

Paper 18- Indirect Tax Laws and Practice

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Full Marks: 100

Time allowed: 3 hours

The figures in the margin on the right side indicate full marks.
Working notes should form part of the answer.

Section - A

Answer Question No. 1 which is compulsory and four from the rest of this section.

1. Choose the correct answer with justification/ workings wherever applicable: [7×2=14]
- (i) Micro Apparels in Chennai, Tamil Nadu, avails fashion designing services of ₹ 50,00,000 from Prabhu Designs in Singapore. Who is liable to pay GST?
- (a) Micro Apparels
(b) Prabhu Designs
(c) Both
(d) None of the above.
- (ii) M/s X Ltd. a dealer offer combo packs of shirt, watch, wallet, book and they are bundled as a kit and this kit is supplied for a single price as a mixed supply. Tax rate for shirt, watch, wallet and book are 12%, 18%, 5% and Nil respectively. The mixed supply will be taxed at:
- (a) 12%
(b) 18%
(c) 5%
(d) Nil.
- (iii) Mr. A is a manufacturer of ice cream. If all other conditions satisfies, the total effective composition tax rate will be:
- (a) 1%
(b) 5%
(c) 2%
(d) Not eligible for composition scheme.
- (iv) Express Parcel Post Services provided by Department of Post to a business entity. The GST is liable to be paid by:
- (a) business entity
(b) Department of Post
(c) Exempted supply
(d) Not at all supply.
- (v) Mr. Ram sold goods to Mr. Shyam worth ₹ 5,00,000. The invoice was issued on 15th November. The payment was received on 30th November. The goods were supplied on 20th November. The time of supply of goods will be:—
- (a) 15th November
(b) 30th November
(c) 20th November
(d) None of the above.
- (vi) The value of the supply of goods or services or both between distinct persons as specified in Sec. 25(4) or Sec 25(4) of the CGST Act, 2017 or where the supplier and

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recipient are related, other than where the supply is made through an agent, shall be determined under CGST Rules by:

- (a) Rule 27
- (b) Rule 28
- (c) Rule 29
- (d) Rule 30.

(vii) The application form for registration by casual taxable person is:

- (a) GST REG-01
- (b) GST REG-02
- (c) GST REG-09
- (d) None of the above.

Answer:

(i) (a): Micro Apparels in Chennai being recipient of service is liable to pay IGST, as it is import of service.

(ii) (b): In this case, watch attracts the highest rate of tax in the mixed supply i.e., 18%. Hence, the mixed supply will be taxed at 18%.

(iii) (d): Manufacturer of ice cream, pan masala etc. are not eligible for composition scheme.

(iv) (b): GST is liable to be paid by Department of Post, as it is not covered under reverse charge mechanism.

(v) (a): The time of supply of goods will be 15th November, as the date of invoice or payment whichever is earlier.

(vi) (b): The value of the supply of goods or services or both between distinct persons as specified in Sec. 25(4) or Sec 25(4) of the CGST Act, 2017 or where the supplier and recipient are related, other than where the supply is made through an agent, shall be determined under CGST Rules by Rule 28.

(vii) (a): The application form for registration by casual taxable person is GST REG-01, as for normal taxable person.

2.(a)(i) Adi Ltd. is a manufacturing concern in Pune. In financial year, 2017-18, the total value of supplies including inward supplies taxed under reverse charge basis are ₹ 1,02,60,000 (exclusive of taxes). The breakups of supplies are as follows:

Particulars	₹
1. Intra state supplies made under forward charge	50,00,000
2. Intra state supplies made which are chargeable to GST at Nil rate	18,00,000
3. Intra state supplies which are wholly exempt u/s 11 of CGST Act	32,00,000
4. Value of inward supplies on which tax payable under RCM	2,60,000

Briefly explain whether Adi Ltd. is eligible to opt for composition scheme in financial year 2018-19. [6]

(ii) State the distinction between composite supply and mixed supply. [3]

(b) State the manner how to determine value of supply of goods or services where the consideration is not wholly in money. [5]

Answer:

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- (a)(i) A registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1,00,00,000, may opt for payment of tax under composition scheme.

