

Note: All questions are compulsory.

Answer 1(6 Marks)

Status Holders are business leaders who have excelled in international trade and have successfully contributed to country's foreign trade. All exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder. Status recognition depends upon export performance. **(1 Mark)**

In order to be categorized as One Star Export House, an exporter needs to achieve the export performance of 3 million US \$ million [FOB/ FOR (as converted)] during current and previous three financial years. Thus, export performance of Blue Heaven Pvt. Ltd. and Clean Planet Pvt. Ltd. would have been at least 3 million US \$ million [FOB/ FOR (as converted)] during current and previous three financial years. **(2 Marks)**

Further, Two Star Export Houses and above are permitted to establish export warehouses. Therefore, Blue Heaven Pvt. Ltd. and Clean Planet Pvt. Ltd. can establish export warehouses in India only if they achieve the status of Two Star Export House and above. In order to achieve said status, export performance of the exporters during current and previous three financial years should be as indicated below: **(2 Marks)**

| Status Category | Export Performance [FOB/FOR (as converted) value in US \$ million] |
|-------------------------|--|
| Two Star Export House | 25 |
| Three Star Export House | 100 |
| Four Star Export House | 500 |
| Five Star Export House | 2,000 |

Answer 2 (5 Marks)

As per rule 3 of the Baggage Rules, 2016, an Indian resident arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say, used personal effects and travel souvenirs; and articles [other than certain specified articles], upto the value of Rs 50,000 if these are carried on the person or in the accompanied baggage of the passenger.

Thus, there is no customs duty on used personal effects and travel souvenirs and general duty free baggage allowance is Rs 50,000 per passenger. Thus, duty liability of Mr. Sujoy and his wife is nil for the used personal effects worth Rs 80,000 and 2 music systems each worth Rs 50,000.

(3 Marks)

As per rule 5 of the Baggage Rules, 2016, the jewellery allowance is as follows:

| Jewellery Bought by | Duty free allowance |
|---------------------|---|
| Gentleman Passenger | Jewellery upto a weight of 20 grams with a value cap of Rs 50,000 |
| Lady Passenger | Jewellery upto a weight of 40 grams with a value cap of Rs 1,00,000 |

However, the jewellery allowance is applicable only to a passenger residing abroad for more than 1 year.

Consequently, there is no duty liability on the jewellery brought by Mr. Sujoy as he had stayed abroad for period exceeding 1 year and weight of the jewellery brought by him is 20 grams with a value less than Rs 50,000.

However, his wife is not eligible for this additional jewellery allowance as she had stayed abroad for a period of less than a year. Thus, she has to pay customs duty on the entire amount of jewellery brought by her as she has already exhausted the general duty free baggage allowance of Rs 50,000 allowed under rule 3.

(2 Marks)

Answer 3 (6 Marks)

Section 28BA of the Customs Act, 1962 provides that provisional attachment of property can be resorted to by the Proper Officer during the pendency of the following proceedings:

- (i) Under section 28, in respect of cases not involving suppression, collusion, wilful misstatement, etc. as well as in cases involving suppression, collusion, wilful misstatement, etc.
- (ii) Under section 28AAA, in relation to fraudulent utilization of duty relatable to instruments issued under Foreign Trade (Development and Regulation) Act, 1992.
- (iii) Under section 28B, in relation to duties collected from buyers but not deposited with the Central Government.

Such an attachment shall be done only when the Proper Officer is of the opinion that the attachment is necessary for the purpose of protecting the interests of revenue. However, a previous approval of the Principal Commissioner/Commissioner of Customs, by order in writing, is a prerequisite for such provisional attachment.

Such an attachment can be done for a period of 6 months. This period will commence from the date of the order of the Principal Commissioner/Commissioner of Customs permitting such provisional attachment.

However, this period may be extended by the Principal Chief Commissioner/Chief Commissioner of Customs by such further period or periods as he thinks fit. The reasons for such an extension shall be recorded in writing. It is to be noted that the total period of extension in any case shall not exceed 2 years.

