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Appendix

CMA Inter Gr. II (New Syllabus)

(Solution of December - 2014)

Paper - 11: Indirect Taxation

Chapter - 1: Canons of Taxation-Indirect Taxes

2014 - Dec [1] (a) Central sales tax.

Chapter- 2: Central Excise Act, 1944

2014 - Dec [1] (c), (d)

(c) No excise duty is payable by manufacturer as CBE & C has issued a Circular bearing number 961/04/2012-CX dated 26th March, 2012, wherein the 3rd para, it has been clarified that export to Nepal will continue to be permissible even when the export proceeds are paid in Indian Rupees as long as payment proceeds are in accordance with applicable RBI guidelines.

(d) SSI units registered under central excise have to file return quarterly in Form ER-3.

2014 - Dec [2] (c) Taxable event for levy of excise duty is date of manufacture of goods.

2014 - Dec [3] (a) (ii), (b) (i), (ii), (c) (ii), (iii)

(a) (ii) Excise duty shall be leviable on supplementary invoice on differential price.
Excise Duty Payable = $1,05,000 \times 12.36\%$
= 12,978.

(b) (i)

Sale Price	400
Less: Abatement 40%	<u>160</u>
	<u>240</u>
Value of Goods	= 2500 units @ ₹ 240
	= ₹ 6,00,000
Excise Duty Payable	= ₹ 6,00,000 × 12.36%
	= ₹ 74,160

- (ii) • Excise duty shall be excluded from computation of Assessable Value.
• Research & Development Cost shall be added.
• Administrative cost shall be added.
• Sale of scrap & value realised shall be deducted for computation.
• Cost incurred on major break down of Machinery shall not be considered for Assessable Value.
• Interest and finance cost shall not be considered for computation of Assessable Value.
- (c) (ii) In case of molasses, procurer of goods is liable to pay excise duty.
- (iii) **Remission of duty:** Where it is shown to the satisfaction of the Commissioner that goods have been lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as unfit for consumption or for marketing, at any time before removal, he may remit the duty payable on such goods, subject to such conditions as may be imposed by him by order in writing:
Provided that where such duty does not exceed ₹ 1,000, the provisions of this rule shall have effect as if for the expression "Commissioner", the expression "Superintendent of Central Excise" has been substituted:
Provided further that where such duty exceeds ₹ 1,000 but does not exceed ₹ 2,500, the provisions of this rule shall have effect as if for the expression "Commissioner", the expression "Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be," has been substituted:
Provided further that where such duty exceeds ₹ 2,500 but does not exceed ₹ 5,000, the provisions of this rule shall have effect as if for the expression "Commissioner", the expression "Joint Commissioner of Central Excise or Additional Commissioner of Central Excise, as the case may be," has been substituted.
In the second case where goods are cleared from factory and then destroyed by road accident, there is no provision for remission of duty.

Chapter- 3: Cenvat Credit

2014 - Dec [1] (e), (n)

- (e) Excise duty of ₹ 1,00,000 paid on input can be availed as cenvat credit as Cenvat is available on entire quantity of input even if part of input goes in process loss, since all inputs are used in the manufacture of final product, even if it is not reflected in the final product.
- (n) Yes company can claim cenvat credit of Service Tax charged by Auditor.

2014 - Dec [3] (a) (i) The CENVAT credit shall be allowed even if any inputs or capital goods as such or after being partially processed are sent to a job worker for further processing, testing, repair, re-conditioning or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose and it is established from the records, challans or memos or any other document produced by the manufacturer or provider of output service taking the CENVAT credit that the goods are received back in the factory within one hundred and eighty days of their being sent to a job worker and if the inputs or the capital goods are not received back within one hundred eighty days, the manufacturer or provider of output service shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods by debiting the CENVAT credit or otherwise, but the manufacturer or provider of output service can take the CENVAT credit again when the inputs or capital goods are received back in his factory or in the premises of the provider of output service.

2014 - Dec [4] (c) (ii) Cenvat credit can be claimed by Indian Manufacture is he gets FSD invoice from importer.

2014 - Dec [6] (c) (iv)

Service receiver can avail cenvat credit immediately on receipt of invoice.

Chapter- 4: Customs Law

2014 - Dec [1] (f),(g), (h), (j)

(f) Yes, as per customs act: "goods" includes:

- vessels, aircrafts and vehicles;
- stores;
- baggage;
- currency and negotiable instruments; and
- any other kind of movable property.

