J.K. SHAH TEST SERIES
Evaluate Learn Succeed

FINAL – November 2017

PAPER 8 : INDIRECT TAX LAWS
Test Code:
Branch (MULTIPLE) Date:
(100 Marks)

Note: Question No.1 is compulsory. Candidates are required to answer any five questions from the remaining six questions.

Question 1
a.

Computation of value of taxable service for the month of July, 2016 (3 marks)

Particulars	(`)
Transportation of goods by vessel from places outside India upto the customs station of clearance in India [Note 1]	30,00,000
Transportation of goods by aircraft from places outside India upto the customs station of clearance in India [Note 2]	Exempt
Value of taxable service	**30,00,000**

Service tax @ 4.2% [14 x 30% - Note 3]	1,26,000
Swachh Bharat Cess @ 0.15% [0.5 x 30%]	4,500
Krishi Kalyan Cess @ 0.15% [0.5 x 30%]	4,500
Total service tax payable	1,35,000

Computation of net service tax liability for the month of July, 2016 (2 marks)

Particulars	Service tax @ 4.2% (`)	SBC @ 0.15% (`)	KKC @ 0.15% (`)	Total (`)
Service tax payable	1,26,000	4,500	4,500	1,35,000
Less: CENVAT credit on input services [Note 4]	42,000	-	1,500	43,500
Net service tax liability	**84,000**	**4,500**	**3,000**	**91,500**

Notes:

With effect from 01.06.2016, services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India have been removed from negative list of services vide the Finance Act, 2016, thereby making them liable to service tax.

With effect from 01.06.2016, the Finance Act, 2016 has removed services by way of transportation of goods by an aircraft or a vessel from a place outside India up to the customs station of clearance in India from the negative list of services thereby making them liable to service tax.

However, service tax will not be payable on transportation of goods by an aircraft as the same have been exempted simultaneously under *Mega Exemption Notification No. 25/2012 ST dated 20.06.2012.*

Abatement of 70% is available vide *Notification No. 26/2012 ST dated 20.06.2012* in respect of transport of goods in a vessel if CENVAT credit on inputs and capital goods used for providing the taxable service, has not been taken under the provisions of CENVAT Credit Rules, 2004.

Prior to 01.04.2016, abatement could be claimed if CENVAT credit on inputs, capital goods and input services used for providing the said service was not taken.

However, with effect from 01.04.2016, the conditions for availing abatement on transportation of goods in a vessel have been amended so as to restrict availing of CENVAT credit only on inputs and capital goods. Thus, CENVAT credit of input services has been allowed while claiming the abatement of 70% on transportation of goods by vessel.

b. Computation of value of taxable service and service tax for the month of July, 2016

Particulars	(`)
Transportation of passengers by non air-conditioned contract carriage [Note 1] **(mark 1)**	Exempt
Transportation of passengers by air-conditioned contract carriage [Note 2] **(mark 1)**	5,00,000
Transportation of passengers by non air-conditioned stage carriage [Note 3] **(mark 1)**	Exempt
Transportation of passengers by air-conditioned stage carriage [Note 3] **(mark 1)**	8,00,000
Value of taxable service	**13,00,000**
Service tax @ 6% [15 (inclusive of SBC and KKC) x 40% - Note 4] **(mark 1)**	**78,000**

Notes:

Transport of passengers, with or without accompanied belongings, by non air-conditioned contract carriage (other than radio taxi) for purposes other than tourism, conducted tour, charter or hire is exempt from service tax vide *Mega Exemption Notification No. 25/2012 ST dated 20.06.2012.*

It has been assumed that the transportation of passengers by CD Pvt. Ltd. in non air-conditioned contract carriage is not for tourism, conducted tour, charter or hire.

Transportation of passengers by air-conditioned contract carriage is neither covered under any of the exemption notification nor under negative list of services. Thus, the same will be liable to service tax.

Prior to June 1, 2016, service of transportation of passengers, with or without accompanied belongings, by a stage carriage [both air conditioned as well as non-air conditioned] was not chargeable to service tax as it was covered in negative list of services under section 66D(o)(i) of the Finance Act, 1994.

