
PAPER 8 : INDIRECT TAXES
MAY 2000

Questions 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)

i. An assessee was using two inputs in the manufacture of beverage, availing proforma credit of the duty paid on the inputs in terms of Rule 56A of Central Excise Rules, 1944. On 29.7.86, these two inputs were exempted from payment of duty; on that date, there was a credit balance in the assessee's account. From 1.03.87, the final product (beverage) was covered under modvat credit scheme and the assessee sought the permission from the central excise officer to transfer the credit balance lying in the proforma credit account to the modvat credit account; this was, however, denied by the assistant commissioner. While denying the permission, he held that the proforma credit was not in operation from 29.07.86 to the date of application and that Rule 57H permitted such transfer to be made only when proforma credit account was "operative immediately prior" to 28.02.1987. On an appeal, the Commissioner held that for transfer of proforma credit, the assessee should be availing of the procedure under Rule 57A immediately before opting for the modvat credit and he further observed that the assessee was not operating under the procedure of Rule 56A i.e. the period between 29.07.86 and 27.03.87. When the application was made under Rule 56A 'immediately before' opting for the Modvat credit and he further observed that the assessee was not operating under the procedure of Rule 56A i.e. the period between 29.07.86 and 27.03.87 when the application was made under Rule 57H. Assessee has now appealed to the Tribunal for remedy. Critically examine the issue and offer your comments by reference to Rules 56A, 57A and 57H.

(4 Marks)

ii. A company engaged in the manufacture of Vacuum Cleaner, was clearing the goods from its factory to its depots in different places in the country from where, they were sold in wholesale. The goods were cleared from the factory by packing each vacuum cleaner in a plain brown carton, two such cartons being further packed together in a larger plain brown carton, to their depots (Godowns). At the depots, the vacuum cleaner were removed from the plain cartons and each 'cleaner' was packed in a printed carton before sales were made. The plain cartons in which the goods were transported from the factory to the depots were discarded. The cost of the plain cartons as also that of the printed cartons was include in the price of the vacuum cleaner. The company filed a price list claiming deduction of the cost of the plain cartons since they were discarded, but the claim was disallowed by the Assistant Commissioner. An appeal against his order was also rejected. In further appeal before tribunal, the company claimed that plain cartons were used only for protection of goods during transport from Factory to Godowns to avoid damage to the printed cartons which would be the case, if they are used for the first stage dispatch itself. You are required to examine the issue and indicate whether the company's claim to exclude the cost of the plain cartons from the assessable value is right.

(4 Marks)

(b)

i. Section 4A of Central Excise Act, 1944 empowers the Central Government to specify goods on which duty will be payable on maximum retail price basis. Bring out the salient features of this concept. **(4 Marks)**

ii. A factory collects insurance charges from its customers as part of the selling price; the factory, however, does not actually incur any charges for obtaining an insurance cover. **(3 Marks)**

Kindly indicate whether the collection made by the factory will form part of the assessable value for excise duty purpose.

Question 2

- (a) A company manufactures excisable goods. Its factory is situated in the interior areas of the country. A substantial part of the manufacture is exported. **(8 Marks)**

Do you recommend to the management of the company any procedure for adoption of a programme which will avoid, within the provisions of Central Excise Legislation, payment of duty? Discuss the procedure you will like to adopt.

- (b)
- i. State the procedure in regard to 'Diversion of Export Goods for Home Consumption'. **(4 Marks)**
 - ii. Explain the validity of "Deemed Manufacture" with examples. **(3 Marks)**

Question 3

- (a)
- i. Discuss the reversibility or otherwise of modvat credit in the following cases, referring to decided case laws, wherever applicable: **(4x2= 8 Marks)**
 - (1) If input originally entitled to Modvat, subsequently became ineligible for Modvat;
 - (2) If supplier gives reduction in price after clearance;
 - (3) If final product is subsequently exempted;
 - (4) If goods are sent under chapter X.
- (b)
- i. "Monthly Return is Self Assessment". Explain the procedure for submission of Monthly Return. **(4 Marks)**
 - ii. Explain 'Return and Retention' under Rule 173L. **(3 Marks)**

Question 4

Discuss the following issues:

- (a) Time Limit for filing refund application under section 11B of Central Excise Act.
- (b) Excluded Turnover for SSI Exemption Limit.
- (c) Emergency Power of the Government to increase Excise Duty. **(5x3= 15 Marks)**

Question 5

Your advice as a consultant is sought by taxpayers in the following cases. Kindly indicate, with reasons, your decision. [Facts do not relate to the same taxpayer]:

- (a) One of the plants of the taxpayer produces ferrous sulphate, chromium sulphate and sulphur-di-oxide during the preparation of a khaki dye. These are intermediate goods/semi-finished goods and are not marketable. Central Excise Authorities demand excise duty on the ground that the taxpayer was manufacturing these goods and was clearing them for internal consumption. **(5 Marks)**
- (b) One of the manufacturing units of the taxpayer manufactured products on which no special excise duty was payable till February, 1999. The products manufactured upto the end of February, 1999 were cleared on 5th March, 1999. On 28th February the government through its budget proposals introduced a special excise duty on these products. Central Excise Authorities demand that the special excise duty introduced effective 1st March, 1999 would be payable on the goods cleared on 5th March, though their manufacture was completed before 1st March, 1999. **(5 Marks)**

-
- (c) An Assistant Commissioner of Central Excise by his order of 11th February, 1980 held that goods were classifiable under tariff item 68 and liable to excise duty. The superintendent of Central Excise by his notice of 24th May, 1980 demanded duty on these goods.
Is the Department's stand justified? **(5 Marks)**

Question 6

- (a)
- i. ABC Ltd. manufacturer of fertilizers, imported large quantity of rock phosphate and sulphur. Goods were purchased by ABC Ltd. on the 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. Customs Authorities assessed the landing charges at 1.4% on C.I.F. value thereof (then assessed rate) and the importer had paid the same as demanded. Later on, Customs Authority claimed that the said 1.4% did not include Stervedoring charges or uploading charges and therefore they added them separately calculating them upon the basis of inter-alia unloading labour charges, customs staff overtime, post-hire charges for dining hall, fuel, electricity, depreciation, maintenance cost, administrative overheads and notional interest on capital.
State what your advice to the company would be, bearing in mind the provisions of Customs Act and decided cases. **(6 Marks)**
- ii. An importer imported some goods for subsequent sale in India at \$12,000 on CIF basis. Relevant exchange rate as notified by the Central Government and RBI was Rs.45 and Rs.45.50 respectively. Finance Act, 1999 restructured the basic customs duty rates and imposed a surcharge @ 10% on the effective basic duty. The item imported attracts basic duty at 40%. If similar goods were manufactured in india, Excise Duty payable as per Tariff is 20%. Arrive at the Assessable value and the total duty payable thereon. **(6 Marks)**
- (b) ITDC as a canalizing agent imported certain goods and stored them in a bonded warehouse. A private party obtained an import licence and approached ITDC for clearance of these goods. ITDC filed ex-bond Bill of Entry on 29th January, 1996. This was returned by customs authorities to ITDC, after due processing, for payment of duty. The private party, in the meantime, changed his mind and decided not to clear the goods and informed ITDC accordingly who in turn, by their requested the Customs Department to cancel the Bill of Entry. This was done.
Subsequently, the Customs Department demanded interest since the duty had not been paid within seven days of assessment of the Bill of Entry as stipulated by Section 47 of the Customs Act.
Do you think that the demand for interest is sustainable? Discuss. **(4 Marks)**

Question 7

- (a)
- i. What do you understand by First Assessment and Second Assessment system under the Customs Law? **(3 Marks)**
- ii. Explain the rules regarding "Remission on relinquished goods". **(3Marks)**
- (b) Write a short note on:
- i. Warehousing period under Section 61 of Customs Act. **(3 Marks)**
- ii. 'Project Import' and "Eligible Projects". **(3 Marks)**

Question 8

- (a) A manufacturer of excisable goods imported epoxy resin under bill of entry dated 28th March, 1992 and put them in a bonded warehouse. He later on cleared it on payment of duty. Subsequently, he realized that there was an excess payment of duty and put in a refund claim. He used the imported goods in the

manufacture of other goods and the burden of duty had not been passed on. The imported goods were not sold to any other buyer.

The Customs Department refused the claim to refund on the ground of unjust enrichment.

Was the decision justified? Discuss.

(4 Marks)

(b) Write a brief note on adjudication in customs cases.

(4 Marks)

(c) State and discuss the feature of temporary detention of baggage imported, under section 80 of Customs Act.

(4 Marks)

Question 9

(a) Write a note under Customs Law on:

i. Tourist

ii. Identical Goods

iii. Customs Station and Customs Port.

(2×3 = 6 Marks)

(b) Discuss the provision regarding 'Transit of Goods' and Transshipment of Goods without Payment of Duty' under Customs Act.

(6 Marks)