

Test Series: March, 2016

MOCK TEST PAPER – 2
FINAL COURSE: GROUP – II
PAPER – 8: INDIRECT TAX LAWS

Question No. 1 is compulsory.

Attempt any five questions from the remaining six Questions.

(Wherever appropriate, suitable assumption should be made and indicated in the answer by the candidate)

Time Allowed – 3 Hours

Maximum Marks – 100

1. (a) XYZ Ltd. is engaged in the manufacture of both excisable and non-excisable goods in a factory building rented by them from October 1, 2014. From the following particulars for the period October 1, 2014 to March 31, 2015, state briefly with suitable explanations, whether XYZ Ltd. could claim the benefit of exemption in terms of *Notification No. 8/2003-CE dated 01.03.2003* for the financial year 2015-16:

		Rs. (in lakhs)
(i)	Clearances of excisable goods bearing brand name of MNO Ltd.	60
(ii)	Export sales of excisable goods to Nepal	80
(iii)	Export sales to USA and Canada	120
(iv)	Clearances of goods (duty paid based on Annual capacity of production under section 3A of the Central Excise Act, 1944)	70
(v)	Clearances of goods subject to valuation based on retail sale price under section 4A of the Central Excise Act, 1944 (the said goods are cleared at MRP and are eligible for 30% abatement)	200
(vi)	Job work under Notification No. 214/86-CE dated 25-3-86	60

During the period April 1, 2014 to September 30, 2014, the previous tenant of the factory building presently occupied by XYZ Ltd. had cleared excisable goods of the aggregate value of Rs. 120 lakh. (5 Marks)

- (b) Ashoka Pvt. Ltd. commenced its business on 15th October, 20XX in Delhi. It has provided following services upto 31st March of the next year. Determine its service tax liability for the said financial year from the information given below:

S. No.	Particulars	(Rs.)*
(i)	Services provided by way of plastering of walls	8,00,000
(ii)	Service provided in the execution of a works contract for construction of a new building	13,50,000

*representing the total amount charged for the works contract

Excise duty of Rs. 1,50,000 has been paid on the inputs used for provision of aforesaid services [provided under a brand name owned by Ashoka Pvt. Ltd.].

Apart from the aforesaid services, Ashoka Pvt. Ltd. has also provided the taxable services worth Rs. 4,00,000 (not in the nature of works contract) under brand name of other person – not eligible for any abatement. Excise duty of Rs. 40,000 has been paid on the inputs used for provision of these services. Rate of service tax is 14%.

Note: Ashoka Pvt. Ltd. cannot determine the value of works contract services provided by it in terms of rule 2A(i) of the Service Tax (Determination of Value) Rules, 2006. (10 Marks)

- (c) Sugam Corporation Limited imported some goods from US. The details of the transaction are as follows:-

Authority	Rate of exchange
CBEC	1 US \$=Rs. 62
RBI	1 US \$=Rs. 61

CIF value of the goods is \$ 1,50,000

Rate of basic custom duty is 10%

Rate of education cess is 2%

Rate of secondary and higher education cess is 1%

If similar goods were manufactured in India, excise duty payable as per Tariff is 12.5%. Additional duty of customs leviable under section 3(5) of the Customs Tariff Act is exempt.

Calculate assessable value and total duty payable thereon. (5 Marks)

2. (a) Swipe Engineers Ltd. removed goods from their factory at Delhi on 20.04.20XX for sale from their depot at Mumbai. On that date, the normal transaction value of goods at Delhi factory was Rs. 20,000 while the normal transaction value at Mumbai depot was Rs. 19,000. The rate of duty was 12.5% ad-valorem. The said goods were sold from Mumbai depot on 15.05.20XX. On that date, the normal transaction value at Mumbai depot was Rs. 22,000 and rate of duty was 16%. M/s. Swipe Engineers Ltd. paid the duty on Rs. 20,000 at the rate of 12.5%.