However, with effect from 01.06.2016, the Finance Act, 2016 has removed the said service from the negative list making it liable to service tax. Also, simultaneously, service of transportation of passengers, with or without accompanied belongings by a non air-conditioned stage carriage has been exempted from service tax by amending *Mega Exemption Notification No. 25/2012 ST dated 20.06.2012.*

Abatement of 60% is available vide *Notification No. 26/2012 ST dated 20.06.2012* in respect of transportation of passengers by a contract carriage other than a motor cab as also for transportation of passengers by a stage carriage if CENVAT credit on inputs, capital goods and input services, used for providing the said taxable services, has not been taken under the provisions of CENVAT Credit Rules, 2004.

c. As per Explanation 2 to rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, where an assessee receives any advance payment from the buyer against delivery of any excisable goods, no notional interest on such advance shall be added to the value unless the Central Excise Officer has evidence to the effect that the advance received has influenced the fixation of the price of the goods by way of charging a lesser price from or by offering a special discount to the buyer who has made the advance deposit. **(2 marks)**

Therefore, the assessable value of 1,000 units in two independent cases will be computed as under:

(i) Assessable value = ` 1,200 x 1,000 units = ` 12,00,000

[No addition of notional interest as price charged from the buyer who has given the advance is not less than the price charged from other buyers] **(1 ½ mark)**

(ii) Assessable value = (` 1,200 x 1,000 units) + (` 5,00,000 x 12/100) = ` 12,00,000 + ` 60,000 = ` 12,60,000

[Notional interest @ 12% will be added as price charged from the buyer who has given the advance is less than the price charged from other buyers] **(1 ½ mark)**

d. **Composite supply** means a supply made by a taxable person to a recipient and:

comprises two or more taxable supplies of goods or services or both, or any combination thereof.
are naturally bundled and supplied in conjunction with each other, in the ordinary course of business.
This means that in a composite supply, goods or services or both are bundled owing to natural necessities. The elements in a composite supply are dependent on the 'principal supply'. **(1 mark)**

Determination of tax liability on composite supplies: (1 mark)

A composite supply comprising of two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply.

Mixed supply means: **(2 marks)**

two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person

for a single price where such supply does not constitute a composite supply.

The individual supplies are independent of each other and are not naturally bundled

Determination of tax liability on mixed supplies: (1 mark)

A mixed supply comprising of two or more supplies shall be treated as supply of that particular supply that attracts highest rate of tax.

Question 2

a.

Computation of service tax liability

Particulars	**(`)**	**Service tax liability (inclusive of SBC and KKC) (`)**
Fees charged for yoga camp conducted by a charitable trust [Note-1]**(1 mark)**	50,000	Nil
Amount charged by Bank Mitra for the services provided to the rural branch of a bank with respect to Basic Savings Bank Deposit Accounts covered by Pradhan Mantri Jan Dhan Yojana (PMJDY) [Note-2] **(1 mark)**	1,00,000	Nil
Amount charged by cord blood bank for preservation of stem cells [Note-3]**(1 mark)**	5,00,000	Nil
Service provided by commentator to a recognized sports body [Note-4] **(1 mark)**	5,20,000	5,20,000 × 15% =78,000

Notes:

As per *Mega Exemption Notification No. 25/2012 ST dated 20.06.2012:*

Services by an entity registered under section 12AA of the Income-tax Act, 1961 by way of charitable activities are exempt from service tax. With effect from 21.10.2015, activities relating to advancement of yoga have been included in the definition of charitable activities.

With effect from 21.10.2015, services provided by a business facilitator/a business correspondent (popularly known as Bank Mitras) to a banking company with respect to Basic Savings Bank Deposit Accounts covered by Pradhan Mantri Jan Dhan Yojana (PMJDY) in the banking company's rural area branch have been exempted from service tax.

Services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation are exempt from service tax.

Services provided **to** a recognized sports body by an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body are exempt from service tax. Thus, services provided by commentators are taxable.

b.

