price charged by assessee, plus money value of the additional consideration received. The buyer may supply any of the following directly or indirectly, free or at reduced cost.

- (i) Materials, components, parts and similar items
- (ii) Tools, dies, moulds, drawings, blue prints, technical maps and charts and similar items used
- (iii) Material consumed, including packaging materials
- (iv) Engineering, development, art work, design work and plans and sketches undertaken elsewhere than in the factory of production and necessary for the production of the goods. In such cases, value of such additional consideration will be added to the price charged by assessee to arrive at the 'transaction value'. [explanation 1 to Rule 6].

Explanation 2 to rule 6

Where an assessee receives any advance payment from the buyer against delivery of any excisable goods, no notional interest on such advance shall be added to the value unless the Central Excise Officer has evidence to the effect that the advance received has influenced the fixation of the price of the goods.

Rule 7

When goods are sold through depot, there is no 'sale' at the time of removal from factory. In such cases, price prevailing at depot (but at the time of removal from factory) shall be the basis of Assessable Value. The value should be 'normal transaction value' of such goods sold from the depot at the time of removal or at the nearest time of removal from factory.

Rule 8

In case of captive consumption, valuation shall be done on basis of cost of production plus 10% (Cost of production is required to be calculated as per CAS-4)

Rule 9

If entire production is sold to 'related person' other than inter-connected undertakings, the assessable value will be 'normal transaction value' at which the related person sells the goods to unrelated buyers.

Proviso to rule 9

If assessee sales goods to 'related person', but related person uses them in captive consumption (and not sell them), valuation will be done on basis of cost of production plus 10%, as per rule 8.

Rule 10

If entire production is sold to 'related person' who are inter-connected undertakings, the assessable value will be as follows – (a) If they are 'related person' as defined in other clauses or is a holding or subsidiary company of assessee, 'normal transaction value' at which the related person sells the goods to unrelated buyers (b) In other cases, the value will be as if they are not 'related person'.

Rule 10A

In case of job worker manufacturing goods on behalf of Principal Manufacturer, value will be the value at which the Principal Manufacturer sales goods to unrelated buyer. 'Job worker' means a person engaged in manufacture or production of goods on behalf of a principal manufacturer, from any inputs or capital goods supplied by the said principal manufacturer or by any other person authorised by him.

Rule 11

Residuary method - If value cannot be determined under any of the foregoing rules, value shall be determined using reasonable means consistent with the principles and general provisions of section 4 and Valuation Rules.

Q3. (a) Exemption granted to SSI.**(b) Define Captive Consumption****Answer 3.****(a) Exemption to SSI**

- SSI are eligible for exemption from duty under Notification No. 8/2003-CE dated 1-3-2003. The SSI unit need not be registered with any authority.

- Broadly, items generally manufactured by SSI (except in tobacco, matches and textile sector) are eligible for SSI exemption. Some items like pan masala, matches, watches, tobacco products, Power driven pumps for water not conforming to BIS, products covered under compounded levy scheme etc. are specifically excluded, even when these can be manufactured by SSI. Some items like automobiles, primary iron and steel etc. are not eligible for SSI exemption, but anyway, these are beyond capacity of SSI unit to manufacture.
- Unit whose turnover was less than Rs 4 crores in previous year are entitled to full exemption upto Rs 150 lakhs in current financial year.
- SSI units manufacturing goods with brand name of others are not eligible for exemption, unless the goods are manufactured in rural area.
- Turnover of all units belonging to a manufacturer will be clubbed for calculating SSI exemption limit.
- Clubbing is also possible if two units are sham or bogus or if there is unity of interest and practically they are one.

While calculating limit of Rs 400/150 lakhs –

- Turnover of Exports, deemed exports, turnover of non-excisable goods, goods manufactured with other's brand name and cleared on full payment of duty, job work done under notification No. 214/86-CE, 83/94-CE and 84/94-CE, processing not amounting to manufacture, strips of plastics used within factory is to be excluded.
- Value of intermediate products (when final product is exempt under notification other than SSI exemption notification), branded goods manufactured in rural area and cleared without payment of duty, export to Nepal and Bhutan and goods cleared on payment of duty is to be included.
- Value of turnover of goods exempted under notification (other than SSI exemption notification or job work exemption notification) is to be included for purpose of limit of Rs 400 lakhs, but excluded for limit of Rs 150 lakhs.

(b) Captive consumption

- Excise duty is payable on goods manufactured and used within the factory.
- The intermediate product manufactured within the factory is exempt from duty, if it is consumed captively for manufacture of (a) Capital goods as defined in Cenvat Credit Rules i.e. those which are eligible for Cenvat credit or (b) Used for in or in relation to manufacture of final products eligible for Cenvat, made from inputs which are eligible for Cenvat. [Notification No. 67/1995 dated 16-3-1995].
- Duty is payable only if intermediate goods are marketable.
- If duty is payable on intermediate products, valuation will be on basis of cost of production plus 10%.
- Cost of production should be calculated on basis of CAS-4.

Q4. Discuss the procedures followed in Central Excise.

Answer 4.

Answer: Some procedures are basic, which every assessee is required to follow. Besides, some procedures are required to be followed as and when required.

Basic Procedures

- (1) Every person who produces or manufactures excisable goods, is required to get registered, unless exempted. [Rule 9 of Central Excise Rules]. If there is any change in information supplied in Form A-1, the same should be supplied in Form A-1.
- (2) Manufacturer is required to maintain Daily Stock Account (DSA) of goods manufactured, cleared and in stock. [Rule 10 of Central Excise Rules]
- (3) Goods must be cleared under Invoice of assessee, duly authenticated by the owner or his authorised agent. In case of cigarettes, invoice should be countersigned by Excise officer. [Rule 11 of Central Excise Rules]
- (4) Duty is payable on monthly basis through GAR-7 challan / Cenvat credit by 5th/6th of following month, except in March. SSI units have to pay duty on monthly basis by 15th/16th of following month. Assessee paying duty through PLA more than Rs 50 lakhs per annum is required to make e-payment only [Rule 8].
- (5) Monthly return in form ER-1 should be filed by 10th of following month. SSI units have to file quarterly return in form ER-3. [Rule 12 of Central Excise Rules] - - EOU/STP units to file monthly return in form ER-2 – see rule 17(3) of CE Rules
- (6) Assessee paying duty of Rs one crore or more per annum through PLA are required to submit Annual Financial Information Statement for each financial year by 30th November of succeeding year in prescribed form ER-4 [rule 12(2) of Central Excise Rules].
- (7) Specified assesseees are required to submit Information relating to Principal Inputs every year before 30th April in form ER-5, to Superintendent of Central Excise. Return for 2004-05 was required to be submitted by 31-12-2004 [rule 9A(1) to Cenvat Credit rules inserted w.e.f. 25-11-2004]. Any alteration in principal inputs is also required to be submitted to Superintendent of Central Excise in form ER-5 within 15 days [rule 9A(2) to Cenvat Credit rules inserted w.e.f. 25-11-2004]. Only assesseees manufacturing goods under specified tariff heading are required to submit the return. The specified tariff headings are – 22, 28 to 30, 32, 34, 38 to 40, 48, 72 to 74, 76, 84, 85, 87, 90 and 94; 54.02, 54.03, 55.01, 55.02, 55.03, 55.04. Even in case of assesseees manufacturing those products, only assesseees paying duty of Rs one crore or more through PLA (current account) are required to submit the return.
- (8) Assessee who is required to submit ER-5 is also required to submit monthly return of receipt and consumption of each of Principal Inputs in form ER-6 to Superintendent of Central Excise by tenth of following month [rule 9A(3) to Cenvat Credit rules inserted w.e.f. 25-11-2004]. Only those assesseees who are required to submit ER-5 return are required to submit ER-6 return.
- (9) Every assessee is required to submit a list in duplicate of records maintained in respect of transactions of receipt, purchase, sales or delivery of goods including inputs and capital goods, input services and financial records and statements including trial balance [Rule 22(2)].
- (10) Inform change in boundary of premises, address, name of authorised person, change in name of partners, directors or Managing Director in form A-1. [Refer Instructions given below form A-1]

These are core procedures which each assessee has to follow. There are other procedures which are not routine.

Non-core procedures - The non-core procedures are as follows -

- (a) Export without payment of duty or under claim of rebate [Rules 18 and 19 of Central Excise Rules]
- (b) Receipt of goods for repairs / reconditioning [Rule 16 of Central Excise Rules]
- (c) Receipt of Goods at concessional rate of duty for manufacture of Excisable Goods.
- (d) Payment of duty under Compounded Levy Scheme
- (e) Provisional Assessment [Rule 7 of Central Excise Rules]
- (f) Warehousing of goods.
- (g) Appeals and settlement.

Q5. (a) State the requirements for removal of final products.

(b) State the Export Procedures

(c) Procedure to be followed if the goods are brought for repairs.

Answer 5.

(a) Invoice for removal of final products

Rule 11(1) of Central Excise Rules provides that excisable goods can be removed from factory or warehouse only under an 'Invoice' signed by owner or his authorised agent. In case of cigarettes, invoice shall be counter-signed by Inspector. Invoice should bear serial number and should be in triplicate.

As per Rule 11(2) of Central Excise Rules, Invoice shall contain –

- (a) Registration Number
- (b) Address of jurisdictional Central Excise Division.
- (c) Name of consignee
- (d) Description and classification of goods
- (e) Time and date of removal
- (f) Mode of transport and vehicle registration number
- (g) Rate of duty
- (h) Quantity and Value of goods
- (i) Duty payable on the goods.

(b) Export Procedures

- Exports are free from taxes and duties.
- Goods can be exported without payment of excise duty under bond under rule 19 or under claim of rebate of duty under rule 18.
- Excisable Goods should be exported under cover of Invoice and ARE-1 form.
- Merchant exporter has to execute a bond and issue CT-1 so that goods can be cleared without payment of duty. Manufacturer has to issue Letter of Undertaking.
- Export to Nepal /Bhutan are required to be made on payment of excise duty.
- EOU has to issue CT-3 certificate for obtaining inputs without payment of excise duty.

(c) Bringing goods for repairs, re-making etc.

- Duty paid goods can be brought in factory for being re-made, refined, reconditioned or for any other reason under rule 16.
- The goods need not have been manufactured by assessee himself.
- Cenvat credit of duty paid on such goods can be taken, on basis of duty paying documents of such goods.
- After processing/repairs, if the process amounts to 'manufacture', excise duty based on assessable value is payable.
- If process does not amount to manufacture, an 'amount' equal to Cenvat credit availed should be paid [rule 16(2)].
- If some self manufactured components are used, duty will have to be paid on such components.
- Buyer/recipient of such goods can avail Cenvat credit of such amount/duty.
- If the above procedure cannot be followed, permission of Commissioner is required [rule 16(3)].