As per section 2(6) of the CGST Act, "aggregate turnover" means the aggregate value of —

- all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis),
- exempt supplies,
- exports of goods or services or both and
- inter-State supplies

of persons having the same Permanent Account Number, to be computed on all India basis but excludes —

- central tax,
- State tax,
- Union territory tax,
- integrated tax and
- cess;

Thus, aggregate turnover shall be computed as under:

1. Intra state supplies made under forward charge	₹ 50,00,000
2. Intra state supplies made which are chargeable to GST at Nil rate	₹ 18,00,000
3. Intra state supplies which are wholly exempt u/s 11 of CGST Act	₹ 32,00,000
4. Value of inward supplies on which tax payable under RCM	Nil
Total	₹ 1,00,00,000

Since, the aggregate turnover does not exceed ₹ 1,00,00,000 during the financial year 2017-18, Adi Ltd. is entitled for composition scheme for financial year 2018-19.

- (ii) A composite supply is naturally bundled while mixed supply is not naturally bundled in ordinary course of business.

A supply can be mixed supply only if it is for a single price, while a supply can be composite supply even if separate prices are charged.

Trade practice is also relevant. A vehicle repair shop also supplies spare parts. However, the long run practice is to treat these two supplies separately. Hence, such activity is not composite supply. It is also not mixed supply as single price is not charged.

- (b) As per rule 27 of the CGST Rules, 2017, where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall,-
1. be the open market value of such supply;
 2. if the open market value is not available, the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;
 3. if the value of supply is not determinable under clause (1) or clause (2), be the value of supply of goods or services or both of like kind and quality;
 4. if the value is not determinable under clause (1) or clause (2) or clause (3), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order.

3.(a) State the circumstances where suo motu cancellation of registration may be granted by proper officer under GST. [5]

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- (b) Mr. Ravi, a wholesaler not registered under excise law, obtained registration under CGST Act, 2017. He is not in possession of valid duty paying documents in respect of stock held by him on 30.06.2017. Determine the amount of credit admissible to him if he has made the following intra-state supplies:

Date of transaction	Particulars of goods supplied	CGST Rate	Taxable value of supply (₹)
12.07.2017	Goods A	6%	1,20,000
14.07.2017	Goods B	9%	2,70,000
19.07.2017	Goods C	14%	1,85,000

What would your answer be in case goods are supplied on 02.01.2018?

[9]

Answer:

- (a) The proper officer may cancel the registration of taxable person from such date, including any retrospective date, as he may deem fit, where:

- the registered taxable person has contravened such provisions of the Act or the Rules made thereunder as may be prescribed; or,
- a person paying tax under composition scheme has not furnished returns for three consecutive tax period: or,
- any taxable person, other than a person specified in clause (2), has not furnished returns for a continuous period of six months: or,
- any person who has taken voluntary registration under section 25(3) has not commenced business within six months from the date of registration: or,
- registration has been obtained by means of fraud, willful misstatement or suppression of facts.

Superintendent of Central Tax has been specified as 'proper officer' for this purpose — CBE&C circular no. 1/1/2017, dt. 26.06.2017.

- (b) A registered person who was not registered under the existing law shall, in accordance with the proviso to section 140(3) of the CGST Act, be allowed to avail of input tax credit on goods (on which duty of excise or additional duties of customs u/s 3(1) of the Customs Tariff Act is leviable) held in stock on the appointed day in respect of which he is not in possession of any document evidencing payment of central excise duty.

Such credit shall be allowed at the rate of 60% on such goods which attract central tax at the rate of 9% or more and 40% for other goods of the central tax applicable on supply on such goods after the appointed date and shall be credited after the central tax payable on such supply has been paid. However, where IGST is paid on such goods, the amount of credit shall be allowed at the rate of 30% and 20% respectively of the said tax. Therefore:

	Goods A @ 6% + 6% = 12%		Goods B @ 9% + 9% = 18%		Goods C @ 14% + 14% = 28%	
	CGST (₹)	SGST (₹)	CGST (₹)	SGST (₹)	CGST (₹)	SGST (₹)
GST = [A = ₹ 1,20,000 × 6%,6%]; [B = ₹ 2,70,000 × 9%,9%]; [C = ₹ 1,85,000 × 14%,14%]	7,200	7,200	24,300	24,300	25,900	25,900
Deemed credit allowed	40%	40%	60%	60%	60%	60%
Credit eligible	2,880	2,880	14,580	14,580	15,540	15,540

Total credit eligible = ₹ 66,000.

