Test Series: February, 2016

MOCK TEST PAPER – 1

FINAL COURSE: GROUP – II

PAPER – 8: INDIRECT TAX LAWS

SUGGESTED ANSWERS / HINTS

1. (a) Computation of assessable value of the excisable goods

	Rs.	Rs.
Contracted sale price		9,00,000
Less: Excise duty (Note – 1)	1,11,200	
VAT (Note – 1)	37,000	
Octroi (Note – 1)	9,500	
Actual freight from "place of removal" to buyer premises (Note – 2)	42,300	
		2,00,000
Assessable value		7,00,000

Notes - In the given question, for the purpose of determining the assessable value of the excisable goods:-

1. the duty of excise, sales tax and other taxes, if any, actually paid or payable on the excisable goods have to be excluded [Section 4(3)(d) of the Central Excise Act, 1944].
2. the cost of transportation from the place of removal up to the place of delivery of the excisable goods has to be deducted [Rule 5 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000].
3. the cost of transportation, worth Rs. 20,000, from the factory to the place of removal would not be excluded [Explanation 2 to rule 5 of the Valuation Rules].
4. cost of packing, Rs. 3,000 and Rs. 7,000 would not be deducted. In this regard, it has been clarified that as per section 4 of the Central Excise Act, 1944, packing charges would form part of the assessable value whether packing is ordinary or special, or primary or secondary *[Circular no. 354/81/2000 dated 30/6/2000].*
5. The cost of moulds and dies used in the production of the goods, supplied by buyer, worth Rs. 4,000 would not be deducted [Explanation 1 to rule 6 of the Valuation Rules].

(b) Computation of service tax liability of Healthy Agro Industries Ltd. for the month of September, 20XX

Particulars	Rs.
Supply of farm labour [Note 1]	Nil
Warehousing of refined vegetable oil [Note 2]	1,25,000
Sale of wheat on commission basis [Note 3]	Nil
Trucks given on hire for transport of minerals [Note 4]	2,50,000
Leasing of vacant land to a stud farm [Note 5]	30,000
Renting of farmhouse for marriage and birthday parties [since not used for agricultural purposes]	45,000
Dehusking of paddy in rice mill [Note 6]	Nil
Total taxable services	4,50,000
Service tax payable @ 14% [Rs. 4,50,000 × 14%] [Note 7]	63,000

Notes:

1. Supply of farm labour is covered in negative list of services under services relating to agriculture or agricultural produce and thus, will not be liable to service tax [Section 66D(d)(ii) of the Finance Act, 1994].

2. Since refined vegetable oil is not an agricultural produce, warehousing thereof will not be covered under negative list of services [Section 65B(5) read with section 66D(d)(v) of Finance Act, 1994].

3. Since, wheat is an agricultural produce, services provided for its sale on commission basis will be covered in negative list of services and thus, will not be liable to service tax [Section 65B(5) read with section 66D(d)(vii) of Finance Act, 1994].

4. Transfer of goods (trucks) by way of hiring without transfer of right to use such goods is a declared service as per section 66E(f) of the Finance Act, 1994 and hence, will be liable to service tax.

5. Services relating to agriculture or agricultural produce by way of renting or leasing of vacant land are covered in the negative list of services. However, since rearing of horses is specifically excluded from the definition of agriculture, leasing of vacant land to stud farm will not be covered thereunder [Section 65B(3) read with section 66D(d)(iv) of Finance Act, 1994].

6. Carrying out an intermediate production process (dehusking of paddy) as job work in relation to agriculture is exempt from service tax *[Notification No. 25/2012 ST dated 20.06.2012]*.

7. Since service tax of Rs. 3,18,000 had been paid during the preceding financial year, aggregate value of taxable services would have been more than Rs. 10,00,000 during the preceding financial year. Hence, small service provider's exemption under *Notification No. 33/2012 ST dated 20.06.2012* cannot be availed.

