

Gurukripa's Guideline Answers to Nov 2015 Exam Questions CA Final – Indirect Taxes

Question No.1 is compulsory (4 × 5 = 20 Marks).

Answer **any five** questions from the **remaining six** questions (16 × 5 = 80 Marks). [Internal Choice in Qn.6(a)]

Note: Page References are from "Padhuka's Students' Referencer on Indirect Taxes"

Note: Modifications have been made in the Questions, in certain cases, as applicable for May 2016 and Nov 2016 Exams, consequent to changes in Rates and Law.

Question 1 (a): Excise – Assessable Value for Captive Consumption **5 Marks**
Shri Ramesh Babu has manufactured Goods for captive consumption. He has incurred the following expenses in producing them.

	Particulars	₹
1.	Cost of Raw Material and Components (inclusive of Excise Duty) [assume ED = 12.36%]	2,24,720
2.	In –House Manpower Costs (includes Admin. Salary of ₹ 18,000) (not relating to production)	48,000
3.	Design & Engineering Charges (inclusive of Service Tax) [assume ST = 12.36%]	22,472
4.	Transportation Cost of Components to Job Worker	2,800
5.	Job Work Charges (Job–Worker's Invoice includes charges on job and Cost of Consumables of ₹ 2,000 and not charged separately)	20,000
6.	Additional Charges levied by Job Worker	
	– Transportation Charges	2,800
	– Wooden Boxes	1,200

Determine the Assessable value and Excise Duty payable by Shri Ramesh Babu, assuming ED at 12.5% on Final Products.

Solution: **Refer Page 4.34, Para 4.4.5, Rule 8, and Illustrations thereto**

Valuation Principle: Under Rule 8, where the Excisable Goods are used for captive consumption the Value shall be **110% of the Cost of Production** or Manufacture of such goods. Cost of Production shall be determined as per the principles in Cost Accounting Standard 4 (CAS 4) issued by Institute of Cost Accountants of India.

Computation of Cost of Production and Assessable Value

Particulars	₹		₹
Cost of Raw Material and Components	2,24,720		
Less: CENVAT Credit availed of ED Paid = ₹ 2,24,720 × $\frac{12.36}{112.36}$ [Note 1]	(24,720)		2,00,000
Man Power Costs (48,000 Less 18,000) [Note 2]			30,000
Design and Engineering Charges	22,472		
Less: CENVAT Credit availed on Service Tax = ₹ 22,472 × $\frac{12.36}{112.36}$ [Note 1]	(2,472)		20,000
Job Work Cost towards [Note 3]			
(a) Job Work Charges	20,000		
(b) Transport Charges	2,800		
(c) Wooden Boxes	1,200		24,000
Cost of Production			2,74,000
Assessable Value = (110% of Cost of Production = ₹ 2,74,000 × 110%)			3,01,400
Excise Duty Payable (12.5% of Assessable Value = ₹ 3,01,400 × 12.5%)			37,675
Less: CENVAT Credit [Note 4]			
(a) On Inputs	(24,720)		
(b) On Input Services	(2,472)		(27,192)
Net Duty Payable			10,483

Notes:

1. It is assumed that the CENVAT Credit of ED paid on Materials / ST Paid on Design Charges is available as per CENVAT Credit Rules, 2004, and hence it is not considered as a Cost.
2. Administration OH not related to production activities, shall not form part of Cost of Production. It is assumed that only ₹ 18,000 Admin Salary is not related to production and hence excluded. If the entire the Manpower Cost of ₹ 48,000 is not related to production, then the entire ₹ 48,000 shall be excluded.
3. As per Guidance Note on CAS-4 relating to Cost of Production for Captive Consumption, Job Work Charges, including Consumables, Transport Charges, Handling Charges to be treated as part of Cost of Materials. In case of Wooden Boxes and other such items having longer process useful life, the cost should be spread over the useful life. However since the Useful Life for the Wooden Boxes are not mentioned in the question, it is assumed that either the Amortized Value relevant to the period (or) the Hire Charges for such Wooden Boxes are only given. Hence, fully included in Cost.
4. It is assumed that the Manufacturer does not have any other CENVAT Credit other than those specified above.

Question 1 (b): Customs – Assessable Value and Duty Payable 5 Marks

15,000 Chalicees were imported for charitable distribution in India by XY Charitable Trust. The Trust did not pay either for the Cost of Goods or for the Design and Development Charges, which was borne by the Supplier. Customs Officer computed its FOB Value at USD 20,000 (including Design and Development Charges), which was accepted by the Trust. Other details obtained were as follows:

Particulars		Amount
1	Freight Paid (Air) (in USD)	4,500
2	Design & Development Charges paid in USA (in USD)	2,500
3	Commission Payable to an Agent in India (in ₹)	12,500
4	Exchange Rate and Rate of Basic Duty notified by CBEC is as follows:	
	Date of Bill of Entry 08-09-2015	BCD 20% Exchange Rate in ₹ 60
	Date of Entry Inward 30-09-2015	BCD 30% Exchange Rate in ₹ 62
	While the Inter-Bank Rate was 1 USD = ₹ 63	
5	Additional Duty Payable u/s 3(1) of the Customs Tariff Act, 1975	12%
6	Additional Duty Payable u/s 3(5) of the Customs Tariff Act, 1975	4%
7	Cess as applicable	

Compute the Assessable Value and Amount of Total Customs Duty payable under the Customs Act, 1962. Make suitable assumptions where required. Working Notes should form part of your answer.