Supplies made on 02.01.2018: This scheme applies for 6 tax periods from the appointed date [01.07.2017 + 6 months = 31.12.2017]. Hence, no credit shall be available on goods supplied on 02.01.2018, i.e. after 6 months from 01.07.2017.

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- 4.(a) Write about the doctrine of unjust enrichment in case of refund of GST. [6]
- (b) M/s ABC Pvt. Ltd. provides the following informations relating to information technology software for the month of September, 2017. Compute the value of taxable supply and GST payable thereon if all charges are exclusive of GST.
1. Development of information technology software: ₹ 10,00,000
 2. On-site development of software: ₹ 7,50,000
 3. Sale of pre packaged software which is put on media: ₹ 15,00,000
 4. License to use software was given to different clients: ₹ 30,00,000
 5. Upgradation of information technology software: ₹ 12,00,000
 6. Programming of software: ₹ 2,50,000. [8]

Answer:

- (a) Doctrine of unjust enrichment in case of refund of GST: Refund will be normally paid in Consumer Welfare Fund, and not paid to the taxable person who has applied for refund - section 54(5) of CGST Act. This is on the basis of doctrine of unjust enrichment, as explained below:

If the supplier of goods and services has recovered GST from recipient, it is clear that he has passed on the burden to the recipient and has already recovered GST from him. In such cases, refund of excess GST paid will amount to excess and undeserved profit to supplier of goods and services. It will not be equitable to refund the duty to him, as he will get double benefit - first from the recipient of goods and services and again from the Government.

This will be 'unjust enrichment' of supplier.

Unjust enrichment - A benefit obtained from another, not intended as a gift and not legally justifiable, for which the beneficiary must make restitution or recompose - Indian Council for Enviro - Legal Action v. UOI (2011) 8 SCC 161.

Refund, if any, should be paid to customer who has borne the burden of GST. However, in majority of the cases, it is not practicable to identify individual consumer and pay refund to him. At the same time, the GST illegally collected and hence cannot be retained by Government.

In UOI v. Roplas Ltd. AIR 1989 Bom 183 = 1988(38) ELT 27 (Bom HC), it was suggested that in such cases, the refund due should be transferred to a Consumer Welfare Fund instead of paying it to the supplier. The fund may be used for activities of protection and benefit of consumers.

With this view in mind, concept of unjust enrichment was introduced in Central Excise Act and Customs Act w.e.f. 20th September 1991.

These provisions are being continued under GST also.

- (b) Computation of value of taxable supply and GST payable:

	₹
1. Development of information technology software (taxable – deemed supply of service)	10,00,000
2. On-site development of software (taxable – deemed supply of service)	7,50,000
3. Sale of pre packaged software which is put on media (supply of goods)	15,00,000

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and liable to GST)	
4. License to use software was given to different clients (taxable – deemed supply of service)	30,00,000
5. Upgradation of information technology software (taxable – deemed supply of service)	12,00,000
6. Programming of software (taxable – deemed supply of service)	2,50,000
Value of taxable supply	77,00,000
GST payable @18%	13,86,000

Note: It is assumed here that rate of GST is 18%.

- 5.(a) State the situations where summary assessment may be permissible. [7]**
(b) The applicant was a re-seller and importer of sun glasses, frames, lenses, contact lenses, etc. having Head Office in West Bengal. Goods, namely, optical lenses and frames for spectacles and accessories, are transferred from the Head Office in West Bengal to its branches in other states. Advance Ruling was sought on whether such goods supplied to the branches in States other than West Bengal can be valued in terms of the cost price under the second proviso to Rule 28 of the CGST Rules, 2017, instead of 90% of MRP as required under the first proviso of the same rule. Examine. [7]

Answer

- (a)** Summary assessment is permissible only to protect the interest of revenue, if delay is likely to adversely affect revenue. Summary assessment is exceptional power.

The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional/Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue. He will issue an assessment order, if he has sufficient grounds to believe that any delay in doing so will adversely affect the interest of revenue- section 64(1) of CGST Act.