Computation of assessable value
(1/2 mark for each)

Particulars	Amount ($)
FOB value of machine with accessories	50,000.00
Add: Extra set of accessories supplied free of cost to cover for transit damage [Note-1]	Nil
Buying commission [Note-2]	Nil
Warranty cost [Note-3]	4,500.00
Design and development charges [Note-3]	6,000.00
License fee [Note-3]	1,000.00
Value of drawings supplied by AMTL Ltd. [Note-3]4	1,000.00
Total FOB Value	62,500.00
Add: Air freight restricted to 20% of ` 62,500 in terms of second proviso to rule 10(2) of the Customs Valuation Rules	12,500.00
Insurance (Unascertainable insurance charges added @ 1.125% of ` 62,500) [Clause (iii) of first proviso to rule 10(2) of Customs Valuation Rules]	703.12
CIF Value	75,703.12
Add: Landing charges @ 1% [Note-4]	757.03
Assessable value in US $	76,460.15
	`
Exchange rate is ` 66.25 per $[Note-5]	
Assessable value in rupees	**50,65,484.94**

Notes:-

(1) Sale price of machine is deemed to include the value of such accessories.

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

(3) As per rule 10(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the following are includible in the assessable value: -

(a) Payment made as a condition of sale is includible in the assessable value. So, warranty cost is includible in the assessable value. [Rule 10(1)(e)]

(b) Design and development charges [Rule 10(1)(b)(iv)]

(c) License fees- [Rule 10(1)(c)]

(d) Value of drawings supplied by AMTL Ltd. [Rule 10(1)(b)(iv)]

(4) Landing charges @ 1% of CIF value are includible in the assessable value, whether actually incurred or not. [Clause (ii) of first proviso to rule 10(2)of Customs Valuation Rules]

(5) Rate of exchange notified by CBEC on the date of filing of bill of entry to be considered. [Third proviso to Section 14 of the Customs Act, 1962]

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4 *Since the value for such drawings is given in US $, it is presumed that the same has been developed outside India.*

c. As per the second proviso inserted in rule 7 of the Point of Taxation Rules, 2011 vide *Notification No 21/2016 ST dated 30.03.2016,* where there is change in the liability or extent of liability of a person required to pay tax as recipient of service notified under section 68(2) of the Finance Act, 1994, in case service has been provided and the invoice issued before the date of such change, but payment has not been made as on such date, the point of taxation shall be the date of issuance of invoice. **(1 mark)**

Since in the given case services have been provided (on 08.07.2016) and invoice has been issued (on 09.07.2016) before date of change in the extent of liability of service recipient (on 15.07.2016) but the payment has not been made as on such date, the point of taxation will be 09.07.2016, i.e. the date of issuance of invoice. **(1 mark)**

The amount of service tax (including 0.5% SBC and 0.5% KKC) on the consideration of ` 10,00,000 is as follows:

= ` 10,00,000 × 15% =` 1,50,000**(1 mark)**

Since the point of taxation (viz. 09.07.2016) lies prior to change in the extent of liability of service recipient, Hindustan Enterprises will pay 50% of the service tax [` 75,000] and remaining 50% of the service tax will be paid by Mr. Prakash [` 75,000]. **(1 mark)**

d.

The following actions can be taken by the Department in case of misuse of service tax credit:

(i) If any person takes or utilises CENVAT credit wrongly or in contravention of any of the provisions of CENVAT Credit Rules, 2004, then:- (a) all such goods shall be liable to confiscation and, (b) such person shall be liable to penalty in terms of clause (a) or clause (b) of section 11AC(1) of the Central Excise Act, 1944 or section 76(1) of the Finance Act, 1994 as the case may be.

The quantum of such penalties can be reduced or even nullified depending on the time of payment of excise duty/service tax, interest and reduced penalty, as the case may be, in accordance with clause (a) or clause (b) of section 11AC(1) and section 76(1), as the case may be [Rule 15(1)]. **(2 marks)**

(ii) If such wrong utilization was on account of fraud, collusion, willful mis-statetment or suppression of facts, or in contravention of Act or rules with intention to evade payment of excise duty/service tax, the penalty will be – (a) in terms of section 11AC(1)(c) or 11AC(1)(d) or 11AC(1)(e) of the Central Excise Act [Rule 15(2)], or (b) in terms of section 78(1) of Finance Act, 1994 [Rule 15(3)]. **(1 mark)**

(iii) Special audit prescribed under section 72 of the Finance Act, 1994 can be ordered where credit of service tax availed and utilized is not within the normal limits etc. **(1 mark)**

Question 3

a. Out of common credit of ` 30,000 (Refer Note below), CENVAT credit on input services attributable to rendering of exempted services during April, 2016

= (` 40,00,000/ `1,00,00,000) x ` 30,000 = ` 12,000**(1 mark)**

Note: Out of total credit of ` 50,000, ` 10,000 is deducted for input services exclusively used for / provision of exempted services and another ` 10,000 is deducted for input services exclusively used for /provision of taxable services.