If an application for settlement of a case under section 127B is made to the Settlement Commission, the period commencing from the date on which such an application is made and ending with the date on which an order under section 127C(1) is made shall be excluded from the extended period mentioned above.

Conclusion: Since as per section 28BA, provisional attachment of the property can be resorted to during the pendency of the proceeding under section 28, which includes cases involving non-fraud reasons too, claim of Mr. X is not right.

Question 4 (5 Marks)

Computation of value of clearances during preceding financial year for determining the eligibility for SSI exemption in the current year

| Particulars | Amount in Lakhs |
|---|-----------------|
| Total value of clearances during preceding financial year | 950 |
| Less: VAT included in above | <u>80</u> |
| | 870 |
| Less: Exports excluding exports to Bhutan (500 - ` 250) lakh (2 marks) | 250 |
| Clearances of goods without payment of duty to a unit in Electronic Hardware Technology Park(1 Mark) | 20 |
| Job work under Notification No. 84/94 CE dated 11.04.1994 and under Notification No. 83/94 CE dated 11.04.1994 i.e., ` 100 + ` 100) lakh(2 marks) | <u>200</u> |
| Value of eligible clearances during preceding financial year | <u>400</u> |

Note: In order to claim the benefit of SSI exemption under *Notification No. 8/2003 C.E. dated 01.03.2003* in a financial year, the total turnover of a unit should not exceed ` 400 lakh in the preceding year

In terms of *Notification No. 8/2003 CE dated 01.03.2003*, while computing such value of clearances during preceding financial year (` 400 lakh)-

- (i) export turnover is excluded. However, export to Bhutan cannot be excluded as these are treated as "clearances for home consumption". With effect from 01.03.2016, clearances made to Nepal are treated like normal exports and are thus, not considered for the purpose of computing limit of ` 400 lakh.
- (ii) job work under *Notification No. 84/94 CE dated 11.04.1994* and *Notification No. 83/94 CE dated 11.04.1994* is not taken into consideration.
- (iii) clearances of excisable goods without payment of duty to a unit in Electronic Hardware Technology Park are excluded.
- (iv) clearances of excisable goods bearing brand name of National Small Industries Corporation are included.

Conclusion: Since the value of clearances in the previous financial year does not exceed ` 400 lakh, Aim & Company is eligible to claim the benefit of *Notification No. 8/2003 CE dated 01.03.2003* in the current financial year.

(5 Marks)

Question 5 (6 Marks)**Computation of central excise duty payable by UVW Ltd. (1 mark for every transaction)**

| Particulars | (₹) | (₹) |
|---|-----------------|------------------|
| Retail sale price of 400 packages containing 60 packs each packed for safety in transportation (60 × ` 120 × 400) | 28,80,000 | |
| Less: Abatement @ 30% | <u>8,64,000</u> | |
| Assessable value (A) [Note 1] | | 20,16,000 |
| Retail sale price of 2,000 packs (2,000 × ` 120) | 2,40,000 | |
| Less: Abatement @ 30% | <u>72,000</u> | |
| Assessable value (B) [Note 2] | | 1,68,000 |
| Retail sale price of 60 packs given as free samples (60 × ` 120) | 7,200 | |
| Less: Abatement @ 30% | <u>2160</u> | |
| Assessable value (C) [Note 3] | | 5040 |
| Retail sale price of 500 packs manufactured on job work basis (500 × ` 120) | | 42000 |
| Less: Abatement @ 30% | | |
| Assessable value (D) [Note 4] | 60000 | |
| Retail Sale Price of 400 multi-packs (400 × ` 170) [Note 5] | | |
| Less: Abatement @ 30% | <u>18,000</u> | |
| Assessable value (E) [Note 5] | | 47600 |
| Total assessable value (A) + (B) + (C) + (D) +(E) | 68000 | <u>22,78,640</u> |
| Excise duty @ 12.5% of ` 22,78,640 (1 Mark) | 20400 | 284830 |

Notes:

- Outer packaging for protection/safety during transportation is not wholesale package. Such packaging does not require details like name/address, cost, month year etc. [*State of Maharashtra v. Raj Marketing (2011) 272 ELT 8 (SC)*]. Therefore, valuation of such package will be done on the basis of section 4A i.e., RSP less abatement.
- Provisions of section 4A of Central Excise Act, 1944 override the provisions of section 4 of the said Act. Therefore, assessable value will be retail sale price declared on the package less abatement irrespective of the quantity discounts offered to the buyer [*Indica Laboratories v. CCE (2007) 213 ELT 20 (CESTAT 3 Member Bench)*].
- Free samples of the products covered under MRP based assessment are valued under rule 4 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 by taking into consideration the deemed value under section 4A [*Circular No. 915/05/2010 CX dated 19.02.2010*].
- Provisions of section 4A override the provisions of section 4. Therefore, in case of goods cleared on job-work basis, assessable value will be retail sale price declared on the package less abatement and not the value as determined under rule 10A of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 viz., the price at which the principal

manufacturer sells the goods.

5. Retail sale price (RSP) of the multi-pack (₹ 170) is considered and product supplied free (small soap) in the multi-pack is not assessed separately. Further, since scored out RSP cannot be considered as RSP either by seller or by buyer, the same (₹ 120) is not taken as the RSP for the purpose of valuation of excisable goods.
6. Since the turnover of UVW Ltd. in the previous financial year is ₹ 470 lakh, it will not be entitled for SSI exemption available under *Notification No. 8/2003 CE dated 01.03.2003* in the current year.

Question 6 (5 Marks)

Computation of assessable value of machine imported by Robust & Co. Ltd.

| Particulars | Amount (₹) |
|---|--|
| Price of the machine | 5,000 |
| Add: Engineering and design charges paid in UK [Note 1] | 250 |
| Licence fee relating to imported goods payable by the buyer as a condition of sale (20% of price of machine) [Note 1] | <u>1,000</u> |
| Total (1 Mark) | <u>6,250</u> |
| | Amount (₹) |
| Value in Indian currency [₹ 6,250 x ₹ 100] [Note 2] (1 Mark) | 6,25,000 |
| Add: Materials and components supplied by Robust & Co. Ltd free of cost [Note 1] (1 Mark) | <u>10,000</u> |
| FOB | 6,35,000 |
| Add: Freight [Note 3] (1 Mark) | 1,00,000 |
| Insurance paid to insurer in India | <u>3000</u> |
| CIF Value | 738000 |
| Add: Landing Charges @ 1 % (Note 4) (1 Mark) | 7380 |
| Assessable value (rounded off) | 745380 |

Notes:

1. Engineering and design charges paid in UK, licence fee relating to imported goods payable by the buyer as a condition of sale, materials and components supplied by the buyer free of cost and

actual insurance charges paid are all includible in the assessable value [Rule 10 of the Customs (Determination of Value of Imported Goods) Rules, 2007].

2. As per Explanation to section 14(1) of the Customs Act, 1962, assessable value should be calculated with reference to the rate of exchange notified by the CBEC.
3. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Second proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007]. Since in this case, the freight paid does not exceed 20% of FOB, so actual freight paid will be includible in the assessable value.
4. Landing charges @ 1% of the CIF value are includible in the assessable value, whether actually incurred or not [Clause (ii) of first proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
5. Buying commission is not included in the assessable value [Rule 10(1)(a) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
6. Only ship demurrage charges on chartered vessels are included in the cost of transport of the imported goods. Thus, demurrage charges for delay in clearing the machine from the Airport will not be includible in the assessable value [Explanation to Rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].

Question 7 (6 Marks)

No, the penalty imposed on Mr. Badri for smuggled gold bars, under section 112(i) of the Customs Act, 1962, is not valid in law. The issue as to whether the expression '*goods in respect of which any prohibition is in force*' under section 112(i) refers to any goods which have been smuggled into the country which may otherwise have been brought into the country by the appropriate channel upon payment of duty due thereon or goods specifically barred from being brought into the country was decided in case of *Gopal Saha v. UOI 2016 (336) ELT 230 (Cal.)*.