(g) Exchange rate to be considered for valuation of export good is 1 US \$ = ₹ 59.50.

(h) The rate of additional customs duty shall be 6% because according to Section 3(1) of customs tariff act, any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable, shall be calculated at that percentage of the value of the imported article.

(j) Duty Drawback = $120 \times 1,000 = ₹ 1,20,000$

But Duty Drawback shall not exceed

$$\begin{aligned} &= \frac{1}{3} \times \text{Market Price of Goods} \\ &= \frac{1}{3} \times 80,000 \\ &= 26,666. \end{aligned}$$

2014 - Dec [4] (a) (i), (ii), (b) (i), (ii), (c) (i)

- (a) (i) Interest rate on delayed payment of custom duty is 15% p.a. Interest is payable after 2 days from the date of out of charge given by customs.

$$\begin{aligned} \text{Interest payable} &= 1,00,000 \times 15\% \times \frac{10}{365} \\ &= 411 \end{aligned}$$

- (ii) Purposes for which goods were housed in customs warehouse are-
1. Fund not available to pay custom duty.
 2. Place for storage not available.

- (b) (i) The term dumping margin means "the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise."

(ii)

FOB	15,000 \$
Add: Air freight (Max. 20% of FOB)	3,000 \$
Add: Transit Insurance (1.125% × 15,000 \$)	168.75 \$
CIF	18168.75 \$
Add: CIF (in ₹)	₹ 10,90,125
Add: Landing charges 1%	10,901
Assessable Value	11,01,026

- (c) (i) The following export goods shall be liable to confiscation:
- (a) any goods attempted to be exported by sea or air from any place other than a customs port or a customs airport appointed for the loading of such goods;
 - (b) any goods attempted to be exported by land or inland water through any route other than a route specified in a notification issued under clause (c) of Section 7 for the export of such goods;
 - (c) any goods brought near the land frontier or the coast of India or near any bay, gulf, creek or tidal river for the purpose of being exported from a place other than a land customs station or a customs port appointed for the loading of such goods;
 - (d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
 - (e) any goods found concealed in a package which is brought within the limits of a customs area for the purpose of exportation;

- (f) any goods which are loaded or attempted to be loaded in contravention of the provisions of Sections 33 or 34;
- (g) any goods loaded or attempted to be loaded on any conveyance or water-borne or attempted to be water-borne for being loaded on any vessel, the eventual destination of which is a place outside India, without the permission of the proper officer;
- (h) any goods which are not included or are in excess of those included in the entry made under this Act or in the case of baggage in the declaration made under section 77:
 - (i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77;
 - (ii) any goods entered for exportation under claim for drawback which do not correspond in any material particular with any information furnished by the exporter or manufacturer under this Act in relation to the fixation of rate of drawback under section 75;
- (i) any goods on which import duty has not been paid and which are entered for exportation under a claim for drawback under section 74;
- (j) any goods cleared for exportation which are not loaded for exportation on account of any willful act, negligence or default of the exporter, his agent or employee, or which after having been loaded for exportation are unloaded without the permission of the proper officer;
- (k) any specified goods in relation to which any provisions of Chapter IVB or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.

Chapter- 5: Exim Policy

2014 - Dec [1] (i) Opinion of Chairman, CBEC about interpretation of a provision in Foreign Trade Policy will be final & binding.

2014 - Dec [3] (c) (i)

Assessable Value	200
Customs Duty (50% of 10% i.e. 5%)	10
Assessable Value for CVD	210
CVD	25.2
2% Education Cess on CVD	0.504
1% SHEC	0.252
Total Customs Duty	25.956
2% Education Cess on Total Customs Duty	0.519
1% SHEC	0.26
Total Duty Payable	26.735

2014 - Dec [5] (a) (i), (ii), (b), (c)

(a) (i) Advance authorisation can also be issued for annual requirement. Status certificate holder and all other categories of exporters having past export performance (in preceding two years) shall be entitled for advance authorisation for annual requirement.

Entitlement in terms of CIF value of imports shall be upto 300% of the FOB value of physical export and/or for value of deemed export in preceding licensing year or ₹ 1 crore, whichever is higher.

(ii) An exporter can file an application for fixation of Brand Rate or a special brand rate, as the case may be, within 30/60 days of export date.

(b) Features of Served from India Scheme

(1) Objective: Objective is to accelerate growth in export of services so as to create a powerful and unique 'Served from India' brand, instantly recognized and respected world over.

