SUGGESTED SOLUTION

FINAL MAY 2014 EXAM

INDIRECT TAX LAWS

Prelims (Test Code - F M J 4 0 4 6)

(Date : 14 April, 2014)

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Ans. 1

(a) Input [Rule 2(k) of CENVAT Credit Rules, 2004]: "Input" means,-

I. All goods used in the factory by the manufacturer of the final product; or

II. Any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or ,

III. All goods used for generation of electricity or steam for captive use; or ,

IV. All goods used for providing any output service; .

but excludes,-

(1) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;

(2) Any goods used for:—

I. Construction or execution of works contract of a building or a civil structure or a part thereof; or

II. Laying of foundation or making of structures for support of capital goods,
except for the provision of service portion in the execution of a works contract or construction service as listed under section 66E(b) of the Finance Act, 1994;

(3) Capital goods except when used as parts or components in the manufacture of a final product;

(4) Motor vehicles;

(5) Any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and

(6) Any goods which have no relationship, whatsoever, with the manufacture of a final product.

(b)

Calculation of cost of production in terms of Rule 8 of Valuation Rules, 2000

Particulars		**(Amount in ₹)**
Direct Material (₹11,648 − ₹1,648 = ₹10,000)	[WN-1]	10,000
Direct Wages & Salaries		8,400
Works Overheads		6,200
Quality Control Costs	[WN-2]	3,500
Research and Development Costs	[WN-2]	2,400
Administrative Overheads	[WN-2]	4,100
Selling and distribution cost	[WN-3]	-
TOTAL		**34,600**
Less: Realisable Value of Scrap	[WN-4]	1,200
Cost of Production		**33,400**
Value of excisable goods under Rule 8 @ 110% of cost of production		**36,740**

Working Notes:

(1) Raw-material cost shall be taken net of excise duty assuming Cenvat credit is availed.

(2) Quality control cost, Research and development cost and Administrative overheads related to production shall form part of cost of production as per CAS-4.

(3) Selling and distribution costs shall not form part of cost of production.

(4) Realisable value of scrap shall be deducted to arrive at cost of production.

(c)

Computation of value of taxable service and service tax liability thereon:

Particulars		**Amount (₹)**
(1)	Basic mail services (Covered in negative list)	Nil
(2)	Transfer of money through money orders (Covered in negative list)	Nil
(3)	Operation of saving accounts (Covered in negative list)	Nil
(4)	Rural postal life insurance services (Excluded from negative list, hence liable to tax)	2,00,000
(5)	Distribution of mutual funds, bonds and passport applications (Excluded from negative list, hence liable to tax)	5,00,000
(6)	Issuance of postal orders (Covered in negative list)	Nil
(7)	Collection of telephone and electricity bills (Excluded from negative list, hence liable to tax)	1,00,000

(8) Pension payment services (Covered in negative list)	Nil
(9) Speed post services (Excluded from negative list, hence liable to tax)	5,00,000
(10) Express parcel post services (Excluded from negative list, hence liable to tax)	2,00,000
Value of taxable services	**15,00,000**
Service tax @ 12.36%	**1,85,400**

(d) Under the works contract, the turnover for imposition of VAT is the sale price of the goods in which there is a transfer of property. The amount representing the labour & other charges incurred for such execution is deductible.

Particulars	**Amount (₹)**
Total Contract Price (excluding VAT)	1,00,00,000
Less: Labour charges paid for execution of the contract	-35,00,000
Cost of consumables used not involving transfer of property in goods	-5,00,000
Taxable Value of the 'works contract'	**60,00,000**

VAT payable thereon @ 12.5%	7,50,000
Less: Input VAT credit on materials (₹45 lakhs × 12.5% ÷ 112.5%)	5,00,000
VAT credit on capital goods (₹10.4 lakhs × 4% ÷104%)	40,000
Net tax payable	**2,10,000**

(e)