Solution: Refer Page 8.3, Para 8.2.2, Valuation under Customs, and Illustrations thereto in Page 8.11

Computation of Assessable Value and Duty Payable

Particulars		Amount
	FOB Value of Goods in USD [Note 1]	\$ 20,000
	FOB Value in INR (\$ 20,000 x ₹ 60) [Note 2]	₹ 12,00,000
Add:	Commission Payable to Agent in India [Note 3]	₹ 12,500
	FOB Value as per Customs	₹ 12,12,500
Add:	Air Freight [Note 4]	₹ 2,42,500
	Insurance Charges [Note 5]	₹ 13,641
	CIF Value in Rupees	₹ 14,68,641
Add:	Landing Charges at 1% of CIF Value [1% × 14,68,641]	₹ 14,686
	Assessable Value	₹ 14,83,327
Computation of Duty and Cess Payable		
(a)	BCD at 30% on AV = 30% on ₹ 14,83,327 [Note 6]	₹ 4,44,998
(b)	ACD u/s 3(1) of Customs Tariff Act, 1975 at 12% = (₹ 14,83,327 + ₹ 4,44,998) × 12%	₹ 2,31,399
(c)	Total of BCD and ACD = (b) + (c)	₹ 6,76,397

B. Amount of Credit to be reversed

Particulars	I Availment	II Availment
1. Date of Availment	24.08.2013	01.04.2014
2. Date of Sale / Removal	16.12.2015	16.12.2015
3. No. of Quarters between Date of Availment and Date of Removal	4 + 4 + 2 = 10	4 + 3 = 7
4. Total Amount availed (50% of ₹ 1,23,600 each)	80,340	80,340
5. Less: 2.5% per quarter from the date of taking the CENVAT Credit	(20,085) (80,340 × 2.5% × 10)	(14,060) (80,340 × 2.5% × 7)
6. Net CENVAT for Reversal	60,255	66,280
7. Total CENVAT for Reversal	₹ 1,26,535	
8. CENVAT Reversal based on Transaction Value (₹ 10,00,000 × 12.5%)	₹ 1,25,000	
9. Hence the amount to be reversed (higher of above)	₹ 1,26,535	

Question 1 (d): Service Tax – RWA – Valuation and ST Liability **5 Marks**

A Resident Welfare Association (RWA) collects the following amounts from its 100 Members for the month of October 2015. Determine the taxability or otherwise of the following amounts and compute Service Tax Payable by the RWA.

Particulars	₹
Contribution from 20 Residents of ₹ 3,500 each	70,000
Contribution from 80 Residents of ₹ 6,500 each	5,20,000
Collection towards payment of Electricity Bills of Residents for 20 Residents as per bills submitted	76,000
Collection in respect of Electricity Bill issued in the name of RWA towards electricity consumption for common use	48,000
RWA has purchased maintenance items from a Factory which has suffered Excise Duty @ 12.5% on goods valued	50,000
Service Provider has charged Service Tax at 14% separately on the value of his Services billed at	1,00,000

Provide brief notes and explanations for your answer.

Solution:

Refer Page 15.12, Para 15.4.8, and Illustrations thereto

Refer Service Tax on RWA Provisions of Circular No.175/01/2014–ST, dt 10.01.2014 in above page.

Computation of Service Tax Payable by a Resident Welfare Association (RWA) for October 2015

Particulars	₹	Reasoning
1. Contribution from 20 Residents of ₹ 3,500 each	NIL	Contribution upto ₹ 5,000 p.m. per Member is exempt. If Contribution upto ₹ 5,000 p.m, the entire amount is taxable.
2. Contribution from 80 Residents of ₹ 6,500 each	5,20,000	
3. Collection towards payment of Electricity Bills of Residents for 20 Residents as per bills submitted	NIL	Expenditure or Costs incurred by a RWA as a Pure Agent of the Members, is excluded from the Value of Taxable Services. Hence, Members' EB Collections are excluded, Common Use EB Collections are taxable.
4. Collection towards payment of Electricity Bills issued in the name of RWA for common use	48,000	
Total Value of Taxable Services	5,68,000	Assumed that RWA is not a Service Provider under Notfn. 33/2012–ST and so, Threshold Exemption ₹ 10 Lakhs is not considered.
Service Tax at 14% = [₹ 5,68,000 × 14%]	79,520	Swachh Bharat Cess 0.5% not considered.
Less: CENVAT Credit		Assumed that both the Inputs and Input Services are utilized in relation to provision of Output Services by the RWA to its Members.
(a) On Inputs = ₹ 50,000 × 12.5%	(6,250)	
(b) On Input Services = ₹ 1,00,000 × 14%	(14,000)	
Net Service Tax Payable	59,270	

Question 2 (a): Excise – SSI Exemption Eligibility **4 Marks**

S & Co., a Small Scale Industry (SSI), provides the Total Value of Clearances during the Financial Year 2014–2015 as ₹ 870 Lakhs (including VAT ₹ 50 Lakhs). Total Value of Clearances includes the following items:

	Particulars	₹ Lakhs
1.	Total Exports (including for Nepal and Bhutan ₹ 200 Lakhs	500
2.	Clearances of Excisable Goods without payment of duty to a unit in Software Technology Park	20
3.	Job work under Notification No. 84/94–CE dated 11–04–1994	50
4.	Job work under Notification No.214/86–CE dated 25–03–1986	50
5.	Clearances of Excisable Goods bearing brand name of Khadi and Village Industries Commission	200

Determine the eligibility for exemption based on value of clearances for the Financial Year 2015–2016 in terms of Notification No. 8/2003–CE dated 01–03–2003. Make suitable assumptions and provide reasons for your answer.

