

FINAL  
GROUP-II PAPER-8  
INDIRECT TAX LAWS

Roll No. ....

Total No. of Questions – 7

Time Allowed – 3 Hours

Total No. of Pages 12

Maximum Marks

2013  
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## LMT

Answer to questions are to be given only in English except in the case of candidates who have opted for Hindi Medium. If a candidate has not opted for Hindi medium, his/her answers in Hindi will not be valued.

Question No. 1 is compulsory.

Candidates are also required to answer any five questions from the remaining six questions.

Wherever appropriate, suitable assumption(s) should be made and indicated in the answer by the candidate.

Working Notes should form part of the answer.

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1. (a) KSP Ltd purchased a Pollution Control Equipment for ₹ 15,14,240 which is inclusive excise duty at 16% plus education cess 2% plus secondary and higher education cess 1%. The equipment was purchased on 1-9-2010 and was disposed of as second hand equipment on 10-10-2012 for a price of ₹ 12,00,000. The excise duty rate on the date of disposal was 12% plus education cess @ 2% plus secondary and higher education cess 1%. 5
- (i) You are required to calculate the amount of CENVAT credit allowable for the financial year 2010-11 and 2011-12.
- (ii) What is the amount payable towards CENVAT credit already availed at the time of disposal of the equipment in the financial year 2012-13 ?  
(Make suitable assumptions where required and show the working and explanation wherever required)

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- (b) MNO & Co. is the small scale unit located in a rural area and is available for the benefit of small scale exemption under Notification No. 8/2003-CE during the year 2011-12. You are required to determine the value of the first clearance of the unit and duty liability on the basis of particulars given below :

- (i) Total value of clearances of goods with own brand name : ₹ 50,00,000
- (ii) Total value of clearances of goods with brand name of other parties : ₹ 100,00,000
- (iii) Clearances of goods which are totally exempt under another notification (other than an exemption based on quantity or value of clearances) ₹ 45,00,000
- (iv) Rate of excise duty – 12% plus education cesses as applicable.
- (v) Assume that the unit is eligible for exemption under Notification No. 8/2003.

(Make suitable assumptions where required and show the calculations with appropriate notes)

- (c) Robinson Bank Ltd furnishes the following information relating to services provided and the gross amount received during the month of December, 2012. Compute the value of taxable service and service tax payable :

	₹ (Lakhs)
(i) Amount of commission received for debt collection service	10
(ii) Discount earned on bills discounted	4.5
(iii) Dealing in sale and purchase of forward contract	5.7
(iv) Charges received on credit card and debit card facilities extended	3.8
(v) Penal interest recovered from the customers for the delay in repayment of loan	2.6
(vi) Commission received for service rendered to Government for tax collection	6.0
(vii) Interest earned on reverse repo transaction	25.0

(Show the workings with explanation wherever required)

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(3)

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5

- (d) The following information relates to purchases and sales of K.K.Ltd. month of September 2012 :

	₹
Purchases for resale within the State	8,00,000
Purchases from registered dealers who opted for composition scheme	4,00,000
Purchases to be used as consumable stores for manufacture of taxable goods	6,00,000
Purchases of goods where invoices does not show the amount of taxes separately	5,00,000
Purchases of goods for personal consumption	2,00,000
Purchases of capital goods (not eligible for input credit)	5,50,000
Purchases of capital goods (eligible for input credit)	5,76,000

Sales made within the State during the month of September 2012 was ₹ 50,00,000 on which VAT @ 4% was payable.

Assuming that all purchases given above are exclusive of VAT @ 12.5%, calculate :

- The amount of input tax credit available for the month of September 2012.
- VAT payable for the month of September 2012.
- Input tax credit carried forward.

Note : The input VAT credit on eligible capital goods is available in 24 equal monthly installments.

(Make suitable assumptions where required and show the workings)

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- (e) BSA & Company Ltd have imported a machine from U.K. From the following particulars furnished by them, arrive at the assessable value for the purpose of customs duty payable :

(i)	F.O.B. cost of the machine	10,000 U.K. Pounds
(ii)	Freight (air)	3,000 U.K. Pounds
(iii)	Engineering and design charges paid to a firm in U.K.	500 U.K. Pounds
(iv)	License fee relating to imported goods payable by the buyer as a condition of sale	20% of F.O.B. cost
(v)	Materials and components supplied by the buyer free of cost valued	₹ 20,000
(vi)	Insurance paid to the insurer in India	₹ 6,000
(vii)	Buying commission paid by the buyer to his agent in U.K.	100 U.K. Pounds

**Other particulars :**

- (i) Inter-bank exchange rate as arrived by the authorized dealer : ₹ 72.50 per U.K. Pound.
- (ii) CBEC had notified for purpose of Section 14 of the Customs Act, 1944, exchange rate of ₹ 70.25 per U.K. Pound.
- (iii) Importer paid ₹ 5,000 towards demurrage charges for delay in clearing the machine from the Airport.

