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**CA FINAL NOVEMBER 2016 EXAM**  
**INDIRECT TAXES**

**Test Code - F N J 6 0 0 5**

**BRANCH - (MUMBAI) (Date :05.06.2016)**

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**Answer-1 (a) :**

**Computation of assessable value and duty thereon**

Particular	Amount
FOB value	8,000 UK pounds
Add: Design and development charges [Note 1]	<u>500 UK pounds</u>
Total	8,500 UK pounds (Rs.)
Total in rupees @ Rs. 100 per pound [Note 2]	Rs. 8,50,000.00
Add: Local agency commission [Note 1]	
(2% of 8000 UK pounds) = 160 UK pounds × Rs. 100	<u>Rs. 16,000.00</u>
FOB value as per customs	8,66,000.00
Add: Air freight (8,66,000 x 20%) [Note 3]	1,73,200.00
Add: Insurance @ 1.125% of customs FOB [Note 4]	<u>9,742.50</u>
CIF Value	10,48,942.50
Add: Landing charges @ 1% of CIF value [Note 5]	<u>10,489.43</u>
Assessable value (rounded off)	10,59,432
Add: Basic custom duty @ 10% [Note 6]	<u>1,05,943.20</u>
Total	11,65,375.20
Add: Additional duty leviable under section 3(1) @ 12.5%	1,45,671.90
Add: Education cess (3% of custom duty)	
3% of Rs. 2,51,615.10 (Rs. 1,05,943.20 + Rs. 1,45,671.90)	<u>7,548.45</u>
Total for additional duty leviable under section 3(5)	13,18,595.55
Additional duty u/s 3(5) payable @ 4% [Note 7]	52,743.82
Total duty payable	
(Rs. 1,05,943.20 + Rs. 1,45,671.90 + Rs. 7,548.45 + Rs. 52,743.82)	3,11,907.37
Total duty payable (Rounded off)	3,11,907

**(5 Marks)**

**Notes:**

1. Design and development charges paid in UK and commission paid to local agent (since it is not buying commission) are includible in the assessable value [Rule 10 of the Customs (Determination of Value of Imported Goods) Rules, 2007]
2. The rate of exchange notified by the CBEC on the date of presentation of bill of entry has been considered [Section 14 of the Customs Act, 1962].
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].
4. Where the insurance charges are not ascertainable, such cost is taken as 1.125% of FOB value of the goods [Clause (iii) of the first proviso to Rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
5. Even if there is no information regarding landing charges, still they are charged @ 1% of CIF value [Clause (ii) of first proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
6. Section 15 of the Customs Act, 1962 provides that rate of duty shall be the rate in force on the date of presentation of bill of entry or the rate in force on the date of arrival of aircraft, whichever is later.
7. Additional duty leviable under section 3(5) of the Customs Tariff Act, 1975 is charged @ 4% of the value of the imported article.

**(3 Marks)**

**Answer-1 (b) :**

Section 61(1) of the Customs Act, 1962 provides that any warehoused goods may be left in the warehouse in which they were deposited or in any warehouse to which they may be removed-

- (a) in the case of capital goods intended for use in any hundred percent export oriented undertaking, till the expiry of five years;
- (b) in the case of goods other than capital goods, intended for use in any hundred per cent export-oriented undertaking, till the expiry of three years; and

(c) in the case of any other goods, till the expiry of one year, after the date on which the proper officer has made an order under section 60 permitting the deposit of the goods in a warehouse.

(2 Marks)

However,

- (i) in the case of any goods which are not likely to deteriorate, the period specified in clause (a) or clause (b) or clause (c) above may, on sufficient cause being shown, be extended-
- (A) in the case of such goods intended for use in any hundred percent export oriented undertaking, by the Principal Commissioner/ Commissioner of Customs, for such period as he may deem fit, and
- (B) in any other case, by the Principal Commissioner/ Commissioner of Customs, for a period not exceeding six months and by the Principal Chief Commissioner/ Chief Commissioner of Customs for such further period as he may deem fit;
- (ii) in the case of any goods referred to in clause (c) if they are likely to deteriorate, the Commissioner of Customs may reduce the aforesaid period of one year to such shorter period as he may deem fit.