Though the section does not specifically say so, principles of natural justice like issue of show cause notice, opportunity of hearing, order with reasons etc. have to be followed. These provisions are independent of section 73 or 74.

Deputy/Assistant Commissioner of Central Tax has been designated as 'proper officer' for the purpose assessing tax liability under summary assessment- CBE&C circular No. 3/3/2017-GST dated 5-7-2017 [State Government will prescribe 'proper officer' for purpose of SGST in the respective State].

If taxable person to whom that liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and pay tax and any other amount due under section 64- proviso to section 64(1) of CGST Act.

On any application made by the taxable person within thirty days from the date of receipt of order passed under section 66(1) or on his own motion, if the Additional /Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in section 73 or 74 (of regular SCN and demand) - section 64(2) of CGST Act.

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(b) It was held in GKB Lens (P) Ltd., In re [2018] 93 taxmann.com 477 (AAR-West Bengal) that the first proviso to rule 28 of CGST Rules, 2017 shows that where goods are supplied to a recipient for further supply as such, the valuation of these goods when transferred from the supplier to the recipient may, at the option of the supplier, be determined at 90% of the price that will be charged by the recipient to its customer, not being a related person. The two clauses important to note in this proviso are: (1) goods received by the recipient are to be sold to a customer not being a related person and (2) the determination of value at 90% of the price that will be charged by the recipient to this customer is an option. Whether or not the supplier avails this option is solely the discretion of the supplier. The second proviso to rule 28 does not mention, unlike first proviso, "where goods are supplied to a recipient for further supply as such", nor is the proviso barred to such goods when further supplied as such. In other words, the second proviso is applicable for both, goods further supplied to non related customers and to goods used in and for the course of business. It is stated that the value declared in the invoices shall be deemed to be the open market value of the goods. The applicant has the option of not supplying goods to its branches under the first proviso of rule 28 and is eligible to value these goods by applying the terms of the second proviso to rule 28.

6.(a) What are the records to be maintained by the owner or operator of godown or warehouse and transporters? [7]

(b) Aryan Ltd. is located in Kolkata and engaged in manufacture of mechanical appliances. It submits the following informations pertaining to inward supply of inputs/ input services/ capital goods during September, 2018:

	Taxable value of inward supply (₹)	GST charged by supplier (₹)
Steel rods for manufacturing (received in factory on September 2, 2018) (invoice is missing, not available in the records of Aryan Ltd.)	7,50,000	1,35,000
Machine tools (received on September 7, 2018) (payment is made on January 10, 2019)	1,00,000	18,000
Stainless steel sheets (first installment received on September 24, 2018, second and final installment will be received on October 10, 2018) (invoice for both installments received on September 26, 2018, taxable value + GST: ₹ 5,90,000)	5,00,000	90,000
Air-conditioner for office (received in office on September 20, 2018) (for income-tax purpose, depreciation is claimed u/s 32 on ₹ 32,000)	25,000	7,000
Heating system for canteen (received on September 28, 2018, depreciation is claimed on taxable value excluding GST)	1,00,000	28,000
Corporate membership of Lions Club (it will be used by directors to entertain foreign collaborators only)	50,000	9,000

Calculate the amount of input tax credit available to Aryan Ltd. [7]

Answer:

(a) Records to be maintained by the owner or operator of godown or warehouse and transporters: As per rule 58 of the CGST Rules, 2017, every person required to maintain records and accounts in accordance with the provisions of sub-section (2) of section 35, if not already registered under the Act, shall submit the details regarding his business electronically on the common portal in FORM GST ENR-01, either directly or through a Facilitation Centre notified by the Commissioner and, upon validation of the details

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furnished, a unique enrolment number shall be generated and communicated to the said person. [Rule 58(1)]

The person enrolled under sub-rule (1) as aforesaid in any other State or Union territory shall be deemed to be enrolled in the State or Union territory. [Rule 58(2)]

Every person who is enrolled under sub-rule (1) shall, where required, amend the details furnished in FORM GST ENR-01 electronically on the common portal either directly or through a Facilitation Centre notified by the Commissioner. [Rule 58(3)]

Subject to the provisions of rule 56 (maintenance of accounts by registered person),-