Q6. Discuss the duty liability of:

- (a) Software and unbranded software**
- (b) Books on CD**
- (c) Unbranded software is service**

Answer 6.**(a) Software is 'goods', but unbranded software is service.**

In *Tata Consultancy Services v. State of Andhra Pradesh* (2005) 1 SCC 308 = 141 Taxman 132 = 271 ITR 401 = AIR 2005 SC 371 = 2004 AIR SCW 6583 = 137 STC 620 = 178 ELT 22 (SC 5 member Constitution bench), it has been held that canned software (i.e. computer software packages sold off the shelf) like Oracle, Lotus, Master-Key etc. are 'goods'. The copyright in the programme may remain with originator of programme, but the moment copies are made and marketed, they become 'goods'. It was held that test to determine whether a property is 'goods' for purpose of sales tax, is not whether the property is tangible or intangible or incorporeal. The test is whether the concerned item is capable of abstraction, consumption and use, and whether it can be transmitted, transferred, delivered, stored, possessed etc. Even intellectual property, once it is put on a media, whether it be in form of books or canvas (in case of painting) or computer discs or cassettes and marketed would become goods. In all such cases, intellectual property has been incorporated on a media for purpose of transfer. The buyer is purchasing the intellectual property and not the media, i.e. the paper or cassette or discs or CD. - - There is no distinction between 'branded' and 'unbranded' software. In both cases, the software is capable of being abstracted, consumed and used. In both the cases, the software can be transmitted, transferred, delivered, stores, possessed etc. Unbranded software when marketed/sold may be goods. However, Supreme Court did not express any opinion because in case of unbranded software, other questions like situs of contract of sale and/or whether the contract is a service contract may arise. Hence, in case of unbranded software, the issue is not yet fully settled. [SC upheld decision of AP High Court reported in *Tata Consultancy Services v. State of AP* (1997) 105 STC 421 (AP HC DB)].

In *Bharat Sanchar Nigam Ltd. v. UOI* (2006) 3 SCC 1 = 152 Taxman 135 = 3 STT 245 = 145 STC 91 = 282 ITR 273 (SC 3 member bench), following extract from decision in case of *Tata Consultancy Services v. State of Andhra Pradesh* was quoted with approval and adopted, 'A

'goods' may be a tangible property or an intangible one. It would become goods provided it has the attributes thereof having regard to (a) its utility; (b) capable of being bought and sold and (c) capable of being transferred, delivered, stored and possessed. If a software, whether customised or non-customised satisfies these attributes, the same would be goods'.

Earlier also, in *Associated Cement Companies Ltd. v. CC* 2001(4) SCC 593 = 2001 AIR SCW 559 = 128 ELT 21 = AIR 2001 SC 862 = 124 STC 59 (SC 3 member bench), it was held that computer software is 'goods' even if it is copyrightable as intellectual property.

In *State Bank of India v. Municipal Corporation* 1997(3) Mh LJ 718 = AIR 1997 Bom 220, it was held that 'computer software' is 'appliance' of computer. It was held that it is 'goods' and octroi can be levied on full value and not on only value of empty floppy. [In this case, it was held that octroi cannot be levied on license fee for duplicating the software for distribution outside the corporation limits].

Excise duty on software - All software, except canned software i.e. software that can be sold off the shelf, is 'exempt' under notification No. 6/2006-CE dated 1-3-2006.

Para 138 of Finance Minister's speech dated 28-2-2006 reads as follows, 'I propose to impose an 8 per cent excise duty on packaged software sold over the counter. Customized software and software packages downloaded from the internet will be exempt from this levy'.

Meaning of 'software' - 'Information Technology Software' is defined in Supplementary Note of chapter 85 of Central Excise Tariff (and also Customs Tariff) as follows - 'For the purpose of heading 8523, 'Information Technology Software' means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine'.

In *CCE v. Pentamedia Graphics* (2006) 198 ELT 164 (SC), it was held that 'motion picture animation file' recorded in a machine readable format and capable of being manipulated by automatic data processing machine is software – referred in *Padmini Polymers v. CCE* (2007) 215 ELT 392 (CESTAT), where it was held that multimedia application software on CD ROM is exempt. In this case, Cook Books and games which were interactive were held as 'software'. Reference was made to CBE&C circular No. 7/98-Cus dated 10-2-1998 where it was clarified that encyclopedia, games, books will be 'software' if these satisfy the interactivity criterion.

The SC decision was also followed in *Gayatri Impex v. CC* (2007) 215 ELT 397 (CESTAT) and *Adani Exports v. CCE* (2007) 210 ELT 443 (CESTAT). However, from the decision, it is not clear what was exactly imported.

There is no requirement that to qualify as software, it must work without any operating system preloaded on computer. Any programme which requires another programme like operating system will also be treated as software – *Contessa Commercial Co. P Ltd. v. CC* (2007) 208 ELT 299 (CESTAT). In this case, the importer had imported educational programmes and games.

(b) Books on CD.

In case of encyclopedia and books, there is hardly any 'interactivity', except that search engine helps in locating particular information. Further, search engine, which can be termed as 'software' forms insignificant part of the whole goods. Applying the criteria of 'essential character' in case of mixture of goods, in my view, these cannot be termed as 'software'. These have to be classified as books.

Note 2 to chapter 49 reads as follows, 'For the purpose of Chapter 49, the term 'printed' also means reproduced by means of a duplicating machine, produced under the control of an automatic

data processing machine, embossed, photographed, photocopies, thermocopied or typewritten. Hence, it can be argued that a book can be 'printed' on CD since it is produced under the control of an automatic data processing machine.

As per item Sr. No. 26 of Notification No. 6/2006-CE dated 1-3-2006, CD-ROMs containing books of an educational nature, journal, periodicals (magazines) or newspaper are fully exempt from excise duty. Thus, a book can be on CD has been recognised in law.

(c) Unbranded software is service

Though Supreme Court has held that tailor made software is also goods, Finance Bill, 2008 has imposed service tax on tailor made i.e. unbranded software.

"Information technology software" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment [proposed section 65(53a) of Finance Bill, 2008]

Any service provided or to be provided to any person, by any other person in relation to information technology software for use in the course, or furtherance, of business or commerce, including, — (i) development of information technology software, (ii) study, analysis, design and programming of information technology software, (iii) adaptation, upgradation, enhancement, implementation and other similar services related to information technology software, (iv) providing advice, consultancy and assistance on matters related to information technology software, including conducting feasibility studies on implementation of a system, specifications for a database design, guidance and assistance during the startup phase of a new system, specifications to secure a database, advice on proprietary information technology software (v) acquiring the right to use information technology software for commercial exploitation including right to reproduce, distribute and sell information technology software and right to use software components for the creation of and inclusion in other information technology software products (vi) acquiring the right to use information technology software supplied electronically, is a taxable service [proposed section 65(105)(zzzz) of Finance Bill, 2008].

Q7. State whether the following are "Goods" as per Central Excise Act, 1944.

- (a) Plant and machinery assembled at site
- (b) Articles marketable before erection
- (c) Goods produced in SEZ in India.
- (d) Dutiability of Steel and concrete Structures
- (e) Structure for pre-fabricated building
- (f) Fabrication of steel structure at site

Answer 7.

(a) Plant and machinery assembled at site

Plant and Machinery assembled and erected at site cannot be treated as 'goods' for the purpose of Excise duty, if it is not marketable and movable. [It may be noted that even if goods are held as 'excisable', they will be exempt if manufactured within factory of production. See case law under 'Captive Consumption' in later chapter].

The word 'goods' applies to those which can be brought to market for being bought and sold, and it is implied that it applies to such goods as are movable. Goods erected and installed in the

premises and embedded to earth cease to be goods and cannot be held to be excisable goods. - Quality Steel Tubes (P.) Ltd. v. CCE 75 ELT 17 (SC) = (1995) 2 SCC 372 = 6 RLT 131 = 1995 AIR SCW 11 - in this case, it was held that tube mill and welding head erected and installed in the premises and embedded in the earth for manufacture of steel tubes and pipes are not 'goods'. [followed in Mittal Works v. CCE (1997) 1 SCC 203 = 1996 (88) ELT 622 (SC) = 106 STC 201 - quoted with approval in Thermax Ltd. v. CCE 1998(99) ELT 481 (SC) - same view in Triveni Engineering v. CCE AIR 2000 SC 2896 = 2000 AIR SCW 3144 = 40 RLT 1 = 120 ELT 273 (SC) * CCE v. Damodar Ropeways 2003(151) ELT 3 = 54 RLT 125 (SC 3 member bench).

In Municipal Corporation of Greater Bombay v. Indian Oil Corporation AIR 1991 SC 686 = 1991 Supp (2) SCC 18, it was held that if the chattel is movable to another place in the same position (condition?), it is movable property. If it has to be dismantled and re-erected at later place, it is attached to earth and is immovable property.

Assembly at site is not manufacture, if immovable product emerges - In Mittal Engg Works v. CCE 1996 (88) ELT 622 = 17 RLT 612 = 106 STC 201 = (1997) 1 SCC 203, it was held that if an article has to be assembled, erected and attached to the earth at site and if it is not capable of being sold as it is, without anything more, it is not 'goods'. Erection and installation of a plant is not excisable - followed in CCE v. Hyderabad Race Club 1996 (88) ELT 633 (SC), where it was held that an article embedded in the earth was not 'goods' and hence excise duty is not leviable - followed in TTG Industries v. CCE 2004 AIR SCW 3329 = 167 ELT 501 (SC) - same view in case of storage cabinets, kitchen counters etc. erected at site in Craft Interiors P Ltd. v. CCE 2006 (203) ELT 529 (SC) - same view in respect of refrigeration plant, air conditioning plant and caustic soda plant in CCE v. Viridi Brothers 2007 (207) ELT 321 (SC).

Capital Goods manufactured within factory of production are exempt even if manufactured by third party - It may be noted that capital goods manufactured within the factory and used within the factory are exempt from excise duty vide notification No. 67/1995-CE dated 16.3.1995. The exemption is available even when the capital goods are manufactured in the factory of production by third party. [see case law under 'Captive Consumption'].

Assembly is manufacture only if machinery can be removed without dis-assembly - In Triveni Engineering v. CCE AIR 2000 SC 2896 = 2000 AIR SCW 3144 = 40 RLT 1 = 120 ELT 273 (SC), it was observed, 'The marketability test requires that the goods as such should be in a position to be taken to market and sold. If they have to be separated, the test is not satisfied'. [Thus, if machine has to be dis-assembled for removal, it is not 'goods' and duty cannot be levied]. If machine (generating set in this case) is only bolted on a frame and is capable of being shifted from that place, it is capable of being sold. It is goods and not immovable property - Mallur Siddeswara Spinning Mills v. CCE 2004 (166) ELT 154 (SC).

Present legal position in respect of machinery erected at site - The latest judgment on the issue is of Triveni Engineering judgment dated 8-8-2000, which has been practically accepted by Board vide its circular dated 15-1-2002. Hence, the present legal provision is, as decided in Triveni Engineering, i.e. 'The marketability test requires that the goods **as such** should be in a position to be taken to market and sold. If they have to be separated, the test is not satisfied'. Thus, if machinery has to be dismantled before removal, it will not be goods. Following is also clear - (a) Duty cannot be levied on immovable property (b) If plant is so embedded to earth that it is not possible to move it without dismantling, no duty can be levied (c) If machinery is superficially attached to earth for operational efficiency, and can be easily removed without dismantling, duty is leviable (d) Turnkey projects are not dutiable, but individual component/machinery will be dutiable, if marketable.

