

Paper 8: Indirect Tax

Answer to Question No.1,6 and 9 are compulsory. In addition thereto, answer any two questions from Part A and One question from Part – B

Part - A

1. (a) Briefly explain any two of the following with reference to the Central Excise Act, 2002: **(2×2=4 Marks)**
- i. Manufacture and processing
 - ii. Dutiability of site related activities
 - iii. Labelling and branding activities.
- (b). Explain briefly the meaning of “Trade parlance test” in matters relating to classification under the Central Excise Act, 1944 and the Central Excise Tariff Act, 1985. **(4 Marks)**
- (c) Discuss the validity or otherwise of the following statements with brief reasons: **(2×3=6 Marks)**
- (i) An assessee would lose the benefit to pay duty in monthly instalments if he made a default in payment of duty by due date and the same is discharged beyond a period of 30 days from the due date in terms of Rule 8 of the Central Excise Rules, 2002.
- (ii) Excise duty is payable on intermediate goods, manufactured by factory A which are removed without payment of duties of excise for use in the manufacture of subject goods, namely machines, in factory B of a Large Tax Payer Unit under Rule 12BB of the Central Excise Rules, 2002.
- (d) Answer briefly in the context of refund of CENVAT credit under Rule 5 of the CENVAT Credit Rules, 2004 the following:
- (i) Under what circumstances will the benefit under the Rule be available for inputs or input services. **(3 Marks)**
- (ii) How is the manufacturer or provider of output service allowed to utilize the CENVAT credit in respect of the inputs or input services? **(3 Marks)**
2. (a) M/s. KE Ltd., manufactured elastics with brand name of M/s. XYZ Ltd., who in turn used these elastics in the manufacture of other excisable goods. These elastics were never sold in the open market. These elastics were never sold in the open market. The general public only received the manufactured excisable goods. M/s. KE Ltd., claimed the exemption based on value of clearances (SSI) in terms of Notification No. 8/2003-C.E. dated 1.3.2003 on the ground that they did not use the brand name on the final product and that the brand name was used only in respect of the goods meant for captive consumption. This claim was disputed by the Excise Department on the basis that it is immaterial whether the ultimate customer got only the final product and the use of the brand name even if not sold in the open market would convey to the customer that the elastics had connection with the owner of the brand name. Briefly discuss whether the stand of the Department is valid in Law? **(5 Marks)**
- (b) With reference to the CENVAT Credit Rules, 2004 discuss briefly whether the following statements are correct or not: **(3×2=6 Marks)**
- (i) CENVAT credit cannot be taken on the inputs lying in stock on the date when the final product becomes dutiable because the said product was initially exempt.

(ii) CENVAT credit of duties of excise on inputs can be availed on the basis of an invoice, while credit of service tax paid on input services can be availed only upon payment of the full invoice value including service tax.

(iii) In case of transfer of ownership of the factory by way of sale along with inputs and capital goods the unutilized input credit shall lapse.

(c) Briefly answer with reference to the provisions of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 whether in the following cases any notional interest on the advance received is includible in the value for purpose of assessment: **(2×2=4 Marks)**

(i) Assessee sells his goods against full advance payment to X. He also sells such goods to y without any advance payment at the same price per unit.

(ii) A the assessee manufactures and supplies certain goods as per design and specification of B. A takes 50 % of the price as advance against these goods and there is no sale of such goods to any other buyer.

3. (a) M/s. PQR Ltd., were granted a refund by the Appellate Authority under the Central Excise Act, 1944. The jurisdictional Asst. Commissioner of Central Excise has issued a notice U/s. 11a of the Central Excise Act, 1944 demanding the amount of refund on the ground that such a refund is erroneous. Briefly discuss whether the action taken by the Asst. Commissioner of Central Excise is valid in law. **(4 Marks)**

(b) Answer briefly with reference to Rule 21 of the Central Excise Rules, 2002 (Regarding remission of duty and destruction of goods) the following: **(2×2=4 Marks)**

(i) The circumstances under which remission of duty may be ordered;

(ii) The manner of destruction.