(2 Marks)

Answer-2 (a) :

**Computation of service tax liability of Triksha Pvt. Ltd.**

Particulars	(Rs.)
<b>Services provided under the brand name owned by Triksha Pvt. Ltd.</b>	
Services provided by way of plastering of walls [Note 1]	5,60,000
Services provided in the execution of works contract for construction of a new building [Note 2]	<u>5,40,000</u>
Total value of taxable services	11,00,000
Less: Exemption for small service providers [Note 4]	<u>10,00,000</u>
Value of taxable services liable to service tax	1,00,000
Service tax payable @ 14% [Rs. 1,00,000 × 14%] [Note 3] (A)	14,000
<b>Services provided under the brand name of other person</b>	
Value of taxable services provided under brand name of other person	4,00,000
Service tax payable @ 14% [Rs. 4,00,000 × 14%] [Note 4] (B)	56,000
Total service tax payable (A) + (B)	70,000
Less: CENVAT credit available [Note 5]	<u>40,000</u>
<b>Service tax payable in cash</b>	<b>30,000</b>

(4 Marks)

Notes:

- Rule 2A(ii)(B)(ii) of the Service Tax (Determination of Value) Rules, 2006 provides that in case of works contracts entered into maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property, service tax shall be payable on 70% of the total amount charged for the works contract. Therefore, for plastering of walls, the value of service portion would be Rs. 5,60,000 [70% x Rs. 8,00,000].
- As per Explanation 1(a)(i) to rule 2A of the Service Tax (Determination of Value) Rules, 2006, original works inter alia means all new constructions. Further, as per rule 2A(ii)(A), in case of works contracts entered into for execution of original works, service tax is payable on 40% of the total amount charged for the works contract. Therefore, for construction of new building, the value of service portion would be Rs. 5,40,000 [40% x Rs. 13,50,000].
- As per Explanation 2 to rule 2A of Service Tax (Determination of Value) Rules, 2006, the provider of taxable service cannot take CENVAT credit of duties paid on any inputs, used in or in relation to the works contract, under the provisions of CENVAT Credit Rules, 2004. Hence, excise duty of Rs. 1,50,000 paid on inputs used for provision of works contract service under rule 2A(ii) of the Service Tax Valuation Rules cannot be availed.
- Since Triksha Pvt. Ltd. has commenced the business in the given financial year, its aggregate value of taxable services are nil in the preceding financial year. Thus, it is eligible for small service providers' (SSP) exemption in the given financial year. However, said exemption is not available in respect of

taxable services provided under a brand name of another person [Notification No. 33/2012 ST dated 20.06.2012].

5. Since the services provided under brand name of other person are not in the nature of works contract, CENVAT credit of excise duty paid on inputs used for provision of such services can be availed.

Also, since SSP exemption is not available in respect of such services, there would not be any restriction for availment of CENVAT credit on inputs used in provision for such service [Notification No. 33/2012 ST dated 20.06.2012].

(2 Marks)

**Answer-2 (b) :**

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 Shambhu Pvt. 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 the contract	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)	<u>60,000</u>
Total amount charged	6,40,000
Value of service portion in the execution of works contract (70% of 6,40,000)	4,48,000
Service tax on Rs. 4,48,000 @14%	62,720
Less: CENVAT credit on inputs (Note-1)	-
CENVAT credit on input services	6,000
CENVAT credit on capital goods (50%) (Note-2)	<u>2,000</u>
<b>Service tax payable</b>	<b>54,720</b>

(4 Marks)

**Notes:**

- 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].
- Only 50% of the duty paid on the capital goods is available as CENVAT credit, in the current year [Rule 4(2)(a) of the CENVAT Credit Rules, 2004].