CIF value		US$	2,000
Less: Freight		US$	500
Insurance		US$	100
FOB value		US$	**1,400**
Add: Air Freight restricted @ 20% of FOB value		US$	280
Insurance (actual amount)		US$	100
CIF value		US$	**1,780**
CIF Value in Indian ₹ (CIF Value in US$ × ₹ 43.80 per US$)		₹	77,964
Add: 1% for landing charges		₹	780
Assessable value	[A]	₹	78,744
Add: Basic Customs duty @ 20% of [A]	[B]	₹	15,749
Total for additional duty of customs u/s 3(1) CTA, 1975	[C]	₹	94,492
Add: Additional Customs Duty (@ 12% of ₹94,492.37 i.e. [C])	[D]	₹	11,339
Add: Education Cess on total customs duty i.e. 3% of [B + D]	[E]	₹	813
Total for the levy of additional duty of customs u/s 3(5) of CTA, 1975	[F=C+D+E]	₹	1,06,644
Add: Additional duty of customs equal to sales tax etc. @ NIL% of [F]	[G]	₹	-
Total cost of imported goods			1,06,644
Total Customs duty [B + D + E + G] (rounded off)		₹	**27,900**

Working Notes:

(1) Rate of exchange notified by CBEC on the date of presentation of bill of entry has been considered.

(2) Rate of duty as applicable on the arrival of aircraft which is later than the date of submission of the bill of entry has been considered.

(3) Landing charges @ 1% have been considered as per Rule 10(2) (b) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

(4) Since Air freight exceeds 20% of FOB value of goods, it shall be restricted to 20% of FOB value of goods.

Ans. 2

(a)

I. Input and final product fall under same tariff heading - May amount to manufacture:
It is not necessary that only when the tariff heading of the commodity changes, the process shall amount to manufacture. Even if tariff heading of the commodity remains same but a new commodity comes into existence having separate name, characteristic and use, the same shall amount to manufacture. Thus change in Tariff heading is not necessary for manufacture.

The Supreme Court in CCEx. v. Kapri International (P) Ltd, [2002] 142 ELT 10 (SC) has held that the commodity shall be dutiable even if the raw-material & the resultant product falls under the same tariff heading. Thus Bed-sheets, Bed spreads, tablecloth, manufactured out of duty paid fabrics were held to be dutiable even if they were falling under the same tariff heading as that of cotton fabrics.

II. Input and final product fall under different tariff heading - May not amount to manufacture :

As held in CCEx. v. Markfed Vanaspati (2003) 153 ELT 491 (SC), mere change in tariff does not mean there is 'manufacture'. It was again confirmed in CCEx. v. SR Tissues (2005) 186 ELT 385 (SC) that just because raw material and finished product fall in different tariff headings it cannot be presumed that process of obtaining finished product from such raw material automatically constitutes 'manufacture'. Therefore, manufacturing is not only about a process and a product but it is about a new identity that must emerge out of the given process. Mere mention of process in tariff entry is not sufficient, it must be specifically stated that a particular process 'amounts to manufacture'. - Shyam Oil Cake Ltd. v. CCEx. [2005J174 ELT 145 (SC).

(b) The taxable value and service tax is computed below:

Particular		**(Amount in ₹)**
(1)	Service of interior decoration in respect of immovable property located in Jammu - As per Rule 5 of Place of Provision of Service Rules, 2012 in respect of services provided directly in relation to immovable property, the place of provision will be location of immovable property. Therefore, in the given case, the place of provision of service will be Jammu which falls in non-taxable territory and thus this service will not be taxable.	Nil
(2)	Service of renting of commercial buildings in Delhi - As per Rule 5 of Place of Provision of Service Rules, 2012 in respect of services provided directly in relation to immovable property, the place of provision will be location of immovable property. Therefore, in the given case, the place of provision of service will be New Delhi which falls within the ambit of taxable territory and thus this services will be taxable.	15,00,000
(3)	Professional services of valuation of immovable properties - As per Rule 7 of Place of Provision of Service Rules, 2012 if services referred in Rule 5 (location specific service) 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. Here, percentage of services performed in London and Kashmir will be ignored for determining place of provision of service because London and Kashmir falls in nontaxable territory. Thus, comparison has to be made between location of Delhi and Kolkata. Since in the present context, the greater proportion 20% of services is performed in Delhi, place of provision of services will be Delhi. As a result, such services will be subject to tax.	20,00,000
(4)	Architectural services to an Indian Hotel Chain which has business establishment in Mumbai) for its newly acquired property in Sydney ₹ 25 lakh; If Rule 5 (Property rule) were to be applied, the place of provision would be the location of the property i.e. Sydney (outside the taxable territory). However, as per Rule 8, since both the provider and the receiver are located in taxable territory, the place of provisions would be the location of the service receiver i.e. Mumbai. Place of provision being in the taxable territory, the service would be taxable in India.	25,00,000
(5)	Services provided as an Indian agent undertaking marketing in India of goods of a foreign seller. The place of provision of service will be outside the taxable territory since the same falls under Rule 3 of the Place of Provision of Service Rules, 2012. Rule 9 of Place of Provision of service rules will not be applicable since marketing agent is of goods	Nil

