SUGGESTED SOLUTION

CA FINAL MAY 2017 EXAM

INDIRECT TAX LAWS

Test Code - F N J 6 0 7 2

BRANCH - (MULTIPLE)

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Answer-1 (a) :

Computation of assessable value:-

i. In the given case, since goods are sold from depot, transaction value (viz. Rs. 110 per meter) cannot be accepted for ascertaining the assessable value of the goods. The value of the said goods shall be determined as per rule 7 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 (hereinafter referred to asValuation Rules).

(1 Mark)

ii. Rule 7 of the Valuation Rules stipulates that if excisable goods are sold from a depotafter their clearance from the place of removal, the value shall be the normal transactionvalue of such goods sold from such other place (depot) at the time of removal fromfactory/warehouse. Hence, the normal transaction value of 1,000 meters of cloth soldfrom the Ahmedabad depot on 05.01.2016 shall be taken as assessable value.

(1 Mark)

iii. (a) Circular No. 354/81/2000 CX dated 30.06.2000 clarifies that if goods are soldfrom depot, "normal transaction value" under rule 2 of Valuation Rules is the transaction value at which the greatest aggregate quantity of goods fromdepots etc., are sold at or about the time of removal of the goods from thefactory/warehouse.

(b) Further, with regard to greatest aggregate quantity, Circular No. 643/34/2002CX dated 01.07.2002 clarifies that in this context, the time period should betaken as the whole day and the transaction value of the "greatest aggregate quantity" would refer to the price at which the largest quantity of identical goods are sold on a particular day, irrespective of the number of buyers.

(2 Marks)

iv. Accordingly, the price at which the largest quantity of identical variety of cloth issold on 05.01.2016 shall be taken as greatest aggregate quantity. The largestquantity sold during the day is 850 meters of cloth. The price at which it is sold i.e. Rs. 125, shall be considered for computing the normal transaction value.

Therefore, assessable value of the cloth = 1,000 mtrs. × Rs. 125 = Rs. 1,25,000.

(1 Marks)

Answer-1 (b) :

Computation of service tax liability of Divyakripa Trust:

Particulars	**Rs.**
Amount received for the Yoga camps organized for elderly people [Note 1]	Nil
Payment made for the services received from a service provider located in US, for the purposes of providing charitable activities [Note 2]	Nil
Amount received for counseling of mentally disabled persons [Note 1]	Nil
Amount received for activities relating to preservation of forests and wildlife [Note 1]	Nil
Amount received for renting of commercial property owned by the trust[Note 3]	1,50,000
Value of Taxable service	1,50,000
Service tax @ 14% (A)	21,000
SBC @ 0.5% (B)	750
KKC @ 0.5% (C)	750
Service tax liability [(A)+(B)]	**22,500**

(3 Marks)

Notes:

1. Services provided by an entity registered under section 12AA of the Income-tax Act, 1961 by way of charitable activities are exempt from service tax vide MegaExemption Notification No. 25/2012 ST dated 20.06.2012. The definition of term charitable activities, inter alia, means activities relating to:
   - advancement of yoga
   - care or counselling of terminally ill persons or persons with severe physical or mental disability.
   - preservation of environment including watershed, forests and wildlife.

2. Service receiver is liable to pay service tax in case of a taxable service provided by any person located in a non-taxable territory and received by any person located inthe taxable territory. However, where such services are received by an entity registered under section 12AA of the Income-tax Act, 1961 for the purposes ofproviding charitable activities from a provider of service located in a non – taxableterritory, they are exempt from service tax vide Mega Exemption Notification No.25/2012 ST dated 20.06.2012.
3. Renting of commercial property owned by the trust is liable to service tax.

(2 Marks)

Answer-1 (c) :

Although the accessories are supplied compulsorily alongwith the machinery, but sincethe price of the accessories is not included in the price of the machinery and is chargedseparately, the accessories will not be charged at the same rate as applicable to themachinery. The accessories will be treated as separate goods and accordingly custom duty shall be payable.