The Central Excise Department claimed that central excise duty should be levied @ 16% on the value of Rs. 22,000.

Examine whether Department's claim is correct. (4 Marks)

- (b) Compute in each of the following independent cases, the taxable value of services provided by an authorized dealer in foreign exchange to its customers. Show working notes as may be required.
- (i) 2500 US \$ are sold by Mr. X to the 'Yummy Cook', an authorized dealer @ Rs. 62.50 per US \$. The RBI reference rate is Rs. 63.00 for that day.
- (ii) Rs. 80,00,000 is changed into Canadian \$ and the exchange rate offered is Rs. 50 per Canadian \$. RBI reference rate for conversion of INR into Canadian \$ is not available.
- (iii) Mr. Exchange gets 1,00,000 Euro converted into 5,00,000 Dirham. RBI reference rate is 1 Euro = Rs. 70 and 1 Dirham = Rs. 16, for that day. (8 Marks)
- (c) With reference to section 9A(1A) of the Customs Tariff Act, 1975, mention the ways that constitute circumvention of antidumping duty imposed on an article which may warrant action by the Central Government. (4 Marks)
3. (a) Whether production of mustard oil and oil cake from mustard seeds amounts to manufacture? You are required to examine the situation with the help of a decided case law. (4 Marks)
- (b) Sohan Lal is engaged in the activity of preparation of a place for organizing event or function by way of erection/laying of pandal and shamiana. He is of the view that service tax is not leviable on his activity as it is a transaction involving "transfer of right to use goods" and hence, is a deemed sale.

Examine whether the contention of Sohan Lal is valid in law. (8 Marks)

- (c) M/s. Chander Exports, an EOU, is purchasing electricity generated by the captive power plant of its sister unit. The furnace oil required for running the captive power plant was imported by the assessee (M/s. Chander Exports) and supplied to sister unit for generation of electricity. The assessee claimed exemption on import of furnace oil under the relevant exemption notification.

The assessee had sought a clarification from the Development Commissioner seeking as to whether import of furnace oil and receipt of electricity would be liable to duty. The Development Commissioner replied in favour of the assessee and thereafter, the assessee claimed the exemption.

A show cause notice demanding duty was issued on the assessee invoking extended period of limitation of 5 years on grounds that the entitlement of duty free

import of fuel for its captive power plant lies with the owner of the captive power plant, and not with the consumer of electricity generated from that power plant.

Is the action of the Department in invoking the extended period of limitation justified in light of the provisions of the Customs Act, 1962? Discuss with the help of a decided case law. *(4 Marks)*

4. (a) Records seized by Department during investigation but not relied upon in the show cause notice should be returned within 30 days of issue of show cause notice. Explain the validity of the said statement with reference to the Central Excise Law, as amended. *(4 Marks)*
- (b) Discuss, in brief, whether the following payments constitute a consideration for provision of service:
- (1) Imposition of fine or penalty for breaking of law.
 - (2) Advance forfeited for cancellation of an agreement to provide a service.
 - (3) Security deposits forfeited for damages caused by service receiver in the course of receiving a service.
 - (4) Demurrages payable for use of service beyond the period initially agreed upon: e.g. retention of containers beyond the normal period. *(8 Marks)*
- (c) 'Ocean King', a vessel containing the goods imported by PQR Ltd. entered the Indian Territorial waters on 24.05.20XX. It arrived at the customs port on 26.05.20XX and the Import Manifest was submitted on 29.05.20XX. However, the entry inwards was given to the vessel on 04.06.20XX. An 'Into Bond' Bill of Entry was presented by PQR Ltd. on 06.06.20XX and thus, the goods were classified, valued and stored in the bonded warehouse.

PQR Ltd. presented the 'Ex-Bond' Bill of Entry in respect of such goods on 01.07.20XX and cleared the goods from the bonded warehouse on 05.07.20XX. The rate of customs duty was increased from 8% to 10% on 04.07.20XX.