	and not of services.	
(6)	Services provided as travel agent undertaking marketing in India of services of a foreign seller-As per Rule 9, the place of provision of intermediaries is the place of location of service provider. Since service provider Heart Ltd. is located in Delhi (taxable territory), hence, these services will be taxable.	1,00,000
(7)	Other services provided: For other services, general rule 3 provides that the services will be taxable at the place of location of recipient. Hence, service where recipient is located in US and Srinagar shall not be taxable; while services provided to recipient located in Delhi are taxable.	15,00,000
	Total Taxable Value	**76,00,000**
	Service tax @ 12.36%	**9,39,360**

(c) The distinction between Rules and Regulations is as under -

Points of difference	Rules	Regulations
Authority	Power to make rules vests with Central Government.	Power to make regulations vests with CBEC.
Section	Central government has been empowered to make Rule under section 156.	CBEC has been empowered to make Regulation under section 157.
Consistency	Rules must be consistent with the provisions of the Act.	Regulation must be consistent with the provisions of the act as well as the rules.

Ans. 3

(a) CCE v. Tata Advanced Materials Ltd. 2011 (271) E.L.T. 62 (Kar.)

Facts of the Case:

The assessee purchased some capital goods and paid the excise duty on it. Since, said capital goods were used in the manufacture of excisable goods, he claimed the CENVAT credit of the excise duty paid on it. However, after three years the said capital goods (which were insured) were destroyed by fire. The Insurance Company reimbursed the amount to the assessee, which included the excise duty, which the assessee had paid on the capital goods. Excise Department demanded the reversal of the CENVAT credit by the assessee on the ground that the assessee had availed a double benefit.

Analysis & Conclusion:

The High Court noted that the as per CENVAT Credit Rules, 2004, CENVAT credit taken irregularly stands cancelled and CENVAT credit utilised irregularly has to be paid for.

In the instant case, the Insurance Company, in terms of the policy, had compensated the assessee. The High Court observed that merely because the Insurance Company had paid the assessee the value of goods including the excise duty paid, it would not render the availment of the CENVAT credit wrong or irregular. It was not a case of double benefit as contended by the Department.

The High Court therefore answered the substantial question of law in favour of the assessee.

(b) Kishore K.S. v. Cherthala Municipality 2011 (24) S.T.R. 538 (Ker.)

Facts of the Case:

The petitioners entered into agreements with the respondent-Municipality and had taken rooms on rent from it. They were called upon to pay service tax. The primary contentions of the petitioners were as follows:-

1. Under the agreement, there was no provision for payment of service tax. Therefore, the demand for payment of service tax was illegal. Further, service tax was payable by the Municipality and there was no authority with which the Municipality could pass it on to the petitioners.
2. Since they were small tenants, the Municipality must be treated as units of the State within the meaning of Article 289 of the Constitution of India and, therefore, levy of service tax on the property or on the income of the Municipality was unsustainable.

The Revenue contended that service tax was an indirect tax. Though primarily the person liable to pay the tax was Municipality, there was nothing in the law which prevented passing of the liability to the tenants. Can it pass the burden of service tax to the service receivers i.e. tenants?