(2) Eligibility: All Service Providers, who have a total free foreign exchange earning of at least ₹ 10 Lakhs in preceding financial year shall qualify for Duty Credit scrip. For Individual Service Providers, minimum would be ₹ 5 Lakhs.

(3) Entitlement: All Service Providers (except Hotels, Restaurants and other Service Providers in Tourism Sector) shall be entitled Duty Credit scrip equivalent to 10% of free foreign exchange earned during preceding financial year.

(4) Remittances: Free foreign exchange earned through International Credit Cards and other instruments as permitted by RBI for rendering of service shall also be taken into account for computation of Duty Credit scrip.

(5) Imports Allowed: Duty Credit scrip may be used for import of any capital goods including spares office equipment and professional equipment, office furniture and consumables; that are otherwise freely importable under ITC (HS). Imports shall relate to any service sector business of applicant. Utilization of Duty Credit scrip earned shall not be permitted for payment of duty in case of import of vehicles, even if such vehicles are freely importable under ITC (HS).

(6) Non-Transferability: Entitlement / goods (imported / procured) shall be non-transferable (except within group company and managed hotels) and be subject to Actual User condition.

(7) Procurement from Domestic Sources: Utilization of Duty Credit scrip shall be permitted for payment of excise duty in terms of DoR notification issued in this behalf, for procurement from domestic sources of items permitted under import allowed.

- (c) The following categories of supply of goods by the main/ sub-contractors shall be regarded as "Deemed Exports" under this Policy, provided the goods are manufactured in India:
- (a) supply of goods against Advance Licence/DFRC under the Duty Exemption /Remission Scheme;
 - (b) supply of goods to Export Oriented Units (EOUs) or units located in Export Processing Zones (EPZs) or Special Economic Zones (SEZs) or Software Technology Parks (STPs) or to Electronic Hardware Technology Parks (EHTPs);
 - (c) supply of capital goods to holders of licences under the Export Promotion Capital Goods (EPCG) scheme;
 - (d) supply of goods to projects financed by multilateral or bilateral agencies/funds as notified by the Department of Economic Affairs, Ministry of Finance under International Competitive Bidding in accordance with the procedures of those agencies/ funds, where the legal agreements provide for tender evaluation without including the customs duty;
 - (e) supply of capital goods, including in unassembled / disassembled condition as well as plants, machinery, accessories, tools, dies and such goods which are used for installation purposes till the stage of commercial production and spares to the extent of 10% of the FOR value to fertiliser plants.
 - (f) supply of goods to any project or purpose in respect of which the Ministry of Finance, by a notification, permits the import of such goods at zero customs duty coupled with the extension of benefits under this chapter to domestic supplies;
 - (g) supply of goods to the power and refineries not covered in (f) above and coal, hydrocarbon, rail, road, port, civil aviation, bridges and other infrastructure projects provided minimum specific investment is ₹ 100 crores or more;
 - (h) supply of marine freight containers by 100% EOU (Domestic freight containers–manufacturers) provided the said containers are exported out of India within 6 months or such further period as permitted by the Customs; and
 - (i) supply to projects funded by UN agencies.

Chapter- 6: Service Tax

2014 - Dec [1] (k), (l), (m), (o)

- (k) Kamal should apply for registration under service tax within 30 days from date on which value of service rendered exceeds ₹ 9 lakhs. i.e. within 30 days from 01.08.2014.
- (l) ABC Co. can revise the return on or before 23rd July 2014 since ST return can be revised if there is any mistake or omission in the original return within 90 days from the date of submission of original return.

- (m) If the assessee is unable to determine his ST liability on account of reasons other than interpretation of law, taxability, classification, valuation or applicability of any exemption notification, then assessee can pay ST on a higher side (Safer side) to avoid interest liability and if subsequently the service tax paid is found to be in excess then excess amount of the ST shall be allowed to be adjusted against ST liability for the succeeding month or quarter.
- (o) Service Tax Payable = $12.36\% \times 6 \text{ lac}$
 = ₹ 74,160.

2014 - Dec [6] (a) (i), (ii), (iii) (b) (i), (ii), (iii) (c) (i), (ii), (iii)

(a) (i)

Output Service Tax	
(30,00,000 × 12.36% + 15,00,000 × 6%)	4,60,800
Less: Input tax credit	<u>1,00,000</u>
Service Tax Payable	<u>3,60,800</u>

In order to reduce service tax payable, i.e. to utilise more cenvat credit, separate set of accounting need to be made for input service used for taxable service and exempted service.

