

Solved  
Scanner

**Appendix**  
**CS Prof. Prog. M - III (New Syllabus)**  
(Solutions of December - 2014)

**Paper - 7: Advance Tax Laws and Practice**

**Chapter - 1: Taxation of Individuals, Partnership Firm/LLP and Companies**

**2014 - Dec [1] (b), (c)**

**(b) (i)** Computation of Total Income and Income Tax Payable for Assessment Year 2014-15.

	₹
As per the normal provision of the Act	
Profits & Gains of business or Profession (Total)	72,00,000
Less: Deduction under section 80-IB	<u>58,00,000</u>
Total income	<u>14,00,000</u>
Tax payable @ 30%	4,20,000
Add: EC @ 2% SHEC @ 1%	<u>12,600</u>
Tax Payable	<u>4,32,600</u>

**(ii)** Computation of Alternate Minimum Tax (Amount)

	₹
Profits & Gains of business or profession	14,00,000
Add: Deduction under section 80 IB	<u>58,00,000</u>
Adjusted Total Income	<u>72,00,000</u>
AMT @ 18.5%	13,32,000
Add: EC @ 2% & SHEC @ 1%	<u>39,960</u>
	<u>13,71,960</u>

Here, as per Section 115JC, Since, the income tax payable as per normal provisions of the Income Tax Act is less than the AMT, the LLP would be liable to pay ₹ 13,71,960 as tax.

(c)

**1. Calculation of tax liability u/s 115 JB:**

Particulars	Details	Amount
Book profit	Given	60,00,000
Tax liability	18.5% of 60 lakh	11,10,000
Add: Surcharge		NIL
Tax liability after surcharge		11,10,000
Add: Edu. cess & SHEC @ 3%		33,300
Tax liability after cess		<u>11,43,300</u>

**2. Calculation of tax liability as per Income Tax Act, 1961:**

Particulars	Details	Amount
Total income	Given	12,00,000
Tax liability	30% of 12 lakh	3,60,000
Add: Edu. cess & SHEC @ 3%		10,800
Tax liability after cess		<u>3,70,800</u>

**3. Computation of final tax payable:**

Particulars	Details	Amount
Tax liability	Tax liability u/s 115J B> Normal Tax liability	11,43,300
Actual Tax liability		11,43,300

The company is eligible for MAT tax credit of ₹ 7,72,500 (₹ 11,43,300 - ₹ 3,70,800) which can be carried forward for 10 years or is to be awaited within 10 years u/s 115 JAA.

**2014 - Dec [2A] (Or)**

- (i) A company, having distributable reserves, has two options to distribute the same to its shareholders either by declaration and payment of dividends to the shareholders or by way of purchase of its own shares (i.e. buy back of shares) at a consideration fixed by it. In the first case, the payment by company is subject to DDT and income in the hands of shareholders is exempt. In the second case the income is taxed in the hands of shareholder as capital gains. Unlisted Companies, as part of tax avoidance scheme, are resorting to buy back of shares instead of payment of dividends in order to avoid payment of tax by way of DDT particularly where the capital gains arising to the shareholders are either not chargeable to tax or are taxable at a lower rate.

In order to curb such practice the Act has amended the Act, by insertion of new Chapter XII-DA, to provide as under:

**(1) Tax on distributed income to shareholders [Section 115QA]**

**(A) Additional income tax on buy back of shares [Section 115QA(1)]**

(i) In addition to the income tax payable by the company on its total income as per the provisions of the Act, the domestic company shall be liable to pay additional income tax @ 20% on any amount of distributed income paid by the company on buy back of shares not being shares listed on a recognised stock exchange.

(ii) Rate of additional income tax is 20%+10%SC+3%Cess i.e. 22.66%

**(B) Additional income tax payable even if the total income of domestic company is exempt [Section 115QA(2)]**

Notwithstanding that no income tax is payable by a domestic company on its total income computed in accordance with the provisions of this Act, the tax on the distributed income under section 115QA(1) shall be payable by such company.

**(C) Time limit for deposit of additional income tax [Section 115QA(3)]**

The principal officer of the domestic company and the company shall be liable to pay the tax to the credit of the Central Government within 14 days from the date of payment of any consideration to the shareholders on buy back of shares referred to in Section 115QA(1).

