
PAPER 8 : INDIRECT TAXES
NOVEMBER 2001

Question 1, and 6 are compulsory.

The candidates are required to attempt three questions out of Question Nos.2,3,4 and 5 and two questions out of Question Nos. 7,8 and 9

Question 1

- (a) Briefly discuss, how “value” is to be determined for purposes of Sec.4 of the Central Excise Act, 1944 and the Central Excise Valuation Rules, 2000 in each of the following situations: **(2×4=8 Marks)**
- i. The assessee manufactures certain excisable goods, which are not sold, but are used for captive consumption in the manufacture and sale of other final excisable products.
 - ii. Excisable goods manufactured and cleared as free samples.
 - iii. Assessee effects F.O.R. sales of excisable goods, where freight and insurance are charged on actual basis through debit notes. Assessee and buyer are not related and price is the sole consideration for the sale.
 - iv. Sales of excisable goods are made ex-factory, where freight and insurance are charged on actual basis through invoice. Assessee and the buyer are not related and price is the sole consideration for the sale.
- (b) “Manufacture” and “Marketability” are the essential ingredients for the levy of Central Excise Duty. Write a brief note in relation to the above statement with the help of decided cases. **(7 Marks)**

Question 2

- (a) Write a brief note on the provisions of Section 11A of the Central Excise Act, 1944 with regard to recovery of duty not levied / not paid / short levied / short paid or duty erroneously refunded making specific reference to the changes introduced by the Finance Act, 2000. **(8 Marks)**
- (b) Discuss briefly the Rules for interpretation of the schedules to the Central Excise Tariff Act, 1985. **(7 Marks)**

Question 3

- (a) Write a brief note on the concessions available to Small Scale Industrial Undertakings in terms of Notification No.8/2000 – C.E. dated 1.3.2000 and No.9-2000 – C.E. dated 1.3.2000. **(8 Marks)**
- (b) Write a brief note on the provisions of Rule 173L of the Central Excise Rules, 1944, which allows for refund of duty paid on goods returned into the factory and show the essential difference between this Rule and Rule 173H relating to Retention in, or bringing into, a factory or warehouse of duty paid goods. **(7 Marks)**

Question 4

- (a) Write short notes on any **two** of the following: **(3×2=6 Marks)**
- (i) Special Audit U/s. 14A of the Central Excise Act, 1944.
 - (ii) “Deemed Exports” with reference to Central Excise Law.
 - (iii) Emergency power of the Central Government to increase the duty of Excise.
- (b)
- (i) Explain briefly the provisions of Rule 173Q of the Central Excise Rules, 1944 with respect to imposition of penalty. **(3×3=9 Marks)**
 - (ii) State briefly the circumstances under which the CEGAT could dispense with pre-deposit of duty and / or penalty U/s. 35F of the Central Excise Act, 1944.

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- (iii) Write a brief note on the right of a party against whom and appeal has been filed to lodge “Cross – objections” U/s. 35B of the Central Excise Act, 1944.

Question 5

- (a) Explain briefly the various types of duties on which CENVAT credit can be taken in terms of Rule 57AB of the Central Excise Rules, 1944 and the manner of utilization of the said credit in terms of this Rule.

(6 Marks)

(b)

- i. A manufacturer utilizes an input “X” in the manufacture of two final products “A” and “B” and avails CENVAT credit on the input “X”. Product “A” is exempt from duty. Briefly explain the procedure to be followed by the manufacturer in terms of Rule 57AD of the Central Excise Rules, 1944 in this regard.

(5 Marks)

- ii. Write short notes on any **two** of the following :

(2×2=4 Marks)

- (a) Wholesale dealer
(b) Excisable goods
(c) Assessee.

Question 6

(a)

- i. DD India Private Ltd., imported components and spares of diesel engines, such as impellers, gaskets, elements from DD Asia Private Ltd., Singapore. The Special Valuation Branch (SVB) Custom House, Chennai initiated investigation into the question of admissibility of invoice value for the purpose of valuation of goods imported and assessment of customs duty.

(5 Marks)

The SVB found that DD India was reselling the imported goods at a margin of 65%(which includes expenses and profits) in the domestic market. The SVB felt that the said margin should not be more than 45%.