Analysis & Conclusion:

The High Court rejected the contentions of the assessee and opined as under:-

1. As regards the contention that there was no mention of the service tax liability in the contract, the Court held that this is a statutory right of the service provider/Municipality by virtue of the provisions under law to pass it on to the tenants. It is another matter that they may decide not to pass it on fully or partly. It is not open to the petitioners to challenge the validity of the demand for service tax, in view of the fact that service tax is an indirect tax and the law provides that it can be passed on to the beneficiary. Hence, the service tax can be passed on by the service provider i.e. Municipality.

2. The word "State" in Article 289 does not embrace within its scope the Municipalities. Hence, when service tax is levied on the Municipality there is no violation of Article 289. Moreover, Municipality has not raised the contention that there was a violation of Article 289.
   Hence, it was held that Municipality can pass on the burden of service tax to the tenants

(c) CCE v. Decorative Laminates (I) Pvt. Ltd. 2010 (257) E.L.T. 61 (Kar.)

Facts of the Case:

The respondent imported resin impregnated paper and plywood for the purpose of manufacture of furniture. The said goods were warehoused from the date of its import. The respondent sought an extension of the warehousing period which was granted by the authorities. However, even after the expiry of the said date, it did not remove the goods from the warehouse. Subsequently, the assessee applied for remission of duty under section 23 of the Customs Act, 1962 on the ground that the said goods had become unfit for use on account of non-availability of orders for clearance.

Analysis & Conclusion:

The High Court, while interpreting section 23, stipulated that section 23 states that only when the imported goods have been lost or destroyed at any time before clearance for home consumption, the application for remission of duty can be considered. Further, even before an order for clearance of goods for home consumption is made, relinquishing of title to the goods can be made; in such event also, an importer would not be liable to pay duty.

Therefore, the expression "at any time before clearance for home consumption" would mean the time period as per the initial order during which the goods are warehoused or before the expiry of the extended date for clearance and not any period after the lapse of the aforesaid periods. The said expression cannot extend to a period after the lapse of the extended period merely because the licence holder has not cleared the goods within the stipulated time.
Moreover, since in the given case, the goods continued to be in the warehouse, even after the expiry of the warehousing period, it would be a case of goods improperly removed from the warehouse as per section 72(1)(b) read with section 71.

The High Court, overruling the decision of the Tribunal, held that the circumstances made out under section 23 were not applicable to the present case since the destruction of the goods or loss of the goods had not occurred before the clearance for home consumption within the meaning of that section. When the goods are not cleared within the period or extended period as given by the authorities, their continuance in the warehouse will not attract section 23 of the Act.

Ans. 4

(a) Grasim Industries Ltd. v. UOI 2011 (273) E.L.T. 10 (S.C.)

Facts of the Case:

The assessee was the manufacturer of the white cement. He repaired his worn out machineries/parts of the cement manufacturing plant at its workshop such as damaged roller, shafts and coupling with the help of welding electrodes, mild steel, cutting tools, M.S. Angles, M.S. Channels, M.S. Beams, etc. In this process of repair, M.S. scrap and Iron scrap were generated. The assessee cleared this metal scrap and waste without paying any excise duty. The Department issued a show cause notice demanding duty on the said waste contending that the process of generation of scrap and waste amounted to the manufacture in terms of section 2(f) of the Central Excise Act.

Provision & Analysis:

The Apex Court observed that manufacture in terms of section 2(f) includes any process incidental or ancillary to the completion of the manufactured product. This 'any process' can be a process in manufacture or process in relation to manufacture of the end product, which involves bringing some kind of change to the raw material at various stages by different operations. The process in relation to manufacture means a process which is so integrally connected to the manufacturing of the end product without which, the manufacture of the end product would be impossible or commercially inexpedient.

However, in the present case, it is clear that the process of repair and maintenance of the machinery of the cement manufacturing plant, in which M.S. scrap and Iron scrap arise, has no contribution or effect on the process of manufacturing of the cement, (the end product). The repairing activity in any possible manner cannot be called as a part of manufacturing activity in relation to production of end product. Therefore, the M.S. scrap and Iron scrap cannot be said to be a by-product of the final product. At the best, it is the by-product of the repairing process.

Conclusion:

Hence, it held that the generation of metal scrap or waste during the repair of the worn out machineries/parts of cement manufacturing plant does not amount to manufacture.