**(D) Additional income tax to be treated as final payment [Section 115QA(4)]**

The tax on the distributed income by the company shall be treated as the final payment of tax in respect of the said income and no further credit therefore shall be claimed by the company or by any other person in respect of the amount of tax so paid.

**(E) Income charged to tax not allowed as deduction [Section 115QA(5)]**

No deduction under any other provision of this Act shall be allowed to:

(a) the company; or

(b) a shareholder

In respect of the income which has been charged to tax under section 115QA(1) or the tax thereon.

**(2) Interest payable for delayed payment of tax [Section 115QB]**

Where the principal officer of the domestic company and the company fails to pay the whole or any part of the tax on the distributed income referred to in Section 115QA(1), within the time allowed under section 115QA(3) of that section, he or it shall be liable to pay simple interest @ 1% for every month

or part thereof on the amount of such tax for the period beginning on the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.

**(3) When company is deemed to be assessee in default [Section 115QC]**

If any principal officer of a domestic company and the company does not pay tax on distributed income in accordance with the provisions of Section 115QA, then, he or it shall be deemed to be an assessee in default in respect of the amount of tax payable by him or it and all the provisions of this Act for the collection and recovery of income tax shall apply.

**Exemption to the shareholder on account of buy back of shares [Section 10(34A)] [W.e.f. A.Y. 2014-15]**

Since, the company has to pay additional income tax on buy back of shares, any income arising to an assessee, being a shareholder, on account of buy back of shares (not being listed on recognised stock exchange), shall be exempt.

- (ii) Where a reference under section 92CA(1) is made, an order under section 92CA(3) may be made at any time before 60 days prior to the date on which the period of limitation referred to in Section 153, or as the case may be, in Section 153B for making the order of assessment or re-assessment or re-computation or fresh assessment, as the case may be, expires.
- (iii) The date of installation of machinery or plant costing more than 100 crores for investment allowance @ 15% u/s 32AC extended to 31.03.2017 and 15% shall also be allowed to any assessee who installed new asset of 100 crore or less but more than 25 crores in any previous year upto 31.03.2017.
- (iv) Where maturity amount is received by the legal heir on the death of employee under keyman insurance policy, then such amount is taxable as Income from other sources in the hands of recipient.

**Chapter - 2: International Taxation**

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

**(a) Rule 10B (1) (b) of Income Tax Rules, 1962 prescribes Resale Price Method by which:**

- (i) The price at which property purchased or services obtained by the enterprise from an associated enterprise is resold or are provided to an unrelated enterprise is identified;
- (ii) Such resale price is reduced by the amount of a normal gross profit margin accruing to the enterprise or to an unrelated enterprise from the purchase and resale of the same or similar property or from obtaining and providing the same or similar services, in a comparable uncontrolled transaction or a number of such transactions;

- (iii) The price so arrived at is further reduced by the expenses incurred by the enterprise in connection with the purchase of property or obtaining of services;
- (iv) The price so arrived at is adjusted to take into account the functional and other differences, including differences in accounting practices, if any, between the international transaction and the comparable uncontrolled transactions or between the enterprises entering into such transactions, which could materially affect the amount of gross profit margin in the open market;
- (v) The adjusted price arrived at under sub-clause (iv) is taken to be an arms length price in respect of the purchase of the property or obtaining of the services by the enterprise from the associated enterprise.

**(b) The application will be filed in the following Forms:**

**Form 34C:** Applicable for a non-resident applicant.

**Form 34D:** Applicable for a resident having transactions with a non-resident.

**Form 34E:** Applicable for the notified residents.

**Chapter - 3: Tax Planning and Tax Management**

**2014 - Dec [1] (a)**

Particulars	Alt 1 ₹	Alt 2 ₹	Alt 3 ₹
Share Capital	50,00,000	20,00,000	10,00,000
Debenture @ 14%		20,00,000	15,00,000
Loans from bank @ 18%		10,00,000	25,00,000
	50,00,000	50,00,000	50,00,000
Expected rate of return before tax - 30%			
Rate of dividend - 22%			
Rate of return before tax	15,00,000	15,00,000	15,00,000
Less: Dividend @ 22% paid	11,00,000	4,40,000	2,20,000
	4,00,000	10,60,000	12,80,000
Less: Debenture @ 14% paid	-	2,80,000	2,10,000
	4,00,000	7,80,000	10,70,000
Less: Loan from bank @ 18%	-	1,80,000	4,50,000
	4,00,000	6,00,000	6,20,000