(c) Computation of assessable value of the imported goods

		US $
(i)	Cost of the machine at the factory	10,000.00
(ii)	Transport charges up to port	500.00
(iii)	Handling charges at the port	50.00
	FOB	10,550.00
(iv)	Freight charges up to India	1,000.00
(v)	Insurance charges @ 1.125% of FOB [Note 1]	118.69
	CIF	11,668.69
	CIF in Indian rupees @ Rs. 60/ per $	Rs. 7,00,121.40
(vi)	*Add:* Landing charges @ 1% of CIF [Note 1]	Rs. 7,001.21
	Assessable Value	Rs. 7,07,122.61
	Assessable Value (rounded off)	Rs. 7,07,123

Notes:

(1) Insurance charges and landing charges have been included @ 1.125% of FOB value of goods and 1% of CIF value of goods respectively [First proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

(2) Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

2. (a) Calculation of service tax and total amount payable under rule 6(3)(i) of the CENVAT Credit Rules, 2004

Particulars	Amount (Rs.)
Service tax payable on taxable services (Rs. 70,00,000 × 14%)	9,80,000
Amount payable @ 7% of value of exempt services under rule 6(3)(i) (Rs. 30,00,000 × 7%) [Note (1)]	2,10,000

Total	11,90,000

Particulars	Service tax and amount payable under rule 6(3)(i) [Rs.]
Amount payable (A)	9,80,000+ 2,10,000 = 11,90,000
Less: CENVAT credit (B)	6,00,000
Net amount payable = (A) - (B)	5,90,000

Amount payable in cash = Rs. 5,90,000

(b) Due date for payment of service tax for the month of January, 20XX 06.02.20XX

Date when service tax was actually paid 15.08.20XX

Section 75 of Finance Act, 1994 levies simple interest on failure to pay service tax by the prescribed due date for the period by which such crediting of tax or any part thereof is delayed.

Notification No. 12/2014 ST dated 11.07.2014 prescribes following rates of interest for delayed payment of service tax:

Extent of delay	Simple interest rate per annum
Up to 6 months	18%
More than 6 months & upto 1 year	18% for first 6 months, and 24% for the period of delay beyond 6 months
More than 1 year	18% for first 6 months, 24% for second 6 months, and 30% for the period of delay beyond 1 year

Such rate of interest shall be reduced by 3% per annum in case of a service provider whose turnover does not exceed Rs. 60 lakh during any of the years covered by the notice or during the preceding financial year.

Hence, in the given case, the concessional rates of interest will be available to PQR Services Ltd. as its turnover was Rs. 55.40 lakh in the preceding financial year.

Period	Rate of interest	Delay	Interest (Rs.)
07.02.20XX to 06.08.20XX	15%	6 months	6,00,000 × 15% × 6/12 = 45,000
07.08.20XX to 15.08.20XX	21%	9 days	6,00,000 × 21% × 9/365 = 3,106 (rounded off)
Total interest (rounded off)			48,106

If the value of taxable services provided by PQR Services Ltd. in the last financial year is Rs. 80.90 lakh (i.e. more than Rs. 60 lakh), interest payable will be computed as follows:-

Period	Rate of interest	Delay	Interest (Rs.)
07.02.20XX to 06.08.20XX	18%	6 months	6,00,000 × 18% × 6/12 = 54,000
07.08.20XX to 15.08.20XX	24%	9 days	6,00,000 × 24% × 9/365 = 3,551 (rounded off)
Total interest (rounded off)			57,551

(c) (i) Invalid. As per section 61 of the Customs Act, 1962, warehousing period for goods other than capital goods intended to be used in 100% EOU is three (3) years and not five (5) years.

(ii) Invalid. As per section 61(2)(ii) of the Customs Act, 1962, where any warehoused goods (not intended for being used in 100 % EOU) remain in a warehouse beyond a period of ninety days, interest is payable for the period from the expiry of said ninety days till the date of payment of duty on the warehoused goods. Section 2(44) of the Customs Act, 1962 defines 'warehoused goods' as goods deposited in a warehouse.

