
PAPER 8: INDIRECT TAXES
NOVEMBER 1999

Question 1 and 6 are compulsory.

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

Question 1

- (a) **(4×2=8 Marks)**
- (i) Computers are covered under heading No.84.71 of the First schedule to the Central Excise Tariff Act, 1985 which describes computers as automatic data processing machines. XYZ Ltd. Has taken up gradation of its computers both in terms of storage capacity and processing speed by increasing the hard disc capacity, RAM changing of processor chip from 386 to 486 and in certain cases from Pentium I to II.
The Departments contention is that new goods with a different name, character and use have come into existence and the upgrade products are chargeable to excise duty. Discuss in the light of provisions of Sec. 2(f) of the central Excise Act, 1944 relating to “manufacture” whether this stand of the Department is justified.
- (ii) XYZ Ltd. Exported carbon steel flanges during the period 1-1-99 to 31-3-99 and 1-4-99 to 30-6-99 under Bond and claimed refund of MODVAT Credit in respect of duty on inputs used in the manufacture of the said product under the provisions of Rule57F(2) of the Central Excise Rules. They claimed refund and the entire quantity of inputs put use in the manufacture of ‘Flanges’ except the quantity of waste and scrap generated during the manufacturing process. They however claimed “burning loss” which occurs at the forging stage and at the machining stage to the extent of 9.4% and 8.8% respectively to be the quantity of inputs used in manufacture. The Assisstant Commissioner allowed the refund claims on the quantity of steel flanges actually exported, but disallowed the claim for credit on “burning loss” etc. Discuss, with reasons, whether the action of the Assisstant Commissioner is suitable in law?
- (b) Discuss fully the revisionary powers of the Central Excise Authorities under Sec. 35E, Sec.35EE of the Central Excise Act, 1944. **(7 Marks)**

Question 2

- (a) Briefly explain the procedure under chapter X of the Central Excise Rules governing remission of excise duty on goods used for special industrial purposes. **(8 Marks)**
- (b) State briefly the provisions relating to MODVAT credit on capital goods. **(7 Marks)**

Question 3

- (a) Explain briefly : **(4×2=8 Marks)**
- (i) Whether expenses for maintenance and running of depots could be claimed as deduction from the price for the purposes of valuation U/s. 4 of the Central Excise Act?
- (ii) Can different rates of discounts offered to dealer in the different regions be claimed as admissible deduction for valuation under Sec.4 of the Central Excise Act?
- (iii) Are Dharmada charges (charity payments) recovered by the assessee from its customers included in the assessable value of the final products under Sec.4 of the Central Excise Act?
- (iv) Whether profits made by a dealer on transportation by charging more than the amount spent on actual transport is includible in the assessable value for purposes of Sec.4 of the Central Excise Act?
- (b) Explain the concept of “Related Person” under Sec.4 of the Central Excise Act with the help of decided cases. **(7 Marks)**

Question 4

- (a) **(4×2=8 Marks)**
- i. Discuss broad criteria for deciding excisability of plant and Machinery assembled at site.
 - ii. Briefly state the provisions relating to exemption available for Small Scale Units under the Central Excise Act.
- (b) Explain the circumstances in which refund claim could be admitted and what are the consequences of rejection of a refund claim under the Central Excise Act? **(7 Marks)**

Question 5

(5×3=15 Marks)

Write short notes on any **three** of the following:

- (a) Dutiability of Waste and Scrap
- (b) Self-assessment
- (c) Eligible “inputs” under MODVAT Scheme
- (d) Authorized Representative.

Question 6

- (a) **(4×2=8 Marks)**
- i. The Shipping bill in respect of an export consignment was presented to the Customs Authority on March 8, 1999. The Customs Authority granted “entry outwards” to the ship on March 11, 1999. A notification was issued under the Customs Act exempting the export item from customs duty on the March 17, 1999. The assessee contends that since the loading of the goods in the ship had commenced after March 17, 1999, the export consignment is eligible for the benefit of the exemption notification. Discuss with reasons whether the assessee’s contention is tenable in law.
 - ii. Nircom Ice cream company imported, under one single order, a consignment of plant and machinery, namely “continuous ice cream freezer with accessories such as electric dozer, can filler, fruit feeder and ripple machine with spare parts”. According to Nircom, the main function of the machine is to make ice cream. The ice freezer is stated to be refrigerating equipment classifiable under the heading 84.18 of the customs Tariff Act, 1975. None of the aforesaid accessories can function independently as each of them has been specially made to be connected to work along with the ice cream freezer. It is the Department’s view that the can filler, fruit feeder and ripple machine are interdependent machines and not accessories. State with reasons as to how you would decide the issue with reference to the “General rules of interpretation under First Schedule- Import Tariff to the Customs Tariff Act, 1975.
- (b) Discuss in detail, various types of duties levied on imports under the Customs Act, 1962. **(8 Marks)**

Question 7

- (a) State briefly the provisions of Sec.14 of the Customs Act, 1962 regarding valuation of Goods for purpose of Assessment. **(6 Marks)**
- (b)
- i. 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 Valuation (Determination of Price of imported Goods) Rules, 1988 read with sec. 14 of the Customs Act, 1962? **(3×2=6 Marks)**
 - ii. Rule 4 of the Customs Valuation Rules, 1988 states that the transaction value of imported goods shall be the price actually paid or payable for the goods shall be the price actually paid or payable for the goods, when sold for export to India adjusted in accordance with the provisions of Rule 9 with regard to costs and services. What is the benefit available to the importer with respect to the cost of transportation by air, when the free on board value is ascertainable? **(6 Marks)**

Question 8

- (a) Explain 'Foreign going vessel or aircraft' under Sec.2(21) of the Customs Act, 1962.State whether a vessel engaged in fishing outside the territorial waters would be considered as foreign going vessel and give reasons therefore? **(6 Marks)**
- (b) Additional duty under Sec.3 of the Customs Tariff Act, 1975 cannot be levied on the import of a manufactured or produced article, if no excise duty on a like article could be levied, if manufactured or produced in India.Explain the importance of this statement with reference to Sec 12 of the Customs Act and Sec 2 and 3 of the Customs Tariff Act, 1975. **(6 Marks)**

Question 9

- (a) **(3×2=6 Marks)**
- i. Sun industries sent certain goods by a ship from Calcutta to Colombo in Sri Lanka under claim for drawback on the said goods under section 75 of the Customs Act, 1962 against Shipping bill. The Ship had passed beyond the territorial waters of India and the engine developed trouble while the ship was in high seas falling within the ambit of the expression 'taking out to a place outside India'. The Ship returned back and ran aground in Indian territorial waters at the port of Paradeep. The fittings, stores and Cargo was salvaged. Discuss the admissibility of claim for drawback of the company.
- ii. An importer having received 100 casks of whisky from Scotland by a vessel, warehouses them in a bonded place. Each cask is reported to contain 1000 litres. At the time of removal of goods, it is found that 50 of the cases contained only in 980 litres each. The importer claims that there has been a loss in storage . Explain the relevant provisions of the Customs Act, 1962 regarding shortage of volatile goods and state, with reasons, how you would decide the case.
- (b) Write short notes on : **(3×2=6 Marks)**
- (i) "Goods" as defined in the Customs Act, 1962
- (ii) Release of Goods on execution of a Bond.