Computation of CENVAT credit available for set off(3 marks)

Particulars	`
Credit on input services	50,000
Less: Credit on exempted service	(10,000)
Less: Reversal under rule 6(3)(ii)	(12,000)
CENVAT credit available for set off	**28,000**

b. Section 89(1)(ii) of the Finance Act, 1994 stipulates that failure to pay any amount collected as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due is punishable with imprisonm ent for a term which may extend to 7 years provided such amount exceeds ` 2 crores. **(1 mark)**

The Department's contention that failure to deposit service tax with Central Government after collecting it from the customers is a continuing offence and hence, entire am ount of arrears of service tax should be taken as liable to be deposited, is correct. **(1 mark)**

Therefore, in the instant case, on the date of arrest of the assessee viz. 25.10.2016, the amount of service tax collected but not deposited with the Central Government beyond a period of six months from the date on which such payment becomes due, will be ` 1.5 crores [` 0.5 crore for FY 2014-15 & ` 1 crore for FY 2015-16]. **(1 mark)**

However, since the amount of service tax outstanding is less than ` 2 crores, the assesse cannot be prosecuted and arrested. **(1 mark)**

c. Duty drawback under section 75 of the Customs Act, 1962 -

(i) is allowed on imported materials used in the manufacture of export goods

(ii) is not allowed if rate of drawback is less than 1% of FOB value, except where drawback amount per shipment exceeds ` 500 under rule 8(1) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995.

(iii) cannot exceed 1/3rd of market price of export product under rule 8A of the said rules. **(2 marks)**

A Drawback amount = 30% of ` 4,30,000 = ` 1,29,000

Duty drawback is allowed, but amount is restricted to 1/3rd of ` 3,50,000 = ` 1,16,667 (rounded off).

B No duty drawback is admissible. Product B is imported and the same product is exported without any manufacturing operation being carried out on the same. However, in such a case, drawback on Product B may be allowed under section 74 of the Customs Act, 1962 which allows drawback on re-export of duty-paid good.

C Duty drawback is admissible. Even though drawback is less than 1% of FOB value, the amount of drawback per shipment (` 1,20,000 × 0.75% = ` 900) exceeds ` 500.

D No duty drawback is allowed if exported goods are manufactured out of duty free inputs.**(1/2 mark for each)**

d. As per section 7(1)(b) of CGST Act, 2017 supply includes the importation of **services for a consideration** whether or not in the course or furtherance of business. Thus, import of services with consideration is taxable in both of the following situations:

(a) in course or furtherance of business

(b) not in course or furtherance of business

Further, Schedule I of CGST Act, *inter alia*, stipulates that import of services by a taxable person from a related person or from his establishments located outside India is treated as "supply" even if made without consideration if it is **provided in the course or furtherance of business. (4 marks)**

Question 4

a. 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.

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 convert ed)] during current and previous three financial years. Thus, export performance of Skyfly Pvt. Ltd. and Landup 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, Skyfly Pvt. Ltd. and Landup 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:

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

(2 marks)

b. **(i)** As per section 89(1)(b) of Finance Act, 1994, both availment and utilization of credit of excise duty without actual receipt of excisable goods constitutes an offence for launching prosecution.

Since in the given case, Mr. Lalit Jain has only availed CENVAT credit and not utilised the same, prosecution provisions will not be applicable to him. **(1 mark)**

(ii) As per section 89(1)(i) of Finance Act, 1994, whoever wilfully evades payment of service tax would be punishable with imprisonment for a period of 6 months to 3 years if the amount involved in the offence exceeds ` 2 crore.

Since in the given case, Mr. Kanha Goel has wilfully evaded payment of service tax of ` 14 crore, which is more than the prescribed limit (` 2 crore), he will be liable for imprisonment for a period of 6 months to 3 years. **(1 mark)**

(iii) As per section 89(1)(ii) of Finance Act, 1994, failure to pay the amount collected as service tax to the credit of Central Government beyond a period of six months from the date on which such payment becomes due, constitutes an offence punishable with imprisonment for a period of 6 months to 7 years, if the amount exceeds ` 2 crore.

