
PAPER 8 : INDIRECT TAXES
NOVEMBER 1998

Question Nos. 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 & 9

Question 1

- (a) Kagaz Karkhana Ltd., manufactures paper. In the year 1995, it embarked on a major expansion programme, and for the purpose, fabricated at site, 75% of the portion of a paper making machine procured (paying excise duty) the remaining parts of the paper making machine from other suppliers. Having done so, it assembled all the parts together into a paper making machine at site. The erection and installation was completed during November, 1995 and the machine was firmly fastened to the earth, with the help of bolts, nuts and grouting material on a concrete bed, to prevent rattling and ensure wobble-free operation and presently the machine is functional and operating. During July, 1998, the Central Excise authorities served the company a show cause notice, demanding excise duty of Rs.5 crores, on the paper making machine, alleging that the activity resulted in manufacture of excisable goods, falling under chapter 84 of CET. The company engages you as 'counsel' to represent them and desires to consent the case on the grounds (i) that the activity of erection and installation was not manufacture, (ii) that the activity resulted in "immovable property" emanating at site and (iii) that the demand is time-barred. You are required to discuss the tenability or otherwise of the contentions of the notice-client and advise them, drawing support from judicial decisions. **(8 Marks)**
- (b) Outline the provisions enshrined in the Central Excise Act, 1944 and rules framed thereunder, which govern the levy of excise based on capacity of production. Your answer shall be with reference to the provisions introduced by the Finance (No.2) Act of 1997. **(7 Marks)**

Question 2

- (a) You are required to test the veracity or otherwise of the following assertions, in the context of Central Excise law, supporting provisions applicable:
- (i) Branding/labeling of packed spices is manufacture, but branding/labeling of stainless steel screws is not manufacture.
 - (ii) Captive consumption of excisable goods within the factory should always be valued on the basis of sale price of similar goods manufactured by others.
 - (iii) Registration procedure is never required to be followed by a non-manufacturer in excise law.
 - (iv) A 100% EOU engaged in the manufacture of excisable goods should pay excise duty in a special manner and general provisions do not apply to them.
- (b)
- (i) Outline all the documents on the basis of which MODVAT credit is admissible (for inputs and capital goods) under the C.E. Rules, 1944.
 - (ii) When the duty paying document accompanying a consignment is lost, what should be done to avail credit? **(5+2=7 Marks)**

Question 3

- (a) How would you deal with the following items in the course of arriving at the assessable value of excisable goods?
- (i) Trade Discount
 - (ii) Protective packing (for safe transportation of goods)
 - (iii) Interest on receivables
 - (iv) Outward handling charges. **(2×4=8 Marks)**

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- (b) Shakti Ltd. Manufactures D.G. sets. During November, 1997 it cleared a D.G. set, paying excise duty to its customer Bhakti Ltd. In August, 1998, the D.G. set developed a major problem and the customer intends to send it back to Shakti Ltd. for repair/ re-conditioning (without paying excise duty again when the repaired D.G. set is sent back to them). There is a two-year warranty period given by Shakti Ltd. You are required to examine the possibility of the repair/ reconditioning being undertaken by the manufacturer and clearance to Bhakti Ltd. without paying excise duty. Examine the relevant provisions of the C.E. Rules. **(7 Marks)**

Question 4

- (a) You are the Manager (Excise) of M/s ALPHA Ltd. situated in Calcutta. You are required to prepare a note to your Managing Director, summarizing the procedure for Export of excisable goods under Bond without payment of excise duty, for a consignment of the company is due to leave Calcutta Port for Singapore (by sea). You shall refer to Rule 13 of the CE Rules, 1944 and other applicable provisions of law. **(8 Marks)**
- (b) Pre-deposit of adjudication levies is a “condition-precedent” for filing an appeal under the Central Excise Act, 1944. Under what circumstances can the appellate authority waive such a condition and admit/ entertain the appeal? Examine the issue with the help of decided cases. **(7 Marks)**

Question 5

- (a) Examine the following aspects with reference to Section 9AA and 9C of the Central Excise Act, 1944:
- Whether criminal prosecution would lie against a company, before a Court of Law?
 - To what extent are directors of a company responsible, for offences committed by the company? **(4×2=8 Marks)**
- (b) Enumerate the instances/ circumstances contemplated in Section 11B of the Central Excise Act, 1944, under which excise duty shall be refunded to an applicant, instead of being credited to the Consumer welfare Fund. Also state under each such instance or circumstance, the document required to be produced or filed along with the refund claim. **(4+3=7 Marks)**

Question 6

- (a) Rishi Alloys Ltd. imported during June, 1998, by sea, a consignment of metal scrap weighing 3,000 M.T. (metric tones) from U.K. They filed a bill of entry for home consumption and the Assistant Commissioner passed an order for clearance of goods, and applicable duty was also paid. The importer thereafter found on taking delivery from the port trust authorities, that only 2,500 M.T. of scrap were available at the docks although they had paid duty for the entire 3,000 M.T., since there was no short-landing of cargo. The short-delivery of 500 M.T. was also substituted by the Port-Trust Authorities, who gave a “weightment certificate” to the importer?
On filing a representation to the Custom Department, the importer has been directed in writing, to justify as to which provision of the Customs Act, 1962 governs their claim for restoration of duty on the 500 M.T. scrap not delivered by the Port-Trust. You are approached by the importer as “counsel” for an opinion / advice. Examine the issues and tender your opinion as per law, giving reasons. **(8 Marks)**
- (b) Sulabh Ltd., imported five main-frame computer systems from USA in December, 1997, paying customs duty of Rs.60 lakhs. Due to some technical snags which developed in the systems during March, 1998, the supplier sent his technicians in July, 1998, the management of Sulabh Ltd. has decided to re-ship/ return the goods to the foreign supplier.
You are finance manager of the company (Sulabh Ltd.) and have been approached by the Board of Directors, to examine and advise whether import-duty paid can be got back from the Central Government when goods are sent back. Examine and advise, in the light of the provisions of Customs Act, 1962. **(8 Marks)**

Question 7

- (a) In the context of the Customs Act, 1962, briefly discuss the following:
- (i) Interest on delayed payment of duty.
 - (ii) Data for purposes of determination of rate of duty/ tariff valuation in respect of goods imported or exported by post. **(3+3=6 Marks)**
- (b)
- (i) Briefly state the law relating to demand for payment of duty and interest under Section 28 of the Customs Act, 1962.
 - (ii) State the provisions in the Customs Act, 1962 which govern the appearance by an authorized representative and the qualifications for such a person. **(3+3=6 Marks)**

Question 8

- (a) Discuss the includibility or otherwise of the following payments made by an importer to the overseas supplier of an imported machine/ equipment, to the assessable value of goods imported:
- (i) Process license fee and technology transfer fees:
 - (ii) Dismantling charges for removing the machine (before shipment to India) at the foreign supplier's site;
 - (iii) Training charges paid to supplier, for imparting training to the 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. **(2×3=6 Marks)**
- (b) State and summarize the procedure and documentation for clearance of "export cargo", under the Customs Act, 1962. **(6 Marks)**

Question 9

- (a) Briefly examine the nature and significance of the levy of "Anti Dumping Duty" under the Customs Tariff Act, 1975. **(6 Marks)**
- (b) Define or briefly elucidate the meaning of the following words/ expressions in the context of the Customs Act, 1962:
- (i) Smuggling
 - (ii) Importer
 - (iii) Foreign Going Vessel or Aircraft. **(2×3=6 Marks)**