Hence, separate assessable values for the machinery and accessories have to becomputed in accordance with the proviso (a) to section 19 of the Customs Act, 1962 read with Accessories (Condition) Rules, 1963 in the following manner:

Particulars	**Accessories US $**	**Machinery US $**
FOB price	600.00	6,000.00
Add: Ocean Freight	100.00	1,000.00
Add: Insurance charges	6.75	67.50
Total CIF value excluding agent's commission	706.75	7,067.50
Exchange rate is 1 US $ = Rs. 62 [Note 1]		
	Rs.	**Rs.**
Total in Indian currency	43,818.50	4,38,185.00
Add: Local agent's commission (allocated on pro-rata basis)	600.00	6,000.00
CIF value	44,418.50	4,44,185.00
Add: Landing charges @1% of CIF value [Note 2]	444.19	4,441.85
Assessable value	44,862.69	4,48,626.85
Assessable value (rounded off)	**44,863**	**4,48,627**

(3 Marks)

Notes:

(1) Rate of exchange notified by CBEC as prevalent on the date of filing of bill of entry would be the applicable rate [Third proviso to section 14(1) of the Customs Act,1962].

(2) 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].

(3) Cost of transport of the imported goods upto the place of importation is only includible in the assessable value. Thus, transportation charges from Indian port tofactory of importer will not be included in the assessable value [Clause (a) of rule 10(2) of Customs (Determination of Value of Imported Goods) Rules, 2007].

(2 Marks)

Answer-1 (d) :

Computation of service tax liability of Singhal Classes

Particulars	**Rs.**
Service tax on coaching fees collected from the students= Rs. 50,00,000 × 14 / 100	7,00,000
Less: CENVAT credit available with respect to service tax paid on:	
—services of catering, photography and tents availed for thecelebrations organized, after	

completion of the academic sessions,for meritorious students [Note 2(i)]	Nil
—rent paid for hiring of examination hall for the purpose ofconducting examination for students undergoing the coaching [Note2(ii)] =Rs. 4,50,000 × 14%	63,000
—travelling expenses incurred for the business tours [Note 2(i)]	Nil
—advertisement expenses for promoting Singhal Classes [Note 1] =Rs. 1,00,000 × 14%	14,000
Service tax payable in cash	**6,23,000**

(2 Marks)

Computation of KKC liability of Singhal Classes

Particulars	**Rs.**
KKC on coaching fees collected from the students= Rs. 50,00,000 × 0.5 / 100	25,000
Less: CENVAT credit available with respect to service tax paid on:	
—services of catering, photography and tents availed for thecelebrations organized, after completion of the academic sessions,for meritorious students [Note 2(i)]	Nil
—rent paid for hiring of examination hall for the purpose ofconducting examination for students undergoing the coaching [Note2(ii)] =Rs. 4,50,000 × 0.5%	2,250
—travelling expenses incurred for the business tours [Note 2(i)]	Nil
—advertisement expenses for promoting Singhal Classes [Note 1] =Rs. 1,00,000 X 0.5%	500
KKC payable in cash	**22,250**

(1 Mark)

Notes:

1. Services used in relation to advertisement are eligible input services as per thedefinition of input service under rule 2(l) of the CCR, 2004.
2. As per Rajasthan High Court decision in case of Bansal Classes v. CCE & ST 2015(039) STR 0967 (Raj.):
   (i) since the activities of catering, photography and tent services are providedafter the students pass their coaching classes, they cannot be said to havebeen used to provide the output service of commercial training or coaching. Further, the travelling expenses incurred by assessee for the business tourscannot be related to provision of commercial training or coaching service.
   Therefore, CENVAT credit of the service tax paid on catering, photography andtent services and travelling expenses is not available.
   (iii) CENVAT credit in respect of service tax paid on renting of immovable propertyservice [hiring of examination hall] are allowed to an assessee engaged inproviding commercial training and coaching services.
3. Credit of KKC paid on input services is allowed and can be used against payment of KKC on output services.
4. In Addition to above, classes is also liable to pay SBC @ 0.5% on fee of Rs. 50,00,000/- i.e. Rs. 25,000/- in cash. It may be noted that as per Rule 3 of CENVAT Credit Rules, 2004 credit of SBC paid on input services cannot be availed.
5. All figures are considered as exclusive of tax and servicetax, SBC & KKC is assumed to be charged separately. **(2 Mark)**