- (a) any person engaged in the business of transporting goods shall maintain records of goods transported, delivered and goods stored in transit by him along with the Goods and Services Tax Identification Number of the registered consigner and consignee for each of his branches.
- (b) every owner or operator of a warehouse or godown shall maintain books of accounts with respect to the period for which particular goods remain in the warehouse, including the particulars relating to dispatch, movement, receipt and disposal of such goods. [Rule 58(4)]

The owner or the operator of the godown shall store the goods in such manner that they can be identified item-wise and owner-wise and shall facilitate any physical verification or inspection by the proper officer on demand. [Rule 58(5)]

(b) Computation of input tax credit available to Aryan Ltd. for September, 2018:

Items	Reasons	₹
Steel rods	input tax credit not available, as invoice is missing	—
Machine tools	input tax credit is available for September, 2018, date of payment is not irrelevant if payment is made within 180 days from the date of invoice	18,000
Stainless steel sheets	when input is received in installments, input tax credit is available only on receipt of last installment, input tax credit will be available October, 2018	—
Air-conditioner for office	input tax credit is not available as GST is included in 'actual cost' for calculating depreciation u/s 32 of Income-tax Act	—
Heating system for canteen	input tax credit is available even if installed in canteen	28,000
Corporate membership of Lions Club	input tax credit is not available on club membership	—
	Total	46,000

7. Answer the following:

[7+7]

- (a) Write a short note on "Advance ruling to be void in certain cases".**
(b) Write a short note on supply as taxable event under GST.

Answer:

- (a) Advance ruling to be void in certain cases:** As per section 104 of the CGST Act, where the Authority or the Appellate Authority finds that —
- advance ruling pronounced by it has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts,
 - it may, by order, declare such ruling to be void ab-initio and

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- thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made: [Section 104(1)]

No order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant.

The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded while computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74.

A copy of the order made under sub-section (1) shall be sent to the applicant, the concerned officer and the jurisdictional officer. [Section 104(2)]

- (b) Supply as taxable event under GST:** Taxable event under GST law is supply of goods or services or both. It means no supply no GST.

The term, "supply" has been inclusively defined in the Act. The meaning and scope of supply under GST can be understood in terms of following six parameters, which can be adopted to characterize a transaction as supply:

1. Supply of goods or services. Supply of anything other than goods or services does not attract GST.
2. Supply should be made for a consideration.
3. Supply should be made in the course or furtherance of business.
4. Supply should be made by a taxable person.
5. Supply should be a taxable supply.
6. Supply should be made within the taxable territory

Exceptions:

- (1) Any transaction involving supply of goods or services without consideration is not a supply, barring few exceptions, in which a transaction is deemed to be a supply even without consideration.
- (2) Further, import of services for a consideration, whether or not in the course or furtherance of business is treated as supply.

As per Section 7(1) of the CGST Act, supply includes:

- (1) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
- (2) import of services for a consideration whether or not in the course or furtherance of business;
- (3) the activities specified in Schedule I, made or agreed to be made without a consideration; and
- (4) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

As per Section 7(2) Supply excludes:

- (1) activities or transactions specified in Schedule III; or
- (2) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

Section - B

Answer Question No. 8 which is compulsory and two from the rest of this section.

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8. Choose the correct answer with justification/ workings wherever applicable: [3×2=6]

- (i) In computation of customs valuation, which of the following is not addable?
 (a) Buying commission
 (b) Development work done other than India
 (c) Materials supplied by buyer
 (d) License fee paid by buyer as a condition of sale.
- (ii) Suppose Assessable Value (A.V.) is ₹ 1,00,000. BCD - 10%, IGST - 28%, SWS – 10%. The amount of IGST will be:
 (a) ₹ 11,000
 (b) ₹ 31,080
 (c) ₹ 28,000
 (d) ₹ 30,800.
- (iii) Minimum value addition required to be achieved under Advance Authorisation scheme is:
 (a) 15%
 (b) 20%
 (c) 50%
 (d) None of the above.

Answer:

(i) (a) Except buying commission, all other are includible while calculating customs valuation.

(ii) (b) the calculation of duty would be: BCD = ₹ 10,000 [10% of A.V.], SWS – ₹ 1,000 [1% of ₹ 10,000], IGST - ₹ 31,080 [₹ 1,00,000 + ₹ 10,000 + ₹ 1,000] × 28%.

