SUGGESTED SOLUTION

CA FINAL MAY 2017EXAM

INDIRECT TAX LAW

Test Code - F M J 4 0 0 9

BRANCH - (MULTIPLE) (Date :08.01.2017)

Head Office :Shraddha, 3rd Floor, Near Chinai College, Andheri (E), Mumbai – 69.

Tel : (022) 26836666

Answer-1 (a) :

The contract entered into by Shambhu Pvt. Ltd. requires the provision of both services and material and is for the purpose of carrying out completion of an immovable property. Therefore, it falls within the scope of term 'works contract' as defined under section 65B(54) of the Finance Act, 1994. As per section 66E(h) of Finance Act, 1994, service portion in the execution of a works contract is a declared service and thus, service provided by ShambhuPvt. Ltd. would be liable to service tax.

Since, in the given case, the value of the service portion in the execution of the works contract cannot be determined as per rule 2A(i) of Service Tax (Determination of Value) Rules, 2006,the value will have to be determined as per rule 2A(ii)(B)(ii).

As per rule 2A(ii)(B)(ii), in case of works contracts involving completion and finishing services such as floor and wall tiling of an immovable property, service tax shall be payable on 70% of the total amount charged for the works contract. Further, explanation 1(b) to rule 2A stipulates that total amount means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting –

(2 Marks)

(i) the amount charged for such goods or services, if any; and

(ii) the value added tax or sales tax, if any, levied thereon.

In accordance with said provisions, service tax liability would be as follows:

Particulars	**(Rs.)**
Gross amount (excluding all taxes) charged by Shambhu Pvt. Ltd. for thecontract	6,00,000
Add: Fair market value of the material supplied by Nath Ltd.	1,00,000
Less: Amount charged by Nathu Ltd. for the material (including VAT)	60,000
Total amount charged	6,40,000
Value of service portion in the execution of works contract (70% of 6,40,000)	4,48,000

(1.5 Marks)

Particulars	**Service tax @ 14% (Rs.)**	**SBC @ 0.5% (Rs.)**	**KKC @ 0.5% (Rs.)**
Service tax on Rs. 4,48,000	62,720	2,240	2,240
Less: CENVAT credit on inputs (Note-1)	-	-	-
CENVAT credit on input services (Note-2)	5,600	-	200
CENVAT credit on capital goods (50%) (Note-3)	2,000	-	-
Service tax liability	55,120	2,240	2,040
Total service tax liability including cesses - Rs. 59,400			

(1.5 Marks)

Notes:

1. CENVAT credit of duties or cess paid on any inputs, used in or in relation to a works contract, is not available [Explanation 2 to rule 2A of the Valuation Rules].
2. Since SBC is not CENVATable, so CENVAT credit of SBC paid on input services is notallowed.
3. Only 50% of the duty paid on the capital goods is available as CENVAT credit, in thecurrent year [Rule 4(2)(a) of the CENVAT Credit Rules, 2004].

Answer-1 (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 servicesintended to be wholly or substantially consumed while on board, shall be the first scheduledpoint of departure of that conveyance for the journey. Hence, in this case the place ofprovision 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.

(2 Marks)

(ii) Leviability of service tax is determined in terms of the provisions of Finance Act, 1994 andnot in terms of Income-tax Act, 1961. The fact that Mr. Sumit is a non-resident is irrelevantfor 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 providedin the taxable territory by one person to another.

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

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

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

(3 Marks)

Answer-2 (a) :

Since in the given case, whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and subsequently the use of theseservices by a person other than the provider gives right to payment of consideration, theservice shall be treated as having been 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 theprovider, whichever is earlier [Rule 8 of the PoTR]. Therefore, the point of taxation for HMVLtd. for various financial years, determined as per rule 8, is as under:

FinancialYear	Point oftaxation	Reason
2013-14	29.07.2014	Date of issuance of invoice [29.07.2014] falls beforedate of payment [16.08.2014]
2014-15	23.05.2015	Date of payment [23.05.2015] precedes date ofissuance of invoice [03.06.2015]
2015-16	16.05.2016	Date of issuance of invoice [16.05.2016] as well asdate of receipt of payment [16.05.2016] is same.