Answer-2 (a) :

Calculation of service tax and total amount payable under rule 6(3)(i) of the CENVAT Credit Rules, 2004

Particulars	**Amount (Rs.)**

Service tax payable on taxable services (Rs. 70,00,000 × 14%)	9,80,000
Amount payable @ 7% of value of exempt services under rule 6(3)(i) (Rs. 30,00,000 × 7%) [Note (1)]	2,10,000
Total	**11,90,000**

(2 Marks)

Particulars	**Service tax and amount payable under rule 6(3)(i) [Rs.]**
Amount payable (A)	9,80,000+ 2,10,000 = 11,90,000
Less: CENVAT credit (B)	6,00,000
Net amount payable = (A) - (B)	5,90,000

Amount payable in cash = Rs. 5,90,000

(2 Marks)

In addition to above, SBC & KKC is also payable @ 0.5% i.e. Rs. 70,00,000 X 0.5% = Rs. 35,000/- each. This amount is wholly payable in cash. It is assumed that entire credit balance has been utilised against the payment of service tax and entire SBC & KKC has been paid in cash.

Answer-2 (b) :

Computation of service tax liability of Triksha Pvt. Ltd.

Particulars	**(Rs.)**
Services provided under the brand name owned by Triksha Pvt. Ltd.	
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]	5,40,000
Total value of taxable services	11,00,000
Less: Exemption for small service providers [Note 4]	10,00,000
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
Services provided under the brand name of other person	
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)	70,0000
Less: CENVAT credit available [Note 5]	40,000
Service tax payable in cash	**30,000**

(5 Marks)

Notes:

1. 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 finishingservices such as glazing or plastering or floor and wall tiling or installation of electricalfittings of immovable property, service tax shall be payable on 70% of the total amountcharged for the works contract. Therefore, for plastering of walls, the value of serviceportion would be Rs. 5,60,000 [70% x Rs. 8,00,000].
2. 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 ispayable on 40% of the total amount charged for the works contract. Therefore, forconstruction of new building, the value of service portion would be Rs. 5,40,000 [40% x Rs. 13,50,000].

3. As per Explanation 2 to rule 2A of Service Tax (Determination of Value) Rules, 2006, theprovider of taxable service cannot take CENVAT credit of duties paid on any inputs, usedin 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 workscontract service under rule 2A(ii) of the Service Tax Valuation Rules cannot be availed.
4. Since Triksha Pvt. Ltd. has commenced the business in the given financial year, itsaggregate value of taxable services are nil in the preceding financial year. Thus, it iseligible for small service providers' (SSP) exemption in the given financial year. However, said exemption is not available in respect of taxable services provided under abrand 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 ofworks contract, CENVAT credit of excise duty paid on inputs used for provision of suchservices can be availed. Also, since SSP exemption is not available in respect of such services, there would notbe any restriction for availment of CENVAT credit on inputs used in provision for suchservice [Notification No. 33/2012 ST dated 20.06.2012].

(3 Marks)

Answer-2 (c) :

Rule 2(c) of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 inter alia provides that "export" means "taking out of India to a place outside India". Section 2(27)of the Customs Act, 1962 provides that India includes the territorial waters of India.

(1 Mark)

In case of CC v. Sun Industries 1988 (35) ELT (241), the Supreme Court held that the expression"taking out of India to a place outside India" would also mean a place in high seas, if that place is beyond territorial waters of India. Therefore, the goods taken out to the high seas outside territorial waters of India would come within the ambit of expression "taking out of India to a place outsideIndia". The emphasis in the aforementioned judgment was on the movement of the goodsoutside the territorial waters of India. It is then that an export may be said to have been takenplace.

(1 Mark)

In the instant case, the vessel sunk within territorial waters of India and therefore, there is noexport. Accordingly, no duty drawback shall be available in this case. Similar decision wasgiven by the Supreme Court in the case of UOI v. Rajindra Dyeing & Printing Mills Ltd. 2005(180) ELT 433 (SC).