**Answer-3 (a) :**

Since in the present case, the construction services are provided by Renu Ltd. to XYZ Ltd. under a contract for a period exceeding three months with the obligation for payment periodically, such services would fall within the ambit of term "continuous supply of service" as per rule 2(c) of the PoTR. The point of taxation in case of continuous supply of services is determined in accordance with provisions of rule 3 of PoTR.

Further, it is important to note that in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which

requires service receiver to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service.

(1 Mark)

Accordingly, the point of taxation with respect to each of the stages of completion is as follows:

**Stage of Completion      Point of taxation**

Initial booking      02.07.2014 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, point of taxation is date of invoice (22.03.2015) or date of payment (29.03.2015) whichever is earlier, i.e. 22.03.2015

75%                      Since invoice has not been issued within 30 days of completion of service, point of taxation is date of completion of service (20.06.2015) or date of payment (25.07.2015) whichever is earlier, i.e. 20.06.2015

100%                     Since invoice has been issued within 30 days of completion of service, point of taxation is date of invoice (21.10.2015) or date of payment (20.10.2015) whichever is earlier, i.e. 20.10.2015

(3 Marks)

**Answer-3 (b) :**

- (i) As per rule 5 of the PoPS Rules, in case of a service that is 'directly in relation to immovable property', the place of provision is where the immovable property is located, irrespective of where the provider or receiver is located.  
Since in the given case, the immovable property in question is located in New Delhi, the place of provision of service is New Delhi and resultantly, the service would be taxable in India. The fact that payment is made in foreign currency does not have any bearing on deciding the taxability of a service.
- (ii) Since in the given case, the immovable property in question is located in San Diego, the place of provision of service is San Diego, U.S.A. and resultantly, the service would not be taxable in India [Rule 5 of the PoPS Rules].
- (iii) In this case, since specific sites in respect of which mineral exploration is to be carried out are located in Canada, the place of provision of services as per rule 5 of the PoPS Rules will be Canada which does not fall within the ambit of 'taxable territory' and resultantly, these services will not be taxable in India. The fact that service providing company is located in USA and service recipient is located in Mumbai (India) is not significant.
- (iv) Although all the locations given in this case fall within the taxable territory, PoPS Rules are still applicable as these rules are also useful for those service providers who operate from multiple locations within India without having centralised registration for the purpose of determining the precise taxable jurisdiction applicable to their operations.  
Where any immovable property related service referred to in rule 5 is provided at more than one location, including a location in the taxable territory, its place of provision shall be the location in the taxable territory where the greatest proportion of the service is provided [Rule 7 of the PoPS Rules].  
Therefore, in the present case, ABC Ltd. is liable to pay service tax and the place of provision of services would be Gujarat because greatest proportion of taxable service [i.e. 60%] is provided there.
- (v) Since in this case, consulting engineer's services provided by Rohit are in respect of locations which fall within non-taxable territory, place of provision of the services provided is U.K., USA and Dubai for the respective services and hence, no service tax is chargeable by Mr. Rohit [Rule 5 of the PoPS Rules].
- (vi) Where any performance based service referred to in rule 4 is provided at more than one location, including a location in the taxable territory, its place of provision shall be the location in the taxable territory where the greatest proportion of the service is provided [Rule 7 of the PoPS Rules].  
In the given case, notwithstanding the fact that the greatest proportion of service is outside the taxable territory, the place of provision will be the place in the taxable territory where the greatest

proportion of service is provided, which in this case is Kerala . Thus,testing services provided in this case will be taxable in India.

**(6 x 1 = 6 Marks)**

**Answer-4 (a) :**

The facts of the case are similar to the case of Board of Trustees v. UOI (2009) 241 ELT 513(Bom HC DB), wherein the High Court held that considering the language of section 45(3), the liability to pay duty is of the person, in whose custody the goods remain as an approved person under section 45 of the Act. Therefore, section 45(3) applies only to the private custodians who are required to be approved by Principal Commissioner/ Commissioner of Customs under section 45(1). Accordingly, the major ports and airports covered under Major Port Trust Act, 1963 who do not require any approval under section 45(1), are not covered by section 45(3). Thus, the Department cannot demand duty from Port Trust on the pilferage under section 45(3) of the Customs Act, 1962.