(c) Briefly explain the procedure for removal of goods by an hundred percent export oriented unit for domestic tariff area. **(4 Marks)**

(d) Write a brief note on “electronic maintenance of records and preparation of returns and documents” under the Central Excise Rules, 2002. **(3 Marks)**

4. (a) Section 35c(2) of the Central Excise Act, 1944 provides that the Appellate Tribunal, may at any time within six months of the date of the order, with a view to rectifying and mistake six months of the date of the order, with a view to rectifying and mistake apparent from the record amend any order passed by it. Briefly illustrate with two examples as to what would constitute “mistake apparent from the record” for the purpose of this provision. **(5 Marks)**

(b) Briefly explain the provisions under the Central Excise Act, 1944 relating to special audit in cases where credit of duty availed or utilized is not within the normal limits. **(4 Marks)**

(c) Write a brief note on the following with reference to the Central Excise Act, 1944 and Rules made thereunder:

(i) Cancellation of Export documents **(2 Marks)**

(ii) Bond to be executed by 100 % EOU's for obtaining indigenous goods without payment of duty. **(2 Marks)**

(iii) Execution of bond by Government undertaking. **(2 Marks)**

5. (a) Discuss briefly the validity of the following statement with reference to the powers of the Central Excise Department to launch prosecution proceedings U/s. 9 and section 9AA of the Central Excise Act, 1944: **(4 Marks)**

“Confiscation and penalty in departmental adjudication and prosecution in criminal proceedings are independent and do not amount to double jeopardy”.

- (b) Write a brief note on the procedure for warehousing of excisable goods removed from a factory or warehouse with reference to Rule 20 of the Central Excise Rules, 2002. **(4 Marks)**

- (c) State briefly the procedure to be followed by the Authority for Advance Ruling U/s. 23D of the Central Excise Act, 1944 on the receipt of an application. **(4 Marks)**

- (d) Write a brief note on the duty of excise not levied or short levied as a result of general practice that is notified as not recoverable U/s. 11C of the Central Excise Act, 1944; **(3 Marks)**

Part-B

6. (a) Explain briefly with reference to the provisions of the Customs Act, 1962 any **two** of the following: **(2×2=4 Marks)**

- (i) “Import” and “Importer”
- (ii) Meaning of “Assessment”
- (iii) “Home consumption” and “Clearance for warehousing”

(b) XYZ ice cream company imported cone containers made from printed Aluminium foils which according to the assessee were classifiable under Chapter 76: “Aluminium and Articles thereof” in section XV of the first schedule to the Central Excise Tariff Act, 1975. According to the revenue these were classifiable under Chapter 48: “Paper and paperboard; articles of paper pulp, of paper or paperboard”. The revenue’s view was that where composite goods are made of different components and cannot be classified by reference to Rule 2 of the Interpretative Rules, then the classification has to be according to the principles contained in Rule 3. The classification has to be as if they consisted of the material or components which gave them their essential criteria. Since the contents of the material in this case was 70.7 % paper, that was the essential component of the cone containers for ice cream and merit classification under Chapter 48. **(4 Marks)**

The chapter notes to Chapter 48 read as follows:

Notes:

- 1.
- 2. This chapter does not cover:
 - (a)
 -
 - (n) metal foil backed with paper or paperboard (Section XV)

Discuss briefly whether the action proposed by the Revenue is correct in law.

- (c) Examine the validity of the following statements with reference to the Customs Act, 1962 giving brief reasons (Answer any three): **(3×2=6 Marks)**

- (i) Service charges paid to canalising agent are not includible in the assessable value of imports.
- (ii) Design and engineering charges are includible in the assessable value of the imported goods only, if the goods imported are specifically manufactured on the basis of the design and engineering specifications provided by the importer.

(iii) Inspection charges are not includible in the assessable value of the imported goods, if contract does not specify for certification by an independent agency.

(iv) Goods exempt from basic custom duty would automatically be exempt from additional duty of customs.

(d) (i) With reference to Section 125 of the Customs Act, 1962 briefly explain the following **(2 Marks)**

(a) Option to pay fine in lieu of confiscation.