(1 Mark)

In other words, if the goods cross the territorial waters, drawback will be available even if theydo not reach the destination or are destroyed provided the payment for the goods is receivedin convertible foreign exchange. Para 2.85.2 of HBP Vol. 1 2015-20 states that paymentthrough insurance cover from General Insurance and approved Insurance Companies wouldbe treated as payment realised for exports under various export promotion schemes.

(1 Mark)

Answer-3 (a) :

The facts of the given case are similar to the case of CCEx. v. Ciens Laboratories 2013 (295) ELT 3 (SC). In the instant case, the Supreme Court made the following significantobservations:

(i) When a product contains pharmaceutical ingredients that have therapeutic orprophylactic or curative properties, the proportion of such ingredients is not invariably thedecisive factor in classification. The relevant factor is the curative attributes of suchingredients that render the product a medicament and not a cosmetic.
(ii) Though a product is sold without the prescription of a medical practitioner, it does notlead to the immediate conclusion that all products that are sold over / across the counterare cosmetics. There are several products that are sold over-the-counter and are yet,medicaments.
(iii) Prior to adjudicating upon whether a product is a medicament or not, it ought to be seenas to how do the people who actually use the product, understand it to be. If a product'sprimary function is "care" and not "cure", it is not a medicament. Medicinal products areused to treat or cure some medical condition whereas cosmetic products are used inenhancing or improving a person's appearance or beauty.

(iv) A product that is used mainly in curing or treating ailments or diseases and containscurative ingredients, even in small quantities, is to be treated as a medicament.

(4 x 1 = 4 Marks)

Based upon the above observations, the Supreme Court held that presence of pharmaceuticalingredients in the cream showed that it was used for prophylactic and therapeutic purposesnamely, for curing dry skin conditions of the human skin and was not primarily intended toprotect the skin; therefore, the same was classifiable as a medicament.

Applying the ratio of the above-mentioned decision to the given situation, it can be concludedthat owing to the pharmaceutical constituents present in the cream „Moisture-BN and its usefor the cure of certain skin diseases, the same would be classifiable as a medicament and notas a cosmetic/toilet preparation.

Answer-3 (b) :

As per section 65B(44) of the Finance Act, 1994, service does not include:-

(a) an activity which constitutes merely,—
  (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
  (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or
  (iii) a transaction in money or actionable claim;
  It has been clarified vide Explanation 2 to clause (44) that transaction in money shall notinclude –
  (A) any activity relating to the use of money or its conversion by cash or by any othermode, from one form, currency or denomination, to another form, currency ordenomination for which a separate consideration is charged;
  (B) any activity carried out, for a consideration, in relation to, or for facilitation of, atransaction in money or actionable claim, including the activity carried out—
    (a) by a lottery distributor or selling agent in relation to promotion, marketing,organising, selling of lottery or facilitating in organising lottery of any kind, inany other manner;
    (b) by a foreman of chit fund for conducting or organising a chit in any manner
(b) a provision of service by an employee to the employer in the course of or in relation to his employment;
(c) fees taken in any Court or tribunal established under any law for the time being in force.

(5 Marks)

Further, it has been provided by way of Explanation 1 to clause (44) that the following are not services–

(A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other localauthorities who receive any consideration in performing the functions of that office assuch member; or
(B) the duties performed by any person who holds any post in pursuance of the provisions ofthe Constitution in that capacity; or
(C) the duties performed by any person as a Chairperson or a Member or a Director in abody established by the Central Government or State Governments or local authority andwho is not deemed as an employee before the commencement of this section.

(3 Marks)

Answer-3 (c) :

In the case of Associated Container Terminals Ltd. v. Union of India 2008 (226) E.L.T 169, Delhi High Court held that as per the words used in section 150(2)(b), the right of warehousekeeper to recover the warehousing charges from the sale proceeds appeared to be superior tothe right of the Revenue to recover customs duty. The Court noted the following words usedin section 150(2)(b): "----------and other charges, if any, payable in respect of goods sold ,to the carrier, if notice of such charges has been given to the person having custody of thegoods".