(b) CCE v. Nahar Industrial Enterprises Ltd. 2010 (19) STR 166 (P & H)

Facts of the Case:

The assessee was engaged in the manufacture of sugar. The Central Government directed him to maintain buffer stock of free sale sugar for the specified period. In order to compensate the assessee, the Government of India extended buffer subsidy towards storage, interest and insurance charges for the said buffer stock of sugar.

Revenue issued a show cause notice to the assessee raising the demand of service tax alleging that amount received by the assessee as buffer subsidy was for the services covered within the definition of `storage and warehousing services'.

Analysis & Conclusion:

The High Court noted that apparently, service tax could be levied only if service of `storage and warehousing' was provided. Nobody can provide service to himself. In the instant case, the assessee stored the goods owned by him. After the expiry of storage period, he was free to sell them to the buyers of its own choice. He had stored goods in compliance to directions of Government of India issued under the Sugar Development Fund Act, 1982. He had received subsidy not on account of services rendered to Government of India, but had received compensation on account of loss of interest, cost of insurance etc. incurred on account of maintenance of stock. Hence, the act of assessee could not be called as rendering of services.

The High Court upheld the Tribunal's decision that just because the storage period of free sale sugar had to be extended at the behest of Government of India, neither the assessee becomes `storage and warehouse keeper' nor the Government of India becomes their 'client' in this regard. Therefore, the storage of specific quantity of free sale sugar could not be treated as providing `storage and warehousing' services to the Government of India.

(c) Narayan Nambiar Meloths v. CCus. 2010 (251) E.L.T. 57 (Ker.).

Facts of the Case:

In the instant case, the refund application filed by the assessee was not entertained on the ground that the petitioner had not produced original of the TR-6 Challan* and what was produced was only an attested copy. According to repondents, production of original of the TR-6 challan* was a mandatory requirement for processing the refund application.

Analysis & Conclusion:

The Kerela High Court decided that the petitioner could not be denied the refund claim on account of following mentioned grounds:-

Firstly, the Court opined that the only contention raised against the petitioner was that TR-6 Challan* he produced was only an attested copy, which was purely a technical contention and could not be accepted.

Secondly, as per clarification issued vide F.No. 275/37/2K-CX. 8A dated 2-1-2002, a simple letter from the person who made the deposit, requesting for return of the amount, along with the appellate order and attested Xerox copy of the Challan in Form TR-6* would suffice for processing the refund application. Evidently, in the instant case, the petitioner had fully complied with the requirement laid down in this clarification.

Ans. 5

(a) Persons required to obtain registration:

The persons required to obtain registration as per Section 6 of the Central Excise Act, 1944 and Rule 9 of the Central Excise Rules, 2002, are as follows -

(1) Every manufacturer of dutiable excisable goods (including Central/State Government undertakings or undertakings owned or controlled by autonomous corporations).

(2) First and second stage dealers (including manufacturer's depots and importers) desiring to issue Cenvatable invoices.

(3) Persons holding warehouses for storing non-duty paid goods.

(4) Persons who obtain excisable goods for availing end use based exemption.

(5) Exporter-manufacturers under rebate/bond procedure; and Export Oriented Units, which have interaction with the domestic economy (through DTA sales or procurement of duty free inputs).

(6) Persons who get yarns, fabrics, ready-made garments etc. manufactured on job work under Rule 12B.

(b) The requirements of Registration under service tax law is contained under section 69 of the Finance Act 1994 as under-

(1) Person liable to pay the service tax - Required to take registration [Section 69(1)] : Every person liable to pay the service tax under this Chapter or the rules made there under shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise.

(2) Registration of other persons [Section 69(2)]: The Central Government may, by notification in the Official Gazette, specify such other person or class of persons, who shall make an application for registration within such time and in such manner and in such form as may be prescribed.