(b) Article can be 'goods' if marketable before erection

An article will be liable to duty if its manufacture is complete before it is fastened to earth. Similarly, if 'machinery' is in marketable condition at the time of removal from factory of manufacture, duty will be leviable, even if subsequently, it is to be fastened to earth.

(c) Goods produced in SEZ in India is exempted from tax.

(d) Dutiability of Steel and concrete Structures

Following are covered in 'iron and steel structure' as defined in tariff heading 7308 – (i) big structures like bridges, transmission towers, and lattice masts, lock-gates, roofs etc. of iron and steel (ii) parts of structures e.g. doors, windows and their frames, shutters, balustrades, pillars and columns etc. of iron and steel (iii) Plates, rods, angles, shapes, sections, tubes and the like prepared for use in structures of iron and steel.

In *Mahindra & Mahindra Ltd. v. CCE 2005 (190) ELT 301 (CESTAT 3 member LB)*, it has been held as follows –

- (i) Immovable iron and steel structures are not goods.
- (ii) Structures and parts mentioned in parenthesis of 7308 like bridges, lock-gates, towers, trusses, columns frames etc., in their movable state will be subject to excise duty, even if latter they get permanently fixed in the structures.
- (iii) Plates, rods, angles, sections, tubes and the like, prepared for use in the structures will also be excisable goods subject to duty in their pre-assembled or disassembled state.

Fabrication of steel structurals like columns, crane, grinders, trusses amounts to 'manufacture' - *R S Avtar Singh v. CCE (2007) 213 ELT 105 (CESTAT)*.

(e) Structure for pre-fabricated building is dutiable

Steel structure for prefabricated building is dutiable. – *Mittal Pipe Mfg. Co. v. CCE 2002(146) ELT 624 (CEGAT)*.

(f) Fabrication of steel structure at site is exempt

As per Sr. No. 64 of notification No. 3/2005-CE dated 24-2-2005, (earlier it was in tariff entry 7308.50), structures fabricated at site of work for use in construction at site are exempt from duty. In *Delhi Tourism v. CCE 1999(114) ELT 421 (CEGAT)*, it was held that the term 'site' should be given wider meaning and not narrow meaning. Even if structure is cast at different place and brought to site of construction, it will be eligible for exemption.

Q8. Comment on the classification of goods on the followings:

- (a) Classification of parachute coconut oil
- (b) Plastic name plate
- (c) Meaning of 'set of articles' – distinction between laptop and desktop
- (d) Software/records/tapes supplied along with equipment

Answer 8.**(a) Classification of parachute coconut oil**

In *Amardeo Plastics Industries v. CCE (2007) 210 ELT 360 (CESTAT 2 v. 1 order)*, on the basis of chapter notes, it was held that parachute coconut oil is 'vegetable oil' under chapter 15 and not 'preparation for use on the hair', since the marking on package did not say that it is for 'such specialized use', though advertisements did indicate so.

However, in *Shalimar Chemical Works v. CST* (2008) 12 VST 485 (WBTT), it has been held that except in a few Southern States, coconut oil is not treated as edible oil for use of daily cooking. In West Bengal, considering consumption pattern, coconut oil cannot be treated as 'edible oil'. It has to be treated as 'hair oil'.

(b) Plastic name plate

Plastic name plate for motor vehicle is to be classified as 'accessory of motor vehicle' in chapter 87 and not 'other articles of plastic' in chapter 39, since 'name plate' is not specified in any heading in chapter 39 – *Pragati Silicons P Ltd. v. CCE* (2007) 8 VST 705 = 211 ELT 534 (SC).

(c) Meaning of 'set of articles' – distinction between laptop and desktop

'Set of article' should consist of more than one item, each complementing the work of another and retaining their individual identity all the time – *CC v. Acer India P Ltd.* (2007) 218 ELT 17 (SC). In this case, it was held that a desktop computer is a combination of CPU with monitor, mouse and keyboard as a set. A desktop computer does not lose individual identities of CPU, monitor, mouse and keyboard. Not only they are marketable as separate items but are also used separately. On the other hand, a laptop (notebook computer) comes in an integrated and inseparable form. It is a combination of CPU, monitor, mouse and keyboard. A laptop cannot be said to be set of CPU with monitor mouse and keyboard – confirming Tribunal decision in *CC v. Acer India P Ltd.* (2007) 208 ELT 132 (CESTAT).

(d) Software/records/tapes supplied along with equipment

Software imports are exempt from customs duty.

Earlier, Customs and Central Excise Tariff had a note No. 6 which stated that software when presented with the apparatus for which it was intended will be classifiable as software. This note has been deleted w.e.f. 1-1-2007. Hence, software embedded or pre-loaded in machine is to be classified along with the machine. This will also be case when software is brought separately, but as a 'set'. If tangible software e.g. operating software or application software loaded on disk, floppy, CD-ROM etc. is imported, it will be classifiable as software under heading 8523 – *CC (Import)*, Mumbai PN 39/2007 dated 3-12-2007.

In *CC v. Hewlett Packard India (Sales) P Ltd.* (2007) 215 ELT 484 (SC), it was held that pre-loaded software in laptop forms integral part of the laptop. Without operating system like windows, the laptop cannot work. Hence, the laptop along with software has to be classified as laptop and values as one unit. Software pre-loaded cannot be classified separately as software (In this case, the importer wanted to classify hard disk along with software as 'software' and refused to give value of software even when called upon to do so. Hence, the decision has to be seen from peculiar facts of the case).

Q9. Discuss the process of import of baggage and courier through post.

Answer 9.

Baggage, Courier and import through post

- Baggage includes unaccompanied baggage but does not include motor vehicles [section 2(3)]
- Indians going out can take out any amount of foreign currency as long as it is obtained from authorised foreign exchange dealer. He can take out and bring in Indian currency only upto Rs. 1,000.

- Baggage includes all dutiable articles imported by passenger or crew but does not include motor vehicles, alcoholic drinks (beyond limits) and goods imported through courier.
- Incoming passenger with no dutiable goods can pass through green channel.
- General rate of duty on import of baggage is 36.05% (35% basic customs duty plus 2% education cess plus 1% SAH education cess). One laptop computer is exempt.
- Bona fide luggage including used personal effects are exempt from customs duty. In addition to bona fide luggage and one laptop computer, Indian resident or foreigner residing in India over 12 years of age is allowed general free allowance (GFA) of Rs 25,000, after stay abroad for more than three days. GFA is lower when passenger comes from some countries like Nepal, Bhutan, Myanmar or China.
- Besides GFA, one laptop can be imported free of customs duty.
- GFA cannot be clubbed with other person.
- If a person comes after 6 months of stay, he can bring gold upto 10 Kg on payment of customs duty @ Rs 250 per 10 gms (plus education cess) and silver upto 100 Kg on payment of customs duty @ Rs 500 per Kg (plus education cess)
- Commercial samples can be brought in or taken out within prescribed limits.
- Additional concession is available if a person transfers his residence after stay abroad for two years. He is eligible for concessional rate of 15% duty (plus 2% education cess) of goods upto Rs 5 lakhs. In case of some goods, duty is Nil. He is also entitled to GFA.
- In case of mini TR (i.e. person returning after 365 days), used personal effects and household articles upto Rs 75,000 can be brought duty free, in addition to GFA. However, items specified in Annex I, II and III as specified in Baggage Rules are not allowed duty free.
- Foreign tourists can bring personal effects and travel souvenirs free of duty. Articles upto Rs 8,000 can be brought as gifts duty free.
- If value of foreign currency notes exceeds US \$ 5,000 or aggregate value of foreign exchange (in the form of currency note, bank notes, traveller cheques etc.) exceeds US \$ 10,000, the passenger has to make declaration in Currency Declaration Form (CDF).
- Unaccompanied baggage can be brought. GFA is not allowed on unaccompanied baggage.

Import and export through Courier

Imports and export through couriers are treated as imports or exports as any other mode. It is not treated as 'baggage'. There is no restriction on value of goods that can be brought through courier. The duty payable is normal duty as applicable to all other goods normally imported by ship or air transport. Duty concessions, if any, are also permissible. Courier Imports and exports (Clearance) Regulations, 1998 specify the procedures, which are summarised in Chapter 17 of CBE&C's Customs Manual, 2001.

Import through post

- Label/declaration on postal article is treated as 'Entry'. Separate Bill of Entry is not required.
- Postal articles are sent to Foreign parcel Department of Post Office. The list is handed over to Principal Appraiser of Customs.
- He will inspect mail. Packets suspected of dutiable articles will be opened and examined by him. He will assess the goods and then seal the parcel.

- Goods will be handed by postmaster to addressee only on receipt of customs duty payable on the goods.
- Gifts upto Rs 10,000 are free. Post parcel is exempt if customs duty is upto Rs 100.

Q10. (a) Warehousing in Customs

(b) Penalties under Customs Act

(c) Margin of Dumping

(d) Rules for deciding subsidy or dumping margin

Answer 10.

(a) Warehousing in customs

- Imported goods can be kept in customs warehouse without payment of customs duty.
- Goods can be kept in warehouse awaiting receipt of import authorisation.
- Goods can be kept in warehouse upto one year, but interest is payable beyond 90 days, @ 15%.
- Goods can be manufactured in warehouse and exported without payment of customs duty. This facility is useful to EOU.
- Warehoused goods can be (a) Cleared on payment of duty (b) Cleared for export without payment of duty or (c) transferred to another warehouse without payment of duty.

(b) Penalties under Customs Act

- Smuggling in relation to goods is an act or omission which will make the goods liable to confiscation.
- Penalty can be imposed for improper imports or improper exports.
- Monetary penalty upto value of goods or Rs 5,000 whichever is higher can be imposed.
- Goods can be confiscated. Permission can be granted for re-export of offending goods..
- In case of goods covered under section 123 of Customs Act, burden of proof that the goods are not smuggled goods is on the accused.

(c) Margin of Dumping

‘Margin of dumping’ means the difference between normal value and export price (i.e. the price at which these goods are exported). [section 9A(1)(a)].

‘Normal Value’ means comparable price in ordinary course in trade, for like article, when destined for consumption in the exporting country or territory. If such price is not available or not comparable (a) comparable representative price of like article exported from exporting country or territory to appropriate third country or (b) cost of production plus reasonable profit, can be considered [section 9A(1)(c) of Customs Tariff Act]. The ‘normal value’ is to be determined as per rules.

In *Reliance Industries Ltd. v. Designated Authority* 2006 (202) ELT 23 (SC), it was held that ‘normal value’ are not exporter specific but exporting country specific. Once dumping of specific goods from a country is established, dumping duty can be imposed on all exports of those goods from that country in India, irrespective of the exporter. Rate of duty may vary from exporter to exporter depending upon the export price.