Solution: Refer Page 5B.14, Para 5B.3.5 Principles, Same Illustration in Page 5B.25 [N 09 Qn]

1. Determination of Turnover for Financial Year 2014–2015

Description	₹ Lakhs	Reasoning for Exclusion
Total Value of Clearances including VAT	870.00	
Less: VAT	(50.00)	VAT is excluded from Turnover.
Export to Countries other than Nepal and Bhutan	(300.00)	Exports to Countries other than Nepal and Bhutan are to be excluded for ₹ 400 Lakhs Limit. [See Note (b)]
Clearances to unit in STP	(20.00)	Clearances of Excisable Goods to a unit in STP are excluded.
Job–work in terms of Notfn.214/86	(50.00)	Job work amounting to manufacture done under specified
Job–Work in terms of Notfn.84/94	(50.00)	Notification are to be excluded.
Turnover under Notfn. 8/2003	400.00	

Note:

- (a) Clearances of Excisable Goods bearing Brand Name of Khadi & Village Industries Board is eligible for SSI Exemption.
- (b) w.e.f. 01.03.2012 Export to Nepal will be treated as Normal Export. However, SSI Notification has not been amended. Hence, it is to be included for determining ₹ 400 Lakhs Limit, till SSI Notification is suitably amended.

2. **Conclusion:** Value of Clearances has not exceeded ₹ 400 Lakhs. So, the Unit can avail SSI Exemption for FY 2015–2016.

Question 2 (b)(i): Service Tax – Intellectual Property Services

4 Marks

Madhuban Services (P) Ltd is engaged in dealing and providing services on Intellectual Properties. During the month ended 30–09–2015, the Company transacted with the following activities for consideration at arm's length with its customers:

Particulars	₹
Permanent transfer of designs to XYZ manufacturers	1,20,000
Allowing Srikant to use patents (for 6 months) that are registered in Indonesia	60,000
It acquires technology & skill from Sam Peters of England by paying and R&D Cess of 5% on import consideration	25,00,000
It also temporarily transfers Original Dramatic Works covered u/s 13(1)(a) of the Indian Copyright Act, 1957	10,00,000

Determine the Service Tax payable on the above transactions, with appropriate notes to substantiate your stand.

Solution: Refer Page 12.14, Para 12.4.1 Principles, and Illustrations thereto

Computation of ST Payable by Madhuban Services (P) Ltd for the month ended 30th September

Particulars	₹	Reason / Calculation
A. As Service Provider		
1. Permanent Transfer of Designs to XYZ Manufacturers	Nil	Not taxable , since only temporary transfer of IPR is covered u/s 66E(c) as Declared Service.
2. Allowing Srikant to use Patents (for 6 months) that are registered in Indonesia	60,000	Sec.66E(c) does not specify any condition regarding the law under which IPR is to be registered. So, such temporary transfer of IPR will be taxable since POPS is in India, i.e. location of Service Receiver is in India.
3. Temporary Transfer of Original Dramatic Works covered u/s 13(1)(a) of the Indian Copyright Act, 1957	Nil	Such Dramatic Works covered u/s 13(1)(a) of Indian Copyright Act, 1957 is specifically exempt under S.No.15 of Notfn. 25/2013–ST. So, not taxable.
Gross Value of Taxable Services	60,000	
Service Tax Payable at 14%	8,400	Assuming Small Service Provider Exemption under Notfn. 33/2012–ST is not applicable.

Particulars	₹	Reason / Calculation
B. As Service Receiver: Acquiring Technology & Skill from Sam Peters of England by paying R&D Cess 5% on import consideration	25,00,000	Taxable, under Reverse Charge, since Services received from Non-Taxable Territory, assuming such Technology is acquired under temporary transfer.
Service Tax Payable at 14%	3,50,000	
Less: R & D Cess @ 5% on 25,00,000	(1,25,000)	Notfn.14/2012-ST exempts ST on IPR Services to the extent of R&D Cess paid, subject to conditions.
Net Service Tax Payable	2,25,000	
Total Service Tax Payable by Assessee (A+B)	2,33,400	

Question 2 (b)(ii): Service Tax – Forex Dealer – Taxable Value of Services **4 Marks**

In the following independent cases, find out Taxable Value of Services provided by M/s. RS Sons, a Partnership Firm, which is a registered Service Provider as Foreign Exchange Dealer (Purchaser and Seller of Foreign Currency):

- (a) US \$ 2,000 are purchased from Mr. John on 2nd September at the rate of ₹ 63 per US \$. The Reserve Bank of India Reference Rate of each US \$ is ₹ 65.50 for that day.
- (b) ₹ 1,40,000 is converted into Great Britain Pound (GBP) on 15th September and the Exchange Rate offered is ₹ 70 per GBP.