(3 Marks)

High Court observed that these words make it clear that it does not pertain to custom duty andrefers to the payment of warehousing charges. So, it takes precedence over recovery ofcustom duty which is relatable to section 150(2)(e) of the Customs Act, 1962.

(1 Mark)

Answer-4 (a) :

(i) The facts of the given case are similar to the case of CCE v. Techno Rubber IndustriesPvt. Ltd. 2011 (272) E.L.T. 191 (Kar.) wherein the High Court has held that theDepartment is bound to refund the excess amount of duty received by it to the personwho has paid this excess duty. In this case, the buyer had refused to pay excess dutyclaimed and had raised a debit note. The High Court observed that in such a situation,the only inference which could be drawn was that the assessee had not received theexcess duty paid by him to the Department.

In the given case also, P Ltd. (buyer) has refused to pay the higher duty and has raised adebit note on Happy Ltd. (assessee). Thus, it can be inferred that Happy Ltd. has paidhigher duty to the Department and has not received it from P Ltd. Thus, Happy Ltd. Isentitled to the refund of such excess duty paid by him and the contention of the Departmentis not valid in law.

(2 Marks)

(ii) No, Revenue could not have filed an appeal to CESTAT against the order passed by theCommissioner of Central Excise (Appeals) as the duty involved for refund is Rs. 4,80,000. CBEC has issued the instructions vide F.No.390/Misc./163/2010-JC dated 17.08.2011fixing the monetary limits of duty below which an appeal cannot be filed in CESTAT,High Court and Supreme Court by the Department and these monetary limits apply tocases of refund as well. As per the said instructions, an appeal cannot be filed beforethe Tribunal if the duty involved in a case is Rs. 5,00,000 or below.

(2 Marks)

Answer-4 (b) :

(1) In this situation, if rule 5 of the PoPS Rules is applied, then place of provision of servicewould be location of property which is Afghanistan. Since Afghanistan falls within nontaxableterritory,theforegoingconstructionserviceswillnotbetaxable.

However, if rule 8 of the PoPS Rules is applied, the place of provision of service will bethe location of the service receiver i.e., Gujarat [which falls within the taxable territory]and resultantly, construction services will be taxable.

As per rule 14 of the PoPS Rules, if the place of provision of service is determinable interms of more than one rule, the same is determined as per the rule that occurs later. Therefore, the place of provision in this case will be Gujarat and the service will betaxable (as per rule 8).

(2 Marks)

(2) In this case, since specific sites in respect of which mineral exploration is to be carriedout are located in Zimbabwe, the place of provision of service as per rule 5 of the PoPSRules will be Zimbabwe which does not fall within the ambit of „taxable territory andresultantly these services will not be taxable. The fact that service providing company islocated in UK and service recipient is located in Chennai (India) is significant as Rule 8 will not be applicable since both the parties are not located in the taxable territory.

(2 Marks)

Answer-4 (c) :

(i) As per rule 9(c) of PoPS Rules, place of provision of intermediary services is the location of service provider.

The definition of term "intermediary" as provided under rule 2(f) of PoPS Rules includes the intermediary of goods in its scope. The definition provides that "intermediary" meansa broker, an agent or any other person, by whatever name called, who arranges orfacilitates a provision of a service (hereinafter called the main „service) or a supply ofgoods, between two or more persons, but does not include a person who provides themain service or supplies the goods on his account.

Accordingly, commission agent of goods are covered under rule 9(c) of PoPS Rules. Thus, the place of provision of services provided or agreed to be provided by PQ TradeLinks (as commission agent of goods) to foreign company will be the location o f serviceprovider i.e., Hyderabad.

(2 Marks)

(ii) Rule 4(a) of PoPS Rules provides that the place of provision of services provided inrespect of goods that are required to be made physically available by the recipient ofservice to the provider of service in order to provide the service, is the location where theservices are actually performed.

However, second proviso to rule 4(a) lays down that clause (a) of rule 4 will not apply inthe case of a service provided in respect of goods that are temporarily imported into Indiafor repairs and are exported after the repairs without being put to any use in the taxableterritory, other than that which is required for such repair. Consequently, such a case willbe covered under rule 3 of PoPS Rules (general rule) and the place of provision ofservice will be the location of service receiver.