In the given case, the amount collected but not paid is ` 5 crore and the same has not been paid beyond the period of six months. Therefore, Mr. Chirag Sharma will be liable for imprisonment for a period of 6 months to 7 years. **(1 mark)**

If Mr. Kanha Goel and Mr. Chirag Sharma are convicted for subsequent offences, then as per section 89(2) of the Finance Act, 1994, Mr. Kanha Goel would be liable for imprisonment for a period which may extend to 3 years, whereas Mr. Chirag Sharma would be liable for imprisonment for a period which may extend to 7 years. **(1 mark)**

c. Works contract service is notified as a "continuous supply of service" vide *Notification No. 38/2012 ST dated 20.6.2012* issued under rule 2(c) of PoTR. In case of continuous supply of service, the date of completion of each event which requires the service receiver to make any payment to service provider, as specified in the contract shall be deemed to be the date of completion of provision of service [Clause (i) of proviso to rule 3 of PoTR]. The point of taxation will, then, be determined accordingly in terms of provisions of rule 3 of PoTR. **(1 mark)**

Therefore, in the given case, the date of completion of various stages of construction - which require payments to be made (including initial booking) - will be considered as dates of completion of service and point of taxation will be determined in accordance with rule 3 as under: **(3 marks)**

Stage of Completion	Point of taxation
Initial booking	May 01, 20XX as the date of completion of service, date of issuance of invoice and date of payment are the same.
50%	Since invoice has been issued within 30 days of completion of service (June 20, 20XX), point of taxation is date of invoice (June 30, 20XX) or date of payment (August 25, 20XX) whichever is earlier, i.e. June 30, 20XX.
75%	Since invoice has not been issued within 30 days of completion of service (July 30, 20XX), point of taxation is date of completion of service (July 30, 20XX) or date of payment (August 30, 20XX) whichever is earlier, i.e. July 30, 20XX.
100%	Since invoice has been issued within 30 days of completion of service (September 25, 20XX), point of taxation is date of invoice (October 03, 20XX) or date of payment (October 01, 20XX) whichever is earlier, i.e. October 01, 20XX.

d. In case of an assessee eligible to avail the exemption under a Notification based on the value of clearances in a financial year (SSIs), the duty on goods cleared during a quarter is paid as under: **(3 marks)**

Case	Due Date for payment of duty
If duty is paid electronically through internet banking	6th day of the month following that quarter
In any other case	5th day of the month following that quarter
In case of goods removed during the quarter ending in March	31st day of March

It may be noted that above relaxation is available to a unit which is "eligible" to claim SSI exemption regardless of the fact whether the concerned unit actually claims it or opts to pay duty. Further, the above relaxation is available to an "eligible" unit for the entire financial year even if it crosses the limit of ` 400 lakh (aggregate value of clearances) in the current financial year. **(1 mark)**

Question 5

a. Computation of CENVAT credit that can be availed by Mahadev Ltd. during the month of November, 2017:

Particulars	`
Raw material (Note 1)	-
Grease and oil (Note 1)	5,000
Input service (Note 2)	19,500
Construction Service (Note 3)	-
Light Diesel Oil (Note 4)	-

Paints (Note 5)	-
Total CENVAT credit that can be availed during the month of November,2017	**24,500**

(4 marks)

Notes:

1. A manufacturer can take CENVAT credit of inputs upto one year from the date of issue of invoice [Third proviso to rule 4(1) of CCR, 2004].
2. A manufacturer can take CENVAT credit of input services upto one year from the date of issue of invoice [Sixth proviso to rule 4(7) of CCR, 2004]. Further, SBC is not CENVAT able and credit of KKC is not available to a manufacturer.
3. Construction service received is not eligible for CENVAT credit.
4. Light Diesel Oil is not an input in terms of definition of inputs [Rule 2(k)(A) of CCR, 2004].
5. CENVAT credit cannot be availed without a valid invoice [Rule 9(1)(a) of CCR, 2004].

b. After goods are confiscated, they become property of Central Government and Government can sell/auction the goods. However, in some cases, the person from whom goods have been seized can get them back on payment of a prescribed fine. This fine is termed as 'redemption fine'. **(1 mark)**

Section 125 of the Customs Act, 1962 empowers a Customs Officer adjudging the confiscation to give an option to the owner of the goods or where such owner is not known, the person from whose possession or custody such goods have been seized to pay a fine as the said officer thinks fit, in lieu of confiscation of the imported goods. The provisions in this regard are as follows: **(2 marks)**

- in case of prohibited goods, the proper officer may give an option to pay a fine in lieu of confiscation;
- in case of other goods, the proper officer shall give an option of payment of fine, in lieu of confiscation;
- the amount of such fine cannot exceed the market price of the goods confiscated less import duty chargeable (in the case of imported goods) thereon;
- in addition to the fine imposed, duty and charges would also be payable in respect of such goods.