'Export Price' means the price at which goods are exported. If the export price is unreliable due to association or compensatory arrangement between exporter and importer or a third party, export price can be constructed (revised) on the basis of price at which the imported articles are first sold to independent buyer or according to rules made for determining margin of dumping. [section 9A(1)(b)].

Margin of dumping is determined on basis of weighted average of 'normal value' and the 'export price' of product under consideration.

(d) Rules for deciding subsidy or dumping margin

Central Government has been empowered to make rules for determining (a) subsidy or bounty in case of bounty fed goods (b) the normal value and export price to determine margin of dumping in case of dumping. Accordingly, Customs Tariff (Identification, Assessment and Collection of Anti-dumping duty on Dumped Articles and for determination of Injury) Rules, 1995 [Customs Notification No. 2/95 (N.T.) dated 1-1-95] provide detailed procedure for determining the injury in case of dumped articles.

Procedure for fixing anti dumping duty

After the 'designated authority' is satisfied about prima facie case, he will give notice to Governments of exporting countries. Opportunity to inspection of documents and making representations will be given to interested parties who are likely to be affected. Designated Authority will first give preliminary finding and then final finding within one year. Provisional duty can be imposed on basis of preliminary finding which can continue upto 6 months, extendable to 9 months. Additional duty may be imposed on basis of the final finding.

As per rule 18 of Anti-Dumping Duty Rules, Central Government has to issue a notification fixing anti-dumping duty within three months from date of notification issued by designated authority.

Q11. Define 'Related Persons' as per Customs Valuation Rules, 1988.

Answer 11.

For the purpose of these rules, persons shall be deemed to be "related" only if –

- (i) they are officers or directors of one another's businesses;
- (ii) they are legally recognised partners in business;
- (iii) they are employer and employee;
- (iv) any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;
- (v) one of them directly or indirectly controls the other;
- (vi) both of them are directly or indirectly controlled by a third person;
- (vii) together they directly or indirectly control a third person; or
- (viii) they are members of the same family.

Q12. When are the custom authorities precluded from enhancing the value on the basis of contemporaneous import at higher price invoking Rule 4 of the Customs (Determination of Price of Imported Goods) Rules, 1989 read with section 14 of the Customs Act, 1962.

Answer 12.

If methodology given under Rule 3 is not followed then custom authorities are precluded from enhancing the value of goods imported on the basis of contemporaneous imports. According to Rule 3, the value shall be transaction value determined in accordance with Rule 4 and where conditions of Rule 4 are not satisfied then valuation has to be done in accordance with Rule 5 to 8. The value can be enhanced on the basis of identical or similar goods imported at or about the same time as the goods are being valued. If the contemporaneous imports does not satisfy the criteria of the identical goods or similar goods then custom authorities cannot enhance the value.

Q13. In a particular case of import of goods, the seller in USA and the Indian buyer were found to be together controlling a third company in India. What are the conditions subject to which then transaction value of such goods would be accepted for customs purpose?

Answer 13.

- (A) Rule 2(2) of Customs Valuation Rules, 1989 specifies the situations in which persons shall be related. One of the specified situations is that the persons together directly or indirectly control a third person. It has been further clarified in the explanation to this sub-rule that the term 'person' also includes legal persons. In view of the above, the seller and buyer are deemed to be related in the given case.
- (B) Rule 4(3) of Customs Valuation Rules deals with acceptance of transaction value where buyer and seller are related. Refer Rule 4(3) above.

Q14. Discuss briefly with reference to the decided case law whether the landing charges imposed after the landing of the goods, but prior to their clearance for custom purposes are to be included for determining the value under section 14 of the Customs Act, 1962 and arriving on the custom duty payable.

Answer 14.

In Garden Silk Mills Ltd. V. UOI [1999] 113 ELT 358 (SC) the Supreme Court held **that** in determining the deemed price **in international** trade the element of port charges, which are borne by the importer, have **to be added** in the assessable value.

As per the Customs Valuation Rules, 1988, handling charges are added in the CIF value @ 1% of GIF value irrespective of the actual **amount of** landing charges.

Q15. Discuss the Includibility or otherwise to the assessable value under the Customs Ac 1962 of the following payments made by the importer to the overseas supplier of second hand plant in India:

- (i) **Dismantling charges for removing the second hand plant at the supplier's place an shipping to Indian importer.**
- (ii) **Fees for supervision of erection and commissioning of plant in India. For this purpose the foreign supplier deputed their technician in India.**

- (iii) **Payments for tools, dies and moulds (imported along with plant) for use in connection with the manufacture of excisable goods on successful commissioning of the plant.**
- (iv) **Lump sum payment and annual royalty for transfer of technical know-how for manufacturing goods.**

Answer 15.

- (i) **Dismantling charges - According to Rule 9 of the Custom Valuation Rules, 1989,** a payments actually made or payable by the importer in connection with the import c goods, to the extent not included in the **price** of the goods are to be included. In the **give** case payment of dismantling charges is certainly incidental and essential for import c machine. Therefore, **it** is to be **included** in the assessable value.
- (ii) **Fees for supervision of erection and commissioning** – The activity of **erection an** commissioning is post import activity and thus, any amount of supervision for the same are not includible in the **assessable value**. It is also to be noted that **such cost is not included** in price of the plant at **the time** of importation into India, as required under section 14 of the Customs Act, **1963**.
- (iii) **Payments for tools, dies and moulds (imported along with plant)** - If the tools, **die and** moulds etc imported along with the plant are to be used with the **same plant the** value thereof is to **be** included in **the assessable value of** the plant otherwise not.
- (iv) **Lump sum payment and annual royalty for transfer of technical know-how** - As per **rule 9 of** the Customs Valuation **Rules. 1989**, the transaction value is inflated by **cost c** services and expenses as specified. **Under** rule 9(1)(c) royalties and licence fee **related t** the imported **goods that** the buyer **is required to** pay as a **condition** of sale of **goods being valued, is added to the transaction price**. It is to be noted that **only** such amount c royalties and licence fee which **relate to the** imported goods is to be added **back**. In **this case** the lump sum payment and annual **royalty** are related to the manufacture **of good and** do not **relate to** the imported **goods**. Hence, this amount is not includible in this **assessable** value.

Q16. Discuss the Includibility of the following payments made by an importer to the overseas supplier of an imported machine/equipment, to the assessable value of imported machine:

- (a) **Process licence fee and technology transfer fee**
- (b) **Dismantling charges for removing the machine before shipment to India at the foreign supplier's site**
- (c) **Training charges paid to supplier, for imparting training to Indian company's personnel, on how to use the equipment.**

Your answer shall be with reference to section 14 of the Customs Act, 1962. You may draw support from decided cases.

Answer 16.

According to section 14, the value shall be the price at which **goods** are ordinarily **sold** in the course of international trade.

- (a) **Process licence fee and technology transfer fee** - In *Collector V. Essar Gujarat Ltd. [1997] 88 ELT 609*, the Supreme **Court held** that process licence **fees, cost of** technical services paid are inciudible in **the assessable** value vide section **14 of the Customs Act, 1963** read with rule **9 of the Customs Valuation Rules, 1989**.

- (b) **Dismantling charges** - According to Rule 9 of the Custom Valuation Rules, 1989, all payments actually made or **payable by** the importer in connection with **the import of** goods, to the **extent** not included in the price of the goods are to be included. **In the given case** payment of dismantling charges is **certainly** incidental and essential for **import of** machine. Therefore, it is **to be** included in the assessable value.
- (c) **Training charges** - Training charges are not includible in the assessable value because it is a **cost** to be **incurred after the** arrival of goods in India and **not at the time of** importation. **Collector V. Essar Gujarat Ltd.** [1997] 88 ELT 609 (SC)

Q17. Explain briefly, how the following would be treated for purposes of valuation under section 14 of the Customs Act, 1963 and the Customs Valuation Rules, 1989 –

- Dismantling charges paid by the importer of a machine to the foreign supplier for removal of the machine before shipment at the foreign supplier's place
- Demurrage charges actually incurred by the importer of goods.

Answer 17.

According to Rule 9 of the Custom Valuation Rules, 1989, all payments actually **made** or payable by the importer in connection **with the** import of goods, to the **extent not included** in the price of the goods are to be included. In the given **case** payment of dismantling **charges** is certainly incidental and essential for import of machine. Therefore, it is to be included **in the** assessable value.

Demurrage charges are the **charges** which are payable by the importer for failure to remove the goods from the port within the permitted time limit. **Rule 9(4) provides that any cost incurred in connection with the import but not provided in the rule shall not be included in the assessable value.** Therefore, **demurrage** charges are not to be included therein. Moreover, according to section 14, **the value** shall be the price at which goods are ordinarily sold in the course of international trade. Payment of demurrage is not an **ordinary** situation. Therefore, it is not includible in the **assessable** value.

Q18. ABC Ltd. a manufacturer of fertilizers, imported large quantity of rock phosphate and sulphur. Goods were purchased by ABC Ltd. on high seas and the responsibility of unloading in India was theirs and they maintained their own wharf at port unloading equipment and staff for the same. Custom authorities assessed the landing charges at 1.4% on CIF value thereof (then assessed rate) and the importer had paid the same as demanded. Later on, custom authorities claimed that the said 1.4% did not include stevedoring charges or unloading charges and therefore they added them separately calculating them upon the basis of inter-alia unloading labour charges, custom staff over time, post-hire charges for dining hall, fuel, electricity, depreciation, maintenance cost, administrative over-heads and notional interest on capital.

State what your advise to the company would be, bearing in mind the provisions of the Customs Act, 1963 and decided cases.

Answer 18.

The main issue in the question is **'landing charges'**. Custom authorities are within **the powers to charge landing charges at a percentage basis or on actual basis. In the given case though the entire work of unloading is done by the assessee himself, the department added 1.4% of the CIF value as landing charges which are paid by the assessee. Later on department has claimed additional amount. The facts of the case are similar to that of Coromondal Fertilizers Ltd.V. Collector of Customs in which the Supreme Court observed that:**

- (a) **'Landing charges' means the expenditure incurred by the importer for bringing goods on board the ship to land. Landing charges, if any, in law, must be assessed on actuals, but as a matter of practice, particularly to facilitate expeditious clearance, landing charges are issued at a percentage of the value of goods and such assessment is accepted. When so assessed, landing charges cover the totality of all that an importer spends to bring the imported goods to land.**
- (b) **Stevedoring charges or unloading charges are not to be added when landing charges are assessed on percentage basis.**

Thus, assessee is not required to **pay any** additional duty as **demand by the custom** authorities.

Q19. M/s XYZ, a 100% Export Oriented Undertaking imported DG sets and furnace oil duty free for setting up captive power plant for its power requirements for export production. They used the power so generated for export production but sold surplus power in domestic tariff area. Is custom department justified in demanding duty on DG sets and furnace oil as surplus power has been sold in domestic tariff area.

Answer 19.