Section 45(3) of the Customs Act, 1962 holds the custodian responsible only in respect of the customs duty in respect of pilfered goods. It does not extend to the value of goods lost. However, the Port Trust, as bailee of the goods, is liable for value of the goods to the importer.

**(3 Marks)**

**Answer-4 (b) :**

- (i) Exempt. Services provided TO an educational institution by way of transportation of students are exempt from service tax vide Notification No. 25/2012 ST dated 20.06.2012.
- (ii) Taxable. Services provided by way of vehicle parking to general public are not exempt from service tax.
- (iii) Taxable. Services provided to Government, a local authority or a Governmental authority by way of repair or maintenance of vessel are specifically exempt from service tax vide Notification No. 25/2012 ST dated 20.06.2012. However, services of repair or maintenance of aircraft owned by Government are not so exempt.
- (iv) Taxable. The benefit of exemption in relation to services provided by way of transfer of copyrights of cinematograph films is available only when such films are exhibited in a cinema hall or theatre. Therefore, exhibition of cinematograph films on television channels is taxable [Notification No. 25/2012 ST dated 20.06.2012]
- (v) Exempt. Services provided by a goods transport agency by way of transportation of milk, agricultural produce, chemical fertilizers and newspaper registered with the Registrar of Newspapers, in a goods carriage are exempt from service tax vide Notification No. 25/2012 ST dated 20.06.2012.
- (vi) Taxable. Transportation of petroleum and petroleum products and household effects by railways are not exempt from service tax.
- (vii) Taxable. Transportation of postal mails and mail bags by a vessel are not exempt from service tax.
- (viii) Exempt. Services provided by an educational institution to its students are exempt from service tax even if such educational institution is not recognized by Government [Notification No. 25/2012 ST dated 20.06.2012].

**(8 x 0.5 = 4 Marks)**

**Answer-5 (a) :**

Person	Offence	Prosecution	Arrest	Bail
Mr. Mihir	Non-cognizable offence	6 months to 3 years	Arrest can be ordered by Principal Commissioner / Commissioner of Central Excise	Bailable Offence
Mr. Sanjay	Non-cognizable offence	Upto 1 year	No arrest	Bailable offence
Mr. Ramesh	Non-cognizable offence	6 months to 3 years	Arrest can be ordered by Principal Commissioner / Commissioner of	Bailable Offence

Miss Kanika	Cognizable offence	Upto 7 years	Central Excise Arrest can be ordered by Principal Commissioner / Commissioner of Central Excise without arrest warrant	Non Bailable / Bailable offence
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(4 Marks)

Answer-5 (b) :

**Computation of customs duty payable**

Particulars	Rs.
Total CIF value in INR = US \$ 40,000 x Rs. 45	18,00,000
Add: Landing charges @1%	<u>18,000</u>
Assessable value (AV)	<u>18,18,000</u>
Basic customs duty (BCD) @10%	1,81,800
Education cess (EC) @ 2% on BCD	3,636
Secondary and higher education cess (SHEC) @ 1% on BCD	<u>1,818</u>
<b>Landed value of imported goods</b>	<b><u>20,05,254</u></b>
<b>Total customs duty payable (BCD + EC+ SHEC)</b>	<b><u>1,87,254</u></b>

(4 Marks)

**Computation of anti – dumping duty payable**

Particulars	Rs.
Value of goods in INR as per Notification = 1,000 Kgs x US \$ 60 x Rs. 45	27,00,000
Less : Landed value of goods	20,05,254
Anti-dumping duty payable	<u>6,94,746</u>

(1 Mark)