Less: Tax paid on dividend distribution tax @ 15% Including 5% Surcharge 2% Edu. Cess 1% SHEC	1,78,200	71,280	35,640
Total @ 16.20%	2,21,800	5,28,720	5,84,360
Income Tax paid by Co. @ 30%	66,540	1,58,616	1,75,308
	1,55,260	37,0104	4,09,052

Answer : Company may opt alt III

2014 - Dec [2] (c), (d)

(c) **Determination of Fair Market Value (FMV) of ESOPs on the date of exercise of option:**

(i) **Where shares in the company are listed on a single stock exchange:**

FMV will be average of opening and closing prices of shares on the date of exercise of option.

If on the date of exercise of option there is no trading in shares, the FMV shall be the closing price of the share on any recognised stock exchange on a date closest to the date of exercise of option and immediately preceding such date of exercise of option.

(ii) **Where shares in the company are listed on more than one recognised stock exchange:** FMV will be average of opening and closing price of shares

on the date of exercise of option on a recognised stock exchange which records the highest volume of trading in the shares.

If on the date of exercise of option there is no trading in shares, the FMV shall be the closing price of the share on a recognised stock exchange which records the highest volume of trading on a date closest to the date of exercise of option and immediately preceding such date of exercise of option.

(iii) **Where shares in the company are not listed on a recognised stock exchange:** FMV will be value on a "specified date" as determined by a Category I merchant banker registered with SEBI.

Specified date means the date of exercise of option or any date earlier than the date of exercise of option, not being a date which is more than 180 days earlier than the date of exercise of option.

**Notes:**

(i) **Period of Holding [Section 2(42A)]:** In the case of a capital asset, being any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer free of cost or at concessional rate to his

employees (including former employee or employees), the period shall be reckoned from the date of allotment or transfer of such specified security or sweat equity shares.

- (ii) **Cost of Acquisition [Section 49(2AA)]:** Where the capital gain arises from the transfer of specified security or sweat equity shares referred to in Section 17(2)(vi), the cost of acquisition of such security or shares shall be the FMV which has been taken into account for the purposes of the said section.

**(d) Objectives of Tax Planning**

1. Reduction of tax liability
2. Minimisation of litigation
3. Productive Investment
4. Healthy growth of economy
5. Economic stability.

**Chapter - 5: Central Excise Law**

**2014 - Dec [3] (a), (d)**

- (a) Cost of production is required to be computed as per CAS-4, Material Cost is required to be exclusive of Cenvat Credit available.

Particulars	₹
1. Material consumed (Net of excise duty) $16,854 - 1,854 = 15,000$	15,000
2. Cost of direct employees	12,300
3. Consumable stores & repairs	8,400
4. Quality control cost	4,300
5. Research & Development	2,700
6. Administrative cost	4,500
Total	47,200
7. Less: Scrap value realised	1,500
8. Cost of production for goods produced for captive consumption	45,700
9. Add: 10% as per Rules 8	4,570
10. Assessable Value	50,270

- (d) As per section 11E of the Central Excise Act, 1944, any duty, penalty, interest or any other sum payable by assessee or any person shall be first charge on the property of assessee or such person. However, such first charge shall be save as otherwise provided in the following:
- (a) Dues under the Section 529A of Companies Act, 1956
  - (b) Recovery of Debt Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act) and
  - (c) Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) [parallel section 11E of Central Excise Act – parallel Section 88 of Financial Act, 1994 and Section 142A of Customs Act introduced w.e.f. 8-4-2011]

Thus, if any of the aforesaid three Acts specifically provide for priority of dues under that Act over tax dues, provisions of that Act will prevail. Otherwise, first charge of tax dues will prevail.

Only Section 529A of Companies Act, 1956 provides for *pari passu* charge with secured creditors. RDDBFI Act or SARFAESI Act do not provide overriding effect to dues of banks and financial institutions over tax dues.