Solution: Refer Page 14.12, Para 14.3.2 Principles, and Illustrations thereto [M 15 Similar Qn]

Case	Principle	Computation	Amount
(a)	Taxable Value = No. of Currencies Exchanged × (Buying Rate – RBI Reference Rate)	2,000 USD × (65.50 – 63.00)	₹ 5,000
(b)	Since RBI Reference Rate is not available, Value shall be 1% of the Gross Rupee Value Exchanged.	1% of ₹ 1,40,000	₹ 1,400

Question 2 (c): Customs – Refund Eligibility **4 Marks**

Mr. N has imported 1000 units of an article “ZEP”, which has been valued at ₹ 1,150 per unit. The Customs Duty on this article has been assessed ₹ 250 per unit and paid by Mr. N. He adds his profit margin ₹ 350 per unit and sells the article for ₹ 1,750 per unit.

After one month of sale of whole units of article “ZEP”, Mr. N found that there was an error in assessment resulting in excess collection of ₹ 100 per unit is liable to be refunded by Department. Mr. N files an application and demands refund.

Calculate the amount of refund to be received by Mr. N. Also mention provisions of the Customs Act, 1962 related to refund in above-said situation.

Solution:

Issue	Answer	Reference
Refund Amount due	Refund Due = Given = ₹ 100 p.u. × 1,000 units = ₹ 1,00,000. It is assumed that relevant documentary evidences are provided by the Assessee.	Page 20.23, Para 20.2.6
Payee of Refund / Unjust Enrichment	<ul style="list-style-type: none"> Price of ₹ 1,750 = Cost ₹ 1,100 + Duty ₹ 250 + Profit ₹ 350. It is clear that the incidence of Customs Duty has been passed on by N to its Customers. Principle of Unjust Enrichment is applicable and Refund will not be given to N. Refund shall be credited to Consumer Welfare Fund, if there is no claim of refund directly from the customers of Mr. N. 	Page 20.18, Para 20.2.4, Para 20.2.5

Question 3 (a): Excise – Rule 18 – Simultaneous Rebate on Inputs and FG – Eligibility **4 Marks**

ABC Ltd manufactured M.M. Yarn by using duty paid Inputs and cleared the same for export on payment of Duty. It claimed Rebate of Duty paid by it on Inputs as well as of duty paid on Finished Goods under Rule 18 of the Central Excise Rules, 2002. The Department rejected the Rebate Claims on the ground that Rule 18 does not permit grant of Rebate of Duty paid on exported Finished Goods simultaneously with the Rebate of Duty paid on Inputs.

Based on case law, if any, explain whether Department's rejection of Rebate Claim is justified?

Solution: Refer Page 5D.12, Case Decision in Rajasthan Textile Mills 298 ELT 183 (Raj.)

1. **Nature of Rebate Claim – No Double Benefit:**

- U/r 18 of CER, grant of Rebate of Duty paid is available either on Excisable Goods or on Materials used in the Manufacture, / or Processing of such goods, i.e. on Raw Material or on Finished Goods.
- Thus, it is open to claim the benefit of Rebate either on Manufactured / Finished Goods or on Raw Material, but **not on both**.
- Since a combined Form ARE-2 can be used to claim both the benefits, i.e. Rebate on Finished Goods or on Inputs, it cannot be inferred out that the Rebate is available on both. **[Rajasthan Textile Mills 298 ELT 183 (Raj.)]**

2. **Conclusion:** By applying above principles in the given situation, the Department's rejection of Refund Claim is valid.

Question 3 (b)(i): Service Tax – Taxability of Services

6 Marks

Determine the Taxability or otherwise of the following services and work out the Service Tax Liability for the following services (SSI Exemption is not available to any of the service): [Assume all Services relate to October 2015]

	Particulars	₹
1.	Premium collected on IRDA approved Micro–Insurance Schemes with sum assured between ₹ 75,000 and ₹ 1,00,000	1,25,000
2.	Indian Tour Operators have received Service Fee for conducting tour outside India for Indian Tourists	2,25,000
3.	Consultancy Services provided to Govt for organizing water supply and sanitation to people in a village	4,00,000
4.	RBI receives services from outside India in relation to Management of Foreign Exchange Services	18,00,000
5.	Tirupati Temple provides Accommodation Services, which has a Declared Tariff of a unit of accommodation of ₹ 1,200 per day for 100 units	1,20,000
6.	Radio Taxis (non–air conditioned) for the purpose of other than Tourism	2,40,000

Solution:

	Taxability	Reference
1.	Exemption is available for IRDA–approved Life Micro–Insurance Product, having maximum cover of ₹ 50,000 only. Since sum assured in this case exceeds the limit, the Premium ₹ 1,25,000 is taxable. Hence, ST Payable at 14% = ₹ 17,500 [Assuming Rule 6(7) is not applicable.]	Page 15.34, Para 15.5.19, Item 8
2.	(a) As per POPS Rule 8, Service Provider and Service Receiver are in taxable territory, POPS is in India (Location of Service Receiver). (b) Taxable Value is 40% after abatement of 60% assuming conditions are satisfied. Hence, ST Payable = ₹ 2,25,000 × 40% × 14% = ₹ 12,600	Page 13.15, Para 13.2.9 & Page 15.26, Para 15.5.11
3.	Consultancy Services provided to Government is taxable. Hence, ST Payable = ₹ 4,00,000 × 14% = ₹ 56,000. [Exemption not available for Consultancy Services provided.]	Page 15.7, Para 15.4.1
4.	Services received by the RBI, from outside India in relation to Management of Forex Reserves are exempt. (Ntn No.6/2014–ST).	Page 15.9, Para 15.4.3
5.	(a) Accommodation Services provided by Guest Houses at declared tariff of a unit of accommodation less than ₹ 1,000 per day are exempt from ST. [Notfn No.6/2014–ST]. (b) Charitable Institution is also liable for ST on the above. [Tirumala Tirupati Devasthanams 30 STR 27 (AP)] (c) ST Payable (assuming Nil Abatement) = ₹ 1,20,000 × 14% = ₹ 16,800. [See Note below.]	Page 15.22, Para 15.5.9
6.	Radio Taxis are not included under Negative List items. Hence, this is taxable, after abatement of 60%. Hence, ST Payable = ₹ 2,40,000 × 40% × 14% = ₹ 13,440	Page 15.26, Para 15.5.12

Note: Abatement under Notfn.26/2012–ST of 60%, is applicable only for hiring out “Commercial Places”. Hence, Tirupati Temple providing Accommodation Services may not be eligible for the above abatement. Alternatively, if it is assumed that abatement is applicable, then ST Payable = ₹ 1,20,000 × 60% × 14% = ₹ 10,080.

Question 3 (b)(ii): Service Tax – Concept of EASIEST & CIN

2 Marks

Explain with reference to Service Tax – (1) EASIEST (Electronic Accounting System in Excise and Service Tax)
(2) CIN (Challan Identification Number)

Solution:

Refer Page 17.5, Para 17.2.2

Question 3 (c): Customs – Penalty Levy on Steamer Agent - Validity **4 Marks**

KRY Logistics Ltd, a Steamer Agent authored Import General Manifest and acted on behalf of the Master of the Vessel (the Person-in-Charge) before Customs Authorities to conduct all affairs in compliance with the Customs Act, 1962. The Steamer Agent filed Import General Manifest, affixed the seal on the containers and took charge of the sealed containers. It also dealt with the Customs Department for appropriate orders that had to be passed in terms of Section 42 of the Customs Act, 1962. Penalty u/s 116 of the Customs Act 1962 was imposed by the Department on the Steamer Agent for short landing of goods.

Examine with a decided case law, if any, whether the Department is justified in imposing a penalty on the Steamer Agent.

Solution: Refer Page 22.15, Case Decision in Caravel Logistics (P) Ltd 293 ELT 342 (Mad)

- Principle:** In case of short-landing of goods, if Penalty is to be imposed on the person-in-charge of Conveyance/Vessel, it can also be imposed on the Agent appointed by him. Hence, the duly appointed Steamer Agent of a Vessel, would be liable to Penalty. However, the Steamer Agent, if innocent, could work out his remedy against the Shipper for short-landing. **[Caravel Logistics (P) Ltd 293 ELT 342 (Mad)]**
- Conclusion:** In the above case, Penalty can be levied on the Steamer Agent, but he can claim his remedy from the Person-in-Charge (Shipper), for short-landing.

Question 4 (a): Excise – Exemption u/s 5A – Doctrine of Estoppel – Validity **4 Marks**

Central Government passed an order u/s 5A granting full exemption from payment of Excise Duty by issue of a Notification. AKS Co. (P) Ltd acted upon it while the Central Government passed a subsequent Notification imposing certain conditions to avail the benefits of Exemption Notification effective from a particular date. AKS Co. (P) Ltd challenged the curtailment of benefits on the ground that Doctrine of Promissory Estoppel was applicable and the benefits could not be curtailed by the Government without the authority of the Parliament. Discuss the issue with a suitable case law.

Solution: Refer Principles in Page 5B.6, Para 5B.2.3 and Page 6.12, Para 6.3.7

- Principles:**
 - A benefit given in a Notification for a certain period of time cannot be suddenly taken away. Such a change would alter the position of the Assessee's Investment, and hence the Government is bound to honour its promises.
 - The Doctrine of Promissory Estoppel is enforceable, and promises made by the Government cannot be breached based on mere conjectures, whims and absolute discretion. **[Unicorn Industries (2013) 290 ELT 495 (Del), Reckitt Benckiser (2011) 269 ELT 194]**
 - A legislature can make a law retrospectively or prospectively subject to justifiability and acceptability within Constitutional parameters. **[State of Rajasthan vs Basant Agrotech (India) Ltd 302 ELT 3 (SC)]**
- Conclusion:** Considering the above case decisions, the benefits cannot be curtailed without the authority of the Parliament in the above case.

Question 4 (b)(i): Service Tax – Exemption for SEZ's Authorised Operations **4 Marks**

Narikela Services (P) Ltd, a Developer of SEZ which is receiving services from another Service Provider for carrying out Authorized Operation in SEZ. Narikela Services (P) Ltd seeks advice regarding exemption and refund of service tax while carrying out such activities. Provide the required professional advice in this regard referring to the appropriate provisions under the Service Tax Law.