In the given case, goods have been temporarily imported by ST Fabricators and havebeen re-exported after the repairs without being put to any use in Mysore (taxableterritory). Therefore, place of provision of repair services carried out by ST Fabricatorswill be determined by rule 3 of PoPS Rules. Consequently, the place of provision ofservice will be the location of service receiver i.e. Egypt.

(2 Marks)

Answer-4 (d) :

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%	18,000
Assessable value (AV)	18,18,000
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	1,818
Landed value of imported goods	**20,05,254**
Total customs duty payable (BCD + EC+ SHEC)	**1,87,254**

(3 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	**6,94,746**

(1 Mark)

Answer-5 (a) :

Rule 3(5B) of CCR, 2004, inter alia, requires a manufacturer to pay an amount equivalent tothe CENVAT credit taken in respect of inputs when the value of such inputs is written off fullybefore being put to use.

(1 Mark)

Thus, PQR Ltd. will have to pay an amount equivalent to the CENVAT credit taken on inputsvaluing Rs. 20,000 (inputs written off) which is Rs. 2,500 (12,500/1,00,000 × 20,000) in June,20XX.

(1 Mark)

However, proviso to rule 3(5B) provides that if the said inputs are subsequently used in themanufacture of final products, the manufacturer, shall be entitled to take credit of the amountequivalent to the CENVAT credit paid earlier subject to the other provisions of CCR, 2004.Thus, in the present case, by virtue of proviso to rule 3(5B) when in December, 20XX, thecompany puts to use entire inputs of Rs. 1,00,000; it will be entitled to take credit of the amountequivalent to the CENVAT credit paid earlier i.e. Rs. 2,500/-.

(2 Marks)

Answer-5 (b) :

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 suchuse 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:

(2 Marks)

Financial Year	**Point of taxation**	**Reason**
2012-13	29.07.2013	Date of issuance of invoice [29.07.2013] falls beforedate of payment [16.08.2013]
2013-14	23.05.2014	Date of payment [23.05.2014] precedes date ofissuance of invoice [03.06.2014]
2014-15	16.05.2015	Date of issuance of invoice [16.05.2015] as well asdate of receipt of payment [16.05.2015] is same.

(2 Marks)

Answer-5 (c) :

(i) As per rule 2(c) of PoTR, continuous supply of service, inter alia, means any service which is provided, or agreed to be provided continuously or on recurrent basis, under acontract, for a period exceeding three months with the obligation for payment periodicallyor from time to time. Since in the given case, service is provided for a period of sixmonths with the obligation of periodic payment, the same will amount to continuoussupply of service.

(2 Marks)

(ii) As per rule 2(c) of PoTR, continuous supply of service, inter alia, includes any servicewhere the Central Government, by a notification in the Official Gazette, prescribesprovision of a particular service to be a continuous supply of service, whether or notsubject to any condition.

In this regard, Central Government has notified that provision of, inter alia,telecommunication services shall be treated as continuous supply of service.

Since in the given case, service provided is telecommunication service, the provisionthereof would amount to continuous supply of service irrespective of the period for whichthe service has been rendered.

(2 Marks)

Answer-5 (d) :

Computation of assessable value

Particulars	**Amount**
CIF value	5000 US $
Less: Freight	1500 US $
Less: Insurance	500 US $
Therefore, FOB value	3000 US $
Assessable value for Customs purpose	
FOB value	3000 US $
Add: Freight (20% of FOB value) [Note 1]	600 US $
Add: Insurance (actual)	500 US $
CIF for customs purpose	4100 US $
Add: 1% for landing charges [Note 2]	41 US$
Value for customs purpose	4141 US $
Exchange rate as per CBEC [Note 3]	Rs. 60 per US $
Assessable value (Rs. 60 x 4141 US $)	Rs. 2,48,460

(3 Marks)

Notes:

1. 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].
2. Even if there is no information regarding landing charges, still they are charged @ 1% ofCIF value [Clause (ii) of first proviso to rule 10(2) of the Customs (Determination of Valueof Imported Goods) Rules, 2007].
3. Rate of exchange determined by CBEC is considered [clause (a) of the explanation tosection 14 of the Customs Act, 1962].