No. the department cannot demand duty on DG set and furnace oil because the 100% EOU has already used power for production of export goods and it is only the surplus that has been sold in the domestic tariff area. CCE&CV. Hanil Era Textiles Ltd. [2005] 180 ELT A 44 (SC)

Q20. An importer has imported certain goods and while determining the assessable value, landing charges @ 1% of CIF value were added. The importer has claimed that actual landing charges are much lower than 1% of the CIF value in his case. You have been asked to advise whether the importer can file a bill of entry by adding actual landing charges instead of notional 1% of CIF value or not.

Answer 20.

The importer cannot file Bill of **Entry by** adding actual landing charges. Rule 3(2)(b) of Customs Valuation Rules, 1989 has statutorily laid down **a fixed 1% charge on free on board value (F.O.B Value)** of the **goods** plus the cost of transport plus the **cost of insurance.**

In Wipro Ltd. Vs ACC, it was held **that** handling charges of 1% of **CIF Value**, which is very nominal, are not arbitrary. It **has been** fixed under the power **conferred by the Parliament** on the rule making authority and such an act cannot be **considered beyond** the power conferred by **Section 14(1) or Section 156 of the Customs Act. 1963.**

Accordingly, the importer should have filed Bill of Entry by adding the **statutorily fixed** 1% charges in the CIF value regardless **of the** actual handling charges being much lower in the present case.

Q21. Whether supplying of computers and other hardware items on hire and generation of MIS reports would come under the ambit of 'business auxiliary service'?

Answer 21.

In the case of Bellary Computers v. CCEx. (Appeals) 2007 (8) STR 470 (Tri.-Bang.)

The appellant entered into an agreement with an electricity concern for providing software and hardware for implementation of the computerized billing revenue management system. A large number of computers were supplied to the electricity concern by the appellants and for the supply of these computers, printers and other hardware items, the appellants received hire charges. They were also required to generate MIS reports and did a lot of data processing and generated reports. The Department contended that the services provided by the appellant were business auxiliary services and were thus liable to service tax.

The Tribunal observed that the appellants were not actually promoting the business of the electricity concern. The Tribunal held that except billing all other services rendered by the appellant were related to information technology service and hence were excluded from the scope of the 'business auxiliary service'. Thus, the Tribunal remanded the case to the original authority for recomputation of service tax liability by excluding the amount charged for hiring hardware and information technology services.

Note - Section 65(19) of the Finance Act, 1994 inter alia lays down that business auxiliary service does not include information technology.

Q22. Whether sale of ready built flats is taxable under 'construction of complex service'?

Answer 22.

In the case of Greenview Land & Buildcon limited v. CCEx., Chandigarh 2008 (11) STR 113 (Tri – Del.)

The assessee was engaged in construction of complex without engaging any contractor or service provider in relation to it. The entire work was carried out by appellant as developer and builder and ready built flats were sold.

Tribunal observed that as per CBEC Circular No. 96/7/2007-S.T. dated 23-8-2007, if no other person is engaged in construction work and the builder/promoter/developer/any such person undertakes construction work on his own without engaging the services of any other person, then in such cases, (i) service provider and service recipient relationship does not exist, (ii) services provided are in the nature of self-supply of services. Therefore, Tribunal held that sale of ready built flats in the instant case was not taxable under 'construction of complex service'.

Q. 23. Z Ltd. is a small-scale industrial unit manufacturing a product X. The Annual report for the year 2008-09 of the unit shows a gross sale turnover of Rs. 1,91,40,000. The product attracted an excise duty rate of 10% as BED and Sales Tax 10%. Determine the duty liability under Notification Nos. 8/2001 and 9/2001 meant for SSI units.

Answer 23.

(A) *Duty payable under Notification No. 9/2001-CE (Now 9/2002-CE)*

Under excise Notification No. 9/2001-CE, an SSI unit is required to pay 60% of normal duty (*i.e.* 6% duty) on first Rs. 100 lakhs and 10% on the balance. The assessee can avail Cenvat credit on all the inputs. Since the example gives gross sale turnover, it is first necessary to find net sales turnover.

In respect of first net turnover of Rs. 100 lakhs (Rs. 1,00,00,000), excise duty will be Rs. 6,00,000. Sales tax @ 10% is payable on net turnover *plus* excise duty *i.e.* on Rs. 1,06,00,000, sales tax @ 10% will be 10,60,000.

Therefore, balance gross sale turnover will be Rs. 74,80,000 [Rs. 1,91,40,000 – 1,16,60,000]. This includes excise duty at 10% and sales tax @ 10%.

Sales tax is payable on cum duty price. If Net turnover for excise purposes is 'Z', the gross sale turnover will be as follows :

Net Turnover	=	Z
Duty @ 10%	=	0.10 × Z
Sub-Total	=	1.10 × Z
Add : Sales Tax @ 10%	=	0.11 × Z
Total price (<i>i.e.</i> inclusive of duty and sales tax)	=	1.21 × Z

Now :

$$1.21 \times Z = \text{Rs. } 74,80,000.00$$

$$\text{Hence, } Z = \text{Rs. } 61,81,818.18$$

This can be checked as follows:

Net turnover = Rs. 61,81,818.18
Excise duty @ 10% = Rs. 6,18,181.82
Sub-Total = Rs. 68,00,000.00
Add: Sales Tax @ 10% = Rs. 6,80,000.00
Gross Selling Price = Rs. 74,80,000.00

Therefore, —

Excise duty paid on first net turnover of Rs. 1,00,00,000	=	Rs. 6,00,000
Excise duty on subsequent Turnover of Rs. 6,18,181.18	=	Rs. 6,18,181.82
Total excise duty paid	=	Rs. 12,18,181.82

This can be checked as follows :

Total Net turnover	=	Rs. 1,61,81,818.18
Total Excise Duty	=	Rs. 12,18,181.82

$$\begin{aligned} &\text{Sales tax @ 10\% on Net turnover plus Excise duty} \\ &(\text{i.e. on Rs. } 1,74,00,000) [1,61,81,818.18 + 12,18,181.82] = \text{Rs. } 17,40,000 \end{aligned}$$

$$\text{Therefore, Gross sales turnover} = \text{Rs. } 1,91,40,000$$

(B) *Duty payable under Notification No. 8/2001-CE (Now 8/2002-CE)*

Under excise Notification No. 8/2001-CE, an SSI unit is exempt from duty on first Rs. 100 lakhs and duty

payable on balance amount is 10%. The assessee can avail Cenvat credit on inputs after it crosses turnover of Rs. 100 lakhs. Since the example gives gross sale turnover, it is first necessary to find net sales turnover.

In respect of first net turnover of Rs. 100 lakhs (Rs. 1,00,00,000), excise duty will be Nil. Sales tax @ 10% will be payable on net turnover on Rs. 1,10,00,000. Sales tax @ 10% will be 10,00,000.

Accordingly, gross sale turnover in respect of first net turnover of 100 lakhs (where excise duty is not paid) will be Rs. 1,10,00,000.

Therefore, balance gross sale turnover will be Rs. 81,40,000 [Rs. 1,91,40,000 – 1,10,00,000]. This includes excise duty at 10% and sales tax @ 10%.

Sales tax is payable on cum duty price. If Net turnover for excise purposes is 'Z', the gross sale turnover will be as follows :

Net Turnover	= Z
Duty @ 10%	= 0.10 × Z
Sub-Total	= 1.10 × Z
Add: Sales Tax @ 10%	= 0.11 × Z
Total price (<i>i.e.</i> inclusive of duty and sales tax)	= 1.21 × Z

Now :

$$1.21 \times Z = \text{Rs. } 81,40,000.00$$

$$\text{Hence, } Z = \text{Rs. } 67,27,272.73$$

This can be checked as follows:

Net turnover	= Rs. 67,27,272.73
Excise duty @ 10%	= Rs. 6,72,727.27
Sub-Total	= Rs. 74,00,000.00
Add: Sales Tax @ 10%	= Rs. 7,40,000.00
Gross Selling Price	= Rs. 81,40,000.00

Hence,—

Excise duty paid on first net turnover of Rs. 1,00,00,000	= Nil
Excise duty on subsequent of Rs. 67,27,272.73	= Rs. 6,72,727.27
Total excise duty paid	= Rs. 6,72,727.27

This can be checked as follows:

Total Net turnover	= Rs. 1,67,27,272.73
Total Excise Duty	= Rs. 6,72,727.27
Sales tax @ 10% on Net turnover <i>plus</i> Excise duty <i>i.e.</i> on Rs. 1,74,00,000 (1,67,27,272.73 + 6,72,727.27)	= Rs. 17,40,000.
Hence, Gross sales turnover [1,74,00,000 + 17,40,000].	= Rs. 1,91,40,000

Q. 24. B Ltd. manufactures two products namely, Eye Ointment and Skin Ointment. Skin Ointment is a specified product under section 4A of Central Excise Act, 1944. The sales prices of both the products are at Rs. 43/unit and Rs. 33/unit respectively. The sales price of both products included 10% excise duty as BED and 8% excise duty as SED. It also includes CST of 2%. Additional information is as follows –

Units cleared: Eye Ointment: 1,00,000 units

Skin Ointment: 1,50,000 units
Deduction permissible under section 4A: 40%
Calculate the total excise duty liability of B Ltd., on both the products.—

Answer 24.

Duty on eye ointment and skin ointment is required to be calculated separately.

Duty on Eye ointment :

Let us assume that Assessable Value of Eye Ointment is Z.

Assessable Value	= Z
Duty @ 18% [Basic 10% + Special 8%]	= $0.18 \times Z$
Sub-Total	= $1.18 \times Z$
Add: Central Sales Tax @ 2%	= $0.0236 \times Z$
Total price (i.e., inclusive of duty and sales tax)	= $1.2036 \times Z$

Now:

$$1.2036 \times Z = \text{Rs. } 43.00$$

$$\text{Hence, } Z = \text{Rs. } 35.73$$

This may be checked as follows:

Assessable Value per unit	= Rs. 35.73
Excise duty @ 18%	= Rs. 6.43
Sub-Total	= Rs. 42.16
Add: Sales Tax @ 2%	= Rs. 0.84
Total price	= Rs. 43.00

Excise duty payable per unit of eye ointment is Rs. 6.43

Total quantity cleared is 1,00,000.

Hence, total excise duty on eye ointment will be Rs. 6,43,000.

Duty on skin ointment

Since the product is covered under section 4A, Assessable Value is required to be calculated after deducting abatement @ 40%.

The MRP is Rs. 33 and abatement is 40%.

Therefore, Assessable Value (after allowing deduction @40%) will be Rs. 19.80

Excise duty payable per unit @ 18% will be Rs. 3.56.

Total quantity cleared is 1,50,000 units.

Accordingly, total duty payable on skin ointment (basic plus special) will be Rs. 5,34,000

Q. 25. Determine the value on which Excise duty is payable in the following instances. Quote the relevant section/rules of Central Excise Law.