Hence, in the given case, amount due to Government is first charge on property of assessee.

**2014 - Dec [4] (a)**

Waste like MS scrap generated during maintenance and repairs work is not excisable when assessee is not involved in manufacture of iron and steel products and no credit was taken on items used in repair and maintenance.

Hence, in the given case, the contention of the Department is correct.

**Case Law:** [*Orissa Bridge & Construction Corpn v. CCE* (2011)]

**2014 - Dec [5] (a), (b)**

**(a) Exempted Goods v. Nil Rated Goods:** Exempted goods means goods exempted by a notification under section 5A of the Central Excise Act. But goods removed under bond are not exempted goods. Exempted goods are basically leviable goods. Fully exempted goods may become dutiable at the time of removal if the exemption is withdrawn by that time. For example, in *Wallace Floor Mills Co. Ltd. v. CCE 1989 (44) ELT 598*, when the goods were manufactured and packed they were fully exempt from duty. At the time of removal of goods from factory, the exemption was withdrawn. The Supreme Court held that the goods are dutiable and hence duty is payable.

The above land mark ruling established the point that dutiability is finally determined at the time of removal and not at the time of manufacture though the



taxable event is manufacture. In other words, rate of duty prevailing at the time of removal and not at the time of manufacture, is relevant.

But same is not the case with NIL rated goods. When goods carry nil rate at the time of manufacture, they continue to be nil and no duty is payable on them unless there is a subsequent change in the tariff rate. Subsequent change may have immediate effect by virtue of Provisional Collection of Taxes Act, 1931.

- (b) In respect of textile products falling under heading 61, 62, 63 person who is getting the goods manufactured on job work basis will be liable to pay excise duty under rule 4(1A) of Central Excise Rules, inserted w.e.f. 1.3.2011. Such person (who is getting goods manufactured) will be 'manufactured' and eligible for SSI exemption – Explanation (i) to SSI exemption Notification No. 18/2003-CE dated 1.3.2001 inserted w.e.f. 1.3.2011.

### Chapter - 6: Customs Law

2014 - Dec [3] (e)

#### Calculation of amount of duty payable:

Exchange rate of \$ 1 = ₹ 60	
CIF Value (800 metric tonnes × ₹ 160 × ₹ 60)	= ₹ 76,80,000
Add: Landing Charges 1% on CIF	= ₹ <u>76,800</u>
Assessable value	= ₹ <u>77,56,800</u>
10% Basic Customs duty on ₹ 77,56,800	= ₹ 7,75,680
Add: Education cess @ 2% on ₹ 7,75,680	= ₹ 15,514
Add: SHEC @ 1% on ₹ 7,75,680	= ₹ <u>7,757</u>
Total custom duty payable	= ₹ <u>7,98,951</u>

**Notes:** more than one transaction value for identical goods are given, we are supposed to take the lowest price of the quantity which is nearest to the quantity of import.

2014 - Dec [4] (b)

**Anita Grover Versus Commissioner of Central Excise and ORS. – Customs – Delhi High Court – HC – Tax defaulter – former director in the company – government dues under the Customs Act, 1962 – Held that:** Considering the provisions of Section 142 & Relevant Rules it is only the defaulter against whom steps may be taken under Rules. The defaulter is the person from whom dues are recoverable under the Act, which in the present case undoubtedly is the company. There is no averment that the company has been or is being wound up. In that case, there cannot be any question about the separate juristic personality of an existing company and its former director, the dues recoverable from the former cannot, in the absence of a statutory provision, be recovered from the latter. There is no provision in the Customs Act, 1962 corresponding to Section 179 of the Income Tax Act, 1961 or Section 18 of the Central

Sales Tax, 1956 which enable the revenue authorities to proceed against directors of companies or such like third parties who are not defaulters – As decided in UOI vs. M.D. Lotlikar [1987 (11) TMI 24 – BOMBAY HIGH COURT] the directors of any company, whether public limited or private, are not personally liable for the debts of the company unless the Company Court finds them guilty of any misfeasance or wrongs – Thus the impugned notices and action of the Customs authorities in the present case is at once in utter violation of Article 265 of the Constitution, as it seeks to recover tax dues of one from another, without authority of law.