(1 Mark)

Answer-6 (a) :

The provisions of the Central Excise (Removal of Goods at Concessional Rate of Duty forManufacture of Excisable Goods) Rules, 2016 in relation to the following cases are explainedas under:

(i) If the material received at concessional rate of duty is not used for intended purpose, themanufacturer is liable to pay the amount equal to the difference between the dutyleviable on such goods without the concession available under these rules and that already paid, if any, at the time of removal from the factory of the manufacturer of thesubject goods, along with interest.
The provisions of section 11A and section 11AA of the Central Excise Act, 1944 applymutatis mutandis for effecting such recoveries.

(1 Mark)

(ii) If the manufacturer on receiving the subject goods finds them to be defective or damagedor unsuitable or surplus to his needs, he may return the subject goods to the originalmanufacturer of the goods.
Such returned goods are added to the non duty paid stock of the manufacturer of thesubject goods and dealt with accordingly.

(1 Mark)

(iii) If the goods are lost or destroyed by natural causes or by unavoidable accident duringtransport from
* the place of procurement to the manufacturer‘s premises or
* from the manufacturer‘s premises to the place of procurement or
* during handling or storage in the manufacturer‘s premises ,

the manufacturer is liable to pay the amount equal to the difference between the dutyleviable on such goods without the concession available under these rules and thatalready paid, if any, at the time of removal from the factory of the manufacturer of thesubject goods, along with interest.
The provisions of section 11A and section 11AA apply mutatis mutandis for effectingsuch recoveries also.

(2 Marks)

Answer-6 (b) :

Section 78A of the Finance Act, 1994 makes a director, manager, secretary or other officer of the company personally liable to a penalty upto Rs. 1 lakh in case of certain specifiedcontraventions committed by the company. Such penalty is leviable if the director, manager,secretary or other officer of the company was in charge of, and was responsible to, thecompany for the conduct of business of such company at a time when any of the specifiedcontraventions was committed provided the same was within the knowledge of such director,manager, secretary or other officer of the company.

(1 Mark)

The specified contraventions inter alia include availment and utilisation of credit of taxes orduty without actual receipt of taxable service or excisable goods either fully or partially inviolation of the rules made under the provisions of Chapter V.

(0.5 Mark)

Though in the given case, Mr. Mudit and Miss. Sneha were in charge of, and were responsibleto, Steft (P) Ltd. for the conduct of its business at the time of such irregular availment andutilization of the credit, personal penalty could be imposed on both of them only if they areknowingly concerned with such contravention. Further, if it is established that Mr. Mudit andMiss. Sneha are knowingly concerned with the contravention, the amount of penalty in case ofMr. Mudit will have to be restricted to Rs. 1,00,000.

(1 Mark)

Yes, penalty can be imposed on manager or officer of a company in other cases as well. Asper section 78A, such other cases are-

(a) evasion of service tax; or

(b) issuance of invoice, bill or, as the case may be, a challan without provision of taxable service in violation of the rules made under the provisions of Chapter V; or

(c) 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.

(1.5 Mark)

Answer-6 (c) :

Yes, rule 6(7) of the Service Tax Rules, 1994 provides an option to an air travel agent, in relation to services of booking of tickets for air travel, to pay following amounts towards thedischarge of his service tax liability instead of paying service tax at the rate of 14%:

(1 Mark)

In the case of	**Option to pay an amount calculated at the rate of**
Domestic bookings of passage for travel by air	0.7% of the basic fare
International bookings of passage for travel by air	1.4% of the basic fare

(2 Marks)

Option once exercised, applies uniformly in respect of all air travel bookings made by him andcannot be changed during a financial year under any circumstances.

"Basic fare" means that part of the air fare on which commission is normally paid to the airtravel agent by the airline.