- (a) A Ltd. sold goods to B Ltd., at a value of Rs. 100 per unit, In turn, B Ltd. sold the same to C Ltd. at a value of Rs. 110 per unit. A Ltd. and B Ltd. are related, whereas B Ltd. and C Ltd. are unrelated.

- (b) A Ltd. and B. Ltd. are inter-connected undertakings, under section 2(g) of MRTP Act. A Ltd. sells goods to B Ltd. at a value of Rs. 100 per unit and to C Ltd. at Rs. 110 per unit, who is an independent buyer.
- (c) A Ltd. sells goods to B Ltd. at a value of Rs. 100 per unit. The said goods are captively consumed by B Ltd. in its factory. A Ltd. and B Ltd. are unrelated. The cost of production of the goods to A Ltd. is Rs. 120 per unit.
- (d) A Ltd. sells motor spirit to B Ltd. at a value of Rs. 31 per litre. But motor spirit has administered price of Rs. 30 per litre, fixed by the Central Government.
- (e) A Ltd. sells to B Ltd. at a value of Rs. 100 per unit. B Ltd. sells the goods in retail market at a value of Rs. 120 per unit. The sale price of Rs. 100 per unit is wholesale price of A Ltd. Also, A Ltd. and B Ltd. are related.
- (f) Depot price of a company are –

Place of removal	Price at depot on 1-1-2009	Price at depot on 31-1-2009	Actual sale price at depot on 1-2-2009
Amritsar Depot	Rs. 100 per unit	Rs. 105 per unit	Rs. 115 per unit
Bhopal Depot	Rs. 120 per unit	Rs. 115 per unit	Rs. 125 per unit
Cuttack Depot	Rs. 130 per unit	Rs. 125 per unit	Rs. 135 per unit

Additional information : (i) Quantity cleared to Amritsar Depot – 100 units (ii) Quantity cleared to Bhopal Depot – 200 units (iii) Quantity cleared to Cuttack Depot – 200 units (iv) The goods were cleared to respective depots on 1-1-2009 and actually sold at the depots on 1-2-2009.

Answer 25.

- (a) Transaction value Rs. 110 per unit (Rule 9 of Transaction value Rules). [Sale to unrelated party].
- (b) Transaction value Rs. 100 per unit for sale to B and Rs. 110 for sale to C – Rule 10 read with Rule 4 [Note that inter connected undertaking will be treated as ‘related persons’ for purpose of excise valuation only if they are ‘holding and subsidiary’ or are ‘related person’ as per any other part of the definition of ‘related person’. Note that A is selling directly to C as per the question, and not through B Ltd].
- (c) Transaction value will be Rs. 100. – section 4(1)—In case of sale to unrelated person, question of cost of production does not arise.
- (d) Transaction value Rs. 31. – section 4. – Since the goods are actually sold at this price, administered price is not considered.
- (e) Transaction value Rs. 120 per unit – Rule 9 read with section 4 of Central Excise Act. Sale to an unrelated buyer. [Under new rules, there is no concept of ‘wholesale price and retail price’]
- (f) Under Rule 7, the price prevailing at the Depot on the date of clearance from the factory will be the relevant value to pay Excise duty.

Therefore –

- (i) Clearance to Amritsar depot will attract duty based on the price as on 1-1-2009. Transaction value Rs. 110 × 100 units = Rs. 11,000
- (ii) Clearance to Bhopal depot. Depot price on 1-1-2009 Transaction value Rs. 120 × 200 units = 24,000
- (iii) Clearance to Cuttack Depot. Depot price on 1-1-2009. Transaction value Rs. 130 × 200 units = Rs. 26,000. Note The relevant date is 1-1-2009, since the goods were cleared to the depots on that date. No additional duty is payable even if goods are later sold from depot at higher price.

Q. 26. Determine the transaction value and the Excise duty payable from the following information : (i) Total Invoice Price Rs. 18,000; (ii) The Invoice Price includes the following :

(a) Sales-tax	Rs. 1000
(b) Surcharge on ST	Rs. 100
(c) Octroi	Rs. 100
(d) Insurance from Factory to depot	Rs. 100
(e) Freight from factory to depot	Rs. 700
(f) Rate of Basic Excise duty	10% ad valorem
(g) Rate of Special excise duty	24% ad valorem

Answer 26.

Let us assume that the Invoice Price of Rs. 18,000 is depot price. Thus, deduction of insurance and transport charges from factory to depot will not be available.

The deductions available will be :

- Sales Tax Rs. 1,000.
- Surcharge on Sales Tax Rs. 100 and
- Octroi Rs. 100

Thus, net price excluding taxes on final product (but inclusive of excise duty) will be Rs. 16,800.

The rate of excise duty is 34% [10% basic plus 24% special].

Hence, duty payable is as follows –

$$\text{Assessable Value} = 16,800 - 4,263 = \text{Rs. } 12,537$$

Check : Excise duty payable (basic plus special) is 34% of Rs. 12,537 i.e. Rs. 4,263.

Q. 27. Thunder TV Ltd is engaged in the manufacture of colour television sets having its factories at Bangalore and Pune. At Bangalore the company manufactures picture tube; which are stock transferred to Pune factory where it is consumed to produce television sets. Determine the Excise duty liability of the captively consumed picture tubes from the following information :

Direct material cost (per unit)	Rs. 600
Indirect material	Rs. 50
Direct Labour	Rs. 100
Indirect Labour	Rs. 50
Direct Expenses	Rs. 100
Indirect Expenses	Rs. 50
Administrative overheads	Rs. 50
Selling and Distribution overheads	Rs. 100

Additional Information :

1. Profit margin as per the Annual Report for the company for 2008-2009 was 15% before income tax.
2. Material cost includes Excise duty paid Rs. 100.
3. Excise duty rate applicable is 10%.

Answer 27.

As per Rule 8 of The Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, the

valuation of captively consumed goods is 110% of the cost of production. The cost of production of goods would include cost of material, labour cost and overheads including administration cost and depreciation etc.

The cost of material would be net of excise duty if CENVAT credit is availed in respect of such inputs. Accordingly, the assessable value will be determined as follows :

Raw materials Cost (net of excise duty)	Rs.	500
Indirect material	Rs.	50
Direct Labour	Rs.	100
Indirect Labour	Rs.	50
Direct Expenses	Rs.	100
Indirect Expenses	Rs.	50
Administrative overheads	Rs.	50
Total cost of production	Rs.	900
Assessable value	Rs.	990
(i.e. 110% of the cost of production)		
Excise duty @ 10%	Rs.	99
Education Cess @ 2%	Rs.	1.98
SHEC @ 1%	Re.	0.99

\ Total Duty Liability = Rs. (99 + 1.98 + 0.99) = Rs. 101.97

The raw material cost has been taken at Rs. 500 after deducting the duty element assuming that the CENVAT credit has been availed.

Q. 28. An assessee cleared his manufactured final products during December 2009. The duty payable for the month on his final products was as follows: Basic duty – Rs. 44,000, NCCD – Rs. 2,000, Education cesses – As applicable. During the month, he received various inputs on which total duty paid by suppliers of inputs was as follows - Basic duty – Rs. 40,000 plus applicable education cess. Service tax paid on input services was as follows: Service tax – Rs. 8,000. Education cess – Rs. 160. There is no opening balance in his PLA account. How much duty the assessee will be required to pay through account current for the month of December 2009?

Answer 28.

Education Cess payable on final products is Rs 920 (2% of Rs 46,000). SAH education cess payable on final products is Rs 460.

Education cess on his inputs is Rs 800 (2% of Rs 40,000)> SAH education cess on inputs is Rs 400. The Cenvat credit available for the month of December 2009 is as follows –

Description	Basic duty Rs.	Service Tax Rs.	Education Cess Rs.	SAH Education Cess Rs.
Inputs	40,000		800	400
Input Service		8,000	160	80
Total	40,000	8,000	960	480

Credit of Rs 48,000 (40,000 + 8,000) can be utilised for payment of any duty.

Credit of education cess of Rs 960 can be utilised only for payment of education cess on final product.

Credit of SAH education cess of Rs 960 can be utilised only for payment of education cess on final product.

	Basic Duty Rs.	NCCD	Education Cess Rs.	SAH Education Cess Rs.
(A) Duty payable	44,000	2,000	920	460
(b) Cenvat Credit Credit (basic plus service tax)	48,000		960	480
Net amount payable (A-B)	(-4,000)		(-40)	(-20)

The credit of basic duty and service tax of Rs 4,000 can be utilised for payment of NCCD of Rs 2,000. Hence for the month of January, 2008, assessee is not required to pay any duty through PLA.

He will carry forward following balances for February 2008 - Basic duty - Rs 2,000. Education Cess - Rs 40. SAH education Cess - Rs 20.

Q. 29. A consignment is imported by air. CIF price is 4,000 US Dollars. Freight is 2800 US \$. Insurance cost was \$ 140. Exchange rate is same as above. Find Value for customs purposes.

Answer 29.

CIF Price	\$ 4,000
(-) Freight	\$ 1,280
(-) Insurance	\$ 140
FOB Price	2,580
(+) Freight @ 20% on FOB	516
(+) Insurance	140
CIF Value for Customs	<u>3,236</u>
Equivalent INR VSD $3,236 \times 44.66 =$	Rs. 1,44,519.76
(+) Landing charges @ 1% =	Rs. 1,445.20
	<u>Rs. 1,45,964.96</u>

Q. 30. FOB Cost of a consignment is 6,000 UK Pounds. Insurance and transport costs are not available. What is Customs Value ? On the date of filing of bill of entry, Reserve Bank of India reference rate of US \$ was 43.37 and inter-bank closing rates were : Rs. 43.38 per US \$ and Rs. 69.38 per UK Pound. Exchange rate announced by Board (CBE&C) by customs notification was Rs. 69.78 per British Pound. T T buying rate was 69.70 and T T selling rate was Rs. 69.61 per UK pound.

Answer 30.

FOB Price	\$ 6,000
Add : Freight @ 2%	\$ 1,200
Add : Insurance @ 1.125% on FOB	\$ 67.50
CIF	<u>\$ 7,267.50</u>
Exchange Rate	Rs. 69.78 per \$
\ CIF Value (in Rs.) ($\$ 7,267.50 \times 69.78$)	Rs. 5,07,126.15
Add : Landing charges @ 1% on CIF Value =	Rs. 5,071.26
Assessable Value for Customs	<u>Rs. 5,12,197.41</u>

Q. 31. Customs value (Assessable Value) of imported goods is Rs. 4,00,000. Basic Customs duty payable is 10%. If the goods were produced in India, excise duty payable would have been 14%. Education cess is as applicable. Special CVD is payable at appropriate rates. Find the Customs duty payable. What are the duty refunds/benefits available if the importer is (a) manufacturer (b) service provider (c) Trader?

Answer 31.