(Make suitable assumptions wherever required and show workings with explanations)

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(5)

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2. (a) Discuss the validity of the following statements with reference to Excise Rules, 2002, as amended : 2×3  
= 6

- (i) The procedures prescribed for export under claim for rebate and export without payment of duty under bond does not apply to Nepal
- (ii) In respect of goods received at concessional rate of duty, return is required to be filed on a monthly basis
- (iii) Submission of Annual Financial Information Statement in FORM-ER4 is compulsory on all assessees

- (b) (i) Apte & Apte Ltd is located in India and holding 51% of shares of Wilson Ltd, a USA based company. Wilson Ltd provides Business Auxiliary Services to Apte & Apte Ltd. 3×2  
= 6

From the following details, determine the Point of Taxation of Apte & Apte Ltd :

Agreed consideration US \$ 1,00,000

Date on which services are provided by Wilson Ltd 16-9-2012

Date on which invoice is sent by Wilson Ltd 19-9-2012

Date of debit in the books of account of Apte & Apte Ltd 31-9-2012

Date on which payment is made by Apte & Apte Ltd 23-12-2012

- (ii) What is the objective of bringing certain services under "Declared Services" ? Mention any three services which fall within the scope of "Declared Services".

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- (c) Examine the validity of the following statements with reference to Customs Act, 1962 :

- (i) Service charges paid to canalizing agent are not includible in the assessable value of imports.
- (ii) Inspection charges are not includible in the assessable value of the imported goods if contract does not specify for certification by an independent agency.

3. (a) Assessee are the manufacturer of motor cars. They were selling the cars much below the cost price continuously for five years and the reasons attributed was for the purpose of 'penetration of market' and to compete with other manufacturers of similar cars, actually incurring loss.

The department after due verification as per Section 14A of Central Excise Act, 1944, refused to accept the assessable value declared by the assessee and contended that the 'wholesale' price declared by the assessee cannot be considered as 'normal price' under Section 4(1)(a) of the Act for the purpose of quantification of assessable value. Further the department opined that the 'penetration price' is to be considered as an extra consideration and therefore the concept of 'price is the sole consideration' as argued by the assessee, cannot be accepted. In that view, assessing authority found justice in invoking Section 4(1)(b) of the Act and resorted to best judgment assessment.

You are required to answer the following questions relevant to the above problem by analyzing the provisions of law and also referring to decided case law, if any :

- (i) Whether the selling price which is below the cost price can be accepted or rejected ?
- (ii) Does the 'penetration price' be considered as an extra commercial consideration ?

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- (b) (i) Naveen Construction was a construction company rendering services under category of "construction of residential complex service" and were paying the service tax in accordance with Finance Act, 1994. They undertook certain construction work on behalf of a trust and paid service tax accordingly. However, later they filed refund claim for the service tax so paid contending that they were not actually liable to pay service tax as it was exempt.

The Department rejected the refund claim on the ground that the refund application filed by Naveen Construction was beyond the limitation period as stated in Section 11B of Central Excise Act. Department did not dispute the fact that service tax was exempted in the instant case.

Is the Department correct in rejecting the refund claim ? Substantiate your answer with the help of a decided case law, if any.

- (ii) Appellant was engaged in the manufacture of steel products and pig-iron for sale in the domestic and export markets. The appellant appointed X & Co., a partnership firm as the "handling contractor" for clearance of Iron and Steel materials from their stockyard. A formal contract was entered into and accordingly, the contractor shall bear all the taxes, duties and other liabilities in connection with discharge of his obligations. In the year 2000, liability to pay service tax in case of "clearing and forwarding agent's" service was shifted from service provider to service receiver and therefore, the appellant deducted tax on the bills of the contractor. The contractor refused to accept the deductions saying that the contractual clause cannot alter the liability placed on the recipient (appellant) by Law.

Discuss whether the contention of the contractor stands to reason, with the help of case law, if any.

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- (c) Sun Synthetic Fibres was an importer. It had imported one unit of equipment which was declared as "High Speed Draw Warping Machine with 1536 ends along with essential spares". The importer claimed that these goods are covered under an exemption notification.

Under said notification, exemption was available in respect of the High Speed Warping Machine with yarn tensioning, pneumatic suction devices and accessories. Undisputedly, the assessee had imported High Speed Warping Machine, but it had drawing unit and not the pneumatic suction device. The textile commissioner, who was well conversant with these machines, had stated that the goods imported by the assessee were covered under the exemption notification. He further stated that drawing unit was just an essential accessory to the machines imported by assessee and, therefore, was covered under said notification. The opinion so furnished is taken note of by the Tribunal while granting relief to the assessee. Revenue contended that the machine imported by the assessee was not in consonance with the exemption notification and, therefore, the benefit of exemption should not be available under the notification to the assessee.

Discuss whether the contention of the Revenue is sustainable in law, with the help of decided case law, if any.