The provisions of section 125 give the importer an option to either allow the goods to be confiscated or pay redemption fine in lieu of confiscation. Hence, the redemption fine becomes liable only in lieu of confiscation.

However, where the importer has abandoned the goods, the scope for payment of any fine in lieu of confiscation comes to an end. Hence, the redemption fine, if already paid shall be liable to be refunded. This view has been upheld by the Madras High Court in the case of *Purfina***(1 mark)**
Chemicals Pvt. Ltd v CEGAT, Madras (2004) (167) E.L.T. 145 (Mad.)

c. Section 14A of the Central Excise Act, 1944 provides that if at any stage of enquiry, investigation or any other proceedings before him, any Central Excise Officer not below the rank of an Assistant/Deputy Commissioner of Central Excise having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or determined by a manufacturer or any person, he may, with the previous approval of the Principal Chief Commissioner/ Chief Commissioner of Central Excise, direct such manufacturer of such person to get the accounts of his factory, offices, depots, distributors or any other place, as may be specified by the said Central Excise officer, audited by a Cost/Chartered Accountant, nominated by the Principal Chief Commissioner / Chief Commissioner of Central Excise in this behalf. **(2 marks)**

The Cost/Chartered Accountant shall submit the audit report duly signed and certified to the said Central Excise Officer within the period specified by him or the period further extended on an application made to him. However, in any case the aggregate of the original and extended period cannot exceed 180 days. The expenses of audit and audit fees for special audit shall be paid by excise department. **(1 mark)**

The manufacturer shall be given an opportunity of being heard in respect of any material gathered on the basis of audit and proposed to be utilized in any proceedings under the Central Excise Act or Rules. This special audit can

be conducted notwithstanding that the accounts of the manufacturer or the person have been audited under any other law for the time being in force or otherwise. **(1 mark)**

d. Rule 8 of the PoTR, inter alia, applies in respect of payments pertaining to patents, where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and subsequently the use or the benefit of these services by a person other than the provider gives rise to any payment of consideration. The service shall be treated as provided each time when a payment in respect of such use or the benefit is received by the provider in respect thereof, or an invoice is issued by the provider, whichever is earlier. **(1 mark)**

Since in the given case, whole amount of the consideration for the provision of patent is not ascertainable at the time when service was performed and subsequently the use of these services by Arti Ltd. gives right to any payment of consideration, both the conditions specified in rule 8 get satisfied. Therefore, the point of taxation of Prabhu Ltd. for various financial years, determined as per rule 8, is as under: **(3 marks)**

Financial Year	Point of Taxation	Reason
2013-14	05.07.2014	Date of issuance of invoice [05.07.2014] falls before date of payment [26.08.2014]
2014-15	03.04.2015	Date of payment [03.04.2015] precedes date of issuance of invoice [13.04.2015]
2015-16	11.04.2016	Date of issuance of invoice [11.04.2016] falls before date of payment [20.05.2016]

Question 6

a.

Due date for payment of service tax for the month of June, 2016	06.07.2016
Date when service tax was actually paid	06.12.2016

Section 75 of Finance Act, 1994 read with *Notification No. 13/2016 ST dated 01.03.2016* provides for charging simple interest where any amount has been collected as service tax but not paid to the credit of the Central Government on or before the date on which such payment becomes due. The interest is payable @ 24% p.a. for the period by which such crediting of tax or any part thereof is delayed. However, in all other cases, 15% simple interest p.a. is payable. **(1 mark)**

Further, such rate of interest shall be reduced by 3% per annum in case of a service provider whose turnover does not exceed ` 60 lakh during any of the financial years covered by the notice or during the last preceding financial year. **(1 mark)**