		Duty %	Amount	Total Duty
(A)	Assessable Value		4,00,000.00	
(B)	Basic Customs Duty	10	40,000.00	40,000.00
(C)	Sub-Total for calculating CVD '(A+B)'		4,40,000.00	
(D)	CVD 'C' × excise duty rate	14	61,600.00	61,600.00
(E)	Education cess of excise – 2% of 'D'	2	1,232.00	1,232.00
(F)	SAH Education cess of excise – 1% of 'D'	1	616.00	616.00
(G)	Sub-total for edu cess on customs 'B+D+E+F'		1,03,448.00	
(H)	Edu Cess of Customs – 2% of 'G'	2	2,068.96	2,068.96
(I)	SAH Education Cess of Customs – 1% of 'G'	1	1034.48	1034.48
(J)	Sub-total for Spl CVD 'C+D+E+F+H+I'		5,06,551.44	5,06,551.44
(K)	Special CVD u/s 3(5) – 4% of 'J'	4	20,262.06	20,262.06
(L)	Total Duty			1,26,813.50
(M)	Total duty rounded to			1,26,813.00

Notes – Buyer who is manufacturer, is eligible to avail Cenvat Credit of D, E, F and K above. A buyer, who is service provider, is eligible to avail Cenvat Credit of D, E and F above. A trader who sells imported goods in India after charging Vat/sales tax can get refund of Special CVD of 4% i.e. 'K' above.

Q. 32. An importer imported some goods for subsequent sale in India at \$ 24,000 on CIF basis. Relevant exchange rate as notified by the Central Government and RBI was Rs. 45 and Rs. 45.50 respectively. The item imported attracts basic duty at 10% and education cess as applicable. If similar goods were manufactured in India, Excise Duty payable as per Tariff is 12% plus education cess of 2%. Spl CVD is payable at applicable rates. Arrive at the Assessable value and the total duty payable thereon. What are the duty refunds/benefits available if the importer is (a) manufacturer (b) service provider (c) Trader?

[Note : For the purpose of determination of spl. CVD rate, Excise Duty is considered to be 12%, though existing rate is 10%]

Answer 32.

CIF Value = 24,000 US \$

Total CIF in Rs. @ 45.00 per US \$ =

Rs. 10,80,000

Add : Landing Charges @ 1% of CIF =

Rs. 10,800

(A) Assessable Value =

Rs. 10,90,800

Calculation of duty payable is as follows :

		Duty %	Amount	Total Duty
(A)	Assessable Value		10,90,800.00	
(B)	Basic Customs Duty	10	1,09,080.00	1,09,080.00
(C)	Sub-Total for calculating CVD '(A+B)'		11,99,880.00	
(D)	CVD 'C' × excise duty rate	12	1,43,985.60	1,43,985.60
(E)	Education cess of excise – 2% of 'D'	2	2,879.71	2,879.71
(F)	SAH Education cess of excise – 1% of 'D'	1	1,439.86	1,439.86
(G)	Sub-total for edu cess on customs 'B+D+E+F'		2,57,385.17	
(H)	Edu Cess of Customs – 2% of 'G'	2	5,147.70	5,147.70
(I)	SAH Education Cess of Customs – 1% of 'G'	1	2,573.85	2,573.85
(J)	Sub-total for Spl CVD 'C+D+E+F+H+I'		13,55,906.72	
(K)	Special CVD u/s 3(5) – 4% of 'J'	4	54,236.27	54,236.27
(L)	Total Duty			3,19,342.99
(M)	Total duty rounded to			3,19,343

Notes – Buyer who is manufacturer, is eligible to avail Cenvat Credit of D, E, F and K above. A buyer, who is service provider, is eligible to avail Cenvat Credit of D, E and F above. A trader who sells imported goods in India after charging Vat/sales tax can get refund of Special CVD of 4% i.e. 'K' above.

Q. 33. Problem 6: An actual user imports following goods from England per Mr. Harimohan : (1) Second hand numerically controlled horizontal lathe machine - Tariff heading – 84.5811, Value FOB - 1,000/ - Pound Sterling (2). A. C. motors - Tariff heading – 85.0110, Value FOB - 500/- Pound Sterling. - - Other relevant data are: - Exchange rate 1 UK Pound = Rs. 65, Freight – 150 UK Pounds, Insurance – 25 UK Pounds. - - Rate of duty : Basic customs duty - 10%, CVD - 12%, Education Cess and Spl CVD at applicable rates. - - It is found that the lathe machine is undervalued. It is proposed to load the FOB value of the lathe machine by 25%. Party does not want show cause notice and personal hearing. Compute – (i) Assessable value; (ii) Total duty payable. What are the duty refunds/benefits available if the importer is (a) manufacturer (b) service provider (c) Trader?

Answer 33.

Since FOB value of lathe machine is being loaded by 25% for under-valuation, the FOB Value of lathe machine for purpose of assessment is 1250 UK Pounds. Value of AC Motors is 500 UK Pounds. Thus, total FOB value for purposes of customs valuation is 1,750 UK Pounds. — Total insurance and freight is 175 UK Pounds [freight is 150 UK Pounds and insurance is 25 UK Pounds]. This will be allocated on lathe machine and AC motors in proportion to value (as no other basis is available).

	A/C Motors	Lathe Machine
FOB Valu (UK \$)	500.00	1250.00
Add : Allocated Total freight & insurance [@ 500 : 1250] \$ 175	50.00	125.00
CIF Value	\$ 550.00	\$ 1,375.00
Exchange Rate per \$	Rs. 65.00	Rs. 65.00
\ CIF Value in INR	Rs. 35,750.00	Rs. 89,375.00
Add : Landing carhges @ 1%	Rs. 357.50	Rs. 893.75
Assessable Value	Rs. 36,107.50	Rs. 90,268.75
Rounded off	Rs. 36,107.00	Rs. 90,269.00

Calculation of duty payable is as follows :

	Duty %	On Lathe Machine		On A/C Motor	
		Amount	Total Duty	Amount	Total Duty
(A) Assessable Value Rs. 10,000		90,269.00	—	36,107.00	—
(B) Basic Customs Duty	10	9,026.90	9,026.90	36,610.70	36,610.70
(C) Sub-Total for calculating CVD '(A+B)'		99,295.90	—	39,717.70	—
(D) CVD 'C' × excise duty rate	12	11,915.51	11,915.51	4,776.12	4,776.12
(E) Education cess of excise – 2% of 'D'	2	238.31	238.31	95.32	95.32
(F) SAH Education cess of excise – 1% of 'D'	1	119.16	119.16	47.66	47.66
(G) Sub-total for edu cess on customs 'B+D+E+F'		21,299.88	—	8,519.80	—
(H) Edu Cess of Customs – 2% of 'G'	2	426.00	426.00	170.40	170.40
(I) SAH Education Cess of Customs – 1% of 'G'	1	213.00	213.00	85.20	85.20
(J) Sub-total for Spl CVD 'C+D+E+F+H+I'		1,12,207.88	—	44,882.40	—
(K) Special CVD u/s 3(5) – 4% of 'J'	4	4,448.32	4,448.32	1,795.30	1,795.30
(L) Total Duty			26,472.20		10,570.70
(M) Total duty rounded to			26,472.00		10,571.00

Notes – Buyer who is manufacturer, is eligible to avail Cenvat Credit of D, E, F and K above. A buyer, who is service provider, is eligible to avail Cenvat Credit of D, E and F above. A trader who sells imported goods in India after charging Vat/sales tax can get refund of Special CVD of 4% i.e. 'K' above..

Q. 34. An importer has imported a machine from UK at FOB cost of 10,000 UK Pounds. Other details are as follows :

- Freight from UK to Indian port was 700 pounds.
- Insurance was paid to insurer in India : Rs. 6,000
- Design and development charges of 2,000 UK pounds were paid to a consultancy firm in UK
- The importer also spent an amount of Rs. 50,000 in India for development work connected with the machinery.
- Rs. 10,000 were spent in transporting the machinery from Indian port to the factory of importer.
- Rate of exchange as announced by RBI was : Rs. 68.82 = one UK Pound
- Rate of exchange as announced by CBE&C (Board) by notification under section 14(3)(a)(i) : Rs. 68.70 = One UK pound

- (h) Rate at which bank recovered the amount from importer : Rs. 68.35 = One UK Pound.
 (i) Foreign exporters have an Agent in India. Commission is payable to the agent in Indian Rupees @ 5% of FOB price.

Customs duty payable was 10%. If similar goods were produced in India, excise duty payable as per tariff is 24%. There is an excise exemption notification which exempts the duty as is in excess of 16%. Education cess is as applicable Spl CVD is payable at applicable rates.

Find customs duty payable. What are the duty refunds/benefits available if the importer is (a) manufacturer (b) service provider (c) Trader?

Answer 34.

FOB Value	\$ 10,000.00
Add : Design & Development Charges	\$ 2,000.00
Add : Ocean freight	\$ 700.00
Total C & F	<u>\$ 12,700.00</u>
Equivalent C&F @ Rs. 68.70 per UK Pound =	Rs. 8,72,490.00
Add : Insurance	Rs. 6,000.00
Add : Local Agency commission 500 \$	
@ Rs. 68.70 per pound =	Rs. 34,350.00
Total CIF Price	<u>Rs. 9,12,840.00</u>
Add : Landing Charges @ 1% of CIF	Rs. 9,128.40
Assessable Value	<u>Rs. 9,21,968.40</u>
Assessable Value (rounded to)	<u>Rs. 9,21,968.00</u>

Calculation of duty payable is as follows :

		Duty %	Amount	Total Duty
(A)	Assessable Value		9,21,968.00	
(B)	Basic Customs Duty	10	92,196.80	92,196.80
(C)	Sub-Total for calculating CVD '(A+B)'		10,14,164.80	
(D)	CVD 'C' × excise duty rate	16	1,62,266.37	1,62,266.37
(E)	Education cess of excise – 2% of 'D'	2	3,245.33	3,245.33
(F)	SAH Education cess of excise – 1% of 'D'	1	1,622.66	1,622.66
(G)	Sub-total for edu cess on customs 'B+D+E+F'		2,59,331.16	
(H)	Edu Cess of Customs – 2% of 'G'	2	5,186.62	5,186.62
(I)	SAH Education Cess of Customs – 1% of 'G'	1	2,593.31	2,593.31
(J)	Sub-total for Spl CVD 'C+D+E+F+H+I'		1,189,079.09	
(K)	Special CVD u/s 3(5) – 4% of 'J'	4	47,563.16	47,563.16
(L)	Total Duty			3,14,674.25
(M)	Total duty rounded to			314,674

Notes – Buyer who is manufacturer, is eligible to avail Cenvat Credit of D, E, F and K above. A buyer, who is service provider, is eligible to avail Cenvat Credit of D, E and F above. A trader who sells imported goods in India after charging Vat/sales tax can get refund of Special CVD of 4% i.e. 'K' above.

Note : (1) Design and development work done in India and transport costs within India are not to be considered for purposes of 'Customs Value'. (2) Excise duty rate has to be considered after considering excise exemption notification. (3) Assessable Value and Final duty payable should be rounded off to nearest Rupee.

Duty payable is same whether the importer is manufacturer or a trader.

