



**J.K. SHAH**<sup>®</sup>  
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**FINAL MAY 2019 EXAM**

**SUBJECT- IDT**

**Test Code – FNJ 7131**

**BRANCH - () (Date :)**

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Answer 1:

(1 mark x 15 = 15 marks)

1) D 2) C 3) B 4) D 5) D 6) D 7) C 8) A 9) B 10) C 11) C 12) C 13) C 14) D 15) D

Answer 2:

(A)

This issue has been addressed to by the **High Court in the case of Tata Teleservices (Maharashtra) Ltd. v. Union of India** 2006 (201) ELT 529 (Bom.). In this case the assessee had evaded duty and had applied for settlement in the Settlement Commission. The contention of the Department was that **the companies or the persons, who evaded the customs duty fraudulently, could not avail of the benefit of approaching the Settlement Commission.** It was submitted by the Department that the Settlement Commission had a limited jurisdiction of accepting only the cases of short levy on account of misclassification or otherwise and not other cases. (2 marks)

The High Court observed that the **Settlement Commission had wide jurisdiction to entertain all kinds of settlement claim applications,** with liberty to reject the same even at preliminary stage, depending upon the nature, circumstances and complexity of a case. However, a case would be accepted by the Settlement Commission only if the mandatory requirements of:

- (i) filing Bill of Entry/Shipping Bill or a bill of export, or a baggage declaration, or a label or declaration accompanying the goods imported or exported through post or courier, as the case may be and issuance of a show cause notice in relation to such such document or documents.
- (ii) making a full and true disclosure of duty liability which was not disclosed earlier before the proper officer and the manner in which such liability had been incurred and additional amount of customs duty accepted to be payable by the assessee and
- (iii) furnishing such other particulars as may be specified by the rules including the particulars of such dutiable goods in respect of which the assessee admits short levy on account of misclassification or otherwise of goods have been fulfilled. (2 marks)

**The High Court observed that the jurisdiction of the Settlement Commission was not restricted only to cases of short levy on account of misclassification or otherwise.** The object of introducing Chapter XIVA to the Customs Act, 1962 was to resolve all disputes so as to collect revenue for the department. **The High Court held that if interpretation of section 127B was restricted to mean only bona fide cases, then there would be no scope of unearthing revenue.** It was pointed out by the High Court that earlier part of section 127B ibid laid down the jurisdiction and only the latter part dealt with the rules whereby certain details were to be provided. Therefore, it was held by the High Court that the argument with regard to short levy due to mis- classification or otherwise was purely a procedural one and there was no need to decide the same. (2 marks)

Note: This ruling has been maintained in Union of India vs. Bipin H Badani 2015 (326) ELT 25 by the Supreme Court and affirmed in Union of India vs. Bipin H Badani 2017 (51) STR 226 by the Supreme Court.

(B)

Assessment Order passed by proper officer may be withdrawn in the following cases:-

- (i) **Assessment of Non-filers of return** – The best judgment order passed by the Proper Officer under section 62 of CGST Act shall automatically stand withdrawn if the taxable person furnishes a valid return for the default period (i.e. files the return and pays the tax as assessed by him), within thirty days of the receipt of the best judgment assessment order. (2 marks)
- (ii) **Summary Assessment** – A taxable person against whom a summary assessment order has been passed can apply for its withdrawal to the jurisdictional Additional/Joint Commissioner within thirty days of the date of receipt of the order. If the said officer finds

the order erroneous, he can withdraw it and direct the proper officer to carry out determination of tax liability in terms of section 73 or 74 of CGST Act. The Additional/Joint Commissioner can follow a similar course of action. **(2 marks)**

**Answer 3:**

**(A)**

Section 161 lays down that any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any GST officer or by **the affected person within a period of three months from the date of issue of such decision** or order or notice or certificate or any other document, as the case may be.

However, no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document. **Further, the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission.**

**Principles of natural justice should be followed** by the authority carrying out such rectification, if it adversely affects any person. **(5marks)**

**(B)**

**High Court's Observations:** Considering the provisions of section 142 of the Customs Act, 1962 and the relevant rules\*, the High Court elucidated that it was only the defaulter against whom steps might be taken for the recovery of the dues. In the present case, it was the company who was the defaulter. **(2 marks)**

**High Court's Decision:** The Court held that since the company was not being wound up, the juristic personality the company and its former director would certainly be separate and the dues recoverable from the former could not, in the absence of a statutory provision, be recovered from the latter. There was no provision in the Customs Act, 1962 corresponding to section 179 of the Income-tax Act, 1961 or section 18 of the Central Sales Tax Act, 1956 (refer note below) which might enable the Revenue authorities to proceed against directors of companies who were not the defaulters. **(3 marks)**

**Notes:**

As per the provisions of section 179 of the Income-tax Act, 1961 and section 18 of the Central Sales Tax, 1956, in case of a private company in liquidation, where any tax dues of the company under the relevant statutes cannot be recovered, every person who was a director of the said company at any time during the period for which the tax is due shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company. Thus, Revenue authorities are empowered to proceed against the directors of the company for recovery of dues from the company under the said statutes.

\* The Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995.

**Answer 4:**

**(A)**

Yes. Any person aggrieved by any order or decision passed by an adjudicating authority under the CGST Act has the right to appeal to the Appellate Authority under section 107. The appeal should be filed **within 3 months** from the date of communication of such order or decision. However, the **Appellate Authority has the power to condone the delay of up to 1 month in filing the appeal** if there is sufficient cause for the delay. The appeal can be filed only when

the **admitted liability and 10% of the disputed tax amount** is paid as pre-deposit by the appellant.

However, no appeal can be filed against the following orders in terms of section 121:-

- (a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer;
- (b) an order pertaining to the seizure or retention of books of account, register and other documents; or
- (c) an order sanctioning prosecution under the Act; or
- (d) an order passed under section 80 (payment of tax in installments). **(5 marks)**

**(B)**

**Neeraj Jhanji v. CCE & Cus. 2014 (308) ELT 3 (SC)**

The Supreme Court observed that the very filing of writ petition by the petitioner in Delhi High Court against the order in original passed by the Commissioner of Customs, Kanpur indicated that the petitioner had taken chance in approaching the High Court at Delhi which had no territorial jurisdiction in the matter. The filing of the writ petition before Delhi High Court was not at all bona fide.

Note: In the aforementioned case, the Apex Court has disapproved the practice of Forum Shopping as adopted by the petitioner. Forum Shopping is the practice adopted by the litigants to have their legal case heard in the Court which would provide most favorable decision. **(4 marks)**

**(C)**

The definition of Advance ruling given under the Act is a broad one. Under GST, Advance ruling can be obtained on a proposed transaction as well as a transaction already undertaken by the appellant.

Advance Ruling can be sought for the following questions:-

- (a) classification of any goods or services or both
- (b) applicability of a notification issued under the provisions of CGST Act
- (c) determination of time and value of supply of goods or services or both
- (d) admissibility of input tax credit of tax paid or deemed to have been paid
- (e) determination of the liability to pay tax on any goods or services or both
- (f) whether applicant is required to be registered
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term. **(6 marks)**