Solution: Refer Page 15.4, Para 15.3.1

Question 4 (b)(ii): Service Tax – Restaurant vs Outdoor Catering – Abatement Rate Validity **4 Marks**

Kalyani Hotels (P) Ltd. is of the opinion that the value of service provided in Restaurants and those provided in Outdoor Catering should be the same and therefore valuing them differently at 40% and 60% of the total amount respectively is incorrect. Discuss with an appropriate Case Law.

Solution: Case Decision in Tamilnadu Kalyana Mandapam Association vs UOI (2006) 4 STT (SC)

The Supreme Court clarified that "Restaurant Service" & "Outdoor Catering" are different due to the following reasons –

- In Outdoor Catering, the Food / Eatables / Drinks are the choice of the person who partakes the service, but in Restaurant Services, the choice is limited to the Menu provided.
- Negotiating power regarding the amount of service and price of the Service are different for the two services.
- Personalisation component is involved more in Outdoor Catering Service.

Effect: Thus, the Service element is more weighty, visible and pre-dominant in Outdoor Catering Service, and it cannot be treated in the same footing as Services in a Restaurant. Hence, the Parliament is competent to specify different taxable values for the two services.

Question 4 (c): Customs – Auction of Seized Goods – Refund with Interest **4 Marks**

Settlement Commission passed an order for release of seized goods of Mr. Banerjee. Since the goods were subject to deterioration, the Revenue informed the Commission that the seized goods had already been auctioned. The Commission, therefore, directed the Revenue to refund the amount remaining in balance after the application of sale proceeds as provided u/s 150(2) of the Customs Act, 1962. The Revenue refunded the principal amount of the sale proceeds without payment of Interest for the delay, on the premise that it did not represent duty or interest as contemplated u/s 27 and 27-A of the Customs Act. Reason out the action of the Revenue by supporting it with case law.

Solution: Refer Page 20.26, Case Decision in Vishnu M Harlalka 294 ELT 5 (Bom)

1. **Principle:** Interest is also payable on delayed refund of sale proceeds of auction of seized goods after adjustment of expenses and charges. [**Vishnu M Harlalka 294 ELT 5 (Bom)**]
2. **Conclusion:** Considering the above case decision, the Assessee is entitled for Interest in the above case.

Question 5 (a): Excise – Dutiability of Bagasse **4 Marks**

Briefly explain whether bagasse which is a marketable product but not a manufactured product can be subjected to excise duty? You may take the help of decided case law, if any.

Solution: Refer Page 2.14, Illustration (same as RTP Qn) Case Decision in Balrampur Chini Mills Ltd

1. **Principle:** Bagasse is an agricultural waste of sugarcane, it is a marketable product. However, Duty cannot be imposed thereon as it does **not** involve any manufacturing activity. [**Balrampur Chini Mills Ltd 300 ELT 372 (All.)**]
2. **Note: Contrary View** is given in **Deccan Sugar and Abkhari Co. 26 ELT 209 (Mad.)** [Refer Page 2.29]

Question 5 (b)(i): Excise – Rule 20 – Packing, etc. in Export Warehouse **4 Marks**

Discuss the procedure as specified under Rule 20 of Central Excise Rules, 2002, relating to packing, re-packing, labeling or re-labeling within the Warehouse in respect of Export Warehousing.

Solution: Refer Page 5C.11, Para 5C.4.4

Question 5 (b)(ii): Service Tax – Refund – Limitation Period for amount paid by mistake **4 Marks**

AKB Construction Ltd was a Construction Company rendering services under category of construction of Residential Complex Service and were paying Service Tax in accordance with the provisions of the Finance Act, 1994. They undertook certain construction work on behalf of a Trust and paid Service Tax accordingly. However, later they filed Refund Claim for the Service Tax so paid contending that they were not actually liable to pay Service Tax as it was exempt. Department also did not dispute the fact that service tax was exempted in the instant case.

However, the Refund Claim was rejected on the ground that same was filed beyond the limitation period provided in Sec.11-B of Central Excise Act, 1944.

Discuss whether the Department is justified in rejecting the Refund Claim. You may refer to decided case law, if any, in support of your answer.

Solution: Refer Page 20.19, Para 20.2.3, Case Decision in KVR Construction 26 STR 195 (Kar.)

1. **Principle:** Sec.11B of CEA apply to a Refund Claim of ED / ST only, and could not be extended to any other amounts collected without authority of law. In view of the above, it was held that Refund of an amount mistakenly paid as Service Tax could not be rejected on ground of limitation u/s 11B of CEA. [**KVR Construction 26 STR 195 (Kar.)**]
2. **Conclusion:** Considering the above case decision, the Assessee is entitled for Refund. Limitation does not apply.

Question 5 (c)(i): Customs – BCD vs ACD – Nature of Exemption **2 Marks**

Is it correct that “Goods exempted from Basic Customs Duty would automatically be exempt from Additional Duty of Customs”? Explain with reasons.

Solution: Refer Page 7.4, Para 7.2.6, Case Decision in Kaur Sarin Traders 199 ELT 224 (Pat).