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(9)

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4. (a) The assessee is engaged in the manufacture of various types of packaging machines known as F & S machine. The machines are made to order according to the specification of individual customers and such machines, before dispatch, are to be tested at the customer's premises for their satisfaction. On being satisfied by the customer, assessee makes entry in the RG-1 register (DSA) declaring the machine is manufactured and ready for clearance. For the proper testing, assessee procures flexible laminated plastic fill in roll form and poly paper (termed as inputs) which are excisable, and were used for testing, turning and adjusting various parts of F & S machine. Assessee filed a declaration and availed the benefit of cenvat credit for the duty paid on the said inputs. Department contented that the said materials were used only for testing and as such, they cannot be treated as inputs for manufacturing final product. Further, the department opined that testing takes place only after manufacturing of final product and any goods used in the process subsequent to manufacture cannot be termed as inputs under Rule 2(k) of Cenvat Credit Rules, 2004. Assessee's contention is that the manufacturing process would be completed only after testing and such inputs are used in or in relation to manufacturing and that the inputs need not be present in the final product and therefore, they have the right to claim cenvat credit.

Discuss whether the contention of the department in denying the cenvat credit is justified. You may refer to decided case law, if any, in support of your decision.

- (b) (i) ABC Ltd. had paid both the service tax and interest for delayed payment before issue of show cause notice under the Act. Section 73(3) of the Finance Act, 1994 categorically stated that if the payment of service tax and interest has been intimated to the authorities in writing, the authorities should not serve any notice for the amount so paid. But to the above, the authorities issued SCN to the appellant for delay in payment of service tax.

Discuss with the help of decided case whether the issue of show cause notice is justified.

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- (ii) Dwarakanath Devasthanams, Dwaraka was running guest houses for pilgrims. The department issued S.C.N. stating that the assessee was liable to get service tax registration under "short term accommodation service" and thus liable to pay service tax. The assessee, on the other hand submitted that they were not club or any other association and thus, were not liable to get registered under service tax. The Assessee contested that since they were running guest houses without any profit motive, they were not liable to pay service tax.

You are required to examine whether the show cause notice issued by the department is valid or not, by referring to case law, if any.

- (c) The importer entered into contract for supply of crude sunflower seed oil @ U.S. \$ 435 C.I.F./Metric ton. Under the contract, the consignment was to be shipped in the month of July, 2011. The period was extended by mutual agreement and goods were shipped on 5<sup>th</sup> August, 2011 at old agreed prices. In the meanwhile, the international prices had gone up due to volatility in market and other imports during August, 2011 were at higher prices. Department sought to increase the assessable value on the basis of the higher prices as contemporaneous imports.

Decide whether the contention of the department is correct. You may refer to decided case law, if any, for your decision.

5. (a) (i) Bring out the conditions under which MRP valuation shall apply under Central Excise Act, 1944. 3×2  
= 6
- (ii) In relation to export of excisable goods under Rule 18 of the Central Excise Rule, 2002, what are the duties of excise eligible for rebate ?

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**LMT**

- (b) (i) Discuss the following terms under Section 65B of the Finance Act, 1994, as amended with effect from 1-7-2012 :
- (i) Works contract
  - (ii) Bundled service.
- (ii) Explain briefly whether VAT is leviable on each of the following lease transaction :
- (i) Inter-state leasing
  - (ii) Maintenance of leased asset.
- (c) Enumerate the penalties in respect of improper exportation of goods under Section 114 of the Customs Act. 3
6. (a) (i) Differentiate between compounded levy scheme and duty based on annual production capacity under Central Excise. 4
- (ii) Bring out the difference between short levy and short payment. 2

**OR**

- (a) Enumerate the safeguards, conditions and limitations subject to which the refund of Cenvat credit shall be allowed under Rule 5 of Cenvat Credit Rules, 2004. 6
- (b) (i) Mention the place of provision of services in respect of the following services under the Place of Provision of Services Rules, 2012 : 3
- (i) Services relating to immovable property.
  - (ii) Services provided at more than one location.
  - (iii) Services in respect of Passenger Transportation.
- (ii) Discuss any three merits of VAT. 3
- (c) Briefly explain the provisions of Section 28 BA of the Customs Act, 1962 regarding property that may be attached provisionally to protect the interest of revenue in certain cases. 3

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7. (a) (i) State the situations in which duty can be remitted under Rule 27 of the Central Excise Rules. Also discuss whether remission of duty shall be granted or not in the following cases, with reason : 4
- (i) Finished goods are destroyed in fire during the process of fire due to spontaneous combustion.
  - (ii) Finished goods (fully manufactured) were lost before removal from the factory and the assessee has received a claim from the insurance company.
- (ii) Discuss briefly the residual penalty under Rule 27 of the Central Excise Rules, 2002. 2
- (b) (i) Briefly explain the provisions in the Service Tax Rules, 1994 relating to furnishing of list of records at the time of filing of return for the first time. 3
- (ii) What are the objectives with which filing of return procedures under VAT Laws are designed ? 3
- (c) Briefly state the rights of the owner of warehoused goods under the Customs Act, 1962. 3

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