In this case, the primary contentions of the petitioners, against levy of the penalty under section 112(i), were:

The penalty under section 112(i) could not be imposed on the gold smuggled by them as gold was not a prohibited item and its import was not prohibited by virtue of any notification issued under section 11 of the Customs Act, 1962/ any other law for the time being in force.

For the purpose of the expression "*goods in respect of which any prohibition is in force under this Act or any other law for the time being in force*", there must be an order of prohibition under either the Customs Act, 1962 or any other statute. Further, such prohibition would relate to the nature of the goods prohibited and would not cover the manner of its import/smuggling into the country. **(1 mark)**

A distinction needs to be made between the 'illegal import' defined under section 11A(a) of the Customs Act, 1962 and the definition of 'prohibited goods' under section 2(33) thereof.

Sections 104 and 135 suggest that prohibited goods referred under the Customs Act, 1962 relates to only those goods which are specifically prohibited from being brought into the country by the said Act/any other law. **(1 mark)**

The primary contentions of the Revenue were: **(1 mark)**

- (i) When the import of any goods is permitted by the Customs Act, 1962/any other law in any particular manner and form, any other mode/method adopted to bring such goods into the country would tantamount to conduct infringing the prohibition of import of the goods in accordance with law. Thus, an act of import in contravention of the statutory process recognised therefor must be regarded as conduct in derogation of the prohibition imposed by law.

(ii) It referred the judgement of Supreme Court in case of *Om Prakash Bhatia v. CCus. 2003 (155) E.L.T. 423 (S.C.)*. In the said case, the Apex Court, considering the meaning of the expression ‘*contrary to any prohibition imposed by/under this Act/any other law for the time being in force*’ appearing with reference to confiscation of improperly exported goods and the expression ‘*subject to any prohibition under this Act or any other law*’ in the definition of ‘prohibited goods’ in section 2(33) of the Act, concluded that if the conditions prescribed for import/export of goods were not complied with, it would be considered to be prohibited goods.

It further referred the judgment of CCus. (Preventive) v. M. Ambalal and Co. 2010 (260) *E.L.T.* 487 (S.C.) wherein the Apex Court held that smuggled goods could not be regarded as imported goods.

Considering the contentions of both the parties, the High Court observed that there is a distinction between section 111 and section 112. The former provides for confiscation of improperly imported goods and the latter prescribes the penalty for improper importation of goods. **(1/2 mark)**

The judgments relied upon by the Revenue revealed a liberal construction of a provision in favour of the Revenue to deal with the mischief for which the statute and the provision have been enacted. **(1/2 mark)**

However, such construction may not apply to a penalty because the fundamental rule for construing a penal provision is otherwise. In other words, it is possible for a provision providing for confiscation of goods to be liberally interpreted, but when a provision provides for punishment, it has to be strictly construed. **(1/2 mark)**

Thus, while the corresponding provision in section 111 permits the confiscation of the goods on a broader construction of the relevant expression with reference to the definition of ‘prohibited goods’; the similar provision in section 112 has to be strictly construed and confined to goods which are expressly prohibited from being imported into the country. **(1/2 mark)**

In the light of the aforesaid discussion, the High Court inferred that expression ‘goods in respect of which any prohibition is in force’ in the context of section 112 implies goods which are prohibited from being imported and not goods which have been smuggled into the country in contravention of the procedure established by law for the import thereof.

Consequently, the order imposing penalty on the petitioner was set aside and the matter was remanded for such limited purpose for the imposition of other permissible penalty. **(1 mark)**

Question 8 (6 Marks)

Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, has been amended vide *Notification No. 14/2013 CE (NT) dated 22.11.2013* to provide that where whole or part of the excisable goods are not sold by the assessee but are used for captive consumption, the value of goods meant for captive consumption shall be 110% of the cost of production or manufacture of such goods.