(5 Marks)

Answer-2 (b) :

Renting of immovable property (whether residential or commercial) is a declared service undersection 66E(a) of Finance Act, 1994. However, services by way of renting of residential dwelling for use as residence are covered in negative list of services and are thus, not liable to service tax.

Since, Mr. A has let out different floors of his residential building to different tenants and separate rent/lease deeds have been executed in respect of each floor of such building and vacant land given on rent/lease, principle of bundled service will not apply. In this backdrop, the taxability of each of the floor of the building and vacant land owned by Mr. A is discussed as under:

(i) **Basement:** As per section 65B(41) of the Act, renting includes letting, leasing, licensing or other similar arrangements in respect of immovable property. Therefore, leasing out of the basement of the building to Mr. B would not be covered under negative list of services as Mr. B uses the basement for commercial purpose. Thus, it would be liable to service tax as declared service.

(ii) **Ground floor:** Renting of ground floor of the building to Mr. C for being used as a guesthouse will not be covered under negative list of services since Mr. C uses it for commercial purpose. Thus, it would be liable to service tax as declared service.

(iii) **First floor:** Since Mr. A uses the first floor of the building himself, it would not be a service and thus, would not be liable to service tax.

(iv) **Second floor:** Renting of second floor of the building to Mr. D for being used as aresidence would not be chargeable to service tax as it is covered in negative list ofservices under section 66D(m) of Finance Act, 1994.

(v) **Vacant land:** Though vacant land is also an immovable property, renting thereof to Mr. E,a parking contractor, will not be covered under negative list of services since Mr. E usesit for commercial purpose. Thus, it would be liable to service tax as declared service. **(5 Marks)**

Answer-3 (a) :

Due date for payment of service tax for the month of June, 20XX 06.07.20XX
Date when service tax was actually paid 06.12.20XX

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 isdelayed. Section 75 of Finance Act, 1994 read with Notification No. 13/2016 ST dated01.03.2016 provides that in case of collection of any amount as service tax but failing to paythe amount so collected to the credit of the Central Government on or before the date onwhich such payment becomes due, the simple interest @ 24% p.a. is payable. However, in allother cases, 15% simple interest p.a. is payable.

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

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

(3 Marks)

Period	Rate of interest	Delay	Interest (₹)
07.07.20XX to 06.12.20XX	21%	5 months	6,00,000 × 21% × 5/12 = 52,500

(1 Mark)

If the value of taxable services provided by ABC 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 (₹)
07.07.20XX to 06.12.20XX	24%	5 months	6,00,000 × 24% × 5/12=60,000

(1 Mark)

Answer-3 (b) :

The time-limit for issuance of show cause notice for demand of service tax under section 73 ofthe Finance Act, 1994 -

(a) in case of fraud, collusion, wilfulmis-statement, suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of service tax, is 5 years from the relevant date.

(b) for any other reason, is 30 months from the relevant date.

If the service of the notice is stayed by an order of a Court, the period of such stay should be excluded in computing the aforesaid period of 5 years or 30 months.

(2 Marks)

Answer-3 (c) :

As per mega exemption Notification No. 25/2012 ST dated 20.06.2012, services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year are exempt from service tax. CBEC Circular No.173/8/2013 ST dated 07.10.2013 clarifies that in a complex, if airconditioned as well as non-air-conditioned restaurants are operational and these restaurants are clearly demarcated and separately named, but food is sourced from a common kitchen, services provided in relation to serving of food/beverages in the air-conditioned restaurant are liable to service tax, but such services provided in a non air-conditioned restaurant are exempt from service tax.

Therefore, services provided in relation of serving of food in the non air-conditioned restaurant are exempt from service tax.

(2 Marks)

Answer-4 (a) :

(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 renovationor repairs of a factory or an office relating to such factory. Thus, credit on such servicesis available.

(1 Mark)

(ii) The said statement is not valid. As per rule 6(4) of the said rules, no credit can beavailed 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 inrespect of which the benefit of an exemption under Notification No. 1/2011-CE dated01.03.2011 is availed are exempted goods, credit

of capital goods used exclusively inmanufacture of such goods is not allowed [Circular No. 943/04/2011-CX dated29.04.2011].