**2014 - Dec [4A] (or) (ii) (a) & (b), (c)**

**(a)&(b)** Where in the case of any imported goods, whether dutiable or not, entered for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied on the application of the importer that the goods cannot be cleared within a reasonable time, the goods may, pending clearance, be permitted to be stored for a period not exceeding 30 days in a public warehouse or in a private warehouse if facilities for deposit in a public warehouse are not available; but such goods shall not be deemed to be warehoused goods for the purposes of this Act and accordingly the provisions of Chapter IX shall not apply to such goods. The commissioner may further extend by a period of 30 days at a time.

**(c)** Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption.

Where the importer fails to pay the import duty within 2 days excluding holidays from the date on which the bill of entry is returned to him for payment of duty, he shall pay interest at such rate, not below 10% and not exceeding 36% per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, on such duty till the date of payment of the said duty.

If the Board is satisfied that it is necessary in the public interest so to do, it may, by order for reasons to be recorded, waive the whole or part of any interest payable under this section.

**2014 - Dec [5] (c)**

**The value of the imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include:**

- (a) the cost of transport of the imported goods to the place of importation;
- (b) loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation; and
- (c) the cost of insurance actually incurred

**The following points shall also be considered while determining the assessable value:**

- (i) Where the cost of transport is not ascertainable, such cost shall be 20% of the free on board value of the goods. In the case of goods imported by air, even where the cost of transportation is ascertainable, such cost shall not exceed 20% of free on board value of the goods;
- (ii) where the cost of insurance is not ascertainable, such cost shall be 1.125% of free on board (FOB) value of the goods;
- (iii) loading, unloading and handling charges shall be 1% of the free on board (FOB) value of the goods + the cost of transport + cost of insurance i.e. CIF Value.

**Computation where FOB value and Cost of Insurance & Transport not ascertainable:**

Where the free on board value of the goods is not ascertainable, then

- Costs of transportation shall be 20% of the FOB value of the goods + cost of insurance and
- Cost of insurance shall be 1.125% of the free on board value of the goods + cost of transport.

**Chapter - 7: Advance Ruling, Settlement Commission and Appellate Procedure 2014 - Dec [4A] (or) (i) (a), (b), (c)**

- (a) Revision application to Central Govt. in case of duty drawback
- (b) Appeal to High Court on a question of law and also to Supreme Court (by permission of High Court or SLP)
- (c) Revision application to Central Govt. in case of loss of goods in transit

**Chapter - 9: Service Tax: Introduction and Administration 2014 - Dec [3] (b)**

	₹
1. Sale of time for advertisement to be broadcast on radio	65,000
2. Sale of time for advertisement to be broadcast on T.V. Channel	1,00,000
	1,65,000
Service tax @ 12%	
Add: Edu. cess @ 2%	
Add: SHEC @ 1%	
Total: @ 12.36%	20,394

Therefore, Service tax liability is ₹ 20,394/-

**Note:**

Section 66 D (g) of Finance Act, 1994 [negative list of services] as amended by Finance (No. 2) Act, 2014 w.e.f. 01-10-2014 reads as follows – ‘Selling of space for advertisement in print media’.

Section 66D(g) of Finance Act, 1994 [negative list of services] was reading as follows upto 01-10-2014 – ‘selling of space or time slots for advertisements other than advertisement broadcast by radio or television’.

Thus, only sale of space in print media will be in negative list of w.e.f. 01-10-2014 i.e. will not be taxable. Other, advertisements will be subject to service tax w.e.f. 01-10-2014

Till 01-10-2014, service tax was payable only on advertisement on radio or TV.

Sale of space in print media, bill boards, public places, buildings, conveyances, cell phones, ATM, internet was presently not taxable upto 01-10-2014. Aerial advertising was also not taxable.

However, after 01-10-2014, these advertisements will also be subject to service tax.