(c) Computation of VAT liability:

Particulars		**(amount in ₹)**
Raw material (net of VAT)	[WN-1]	1,00,000
Depreciation on capital goods	[WN-2]	1,40,625
Manufacturing and other expenses		1,17,000
Total cost		**3,57,625**
Add: 80% mark-up on cost		2,86,100
Sale price		**6,43,725**
VAT on sales (20% of ₹ 6,43,725)		1,28,745
Less: Input tax credit on raw material (₹1,10,000 × 10 ÷110)		10,000
VAT payable in cash		**1,18,745**

Working Notes:

(1) VAT paid on raw material is available as credit, hence cost of raw material
= ₹1,10,000 ×100 ÷110 = ₹1,00,000.

(2) No credit is allowed of VAT paid on capital goods, hence depreciation
= 25% of ₹ 5,62,500 = ₹ 1,40,625.

(d) In the case of Advait Steel Rolling Mills Pvt. Ltd. v. UOI [2012] 286 ELT 535 (Mad), it is held that the clearances of goods from DTA to Special Economic Zone are not chargeable to export duty either under the SEZ Act, 2005 or under the Customs Act, 1962 on the basis of the following observations –

(1) The charging section needs to be construed strictly. If a person is not expressly brought within the scope of the charging section, he cannot be taxed at all.

(2) SEZ Act does not contain any provision for levy and collection of export duty on goods supplied by a DTA unit to a unit in a Special Economic Zone for its authorised operations. Since there is no charging provision in the SEZ Act providing for the levy of customs duty on such goods, export duty cannot be levied on the DTA supplier.

(3) Reading Section 12(1) of the Customs Act, 1962 makes it apparent that customs duty can be levied only on goods imported into or exported beyond the territorial waters of India.

Since both the SEZ unit and the DTA unit are located within the territorial waters of India, supplies from DTA to SEZ would not attract Section 12(1).

Ans. 6

(a) Computation of assessable value for the purpose of levy of excise duty for the A.Y. 2013-14:

	Cum-duty Sale Price as given in the question		5,90,300
1.	Warranty charges	[WN-1]	Not deductible
2.	Secondary packing	[WN-2]	Not deductible
3.	Trade discount actually allowed	[WN-3]	-24,000
4.	Design and development charges of machine	[WN-4]	Not deductible
5.	Primary packing	[WN-2]	Not deductible
6.	Cost of return fare of vehicles	[WN-5]	-4,500
7.	Advertisement and publicity charges borne by ALM Ltd.	[WN-6]	Not deductible
8.	Pre-delivery inspection charges	[WN-7]	Not deductible
9.	After sales service charges	[WN-7]	Not deductible
	Cum-duty value		**5,61,800**
	Excise duty doesn't form part of assessable value [Cum-duty value ×12.36 ÷ 112.36]		61,800
	Assessable value		**5,00,000**

Working Notes:

(1) As per the definition of the transaction value u/s 4(3) (d) of the Central Excise Act, 1944, warranty charges are includible in the assessable value.

(2) Amount charged from the buyer in relation to packing, irrespective of it being primary or secondary, is included in the assessable value. (Circular No. 643/34/2002 CX, dated 01-07-2002)

(3) As the transaction value is the price actually paid or payable, trade discount is allowable as deduction. The discount amount is reduced from the sale price on the presumption that such discount is included (added back) in the sale price of ₹5,90,300.

(4) Design and development charges of machine are included in the assessable value as such charges are 'in connection with sale'.

(5) Cost of return fare of vehicles is not included in the assessable value (Circular No. 923/13/2010 CX, dated 19-05-2010).

(6) Advertisement and publicity expenses borne by the buyer are included in the assessable value. (Circular No. 643/34/2002 CX, dated 01-07-2002)

(7) Pre-delivery inspection charges and after sales service charges charged by manufacturer are included in the assessable value.

(b) The different rates under VAT system are as under -

VAT Rate	Goods
0%	This category covers around 50 commodities comprising of – (1) natural and unprocessed products in unorganised sector (e.g. unprocessed agricultural goods), (2) items which are legally barred from taxation (3) items which have social implications. This category includes a maximum of 10 commodities flexibly chosen by individual States from a list of goods (finalised by the Empowered Committee) which are of local social importance for the individual States without having any inter-State implication. The rest of the commodities in the list will be common for all the states.
1%	This special rate is meant for precious stones, bullion, gold and silver ornaments, etc.
4%	This rate is applied to largest number of goods, common for all the States, comprising of – (1) items of basic necessities such as medicines and drugs, (2) all agricultural and industrial inputs, (3) capital goods.
5%	This rate covers Declared goods, (w.e.f. 08-04-2011, the maximum rate of VAT on declared goods can be 5%)
12.5%	All goods other than the goods covered by the above categories.
20%	Luxury goods.