Q. 35. An importer has imported a machine from Japan at FOB cost of 9,00,000 Yens. Other details are as follows :

- (a) Freight from Japan to Indian port was 18,000 Yens.
- (b) Transit insurance charges were 1% of FOB value.
- (c) Design and development charges of 90,000 Yens were paid to a consultancy firm in Japan for design of machinery.
- (d) Packing charges of 22,000 Yen were charged extra.
- (e) Rs. 20,000 were spent in design cost on machine in India.
- (f) An amount of 98,500 Yen was payable to Japanese manufacturer towards charges for installation and commissioning the machine in India.
 - (a) Rate of exchange as announced by RBI was: 1 yen = Rs. 0.309
 - (b) Rate of exchange as announced by Central Government by notification under section 14(3)(a)(i) : 1 Yen = 0.302 Rs.
 - (c) Customs duty was 20% and special additional duty was 4%. Excise duty on similar machinery in India would be 16%.

Find the customs duty payable.

Answer 35.

Design charges of Rs. 20,000 are not includible in Assessable Value, but design charges paid abroad are includible. Erection and commissioning charges are not includible. Relevant rate of exchange is 1 Yen = Rs. 0.302. Hence, duty payable is calculated as follows –

FOB Price	Yen	9,00,000	
Add – Ocean Freight	Yen	18,000	
Add – Insurance charges	Yen	9,000	
Add – Design and consultancy charges	Yen	90,000	
Add – Packing Charges	Yen	22,000	
Total CIF Price	Yen	<u>10,39,000</u>	
CIF @ Rs. 0.302 = 1 Yen			Rs. 3,13,778.00
Add – Landing charges @ 1%			Rs. 3,137.78
Assessable Value			Rs. 3,16,915.78
Basic duty @ 20%			Rs. 63,383.16
CVD @ 16% on Rs. 3,80,298.94			Rs. 60,847.83
SAD @ 4% on Rs. 4,41,146.77			Rs. <u>17,645.87</u>
Total Customs Duty (Basic+CVD+SAD)			Rs. <u>1,41,876.86</u>
Rounded to			Rs. <u><u>1,41,877</u></u>

Q. 36. Mr. B, an Indian resident, aged 52 years, returned to India after visiting England on 31.10.2009. He had been to England on 10.10.2009. On his way back to India he brought following goods with him –

- His personal effect like clothes etc. valued at Rs. 40,000.
- 1 litre of Wine worth Rs. 1,000.
- A video cassette recorder worth Rs. 1,000
- A microwave oven worth Rs. 20,000.

What is the customs duty payable?

Answer 36.

As per Rule 3 of the baggage Rules, 1998 passengers above 10 years of age and returning after stay abroad of more than 3 days are eligible for the following general free allowance :

- Used personal effect of any amount;
- Articles other than those mentioned in Annex, I upto a value of Rs. 25,000 if these are carried on the person or in the accompanied baggage of the passenger;

Therefore, in the instant case, the total customs duty payable by the passenger will be as follows :

Articles	Duty
1. Used personal effects	No Duty
2. Wine upto 1 Ltr. Can be accommodated in General Free Allowance	Rs. 1,000
3. Video cassette recorder is dutiable	Rs. 11,000
4. A microwave oven	Rs. 20,000
Total Dutiable goods imported (that can be accommodated in General Free Allowance)	Rs. 32,000
Total General Free allowance (As per rule 3 of the Baggage Rules)	Rs. 25,000
Balance Goods on which duty is payable	Rs. 7,000
Duty payable @ 60% [30% + 2% of 30% + 1 % of 30% = 30.9%]	Rs. 2,163

Q. 37. Discuss whether any duty drawback is admissible under section 75 in the following cases and if yes, what is the quantum of such duty drawback—

	FOB value of exported goods (Rs.)	Rate or amount of drawback	Market price of goods (Rs.)	Value of imported material used in goods (Rs.)
(a)	1,00,000	0.75% of FOB value	80,000	50,000
(b)	49,000	1% of FOB value	50,000	30,000
(c)	60,000	0.8% of FOB value	70,000	35,000
(d)	3,000	1.5%	3,100	2,500
(e)	2,00,000	40% of FOB value	1,50,000	1,20,000
(f)	1,00,000 (2,000 kgs.)	Rs. 30 per kg.	55,000	40,00
(g)	4,00,000	3.5% of FOB value	4,60,000	4,50,000
(h)	4,20,000	4% of FOB value	4,10,000	3,00,00**

** In this case, the Central Government has specified that the export value should be 40% more than the value of the imported material used therein.

Answer 37.

The admissibility or otherwise of duty drawback in the aforesaid cases in discussed hereunder—

- Drawback Admissible Rs. 750 :** Even inf the rate of drawback is less than 1% of FOB value of goods, drawback will be admissible because the amount of drawback i.e. 0.75% of 1,00,000 i.e. Rs. 750/- exceeds Rs. 500.
- Drawback Admissible Rs. 490 :** Even if the amount of drawback is less than Rs. 500, drawback will be admissible because it is 1% or mor of the FOB value of the goods,
- Drawback Inadmissible :** The drawback will n ot be admissible because it is less than 1% of the FOB value of the goods and its maount (0.8% of 60,000 i.e. 480) is less than Rs. 500.
- Drawback Inadmissible :** Even if the drawback is 1.5% of FOB value, drawback will be inadmissible as the amount thereof is 1.5% of 3,000 i.e. Rs. 45, which is less Rs. 50.
- Drawback Admissible Rs. 50,000 :** The amount of drawback i.e. 40% of 2,00,000 i.e. Rs. 80,000 shall be restricted to 1/3rd of the Market price of the goods i.e. 1/3rd of 1,50,000. Hence, the amount of drawback admissible shall be Rs. 50,000.
- Draback Inadmissible :** In this case the market price of the goods Rs. 55,000 is less than the amount of drawback i.e. 2,000 kgs. × Rs. 30 i.e. Rs. 60,000. Hence, no drawback shall be allowed.
- Drawback Inadmissible :** No drawback shall be allowed in this case, as the export value i.e. FOB value of the goods is less the value of imported material used therein.
- Draback Inadmissible :** The value 40% more than value of imported materials is Rs. 3,00,000 + 40% of 3,00,000 i.e. Rs. 4,20,000. Since, the export value is not more than Rs. 4,20,000, no drawback shall be admissible.

Comparison of section 74 and 75 of the Customs Act, 1962 relating to duty drawback.

Basis	Drawback allowable on re-export of duty paid goods—Section 74	Drawback on materials used in the manufacture of exported goods — Section 75
1. Scope of drawback	Drawback, in relation to any goods exported out of India, means refund of duty paid on importation of such goods in terms of section 74. Thus, drawback is allowed only of import duties of customs.	“Drawback” in relation to any goods manufactured in India and exported, means the rebate of duty or tax, as the case may be, chargeable on any imported materials or excisable materials used or taxable services used as input services in the manufacture of such goods.
2. Identity of goods exported	The identity of the goods exported should be established as the one, which was imported on payment of duty.	The goods exported under this Section are different from the inputs as the inputs are manufactured, processed or any operations are carried on them before their export.
3. Goods eligible for drawback	Drawback under this Section is available on all goods (identification is the only criterion).	Drawback under this Section is available only on notified goods.
4. Nature of goods exported	The exported goods should have been imported and customs duty be paid thereon.	The goods to be exported may be manufactured or processed from imported or indigenous inputs or by utilising input services.
5. Rate of drawback	The rate of drawback is 98% in case the goods are exported without use. The rate of drawback on goods taken into use is separately notified depending upon the period of use, depreciation in value and other relevant factors.	Rate per unit of final article to be exported is fixed by taking into account— (a) mode of manufacture (b) input-output ratio (c) standardisation of the products etc.
6. Period for export of goods	The goods should be exported within two year from the date of payment of duty or such extended time as the Board may allow.	No such restrictions.
7. Criteria of Value addition	There is no criterion of minimum value addition, which is to be fulfilled before export for claim of drawback.	It has been specifically provided that there should not be negative value addition and in specified the same should be achieved for claim of drawback.
8. Rules framed	The drawback is governed by the Re-export of Imported goods (Drawback of Customs Duties) Rules, 1995. The Rules cover only the customs duty.	The drawback, in this case, is governed by the Customs Central Excise Duties and Service tax Drawback Rules, 1995. The rules cover customs duty, central excise duty and service tax.

Q. 38. During 2008-09, the gross inter-State sales made by Strend Fast Ltd. of Jodhpur is Rs. 71,79,000. Although the central sales tax is not shown separately, the following information is available from the records of the company —

(i) The company sells machinery which makes copper wire rods. If is sold in the Rajasthan State, sales tax rate is 7 per cent [plus additional tax 10 per cent of sales tax]

(ii) Information regarding sales with and without C Form is as follows —

<i>Particulars</i>	<i>Inter-State sale with C Form</i>	<i>Inter-State sale without C Form</i>
Gross sales	44,25,000	27,54,000
It includes the following —		
Excise duty	19,12,500	6,15,00
Freight [not being shown separately]	55,500	72,000
Freight [shown separately]	1,05,000	25,500
Packing charges	22,815	29,550
Cost of installation [shown separately]	1,38,000	1,59,000
Insurance charge to cover the risk of the seller	15,750	22,800
Insurance charges for covering the risk of Buyer at the request of the buyer	22,500	1,26,000

The following items have not been deducted to calculate gross sales turnover

<i>Particulars</i>	<i>Inter-State sale with C Form</i>	<i>Inter-State sale without C Form</i>
Trade discount [given by way of credit note on March 31, 2009]	27,000	30,000
Goods returned within 6 months	3,00,000	1,50,000
Incentives bonus for additional sale	37,500	30,000

Ascertain the sales turnover and Central Sales Tax payable.

Answer 38.**Computation of Sales Turnover & Central Sales Tax**

Particulars	Inter-State sale with C Form	Inter-State sale without C Form
Gross Sales	44,25,000	27,54,00
Less :		
Excise duty [not to be deducted]	—	—
Freight not being shown separately [not to be deducted]	—	—
Freight shown separately	1,05,000	22,500
Packing charges [not to be deductd]	—	—
Cost of installation shown separately	1,38,000	1,59,000
Insurance charges to cover the risk of the seller [not to be deducted]	—	—
Insurance charges for covering the risk of buyer at the request of the buyer	22,500	1,26,000
Trade discount [as it is not deducted from gross turnover, it shall be deducted]	27,000	30,00
Goods returned within 6 months	3,00,000	1,50,000
Incentives bonus for additional sale [not to be deducted from sale price]	—	—
Aggregate sale price [Total : Rs. 60,96,000] [a]	38,32,500	22,63,500
Local sales tax rate [7% + 10% of 7%]	7.70%	7.70%
Central sales tax	2%	2%
Central sales tax [i.e., 2/102 of Rs. 38,32,500; $\frac{7.70}{107.70}$ of Rs. 22,63,500] [b]	75,147	1,61,829
Sales turnover [a+b] [Total : Rs. 58,59,024]	37,57,353	21,01,671