- (ii) Service tax would be leviable as the service is being provided in India even if the tour is outside India. Contention of Mr. Jairam is incorrect.
- (iii) All services provided by an educational institution in relation to education is not taxable.
- (b) (i) It is essential to understand the conceptual difference between 'non-taxability' of services covered by the 'Negative List' and 'non-taxability' arising in respect of 'exempted services'. At first glance, whether the service is covered by the 'Negative List' or by an exemption notification, both appear to be sitting at par in as much as service tax is not payable in either case. However, dig deeper and the distinction becomes clear. The services specified in the 'Negative List' (Section 66D) are excluded from the scope of levy through charging Section 66B itself. Hence, such services are 'non-taxable' per se. This 'non-taxability' is akin to 'non-excisability' that arises in the context of Central Excise when, in a given case, the twin-tests of 'manufacture' and 'marketability' are not satisfied. On the other hand, a service which is exempted by an exemption notification does not become 'non-taxable', that is, it does not go outside the purview of levy of tax. It remains 'taxable' (just like an 'excisable but exempted product') but is freed from the burden of service tax for the time being in view of the exemption notification. It may be remembered that 'exemption follows the levy but it does not determine nor precede the levy'. Whereas an exemption notification can be withdrawn or amended by the Central

Government under its delegated powers at any time so as to subject the exempted service to the payment of service tax, the amendment to 'Negative List' would require legislative sanction which generally happens only through the Finance Act.

(ii) Examples of 'intermediary services':

- Travel Agent (any mode of travel)
- Tour Operator
- Commission agent for a service [an agent for buying or selling of goods is excluded]
- Recovery Agent.

(iii) Service Tax Payable = $12,00,000 \times 12.36\%$
= 1,48,320

(c) (i) Rate of service tax would be 12%, due date of payment of Service tax is 5th/6th October.

(ii) No, Service tax is payable on salary paid to whole time director.

(iii) With effect from 01.07.2012, the Central Government has notified the new partial reverse charge mechanism for the payment of Service tax in respect of certain taxable services. Under this, a portion of Service tax is payable by Service Receiver who satisfy certain requirements. Security agency is one such service where partial reverse charge is applicable.

Service Provided by Security agency in relation to the security of any property, whether movable or immovable or of any person, in any manner and includes the services of investigation, detection or verification of any fact or activity.

- Under Reverse charge mechanism if Service is provided by individual/Firm/HUF/AOP to a body corporate registered under Companies Act, 1956 and/or Companies Act, 2013 to the extent applicable, then Service Provider shall pay Service tax to the extent of 25% and Service Receiver has to pay to the extent of 75%. In all other cases, Service Provider has to pay 100% Service tax.
- Service Receiver (Body corporate) cannot take the benefit of Small Services Provider exemption (Notification No. 33/2012). However, this exemption shall continue to be applicable to Service Provider.
- Service Receiver cannot utilize the available Cenvat Credit for paying Service tax under reverse charge.
- Service Receiver (Body corporate) can take the Cenvat Credit of entire Service tax paid (by Service Provider + Service Receiver under reverse charge mechanism) on the basis of invoice issued by Security Agency and challan through which Service tax has been deposited.

- In invoice, Service Provider shall mention the bill amount and the Service tax applicable to SP + SR and also divide the Service tax in the invoice proportionately.
- The Service Receiver shall deduct TDS at applicable rate on total bill (Bill amount + service tax amount applicable to SP) and make payment to Service Provider.

Chapter - 7: Adjudication, Penalties and Appeals in Indirect Taxes

2014 - Dec [1] (b) An assessee aggrieved with the order can file appeal against order of CESTAT (Tribunal).

2014 - Dec [3] (a) (iii) No, he can not approach Settlement Commission as the excise duty was confirmed against him by Commissioner (Appeals).

Chapter- 8: State Level VAT

2014 - Dec [1] (r) Tax on Declared Goods cannot exceed 4% within the state Section 15(a).

2014 - Dec [2] (a), (b)

(a) Sale of software & sale of food is liable for State Vat and levy of Service Tax.

(b) Sale of newspaper is not liable for levy of sales tax whether VAT or CST.

2014 - Dec [7] (a) (ii), (c) (i)

(a) (ii) **Taxable turnover:**

	Contract price	1,00,000
Less:	Cost of Labour	25,000
	Cost of other services	10,000
	Cost of consumables	5,000
	Taxable T/O	<u>60,000</u>
	Vat O/P (14.5%)	8,700
Less:	Input tax credit on materials	1,450
	On capital goods	<u>1,000</u>
	Vat payable	<u><u>6,250</u></u>

(c) (i) Zero-rated supplies are taxable supplies subject to VAT at zero percent. Exempt supplies are not taxable for VAT purposes and therefore do not form part of a business VAT-related enterprise.