(c) Place of provision of specified services [Rule 9 of POP, 2012] : As per Rule 9 the following are the specified services where the place of provision is the location of the service provider,

(1) Services provided by a banking company, or a financial company, or a non-banking financial

Company to account holders;
(2) Online information and database access or retrieval services;
(3) Intermediary services;
(4) Service consisting of hiring of means of transport, up to a period of one month**.**

(d) Powers of the Authority [Section 28L]: The Authority shall have the powers of,-
1. Discovery and Inspection;
2. Issuing commissions;
3. Enforcing attendance of any person and examining him under an oath;
4. Compelling production of books of accounts and other records.

The Authority shall be deemed to be a civil court and every proceeding before the Authority shall be deemed to be judicial proceeding.

Ans. 7

(a) The relevant provisions are discussed as under –

(1) General bar on production of additional evidences :
The appellant shall not be entitled to produce before the Commissioner (Appeals) any evidence, whether oral or documentary, in addition to evidence produced by him during the course of the proceedings before the adjudicating authority.

(2) Circumstances in which additional evidences can be admitted :
Rule 5 of the Central Excise (Appeals) Rules, 2001 provides that the appellant shall be entitled to produce before the Commissioner (Appeals) any evidence, whether oral or documentary, in addition to evidence produced by him during the course of the proceedings in the following circumstances,-
I. where the adjudicating authority has refused to admit evidence which ought to have been admitted, or
II. where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by adjudicating authority, or
III. where the appellant was prevented by sufficient cause from producing, before the adjudicating authority any evidence which is relevant to any ground of appeal, or
IV. where the adjudicating authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(3) Conditions for admission :
The Commissioner (Appeals) has to record the reasons for admitting the additional evidence in writing. Further, the adjudicating authority or an officer authorized by the said authority has to be allowed a reasonable opportunity,-
I. to examine the evidence or document or to cross examine any witness produced by the appellant; or
II. to produce any evidence or any witness in rebuttal of the additional evidence.

(4) Commissioner Appeals may require production of documents or examination of witness :
The power of the Commissioner (Appeals) to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal is independent of the above provisions relating to additional evidence and his powers will not be affected by the said provisions.

(b) Powers of arrest have been introduced in the service tax law by the Finance Act, 2013 by inserting a new Section 91 under Chapter V of Finance Act 1994. The relevant provisions are discussed as under –
(1) Authorities empowered to arrest : The Commissioner of Central Excise by general or special order authorize any officer of Central Excise, not below the rank of Superintendent of Central Excise to arrest a person.
(2) Person who can be arrested : A person who has committed any of the offences specified under section 89(1) and the amount involved in the offence exceeds 150 lakh.
(3) When can an arrest be tnade: The Commissioner of Central Excise can order arrest if he has reason to believe that a person has committed the offence mentioned above.

(4) Manner of arrest: All arrests have to be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrests.

(5) Procedure of arrest: The procedure is as under –

I. Procedure in case of cognizable offence: In case of cognizable offence, every officer authorised to arrest a person has to inform the arrested person of the pounds of arrest and produce him before a magistrate within 24 hours.

II. Procedure in case of non-cognizable and bailable offence : The Assistant Commissioner /Deputy Commissioner is empowered to release an arrested person on bail or otherwise. For this purpose, the Assistant Commissioner /Deputy Commissioner will have same powers and be subject to the same provisions as an officer in charge of a police station is under Code of Criminal Procedure, 1973.