Since in the given case, Kishore Housekeeping Services Ltd. has collected service tax but failed to deposit the same on/before the due date with Central Government and its turnover was ` 58.50 lakh in the preceding financial year, interest under section 75 will be payable @ 21% as follows:**(1 mark)**

Period	Delay	Interest (`)
07.07.2016 to 06.12.2016	5 months	` 5,00,000 × 21% × 5/12 = 43,750

However, if the value of taxable services provided by Kishore Housekeeping Services Ltd. in the preceding financial year is ` 91.90 lakh (i.e. more than ` 60 lakh), interest payable will be computed as follows: **(1 mark)**

Period	Rate of interest	Delay	Interest (`)
07.07.2016 to 06.12.2016	24%	5 months	5,00,000 × 24% × 5/12 = 50,000

b.

(i) **The statement is not correct.** Madras High Court in the case of *Chitra Builders Private Ltd. v. Addl. Commr. of CCEx. & ST 2013 (31) STR 515 (Mad.)* has held that it is a well settled position in law that no tax can be collected from the assessee, without an appropriate assessment order being passed by the authority concerned and without following the procedures established by law.**(2 marks)**

(ii) **The statement is correct.** As per proviso to section 73(1), extended period of limitation can be invoked if the service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provision of Chapter V or of rules made thereunder with an intent to evade the payment of service tax.
The Calcutta High Court in the case of *Infinity Infotech Parks Ltd. v. UOI 2013 (31) STR 653 (Gau.)* has held that mere contravention of provision of Chapter V or rules framed thereunder does not enable the service tax authorities to invoke the extended period of limitation. The contravention necessarily has to be with the intent to evade payment of service tax. **(2 marks)**

c. The sums due to the Government can be recovered from any person in any of the following two ways:

a. Deducting the amount payable from any money owing to the defaulter which may be under the control of any Customs Officer.
b. Detaining and selling goods belonging to such person, which are under the control of customs authorities; **(2 marks)**

If amount cannot be recovered from such person in the manner provided in clause (a) and (b) above, recovery can be made in either of the following ways:- **(2 marks)**

a. Issuing a certificate to District Collector in whose district any property of the person is situated or where he resides or carries on his business.
b. Distraining and detaining any property (movable/immovable) belonging to the person and selling the same.
c. Recovering from successor by attaching and selling goods, materials, machinery, plant etc. transferred to successor in trade or business.
d. Recovering from a person other than from whom money is due, if that other person holds money for/on account of the first person.

d. Section 72A(1) of the Finance Act, 1994, *inter alia,* provides that if the Commissioner of Central Excise, has reasons to believe that any person liable to pay service tax has operations spread out in multiple locations and it is not possible or practicable to obtain a true and complete picture of his accounts from the registered premises falling under the jurisdiction of the said Commissioner, he may direct such person to get his accounts audited by a Chartered Accountant or Cost Accountant nominated by him, to the extent and for the period as may be specified by him. **(2 marks)**

Further, sub-section (3) of section 72A provides that Commissioner may order such special audit even if the accounts of such person have been audited under any other law for the time being in force. **(1 mark)**

Therefore, the fact that Raman's accounts have been audited under Income-tax Act, 1961 will not have any bearing on special audit ordered under section 72A of Finance Act, 1994. Thus, the contention of Raman is not correct in law. **(1 mark)**

Question 7

a. Article 279A of the Constitution empowers the President to constitute a joint forum of the Centre and States namely, Goods & Services Tax Council **(GST Council)**.

The provisions relating to GST Council came into force on 12th September, 2016. President constituted the GST Council on 15th September, 2016. **(1 mark)**

The Union Finance Minister is the Chairman of this Council and Ministers in charge of Finance/Taxation or any other Minister nominated by each of the States & UTs with Legislatures are its members. Besides, the Union Minister of State in charge of Revenue or Finance is also its member. **(1 mark)**

The function of the Council is to make recommendations to the Union and the States on important issues like tax rates, exemptions, threshold limits, dispute resolution etc. The GST Council has decided the threshold exemption, composition threshold, GST rates, GST legislations including rules and notifications. **(2 marks)**

b. Computation of export duty(4 marks)

Particulars	Amount (US $)
FOB price of goods [Note 1]	1,00,000
	Amount (`)
Value in Indian currency (US $ 1,00,000 x ` 55) [Note 2]	55,00,000
Export duty @ 8% [Note 3]	**4,40,000**

Notes:

1. As per section 14(1) of the Customs Act, 1962, assessable value of the export goods is the transaction value of such goods which is the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation.
2. As per third proviso to section 14(1) of the Customs Act, 1962, assessable value has to be calculated with reference to the rate of exchange notified by the CBEC on the date of presentation of shipping bill of export.
3. As per section 16(1)(a) of the Customs Act, 1962, in case of goods entered for export, the rate of duty prevalent on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation, is considered.

c. No, the stand taken by the Department is not correct in law.