Principle: When Goods are exempted from BCD u/s 12 of CUA, it would not mean that they are exempted from ACD u/s 3(1) also, as BCD is leviable u/s 12 of CUA while ACD is leviable u/s 3 of CTA. [**Kaur Sarin Traders 199 ELT 224 (Pat).**]

Question 5 (c)(ii): Customs – Power u/s 8A of CTA

2 Marks

Write a note on “Emergency Power to impose or enhance Import Duties under Sec.8A of the Customs Tariff Act”.

Solution:

Refer Page 7.14, Para 7.4.7 [Sec.8A Provisions]

Note: Internal Choice in Q.No.6(a). Any one set of Q.No.6(a)(i) & 6(a)(ii) is to be answered.

Question 6 (a)(i): Settlement Commission – Eligible Applicant

2 Marks

Holding Company in USA having its Subsidiary in India intends to make an application to Settlement Commission. Is it permissible?

Solution:

Refer Page 24.2, Para 24.2.1, 24.2.3.

1. **Principle:** If any proceeding of the Holding Company under CEA / CUA / any other Act for levy, assessment & collection of ED / Customs Duty, is pending before an Adjudicating Authority, on the date of the application, then it can make an Application the Settlement Commission.
2. **Conclusion:** If the Indian Subsidiary has any pending proceeding as above in its own right, it is eligible to make an application to the Settlement Commission.

Question 6 (a)(ii): Settlement Commission – Power to remand case back

2 Marks

Settlement Commission after having heard the Applicant, intends to send the case back to the Central Excise Officer for re-adjudication. Under what circumstances can it be done, if so?

Solution:

Refer Page 24.6, Para 24.3.3 – Powers of Settlement Commission

1. Settlement Commission has power to send a case back to the Excise / Customs Officer, if the Applicant has **not co-operated** with Settlement Commission.
2. All materials & evidences shall also be sent to the Adjudicating Authority. [**CEA S.32L, CUA S.127–I**]
3. Period from the date of application to the Commission and ending with the date of receipt of (referral back) order, shall be excluded in computing – (a) time limits for completing the assessment, and (b) interest.

Question 6 (a)(i): Excise – Powers of AC/DC – Writ Maintainability

2 Marks

Assistant Commissioner exercises his power delegated to him under a Notification and the Assessee is aggrieved and challenges the same through a Writ Petition. Explain whether the Petition so made will be successful.

Solution:

1. The Court **may** entertain a Writ Petition if it is of the opinion that the Authority acting under a Law does not have the power to issue the order.
2. In the instant case, the AC has exercised the power delegated to him under a Notification, and prima facie, he has the power to issue the order (of adjudication), and Writ Petition may not be maintainable in this regard.
3. As held in **Khanapur Taluka Co-op. Shipping Mills Ltd. 292 ELT 16 (Bom.)**, the High Court in exercise of writ jurisdiction could not interfere with the Order passed by the Adjudicating Authority, in certain cases.

Question 6 (a)(ii): Appeals – Additional Evidence – Opportunity to Adjudicating Authority

2 Marks

Commissioner (Appeals) has taken additional evidence, from the Assessee, without providing reasonable opportunity to the Adjudicating Authority or an Officer authorized in this behalf as the said Authority. What opportunity had to be provided as per law?

Solution:

Refer Page 23.5, Para 23.1.4 (Rights of Adjudicating Officer) Point 3

Question 6 (b)(i): Service Tax – Interest Payable by Assessee – Different Rates

4 Marks

Sudarsan Ltd was liable to make payment of Service Tax of ₹ 8,00,000 for the month of November 2014. However, it deposited it on 18.07.2015. Compute the amount of interest payable of Sudarsan Ltd u/s 75 of the Finance Act, 1994. Assuming –

1. The Value of Taxable Services provided by it during the preceding Financial Year was ₹ 52 Lakhs.
2. The Value of Taxable Services provided by it during the preceding Financial Year was ₹ 85 Lakhs.

Solution:

Refer Principles in Page 20.11, Para 20.1.9 and

Page 17.8, Para 17.2.6 & Illustrations thereto [N 14, N 12 Similar Qn]

Note: Here, the delay is from 6th Dec 2014 to 18th July 2015 = 25+31+28+31+30+31+30+18 = 224 days, and number of months = 8 months. Hence, Interest Rate shall be 18% for first six months period and 24% for the balance period.

Of the above days, 25+31+28+31+30+31 = 176 days fall in the first 6 months period and 48 days in the next period.

Particulars	Case 1	Case 2
Description	Value of Taxable Service is ≤ ₹ 60 Lakhs in the Preceding Financial Year	Value of Taxable Service is > ₹ 60 Lakhs in the Preceding Financial Year
1. Applicable Interest Rate [Reduced Rate applicable in Case 1]	First 6 months period: 15% Balance Period (upto 12 mths): 21%	First 6 months period: 18% Balance Period (upto 12 mths): 24%
2. Interest Computation:		
(a) First six months	₹ 8,00,000 × 15% × 176/365 = ₹ 57,863	₹ 8,00,000 × 18% × 176/365 = ₹ 69,436
(b) Next six months	₹ 8,00,000 × 21% × 48/365 = ₹ 22,093	₹ 8,00,000 × 24% × 48/365 = ₹ 25,249
Total Interest Payable	₹ 79,956	₹ 94,685

Alternative Computation (based on months/days)

Delay from 7th Dec 2014 to 6th June 2015 = 6 months, thereafter, delay = 7th June to 18th July = 23+18 = 41 days.