(1 Mark)

Answer-6 (d) :

Yes, the Authority for Advance Rulings (AAR) can entertain applications from residents also. Section 28E(c) of the Customs Act, 1962 incl udes the following within the definition of anapplicant:

(i) a joint venture in India, and

(ii) a resident setting up a joint venture in India in collaboration with a non-resident; or

(ii) a resident falling within any such class or category of persons as the Central

(2 Marks)

Government may by notification in the Official Gazette specify in this behalf. A PublicSector Company, a resident importing goods under Project Import Scheme, a residentpublic limited company, a resident private limited company and a resident firm have beennotified so far in pursuance of aforementioned power. Here, firm means a partnershipfirm and includes a limited liability partnership, a limited liability partnership which has nocompany as its partner, a sole proprietorship and a one person company.

(2 Marks)

Answer-7 (a) :

The differences between two schemes are as follows -

(i) 'Advance Authorisation' is not transferable . DFIA is transferable after export obligation isfulfilled.

(ii) Material imported under Advance Authorisation i s not transferable even after fulfillment ofexport obligation. Material imported under DFIA will be transferable after fulfillment ofexport obligation.

(iii) Advance Authorisation scheme requires 15% value addition, while in case of DFIA,minimum 20% value addition is required.

(iv) Advance Authorisation scheme is available to gem and jewellery sector but not DFIA.

(v) Advance Authorisation can be issued even if SION for that product is not fixed. DFIA can be issued only if SION has been fixed for the product to be exported.

(4 Marks)

Answer-7 (b) :

Export Promotion Capital Goods Scheme (EPCG) permits exporters to import capital goods at zero customs duty or procure them indigenously without paying duty in prescribed manner . Inreturn, exporter is under an obligation to fulfill the export obligation. Export obligation means obligation to export product(s) covered by Authorisation/permission in terms of quantity orvalue or both, as may be prescribed/specified by Regional or competent authority. Exports toSEZ unit/developer/co-developer will be considered for discharge of export obligation of EPCGAuthorization, irrespective of currency.

(1 Mark)

The authorisation holder can either procure the capital goods (whether used for preproduction,production Orpost-
production)fromglobalmarketordomesticmarket.ThecapitalgoodscanalsobeimportedinCKD/SKDtobeassembledinIndia.

(1 Mark)

An EPCG Authorization can also be issued for import of capital goods under Scheme forProject Imports notified by CBEC. Export obligation for such EPCG Authorizations would be 6times of duty saved.

(1 Mark)

However, import of capital goods is subject to 'Actual User' condition till export obligation iscompleted. After export obligation is completed, capital goods can be sold or transferred. Therefore, based on the above discussion, XP Pvt. Ltd. can import the capital goods underEPCG Scheme. However, it has to make sure that it does not sell the capital goods till theexport obligation is completed.

(1 Mark)

Answer-7 (c) :

An assessee is barred from making an application for settlement of cases under section 32Eof Central Excise Act, 1944 under the following circumstances:-

(i) Where the assessee has filed the application for settlement in respect of a case relatingto him after the adjudication thereof;

(ii) Where the applicant has not filed returns showing production, clearance and centralexcise duty paid. However, if the Settlement Commission is satisfied that circumstancesexist for not filing the returns, it may allow the applicant to make an application forsettlement after recording reasons for the same.

(iii) Where the applicant has not received a show cause notice issued by the Central ExciseOfficer for recovery of excise duty;

(iv) Where the case is pending before the Appellate Tribunal or any Court;

(v) Where the dispute relates to interpretation of classification of excisable goods;

(vi) Where the additional amount of duty accepted by the applicant in his application does not exceedRs.3,00,000.

(vii) Where the applicant, while filing the application, has not deposited the additional amount of excise duty accepted by him and/or interest due under section 11AA.

(4 Marks)

Answer-7 (d) :

Section 64 of Customs Act 1962, provides that with the sanction of the proper officer, and on payment of the prescribed fees, the owner of any goods either before or after warehousing thesame -

(a) inspect the goods;

(b) separate damaged or deteriorated goods from the rest;

(c) sort the goods or change the containers for the preservation, sale, export or disposal of the goods;

(d) deal with the goods & their containers in such manner as may be necessary to prevent loss, deterioration or damage to the goods;

(e) show the goods for sale;

(4 Marks)