#### **Chapter - 10: Procedural Aspects and Adjudication Under Service Tax 2014 - Dec [4] (c)**

In the case of **Mr. P. k. Kasliwal vs Mr. Sarvesh Jain, 2014**, High Court held that before finally concluding the judgement, we would like to observe that it is a case of peculiar nature which is brought to our notice that initially the stay order was passed by the Tribunal of pre deposit on certain conditions granting waiver of pre deposit after detailed discussion on 20.9.2012 and after the notice came to be served by the department on 3.1.2014 much prior thereto application was filed by the petitioner 30.10.2013 before the Tribunal seeking extension of stay granted on 20.9.2012 and knowing it fully well that application is coming up before the Tribunal on 23.1.2014 such hasty steps by service of notice u/s 87(b) of the Finance Act, 1944 on 21.1.2014 freezing the bank account of the petitioner pursuant to notice 3.1.2014 and to recover the amount by debiting the petitioner's bank account on 22.1.2014 i.e. a day prior to the date i.e. 23.1.2014 on which date the application for extension was coming up before the Tribunal cannot be appreciated and it tantamount to overreaching the process of law which cannot be approved by this Court.

We, however, make it clear that we are not examining the matter on merits and what is being observed by us is only confined to the disposal of the present writ petition and the Tribunal may not be influenced/inhibited by the observations made or considered in any collateral proceeding pending in any court of law or before adjudicating authority and the tribunal may decide the pending dispute independently and it is also expected that pending appeal of the petitioner may be decided expeditiously in accordance with law. Consequently, the writ petition succeeds and stands allowed. The notice issued u/s 87(b) of the Finance Act, 1944 21.1.2014 and further action debiting the petitioner's Bank Account 22.1.2014 are hereby quashed and set aside and the respondents are directed to refund the amount which was debited on 22.1.2014 from the petitioner's bank account within 2 weeks.

Hence, in the given case, the contention of the company is legal.

**2014 - Dec [4A] (or) (iii) (a), (b)**

- (a) The rate of service tax, value of a taxable service and rate of exchange, if any, shall be the rate of service tax or value of a taxable service or rate of exchange, as the case may be, in force or as applicable at the time when the taxable service has been provided or agreed to be provided.
- (b) As per Section 77(1)(a) of Finance Act, 1994, if a person who is liable to pay service tax or required to take registration, fails to take registration in accordance with the provisions of Section 69 or rules, he shall be liable to pay a penalty which may extend to ₹ 10,000.

**2014 - Dec [5] (e)**

Point of Taxation where Service is Taxed First Time (Rule 5)

**Where a service is taxed for the first time, then:**

- (a) no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;
- (b) no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within 14 days of the date when the service is taxed for the first time.

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

**Payment of Service Tax**

Rule 6(1) of the Service Tax Rules, 1994 specifies the time period for payment of service tax regarding partnership firms:

The service tax shall be paid to the credit of the Central Government by the 5<sup>th</sup> of the month immediately following the respective quarter in which service is deemed to have been provided as per POT Rules made in this regard.

Where payment is made through internet banking, such e-payment can be made by 6<sup>th</sup> of the month immediately following the respective quarter.

However, for the quarter ending 31<sup>st</sup> March, the due date of payment of service tax shall be 31<sup>st</sup> March.

As stated earlier, partnership firms whose aggregate value of taxable services provided from one or more premises is ₹ 50 lakhs or less in the previous financial year, the service provider shall have option to pay the service tax on receipt basis by the due dates upto ₹ 50 lakhs in the current financial year.

**Chapter - 11: Goods and Service Tax-Concept and Developments****2014 - Dec [6] (a)**

The Constitution provides for delineation of power to tax between the Centre and States. While the Centre is empowered to tax services and goods upto the production stage, the States have the power to tax sale of goods. The States do not have the powers to levy a tax on supply of services while the Centre does not have power to levy tax on the sale of goods. Thus, the Constitution does not vest express power either in the Central or State Government to levy a tax on the 'supply of goods and services'. Moreover, the Constitution also does not empower the States to impose tax on imports. Therefore, it is essential to have Constitutional Amendments for empowering the Centre to levy tax on sale of goods and States for levy of service tax and tax on imports and other consequential issues.

Hence, the 115<sup>th</sup> Constitutional Amendment Bill, 2011 ("Bill") was tabled before the Parliament by the Finance Minister on March 22, 2011. The Bill proposes to amend the Constitution to empower the Union and States to frame laws for levying goods and service tax ("GST") on transactions involving supply of goods and services.