(b) Whether this fine once paid could be claimed as a refund if the importer decides to abandon the goods. **(2 Marks)**

(ii) Briefly explain the provision of section 89 of the Customs Act, 1962 with regard to supply of ship stores. **(2 Marks)**

7. (a) M/s. HIL imported copper concentrate from different importers. At the time of import the seller issues a provisional invoice and the goods are provisionally assessed U/s. 18 of the Customs Act, 1962 based on the invoice. When the final invoice is raised based on the price prevalent in the London Metal Exchange on a predetermined date based on the covenant in the contract between the buyer and seller the assessments are finalized on such invoices. M/s. HIL had filed two refund claims arising out of the finalization of the Bills of Entry by the authorities on 1.3.2006 and on 15.3.2006. With effect from 14.7.2006 (Presidential assent on 13.7.2006) Section 18 of the Customs Act, 1962 was amended with the insertion of certain provisions in terms of which it became necessary for the assessee to prove that they had not passed on the amount to their customers. Based on this amendment the department has rejected the refund claims. Discuss in the light of decided case law, if any, whether the action of the department is correct in law? **(5 Marks)**

(b) M/s RIL Ltd., claimed duty drawback in respect of its export products. Over 97% of the inputs by weight of the product were procured indigenously and were not excisable. All industry rates under the Customs and Central Excise Duties Drawback Rules. 1995 were fixed taking in to account the incidence of customs duty on imported product inputs. Explain briefly with reference to Rule 3(i)(ii) of the said rules whether the claim of M/s. RIL will merit consideration by the authorities. **(4 Marks)**

(c) In the context of Section 65 of the Customs Act, 1962 dealing with waste of refuse during the manufacturing operations or other processes done in the warehouse:

(i) Examine the validity of the following statement with brief reasons: **(3 Marks)**

“If finished products are cleared for home consumption on payment of appropriate import duty of custom, then appropriate duty of customs should be levied on the imported goods context in the waste or refuse”.

(ii) Explain briefly “relevant date” for determination of rate of duty leviable on the import material content in the waste or refuse. **(3 Marks)**

8. (a) Briefly explain the salient features of the Customs Act, 1962 relating to Special Economic Zones. **(5 Marks)**

(b) Explain briefly the provisions of Section 28(1A) of the Customs Act, 1962 in respect of a person who voluntarily deposits fully duty demanded along with interest and applicable penalty. **(5 Marks)**

(c) Write a brief note on the provisions of section 28BA of the Customs Act, 1962 regarding property that may be attached provisionally to protect the interest of revenue in certain cases. **(5Marks)**

Part – C

9. (a) Service Tax (Determination of Value) Rules, 2006 (Valuation Rules) and Taxation of Services (Provided from outside India and received in India) Rules, 2006 (Import Rules) came into force from 19.4.2006. **(3×2=6 Marks)**

Answer the following with reference to the said Rules:

- (i) Expenditure or costs incurred by the service provider as a “Pure Agent” of the recipient of service shall be excluded from the value of the taxable service. Who is “Pure Agent” under the Valuation Rules?
- (ii) What is the value of taxable service in the case of service provided from outside India under the Valuation Rules?
- (iii) What are the three categories specified in Rule 3 of the Import Rules?

(b) Answer the following with reference to the Finance Act, 1994 and the Rules made thereunder relating to Service Tax: **(1×3=3 Marks)**

- (i) Intimation regarding charge in details furnished by an assessee in Form ST-1.
- (ii) Cancellation of registration certificate.
- (iii) Adjustment of excess amount paid towards service tax liability for the subsequent period.

(c) Answer any **three** of the following with reference to the Finance Act, 1994 as amended relating to applicability of Service Tax:: **(2×3=6 Marks)**

- (i) Manpower recruitment agency services in respect of staff not contractually employed by the recipient of service but who come under his direction.
- (ii) Business support services in the context of “Outsourced services”.
- (iii) Construction of roads, airports, railways, bridges, tunnels in the context of “site preparation and clearances, excavation earth moving and demolition services”.
- (iv) Clearing and Forwarding Agent’s Services.