(1 Mark)

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

(1 Mark)

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

(i) Motor vehicles for the transport of 10 or more persons, including the driver [Chapterheading 8702].

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

(iii) Motor vehicles for transport of goods [Chapter heading 8704]

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

(3 Marks)

Answer-4 (b) :

Rule 5 of CENVATCredit Rules, 2004, *inter alia,* provides that a service provider who provides an output service which is exported without payment of service tax, shall be allowed refund of CENVAT credit as determined by the following formula:

$$\text{Refund amount} = \frac{\text{Export turnover of services}}{\text{Total turnover}} \times \text{Net CENVAT credit}$$

(1 Mark)

CENVAT credit of service tax and KKC paid will be utilized towards payment of service tax and KKC on taxable output services respectively and the balance will be claimed as refund [Rule 6(8) of CCR, 2004 read with rule 5 of CCR, 2004].

In this case the service tax liability on taxable services of Rs. 10,000 (Rs. 30,000 - Rs. 20,000) is Rs. 1,500 @15% (including KKC and SBC). Out of this amount, service tax Rs. 1,400 and KKC Rs. 50 can be paid utilizing CENVAT credit while SBC Rs. 50 has to be paid in cash only.

Credit of KKC can be utilized only for payment KKC. Therefore, there is an excess credit of service tax of Rs. 1,400 (Rs. 2,800 – Rs. 1,400) and KKC of Rs. 50 (Rs. 100 – Rs. 50) which cannot be utilized. Thus, the refund of such credit can be claimed.

However, the refund will be restricted to the extent of ratio of export turnover to the total turnover for the given period, i.e. service tax Rs. 1,866 [Rs. 2,800 × (Rs. 20,000/Rs. 30,000)] and KKC Rs. 67 [Rs. 100 × (Rs. 20,000/Rs. 30,000)] (both rounded off) .

Thus, refund admissible is Rs. 1,450 (including KKC of Rs. 50).

(3 Marks)

Answer-5 (a) :

Computation of CENVAT credit available

Particulars	**Amount (Rs.)**
Raw Steel	22,000
Water pipe making machine (Rs. 18,000 × 50%) (Note-1)	9,000
Grease and Oil	2,800
Office equipment used in factory (Rs. 20,000 × 50%) (Note 2)	10,000
Spare parts for the machinery (Note-4) (7500*50%)	3,750
CENVAT credit admissible	47,550

(3 Marks)

Notes:

1. Water pipe making machine and spare parts, being capital goods, only 50% of CENVATcredit is available since XYZ & Co. is not eligible for SSI exemption [Rule 2(a) along withrule 4(2)(a) of the CCR, 2004].
2. With effect from 01.04.2016, a manufacturer can avail credit on equipment or applianceused in an office located within the factory [Rule 2(a) of the CCR, 2004].

3. No credit is available on light diesel oil since the definition of input under rule 2(k) of theCCR, 2004 specifically excludes the same.
4. With effect from 01.04.2016, definition of inputs under rule 2(k) of the CCR, 2004 hasbeen amended to include capital goods of **valueuptoRs. 10,000 per piece**, within its ambit.In the present case the **exciseduty** is Rs 7500 and therefore not considered as inputs and will continue to be capital goods.

(4 x 0.5 = 2 Marks)

Answer-5 (b) :

In both DFIA and Advance Authorization schemes, import of inputs, oil and catalyst which are required for export products are permitted without payment of customs duty.

The differences between DFIA and Advance Authorisation schemes are as follows -

(i) 'Advance Authorisation' is not transferable. DFIA is transferable after export obligation is fulfilled.
(ii) Advance Authorisation scheme requires 15% value addition, while in case of DFIA, minimum 20% value addition is required.
(iii) Advance Authorisation scheme is available to gem and jewellery sector but not DFIA.
(iv) DFIA cannot be issued where SION (Standard Input Output Norms) prescribes actual user condition [as the material is transferable after fulfilment of export obligation].
(v) Advance Authorisation can be issued even if SION for that product is not fixed. DIFA can be issued only if SION has been fixed for that product to be exported.

(5 x 1 = 5 Marks)