Circular No. 39/2013 Cus dated 01.10.2013 has clarified that a harmonious reading of section 61 and section 2(44) of the Customs Act, 1962 indicates that when the goods deposited in a warehouse remain warehoused beyond a period of 90 days, then the interest starts accruing. In other words, the relevant date when the period of 90 days would commence would be the date of depositing the goods in the warehouse and not the date on which into-bond bill of entry in respect of such goods is presented.

3. (a) The facts of the given problem are similar to the case of *Sujanil Chemo Industries v CCEx., & Cus., Pune 2005 (181) ELT 206 (SC)* wherein the Supreme Court observed that even though, in normal parlance, a product may be considered to be an insecticide, if that product has any therapeutic and prophylactic use then for purposes of classification that product cannot fall under Chapter 38. The Apex Court clarified that any medicine or substance which treats disease or is a palliative or curative is therapeutic. Therefore, since Licel cured the infection or infestation of lice in human hair, it was therapeutic. Further, it was also prophylactic in as much as it prevented disease which would follow from infestation of lice. Thus, the Apex Court held that 'Licel' was a product which was used for therapeutic and prophylactic purposes. It would thus, be a Medicament within the meaning of the term "Medicament" in Note 2 of Chapter 30 and would be excluded from Chapter 38.

Applying the ratio of the above decision, "MICEL" will be classified as a medicament under Tariff subheading 3003.10 and not as an insecticide under Tariff sub-heading 3808.10.

Note: This case was maintained in *2008 (227) ELT A166 (Supreme Court)*.

(b) There are contrary views of the High Courts on this issue. While Karnataka High Court in the case of KVR Construction has held that limitation under section 11B will not apply in case of amount mistakenly paid as service tax, Bombay High Court took a contrary view in the case of Andrew Telecom India Ltd.

Karnataka High Court's view in *CCE(A) v. KVR Construction 2012 (26) STR 195 (Kar.)*

The High Court noted that service tax paid mistakenly under construction service although actually exempt, was payment made without authority of law. Mere payment of amount would not make it 'service tax payable by the assessee'. The High Court opined that once there was lack of authority to collect such service tax from the assessee, it would not give authority to the Department to retain such amount and validate it.

Further, provisions of section 11B of the Central Excise Act, 1944 apply only to a claim of refund of excise duty/service tax, and could not be extended to any other amounts collected without authority of law. In view of the above, the High Court held that refund of an amount mistakenly paid as service tax could not be rejected on ground of limitation under section 11B of the Central Excise Act, 1944.

Bombay High Court's view in *Andrew Telecom India Pvt. Ltd v. CCE Goa 2014 (34) STR 562*

The High Court of Bombay held that if tax has been paid treating it as tax by mistake, the refund claim has to be filed under section 11B of Central Excise Act, 1944 only and limitation under the section would apply. The undisputed position was that the amount was paid by the appellant as service tax. That tax was not imposable or leviable on export of services was a clarification made by the Department and relying on that clarification, the refund of duty or service tax was claimed. The High Court clarified that this was squarely a case falling within the provisions of the Central Excise Act, 1944 and therefore, the rule of limitation under section 11B was applied. That was applied when the application for refund was made invoking section 11B of the Central Excise Act, 1944. The High Court categorically pointed out that when this was the provision invoked, same applied with full force including the rule of limitation prescribed therein.

Similar view has been adopted in the case of *MCI Leasing Pvt. Ltd v. CCE Mysore 2014 (33) STR 497* by the Karnataka High Court.

(c) The facts of the case are similar to the case of *Balwinder Singh v. Asstt. Commissioner, Customs & Central Excise 2005 (181) E.L.T. 203 (S.C.).* In this case, the Supreme Court stated that the registered owner of the vehicle was convicted solely for the reason that he was the registered owner of the vehicle. There was no evidence to prove that he knowingly allowed any person to use the vehicle for any illegal purpose. There was also no evidence to prove the conspiracy set up by the prosecution. The Apex Court held that though the articles were recovered from the truck, there was no evidence to show that the appellant had any control over the vehicle nor was he in possession of those drugs. Therefore, the registered owner of the vehicle was acquitted of all charges framed against him.