With both zero-rated sales and exempt sales you don't charge VAT. For zero-rated sales you are eligible to claim a tax credit for the input tax paid on your purchases; whereas for exempt sales you are not eligible to claim a tax credit for the input tax paid on your purchases relating to such exempt sales.

Exempt supplies include certain financial services, the supply of residential accommodation, certain educational services and the transport of fare-paying passengers by road or rail. A business making only exempt supplies does not carry on an enterprise for VAT purposes and may therefore not register as a VAT vendor.

Chapter- 9: Central Sales Tax Act, 1956

2014 - Dec [1] (p), (q)

(p) CST Payable = 20 lac × 2% = 40,000

Input Tax Credit available = 40,000.

(q) Turnover (often called 'taxable turnover') is defined under section 2(j) as aggregate of the sale prices received and receivable by the dealer in respect of sales of any goods in the course of inter-State trade or commerce made during any prescribed period and determined in accordance with provisions of Central Sales Tax Act and Rules.

The 'aggregate sale price' i.e. total sale price for the prescribed period, is assumed as inclusive of Central Sales Tax and backward calculation is made.

2014 - Dec [7] (a) (i), (b) (i), (ii), (c) (ii)

(a) (i) **Purpose for which Goods can be purchased under concessional rate [Ref; Sec. 8(3)]**

(i) Goods as being intended for re-sale.

(ii) For use in the manufacture or processing of goods for sale.

(iii) For use in telecommunication network or in mining; or

(iv) For use in generation or distribution of electricity or any other form of power.

(v) Container or other materials intended for the packing of goods for sale (i.e. primary packing materials).

(vi) Container or other materials used for packing of any goods mentioned in para (i) or (iv) above (i.e. Secondary packing materials).

(b) (i) As per Section 8(1)(b) of CST Act, 1956 sales tax liability on inter-state sales is @ 2% or 'rate of tax for sale within State' whichever is lower, provided such sale is affected to a registered dealer and goods are covered in the registration certificate of the purchasing dealer. Otherwise the rate of tax would be the rate which is applicable on the goods sold within that State.

Thus, CST rate @ 2% (i.e. concessional rate) can be claimed if:

(i) Sale has been made to registered dealer; and

(ii) Goods sold are covered in the Registration Certificate (RC) of the buying dealer.

Hence, the applicable tax rate will be the VAT rate in both the cases as follows:

- (a) 1%
(b) 15%.

(ii) Sale is made against C forms, hence rate of CST = 2%.

Trade commission / trade discount to be excluded from sale price.

Freight, transport & installation is includible only if it is not separately charged in invoice.

Hence,

Sales = 2,29,50,000

Freight included in value is already included in above figure.

+ Insurance for transport of machinery 75,000

Sales Value = 2,30,25,000

CST not shown separately

$$\therefore \text{CST} = 2,30,25,000 \times \frac{2}{102} = 4,51,471$$

(c) (ii) **Provisions:** Exemption to penultimate sale is available subject to the conditions that the penultimate sale (i.e., last but one sale before export sale) is:

- For the purpose of complying with export order in relation to export.
- Such penultimate sale is made after the export order in relation to export.
- The same goods which are purchased in penultimate sale must be sold as exports, and
- The dealer claiming the benefit of Sec. 5(3) should obtain Form H declaration from the exporter. The details in Form H prove *prima facie* that conditions of Section 5(3) have been fulfilled.

Chapter-10: International Taxation and Transfer Pricing

2014 - Dec [1] (s), (t)

(s) Advance Pricing Agreement for some set of transactions at issue over a fixed period of time (called covered transaction).

(t) 5%.

2014 - Dec [8] (a) (i), (ii), (b), (c)

(a) (i) The said service would be called erection, commissioning and installation service.

- (ii) (a) ALP would be US \$ 120 per piece.
(b) ALP would be US \$ 180 per piece.

- (b) In case of a transaction which is covered by DTAA, provisions of Income Tax Act will not apply. Therefore, the income would be exempt.
- (c) Safe Harbour Rule applies to circumstances under which the income-tax authorities shall accept the transfer pricing declared by the assessee. It is not arm's length price but in the nature of presumptive taxation.

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