Cost of production is to be determined as per ‘Cost Accounting Standard (CAS)-4: Cost of Production for Captive Consumption’ issued by ICWAI [*CBEC Circular No. 692/8/2003 dated 13.02.2003*].

Since in the present case, only a part of the excisable goods are used for captive consumption (80% of 1,000 units i.e., 800 units), assessable value of such 800 captively consumed units will be determined in accordance with rule 8 of Valuation Rules. The assessable value of remaining 200 units sold to unrelated buyers will be determined under section 4 of Central Excise Act, 1944 i.e., transaction value.

Computation of cost of production as per CAS-4 and value of product ‘X’

| S. No. | Particulars | - |
|--------|-------------|---|
| | | |

| | | | |
|--|------------------------------------|---------------------|---------------|
| 1. Material consumed: (1 Mark) | | | |
| Cost of direct materials | | ₹ 22,500 | |
| | ₹ 22,500 | | |
| Less: Central excise duty | $\frac{22,500}{112.5} \times 12.5$ | ₹ 2,500 (Note 1) | 20,000 |
| 2. Direct wages and salaries: (1/2 Mark) | | | |
| Cost of direct salaries (including house rent allowance of ₹ 12,000) | | | 30,000 |
| 3. Works overheads: | | | |
| Consumable stores and repairs (1/2 Mark) | | | 8,400 |
| Depreciation of machinery (1/2 Mark) | | | 500 |
| 4. Quality control cost (1/2 Mark) | | | 4,300 |
| 5. Research & development cost (1/2 Mark) | | | 2,700 |
| 6. Administrative overheads (relating to production activity): (1/2 Mark) | | | <u>2,000</u> |
| Total | | | 67,900 |
| Less: Scrap value realized (1/2 Mark) | | | <u>1,500</u> |
| Cost of production of 1,000 units of product 'X' | | | 66,400 |
| Cost of production for 800 units of product 'X' | $\frac{66,400}{1,000} \times 800$ | | 53,120 |
| Add: Amortised cost of moulds and tools received free of cost from unit 'B' for being used only in the manufacture of goods to be consumed by unit 'B' (1/2 Mark) | | | <u>600</u> |
| Cost of production of 'X' produced for captive consumption | | | 53,720 |
| Value of 800 units of product 'X' consumed captively 110% (1/2 Mark) | | [₹ 53,720 × | 59,092 |

Notes:

- Since CENVAT credit is available on central excise duty paid on direct materials, it has been deducted from the cost of direct materials in accordance with the Cost Accounting Standard-4 [CAS-4].
 - Administrative overheads in relation to activities other than manufacturing activities like project management activities have not been included in cost of production [CAS-4].
 - Interest and financial charge being a financial charge has not been considered to be a part of cost of production [CAS-4].
 - Abnormal cost like break down of machinery does not form part of cost of production [CAS-4].
 - Selling and distribution cost have not been considered while computing the cost of production as they are not in relation to production activity [CAS-4].
- Value of 800 units of product 'X' consumed captively for the purpose of excise duty is ₹ 59,092.
 Value of 200 units of product 'X' sold to unrelated buyers for the purpose of excise duty is ₹ 15,000 (200 units × ₹ 75) [Section 4 of Central Excise Act, 1944].

Question 9 (5 Marks)

The facts of the given case are similar to the case of *Medley Pharmaceuticals Ltd. v. CCE & C., Daman 2011 (263) E.L.T. 641 (S.C.)*. In the instant case, the Supreme Court observed that merely because a product was statutorily prohibited from being sold would not mean that the product was not marketable. Sale is not a necessary condition for charging duty as excise duty is payable in case of free supply also. The Supreme Court observed that since physician samples were capable of being sold in open market, the same were marketable and thus, liable to excise duty.

Moreover, since the Drugs and Cosmetics Act, 1940 (Drugs Act) and the Central Excise Act, 1944 operated in two different fields, the restrictions imposed under Drugs Act could not lead to non-levy of excise duty under the Central Excise Act.

Therefore, in view of the above-mentioned ruling of the Supreme Court, the contention of the assessee is not valid in law.