In the given case also, there is no evidence against 'M', the registered owner of the vehicle, and thus he shall not be prosecuted.

4. (a) According to provisions of section 23A(c) of Central Excise Act, 1944, an application for advance ruling can be made by any of the following:

(i) (a) a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident; or

(b) a resident setting up a joint venture in India in collaboration with a non-resident; or

(c) a wholly owned subsidiary Indian company, of which the holding company is a foreign company,

who/which proposes to undertake any business activity in India

(ii) a joint venture in India; or

(iii) a resident falling under any such class or category of persons, as may be specified by Central Government. The Central Government has notified public sector companies, resident public limited companies, resident private limited companies and resident firm as the class or category of resident persons who can apply for advance ruling.

(b) (i) Taxable. Services provided to Government, a local authority or a Governmental authority by way of repair or maintenance of vessel are specifically exempt from service tax vide *Notification No. 25/2012 ST dated 20.06.2012*. However, services of repair or maintenance of aircraft owned by Government are not so exempt.

(ii) Exempt. Services provided by a goods transport agency by way of transportation of milk, agricultural produce, chemical fertilizers and newspaper registered with the Registrar of Newspapers, in a goods carriage are exempt from service tax vide *Notification No. 25/2012 ST dated 20.06.2012*.

(iii) Taxable. Transportation of petroleum and petroleum products and household effects by railways are not exempt from service tax.

(iv) Taxable. Transportation of postal mails and mail bags by a vessel are not exempt from service tax.

(c) The balance sale proceeds left after being applied for the purposes specified under section 150(2) shall be paid to the owner of the goods. However, where it is not possible to pay the balance of sale proceeds, if any, to the owner of the goods within a period of six months from the date of sale of such goods or such further period as the Principal Commissioner of Customs or Commissioner of Customs may allow, such balance of sale proceeds shall be paid to the Central Government.

5. (a) *Circular No. 995/2/2015 CX dated 27.02.2015,* which has come into effect from 1st July, 2015 has specified new norms to be followed by Audit Commissionerates. The new norms do not prescribe any frequency for conducting audits. The new norms have introduced risk based selection of assessees for audit based on identified/quantified risk parameters and also introduced jurisdictional specific criteria (as opposed to uniform norm across the country) for segmenting the taxpayer into large, medium & small categories.

The criteria for categorizing an assessee as large, medium or small would be value of clearances and total excise duty paid. The threshold limits of value of clearances for categorizing the units into large, medium and small would be dependent upon (i) the available manpower in the Audit Commissionerate and (ii) the assessee base, turnover and excise duty paid by each assessee in the jurisdiction of the Audit Commissionerate. It may be noted that threshold limits may vary from one Audit Commissionerate to another Audit Commissionerate in view of varying number of assessees and quantum of value of clearances and excise duty paid in case of each assessee.

The selection of assessees would be done based on the risk evaluation method prescribed by the Directorate General of Audit. The risk evaluation method would be separately communicated to the Audit Comissionerates during the month of March / April every year. The risk assessment function will be jointly handled by National Risk Managers (NRM) situated in the Directorate General of Audit and Local Risk Managers (LRM) heading the Risk Management section of Audit Commissionerates. The Audit Commissionerates could also select few units at random or based on risk perception in each category of large, medium and small tax payers.

(b) (i) As per rule 12 of PoPS Rules, the place of provision of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey. Hence, in this case the place of provision of this service will be Singapore, which is outside the taxable territory.

However, if the above service is provided on a Delhi-Bangalore-Singapore-Malaysia flight during the Singapore-Malaysia leg, then the place of provision of this service will be Delhi, which is in the taxable territory.

(ii) Leviability of service tax is determined in terms of the provisions of Finance Act, 1994 and not in terms of Income-tax Act, 1961. The fact that Mr. Samir is a non-resident is irrelevant for determining the taxability of services received by him.