**Chapter - 12: Value Added Tax: Introduction and Procedural Aspects****2014 - Dec [3] (c)**

Inputs	Amount (₹)	VAT (₹)	Total (₹)
1% VAT purchases	40,00,000	40,000	40,40,000
4% VAT purchases	60,00,000	2,40,000	62,40,000
12.5% VAT purchases	10,00,000	1,25,000	11,25,000
<b>Total</b>	<b>1,10,00,000</b>	<b>4,05,000</b>	<b>1,14,05,000</b>

Sales	Amount (₹)	VAT (₹)	CST (₹)	Total (₹)
4% VAT sales	20,00,000	80,000	-	20,80,000
Exempted sales	10,00,000	-	-	10,00,000
2% CST sales	10,00,000	-	20,000	10,20,000
<b>Total (a)</b>	<b>40,00,000</b>	<b>80,000</b>	<b>20,000</b>	<b>41,00,000</b>

Sales	Amount (₹)	VAT (₹)	CST (₹)	Total (₹)
1% VAT sales	44,00,000	44,000	-	44,44,000
12.5% VAT sales	12,00,000	1,50,000	-	13,50,000
<b>Total (b)</b>	<b>56,00,000</b>	<b>1,94,000</b>	<b>-</b>	<b>57,94,000</b>
<b>Gross Amount (a+b)</b>	<b>96,00,000</b>	<b>2,74,000</b>	<b>20,000</b>	<b>98,94,000</b>

Eligible Input tax credit on 4% VAT purchases is ₹ 1,80,000 (i.e. 2,40,000 – 60,000) only.

(i.e.  $2,40,000 \times 10,00,000/40,00,000 = ₹ 60,000$ )

**Adjustment of input tax credit against VAT payable on sales:**

	₹
VAT payable on sales	2,74,000
Less: Input Tax Credit	
1% VAT purchases	= ₹ 40,000
4% VAT purchases	= ₹ 1,80,000
12.5% VAT purchases	= ₹ 1,25,000
	3,45,000
Excess Input Tax Credit	71,000
	₹
2% CST payable on inter state sales	20,000
Less: Excess Input Tax Credit	(71,000)
Excess Input Tax Credit	(51,000)

**Note:** if such excess credit remains un-utilized till the time as specified in State VAT Act, then it will be refundable.

**2014 - Dec [5] (d)**

Zero Rating means that the tax payable on sale of a commodity is fixed at 0%. Though apparently, it looks similar to an exempted transaction, there is a significant difference between the two. While in an exempted transaction, the tax paid on input lapses i.e. it cannot be set off, under the Zero rated sales, prior stage tax is set off against the 0% tax paid and effectively the entire tax paid on purchases is eligible for refund. Thus, 'Zero Rating' is advantageous to the dealer compared to 'exempting' of sale transactions. Generally, export sales are zero rated and thereby, exporters are granted refund of taxes paid by them on their inputs. Exporters gain significantly due to the 'Zero Rating'.

**2014 - Dec [6] (b)**

Input tax credit is generally given for the entire VAT paid within the state on purchases of taxable goods meant for resale or manufacture of taxable goods. However, generally no credit is available in respect of purchases given below:

- (i) Goods purchased from unregistered dealers;
- (ii) Goods purchased from registered dealers who opt for composition scheme;
- (iii) Goods purchased from other states or countries;
- (iv) Purchases of goods used in manufacture of exempted goods;
- (v) Purchases of goods used in manufacture of goods to be dispatched outside any state as branch transfer or consignments;
- (vi) Purchases of goods in cases where the dealer does not have invoices showing amounts of tax charged separately by the selling dealer;

- (vii) Purchase of goods used for personal purposes/consumption or provided free of charge or gifts.
- (viii) Purchase of goods where the purchase invoice is not available with the claimant.
- (ix) Goods purchased are given away as free samples;
- (x) Goods purchased are destroyed by fire or are stolen or lost;
- (xi) Goods purchased and returned within the specified period;
- (xii) Purchase of automobiles and its spare parts and accessories by a person other than a dealer.

**Shuchita Prakashan (P) Ltd.**  
25/19, L.I.C. Colony, Tagore Town,  
Allahabad - 211002  
*Visit us: [www.shuchita.com](http://www.shuchita.com)*