(c) The provisions relating to warehousing without warehousing is as under -

(1) Storage of imported goods in warehouse pending clearance [Section 49] :

In case, if the imported goods are entered for home consumption but the importer is unable to clear the goods, then he may apply to Assistant Commissioner of Customs or Deputy Commissioner of Customs for permitting the goods to be deposited in a public warehouse for a period not exceeding 30 days, or in a private warehouse if facilities for deposit in a ' public warehouse are not available. However, such goods shall not be deemed to be warehoused goods for the purposes of this Act, and accordingly the provisions of warehousing shall not apply to such goods.

(2) Extension by Commissioner for further period of 30 days : The Commissioner of Customs may extend the period of storage for a further period not exceeding 30 days at a time.

The said goods are kept in warehouse so as to avoid demurrage charges charged by the port trust authority/ custodians of cargo, if goods remain in their custody beyond the stipulated period.

MARKS ALLOCATION SHEET

Que. No.	*Sub point No.(if any)*	*Name of Chapter*	*Description of Concept*	*Mark Allocation*	*Total Marks*
1	(a)	CENVAT CREDIT	Input Meaning (each Point has 0.5 mark)	2	
1	(a)	CENVAT CREDIT	Exclusion Part (each Point has 0.5 mark)	3	5
1	(b)	Excise Valuation	Calculation of cost of Production	4	
1	(b)	Excise Valuation	Value of excisable	1	5
1	(c)	ST-Various Aspects	Calculation of value of taxable services	4	
1	(c)	ST-Various Aspects	Calculation of service tax	1	5
1	(d)	VAT- Special Transaction	Calculation of taxable value of works Contract	3	
1	(d)	VAT- Special Transaction	Calculation of net tax payable	2	5
1	(e)	Customs Valuation	Calculation f FOB Value	1	
1	(e)	Customs Valuation	Calculation of CIF value	1	
1	(e)	Customs Valuation	Calculation of Assessable Value	1	
1	(e)	Customs Valuation	Total Cost of imported goods	1	
1	(e)	Customs Valuation	Total customs duty	1	5
2	(a)	Excise – Basic Concepts	Each Point has 3 marks	6	
2	(b)	ST - Basic Concepts	Calculation of taxable value	5	
2	(b)	ST - Basic Concepts	Calculation of Service Tax	1	6
2	(c)	Customs-Basic Concepts	Each difference has 1 mark	3	3
3	(a)	CENVAT Credit	Fact of the Case	3	
3	(a)	CENVAT Credit	Analysis & Conclusion	3	6
3	(b)	ST – Basic Concepts	Fact of the Case	3	
3	(b)	ST – Basic Concepts	Analysis & Conclusion	3	6
3	(c)	Customs – Levy & Exemption	Fact of the Case	1.5	
3	(c)	Customs – Levy & Exemption	Analysis & Conclusion	1.5	3
4	(a)	Excise – Basic concepts	Fact Of the Case	1	
4	(a)	Excise – Basic concepts	Provision & Analysis	3	
4	(a)	Excise – Basic concepts	Conclusion	2	6
4	(b)	ST – Basic	Fact Of the Case	3	
4	(b)	ST – Basic	Analysis & Conclusion	3	6
4	(c)	Customs – Refund	Fact Of the Case	1.5	
4	(c)	Customs – Refund	Analysis & Conclusion	1.5	3
5	(a)	Excise – Gen. Procedures	Each Point has 1 mark	6	6
5	(b)	ST – Procedural Compliance	Each Point has 1.5 marks	3	3
5	(c)	VAT	Calculation of VAT liability	3	3
5	(d)	Customs – Basic Concepts	Each Point has 1 mark	3	3
6	(a)	Excise – Valuation	Calculation of Cum-duty Value	3	
6	(a)	Excise – Valuation	Calculation of Assessable Value	1	
6	(a)	Excise – Valuation	Notes	2	6
6	(b)	VAT	Each Point has 0.5 mark	3	3
6	(c)	ST – Basic Concepts	Name of Services	3	3
6	(d)	Advance Ruling	Explain Powers	3	3
7	(a)	Appeals & Revision	Each Point has 1.5 Mark	6	6
7	(b)	Offences & Procecution	First 4 Point (each Pont has 1 ,Mark)	4	
7	(b)	Offences & Procecution	5th Point	2	6
7	(c)	Customs – Import & Export	Each Point has 1.5 mark	3	3