As per section 66B of Finance Act, 1994, service tax is levied on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another.

As per rule 9 of PoPS Rules, the place of provision of services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders is the location of the service provider.

Account has been defined under rule 2(b) of PoPS Rules to mean an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account. Services linked to or requiring opening and operation of bank accounts such as lending, deposits, safe deposit locker etc. are few examples of services that are provided by a banking company or financial institution to an "account holder" in the ordinary course of business.

Since, in the present case, services (safe deposit locker) are provided by Ahmedabad Branch of Safe and Sound Bank to an account holder (Mr. Samir), rule 9 of PoPS Rules will apply. Thus, the place of provision of service would be Ahmedabad and since Ahmedabad falls in taxable territory, locker fee would be liable to service tax.

(c) As per rule 6 of the Baggage Rules, 1998, an Indian passenger who has been residing abroad for over one year and returns to India shall be allowed duty free clearance of jewellery in his bona fide baggage:

- upto an aggregate value of Rs. 50,000 by a gentleman passenger
- upto an aggregate value of Rs. 1,00,000 by a lady passenger..

Thus, in the given case, Mr. Ravan and his wife together would be allowed duty free jewellery allowance upto an aggregate value of Rs. 1,50,000.

Further, in addition to the jewellery allowance, Mr. Ravan and his wife would also be allowed duty free clearance jewellery worth Rs. 90,000 (Rs. 45,000 per person) as part of free baggage allowance.

6. (a) Yes, the statement is valid. As per rule 24 A of the Central Excise Rules, 2002, the books of accounts or other documents, seized by the Central Excise Officer or produced by an assessee or any other person, which have not been relied on for the issue of notice under the Act or the rules made thereunder, shall be returned

within thirty days of the issue of said notice or within thirty days from the date of expiry of the period for issue of said notice:

Further, the Principal Commissioner of Central Excise or Commissioner of Central Excise may order for the retention of such books of accounts or documents, for reasons to be recorded in writing and the Central Excise Officer shall intimate to the assessee or such person about such retention.

Or

Following exporters are eligible for facility of export warehousing under the central excise law:

1. Exporters who are Status Holder under Foreign Trade Policy.
2. Foreign departmental stores of repute
3. Automobiles manufacturers who have signed Memorandum of Understanding with Directorate General of Foreign Trade in the Ministry of Commerce and Industry [*Circular No. 581/18/2001 CX dated 29.06.2001* as amended].

(b) Rule 6(7A) of the Service Tax Rules, 1994 provides an option to an insurer carrying on life insurance business to pay service tax:

(i) on the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of policy holder, if such amount is intimated to the policy holder at the time of providing of service;

(ii) in all other cases, @ 3.5% of the premium charged from the policy holder in the first year and @ 1.75% of the premium charged from the policy holder in subsequent years towards the discharge of his service tax liability instead of paying service tax at the rate of 14%.

However, such option is not available in cases where the entire premium paid by the policy holder is only towards risk cover in life insurance.

In the light of the aforesaid provisions, service tax liability of ALICL for financial year 2014-15 would be computed as follows:

(i) If the amount allocated for investment has been intimated by ALICL to policy holders at the time of providing service, ALICL has the option to pay service tax on the gross premium charged from a policy holder reduced by the amount allocated for investment. Thus, service tax liability of ALICL for the year 2014-15 will be computed as under:

= Rs. (180-100) lakh × 14% = Rs. 11,20,000

(ii) If the amount allocated for investment has not been intimated by ALICL to policyholders at the time of providing of service, ALICL will have to pay service tax @ 3.5% of the premium charged from policy holders in the first year and @ 1.75% of the premium charged from policy holders in the subsequent years.