The SVB came to the following two conclusions:

(1) DD India is related to DD Asia as per Rule 2(2) of the Customs Valuation Rules, 1988 as DD India are the sole distributors in India of DD Asia.

(2) The “transaction value” shall be determined as per Rule 8 of the Customs Valuation Rules, 1988.

Consequently the invoice value of all imports by DD India was ordered to be loaded by 20% for purpose of assessment to customs duty.

DD India had taken over the distribution from M/s.Elandtee , who were the erstwhile distributors in India for DD Asia. During the enquiry proceedings DD India had placed evidence before the SVB that the margin enjoyed by M/s.Elandtee was also 65%. This was however ignored by the SVB as being not relevant.

The SVB also rejected the price list of foreign suppliers produced by DD India without assigning any reasons. Write a brief note on the two conclusions arrived at by the SVB and state, how as the Excise and Customs consultant of DD India you would assail the same in the aforesaid facts and circumstances of the case.

- ii. K Power Corporation(KP) are the promoters of Naphtha based short gestation 355 M.W. combined cycle power plant. For setting up the power plant KP entered into a power purchase agreement with the State Electricity Board. With a view to implement the project on schedule and to avail the Concessional customs duty provided under the Project Import Regulations, 1986 the contract between KP and the foreign suppliers of power equipment based in Korea was registered with the Customs House. The Project equipment was off loaded after filing necessary documents relating to clearance of goods vide Bill of Entry No.109 dated 20.50.2000. The Customs Authorities in terms of the contract registered under the Project Import Regulations assessed the customs duty on the project equipment

amounting to Rs.2-15 crores provisionally. The duty was paid as per the provisionally assessed Bill of Entry. The Cargo was discharged between 21-5-2000 and 24-5-2000.

(5 Marks)

As the project equipment imported at the port was more than 200 M.T. in weight and the equipments were in assembled condition it was felt that the equipment could not be transferred by road from the port to the project site. Therefore, it was decided to transport the equipment, which was oversized cargo was therefore transferred to the barge to be towed by a tug to place(M). all the packages containing the said equipment were discharged to Trailers / barges. The barge set out on Costal Voyage on 1-6-2000 after taking necessary permission from various authorities. Unfortunately the barge capsized during the Voyage on 2.6.2000 and finally over turned resulting in total loss of all packages containing the said equipment.

The importers have sought for remission of duty and refund of duty already paid on provisional basis in terms of Sec.23 of the Customs Act, 1962. Write a brief note on the validity of the claim made by the importers.

- (b) Explain briefly, how the following would be treated for purposes of valuation U/s. 14 of the Customs Act, 1962 and the Customs Valuation Rules, 1988: **(3×2=6 Marks)**
- “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.

Question 7

- (a) Explain briefly the procedure for assessment and clearance of imported goods through a Customs Sea Port under the Customs Act, 1962. **(6 Marks)**
- (b)
- Who is a “tourist” under the Baggage Rules, 1988? **(2 Marks)**
 - Briefly enumerate the articles that are allowed free of duty under the Baggage Rules, 1988 to a tourist of Indian origin coming from countries other than Nepal, Bhutan, China and Myanmar. **(4 Marks)**

Question 8

- (a)
- The Customs Authority released the seized goods to the owner on the execution of a Bond. The Adjudicating Authority in his Adjudication order imposed a Redemption fine. The owner has contended that no Redemption Fine could be imposed as the goods are no longer in the custody of the Customs Department. Briefly examine whether the contention of the owner is correct in law. **(3 Marks)**
 - Briefly list out the circumstances mentioned in Sec.72 of the Customs Act, 1962, when the doctrine of “unjust enrichment” will have no application. **(3 Marks)**
- (b) Briefly explain the provisions relating to “Advance Ruling” contained in Sec.28E to Sec.28M of the Customs Act, 1962. **(6 Marks)**

Question 9

- (a)
- Explain briefly the provisions under the Customs Act, 1962 with respect to duty on “Pilfered goods”. **(3 Marks)**
 - Write short notes on “Special Additional Duty of Customs”? **(3 Marks)**
- (b) Write short notes on any **two** of the following : **(3×2=6 Marks)**
- Warehousing period.
 - Drawback U/s. 74 of the Customs Act, 1962
 - Procedure for Sale of goods and application of Sale Proceeds in terms of Sec.150 of the Customs Act, 1962.