Particulars	Case 1	Case 2
Description	Value of Taxable Service is ≤ ₹ 60 Lakhs in the Preceding Financial Year	Value of Taxable Service is > ₹ 60 Lakhs in the Preceding Financial Year
1. Applicable Interest Rate [Reduced Rate applicable in Case 1]	First 6 months period: 15% Balance Period (upto 12 mths): 21%	First 6 months period: 18% Balance Period (upto 12 mths): 24%
2. Interest Computation:		
(a) First six months	₹ 8,00,000 × 15% × 6/12 = ₹ 60,000	₹ 8,00,000 × 18% × 6/12 = ₹ 72,000
(b) Next six months	₹ 8,00,000 × 21% × 41/365 = ₹ 18,871	₹ 8,00,000 × 24% × 41/365 = ₹ 21,567
Total Interest Payable	₹ 78,871	₹ 93,567

Question 6 (b)(ii): Service Tax – Declared Services - Taxability

4 Marks

State briefly, with reasons, whether the following transactions involve transfer of right to use goods for taxability as 'Declared Service' under Section 66(E) of the Finance Act, 1994.

1. A Car is given in hire by a person to a Company along with a Driver on payment of charges on per month/mileage basis.
2. Hiring of Bank Lockers.

Solution:

Same as Illustration in Page 12.16, Point 1 & 2

[Hint Answer: Yes in both cases.]

Question 6 (c): Customs – Licencing of Private Warehouses – Conditions

4 Marks

X Ltd has constructed a Warehouse nearby Notified Custom Station. It wants to get license for deposition of Imported Goods. Can X Ltd get license for its Warehouse for deposit of Imported Goods? Answer with reasons.

Also, if once license is granted to X Ltd, will it be renewed automatically after expiry of notified period?

Solution:

Refer Page 9.10, Para 9.3.3 (Licencing of Private Warehouses)

Note: If a licence is obtained, X Ltd has to apply for renewal after expiry of Notified Period.

Question 7 (a)(i): Excise – Audit Objection and Audit Para

4 Marks

Write short note on Audit Objection and Audit Para under the procedure of Excise Audit, 2000.

Solution:

**Audit Objection: Refer Page 5E.12, Para 5E.4.2, Points 14 & 15,
Audit Para: Page 5E.13, Para 5E.4.3**

Question 7 (a)(ii): Waiver of Warehousing – Procedures

4 Marks

Explain the procedures to be followed for waiver of Warehousing.

Solution: Refer Page 5C.11, Para 5C.4.6, (Waiver of Physical Warehousing)

Question 7 (b)(i): Service Tax – Recovery of Dues from Successor of Business

2 Marks

Explain briefly the provisions relating to recovery of Service Tax dues of the Predecessor from the Assets of the Successor purchased from the Predecessor under Section 87(c) of the Finance Act, 1994.

Solution: Refer Page 20.12, Para 20.1.10, Point 3(d)

Question 7 (b)(ii): AAR – Eligible Applicant

2 Marks

Who can apply for Advance Ruling under Sec.96–A in respect of a question of law or fact regarding the liability to pay Service Tax in relation to a proposed service?

Solution: Refer Page 19.1, Para 19.1 (Applicant)

Question 7 (c)(i): FTP – Deemed Exports

4 Marks

- (1) What do you mean by “Deemed Exports” under Foreign Trade Policy?
- (2) Mr. A manufactured goods in India and got a contract to supply Capital Goods within India to Z Export Ltd (holding license under Export Promotion Capital Goods Scheme). Due to some operational problem, Mr. A sub–contracted supply of Capital Goods to Mr. M with proper authorization from Z Export Ltd and included the name of Mr. M in the main contract of supply before he started supply of goods. Can Mr. M claim benefit of Deemed Export for supplies made to Mr. A? Explain with reasons.

Solution: Refer Page 11.15, Para 11.2.6

Point 3 – Meaning of Deemed Exports, Point 4(b) – Eligibility of Sub–Contractor for Deemed Export

Question 7 (c)(ii): Service Tax – Centralised Registration – Eligibility of Credit

4 Marks

Sham Lal Advertisers have obtained Centralized Registration under Service Tax law for the purpose of paying its taxes on services rendered. By virtue of this, it has obtained Service Tax Input Credit from different locations where the services are being rendered. Service Tax Officer is denying the credits obtained from different locations, while Sham Lal argues that he is eligible to do so, on account of Centralized Registration. Comment on the action of Sham Lal.

Solution: Case Decision in mPortal India Wireless Solutions Pvt. Ltd (2012) 27 STR 234 (Kar)

1. **Principle:** In case of common Centralised Registration, CENVAT Credit cannot be denied on the ground that the Office was not registered at all. It was an addition to their offices listed in the Certificate and is only for the purpose of information and Centralized Registration involves issue of a Single Registration Certificate. Therefore, it cannot be said that each unit is considered as registered separately in the absence of different Registration Certificates.
2. **Conclusion:** By applying the above decision, the Assessee is entitled to CENVAT Credit at different locations.