The plastic name plates should be classified as parts and accessories of motor vehicles on following grounds:

a. name plates are solely and exclusively used for motor vehicles.
b. classification as parts and accessories of motor vehicles is more specific while the classification as other plastic products is residuary and more general in nature. **(2 marks)**

The Department has only examined whether the name plates can be considered 'parts' of motor vehicles, it has not considered whether these name plates can be considered 'accessories' of motor vehicle - an 'accessory' by its very definition is something supplementary or subordinate in nature and need not be essential for the actual functioning of the product. **(1 mark)**

The Supreme Court in the case of *Pragati Silicons Pvt. Ltd. v. CCEx. Delhi (2007) 211 ELT 534 (SC)* applied the test laid down in the case of *Mehra Bros. v. Joint Commercial Officer (1991) 51 ELT 173 (SC)* and held that name plates add to convenient use of motor vehicle and give an identity to it. They add effectiveness and value to vehicle and are at very least accessories of vehicles. Thus, even if there was any difficulty in the inclusion of the name plates as 'parts' of the motor vehicles, they would most certainly have been covered by the broader term 'accessory' as car seat covers and upholstery etc. **(1 mark)**

d.

i. The given statement is **not valid** as the definition of input service under rule 2(l) of the CENVAT Credit Rules, 2004 specifically includes services used in relation to renovation or repairs of a factory or an office relating to such factory. Thus, credit on such services is available. **(1 mark)**

ii. The said statement is **not valid**. As per rule 6(4) of the said rules, no credit can be availed on capital goods which are used exclusively in manufacture of exempted goods or in providing exempted service. Since, as per rule 2(d) of the said rules, goods in respect of which the benefit of an exemption under *Notification No. 1/2011-CE dated 01.03.2011* is availed are exempted goods, credit of capital goods used exclusively in manufacture of such goods is not allowed [*Circular No. 943/04/2011-CX dated 29.04.2011]*. **(1 mark)**

iii. The said statement is **valid**. As per rule 3(5A)(b) of the CENVAT Credit Rules, 2004, if the capital goods are cleared as waste and scrap, the manufacturer has to pay an amount equal to duty leviable on transaction value. **(1 mark)**

iv. The said statement is **not valid**. Rule 2(a) of the CENVAT Credit Rules, 2004provides that motor vehicles falling under tariff headings 8702, 8703, 8704 and 8711 are not eligible as 'capital goods' for CENVAT credit. Thus, following motor vehicles are specifically excluded from the ambit of the definition of capital goods: **(1 mark)**

a. Motor vehicles for the transport of 10 or more persons, including the driver [Chapter heading 8702].

b. Motor cars and other motor vehicles principally designed for the transport of persons (other than those covered in (i) above), including station wagons and racing cars[Chapter heading 8703].

c. Motor vehicles for transport of goods [Chapter heading 8704]

d. Motor cycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side cars [Chapter heading 8711].

e.

The issue as to whether the best judgment assessment under section 72 of the Finance Act, 1994 is an ex-parte assessment procedure is decided by the High Court in case of *N.B.C. Corporation Ltd. v. Commissioner of Service Tax 2014 (33) S.T.R. 113 (Del.)* wherein the High Court held that section 72 could *per se* not be considered as an ex parte assessment procedure as ordinarily understood under the Income-tax Act, 1961. Section 72 mandates that the assessee must appear and must furnish books of account, documents and material to the Central Excise Officer before he passes the best judgment assessment order. Thus, said order is not akin to an ex parte order.

Such an order will be akin to an ex parte order, when the assessee fails to produce records and the Central Excise Officer has to proceed on other information or data which may be available.

(4 marks)

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