At what rate should PQR Ltd. pay the customs duty on the goods imported by it?

(4 Marks)

5. (a) ST & Co. deposits the required amount of Rs. 1,00,000 as pre-deposit under section 35F of the Central Excise Act, 1944 on 30-09-20XX and files an appeal before the CESTAT. The said appeal is decided in favour of ST & Co. on 30-11-20XX. ST & Co. forwards a letter seeking refund of pre-deposit on 7-12-20XX and the same was refunded on 15-12-20XX. Explain whether ST & Co. is entitled to payment of interest on refund of such pre deposit and compute the amount of interest payable. *(4 Marks)*
- (b) Mona Limited entered into a contract with Meena Limited for construction of a new building to be used primarily for the purpose of commerce or industry for a total

consideration of Rs. 500 lakh on May 01, 20XX. The said services fall within the purview of 'works contract services'. The initial booking amount of Rs. 100 lakh was billed and received on the date of contract itself.

It was further agreed that Rs. 170 lakh, Rs. 140 lakh, Rs. 90 lakh respectively would be received on completion of 50%, 75% and 100% of the construction work of the building. Determine the point of taxation in respect of each of following stages of completion with the help of relevant details furnished as under:

Stage	% of completion of the building	Date of completion	Date of issuance of invoice	Date of payment of stipulated amount
I	50%	June 20, 20XX	June 30, 20XX	August 25, 20XX
II	75%	July 30, 20XX	September 25, 20XX	August 30, 20XX
III	100%	September 25, 20XX	October 03, 20XX	October 01, 20XX

A certificate from Chartered Engineer registered with Institution of Engineers has been obtained for each stage of completion of the building.

Give brief reasons for your answer. (8 Marks)

- (c) M/s. CIB imports copper concentrate from different suppliers. At the time of import, the seller issues a provisional invoice and the goods are provisionally assessed under section 18 of the Customs Act, 1962 based on the invoice. When the final invoice is raised, based on the price prevalent in the London Metal Exchange on a predetermined date based on the covenant in the contract between the buyer and seller, the assessments are finalized on such invoices.

M/s CIB has filed a refund claim arising out of the finalization of the bill of entry by the authorities. The Department, however, has rejected the refund claim on the grounds of unjust enrichment. Discuss whether the action of the department is correct in law? (4 Marks)

6. (a) With reference to the provisions of Settlement Commission, explain the term 'case' as provided under section 31(c) of the Central Excise Act, 1944. (4 Marks)

Or

Write a brief note on "cancellation of export documents" with reference to rule 19 of the Central Excise Rules, 2002. (4 Marks)

- (b) Mention the procedure for obtaining electronic rebate of service tax paid on specified services used for the export of goods, through ICES system. (8 Marks)
- (c) Briefly explain the salient features of Special Economic Zones. (4 Marks)

7. (a) Can the Department file an appeal in respect of the same assessee if in respect of some years, no appeal was filed in matters involving identical dispute? Discuss with reference to the provisions of the Central Excise Act, 1944. (4 Marks)
- (b) Tough (P) Ltd., a service provider, has availed and utilized credit of excise duty without actual receipt of excisable goods. A personal penalty of Rs. 1,90,000 has been imposed on Mr. Pawan, Manager of Tough (P) Ltd. and Rs. 72,000 on Miss Saakshi, an officer of Tough (P) Ltd. who were in charge of, and were responsible to, Tough (P) Ltd. for the conduct of its business at the time of such availment and utilization of the credit.
- Discuss whether such penalty can be imposed on Mr. Pawan and Miss Saakshi under section 78A of Finance Act, 1994. Can penalty be imposed on manager or officer of a company in any other case? Explain. (8 Marks)
- (c) Differentiate between Advance Authorisation and DFIA (Duty Free Import Authorisation) (4 Marks)