Thus, service tax liability of ALICL for the year 2014-15, being first year of its operations, will be computed as under:

= Rs. 180 lakh × 3.5% = Rs. 6,30,000

(iii) If gross premium received from policy holders is only towards risk cover, ALICL cannot discharge its service tax liability using aforesaid option. In such a case, it will have to pay service tax @ 14% on the entire premium charged from the policy holders. Thus, service tax liability of ALICL for the year 2014-15 will be computed as under:

= Rs. 180 lakh × 14%= Rs. 25,20,000

(c) The scheme is known as Merchandise Exports from India Scheme (MEIS).

Objective of MEIS scheme is to offset infrastructural inefficiencies and associated costs involved in export of goods/products, which are produced/manufactured in India, especially those having high export intensity, employment potential and thereby enhancing India's export competitiveness.

Under MEIS, exports of notified goods/products to notified markets shall be eligible for reward at the specified rate(s). Unless otherwise specified, the basis of calculation of reward would be:

(i) on realised FOB value of exports in free foreign exchange,

or

(ii) on FOB value of exports as given in the Shipping Bills in free foreign exchange,

whichever is less.

These scrips can be used for payment of customs duties on import of inputs/goods including notified capital goods, payment of excise duties on domestic procurement of inputs/goods including capital goods, payment of service tax on procurement of services.

7. (a) The statement is not valid. Supreme Court in case of *Ratan Melting & Wire Industries v. CCE 2008 (231) E.L.T. 22 (S.C.)* has held that circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned, they represent merely their understanding of the statutory provisions. They are not binding upon the Court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. A circular which is contrary to the statutory provisions has really no existence in law.

In the light of the aforesaid judgment, CBEC, vide *Circular No. 1006/13/2015-CX dated 21.09.2015,* has also clarified that Board Circulars contrary to the judgements of Hon'ble Supreme Court and High Court judgments where Board has decided not to file an appeal on merit, become non-est in law and should not be followed.

(b) (i) No, the proceedings initiated by the Department are not justified.

Section 73(3) of Finance Act, 1994, *inter alia* provides that where any service tax has not been paid, the person chargeable with the service tax may pay the amount of such service tax and the applicable interest thereon on the basis of his own ascertainment thereof, before service of notice on him in respect of such service tax, and inform the Central Excise Officer of such payment in writing. The Central Excise Officer, on receipt of such information shall not serve any notice in respect of the amount so paid.

Further, the Explanation 2 to section 73(3) of Finance Act, 1994, states that no penalty under any of the provisions of this Act or the rules made thereunder will be imposed in respect of payment of service tax and interest thereon.

(ii) Yes the Department has first charge on the property of Maan Ltd for recovery of service tax dues of Rs. 40 lakh. According to provisions of section 88 of the Finance Act, 1994, any amount of tax, penalty, interest or any other sum payable by an assessee or any other person shall be the first charge on the property of the assessee or the person, as the case may be.

However, the aforementioned first charge shall be subject to the following:-

- Companies Act, 1956 (Section 529A);
- Recovery of Debts due to Banks and Financial Institutions Act, 1993; and
- Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

(c) DFIA is issued to allow duty free import of inputs, fuel, oil, energy sources, catalyst which are required for production of export product. The goods imported are exempt ONLY from basic customs duty. Additional customs duty/excise duty, being not exempt, shall be adjusted as CENVAT credit as per DoR rules.

DFIA shall be issued on post export basis for products for which Standard Input Output Norms (SION) have been notified. Separate DFIA shall be issued for each SION and each port.

No DFIA shall be issued for an export product where SION prescribes 'Actual User' condition for any input.

Holder of DFIA has an option to procure the materials/ inputs from indigenous manufacturer/STE in lieu of direct import against Advance Release Order (ARO)/ Invalidation letter/ Back to Back Inland Letter of Credit. However, DFIA holder may

obtain supplies from EOU/EHTP/BTP/STP/SEZ units, without obtaining ARO or Invalidation letter.

Drawback as per rate determined and fixed by Central Excise authority shall be available for duty paid inputs, whether imported or indigenous, used in the export product.

DFIA or the inputs imported against it can be transferred after the fulfillment of the export obligation. A minimum 20% value addition is required for issuance of DFIA except for items in gems and jewellery sector.