(iii) (a) Minimum value addition required to be achieved under Advance Authorisation scheme is 15%. However, separate value addition is notified for specified products.

9.(a) M/s A Ltd. imported flat-rolled products of stainless steel with CIF value US \$ 50,000 from China. Exchange rate was 1 US \$ = ₹ 45 on the date of presentation of bill of entry. Basic customs duty is chargeable @10% and SWS @10%. The said product, if imported from China, is liable to anti-subsidy duty @18.95% of landed value. IGST on similar product supplied in India is 18%. You are given that 'landed value' for levy of anti-subsidy duty means customs value plus all duties of customs except duties levied u/s 3, 3A, 8B, 9 and 9A of the Customs Tariff Act. Compute total duties payable. [8]

(b) Write down the activities of customs brokers. [4]

Answer:

(a) The computation is as follows:

	Duty		Total
	Rate	₹	₹
CIF or Assessable value [$\$ 50,000 \times ₹ 45$]			22,50,000
Add: Basic Customs Duty (BCD)	10%	2,25,000	2,25,000
Add: SWS on BCD	10%	22,500	22,500
Landed value of goods		2,47,500	24,97,500
Add: anti-subsidy duty	18.95%	4,73,276	4,73,276
Value for levy of Integrated Goods & Services Tax (IGST)		7,20,776	29,70,776
Add: IGST	18%	5,34,740	5,34,740
Total duties payable		12,55,516	35,05,516

(b) Activities of customs brokers:

- Processing of documents, shipping bills etc. for export.

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- Carting of goods/cargo to Container Freight Station.
- Arranging of physical examination of goods
- Collection of measurement certificate
- Handover goods/cargo to carrier i.e., shipping line
- Personally attending stuffing of cargo in container
- Collection of Bill of Lading from shipping line
- Collection of documents from Customs such as duplicate copy of shipping bill, attested copy of Invoice & Packing List etc.

10.(a) M/s. Pipli Imports Ltd. imported certain goods, which were unloaded in the customs area on 01.10.2013. When order for clearance was passed by proper officer on 5.10.2013, it was found that there was some pilferage of such goods. As the imported goods were in the custody of port trust, the Department demanded duty from the custodian under Section 45(3) of the Customs Act, 1962 on such pilferage. The port trust denied such demand contending that it was not an approved custodian falling under Section 45 but possession of goods by it was by virtue of powers conferred under the Major Port Trust Act, 1963. Hence, it is not liable for customs duty on pilfered goods. The importer has also asked the custodian to make good the loss of goods. Examine, whether demands made by the Department and importer are justified in law, referring to decided case law. [7]

(b) State the objectives of foreign trade policy 2015-20. [5]

Answer:

(a) The Bombay High Court differently interpreted the liability of the Custodian. As per section 45 of the Customs Act, the person referred to in sub-section (1) thereof can only be the person approved by the Commissioner of Customs. It excludes a body of persons, who by virtue of a law for the time being in force, is entrusted with the custody of goods by incorporation of law under another enactment, (for example, the Port Trust Act in the given case). The recovery of duty in respect of pilfered goods could only be from the approved person and the Port Trust is not liable to pay duty on goods pilfered while in their possession [Board of Trustees of the Port of Bombay v UOI 2009 (241) ELT 513 (Bom)].

Therefore, demands made by the Department and importer are not justifiable in law.

(b) The foreign trade policy for 2015-2020 seeks to achieve the following objectives:

- (1) Stable and sustainable policy environment for foreign trade: To provide a stable and sustainable policy environment for foreign trade in merchandise and services;
- (2) Export Promotion Mission: To link rules, procedures and incentives for exports and imports with other initiatives such as "Make in India", "Digital India" and "Skills India" to create an "Export Promotion Mission" for India;
- (3) Diversification of India's export: To promote the diversification of India's export basket by helping various sectors of the Indian economy to gain global competitiveness with a view to promoting exports;
- (4) Expansion and integration of export market: To create an architecture for India's global trade engagement with a view to expanding its markets and better integrating with major regions, thereby increasing the demand for India's products and contributing to the government's flagship "Make in India" initiative;
- (5) Regular appraisal: To provide a mechanism for regular appraisal in order to rationalise imports and reduce the trade imbalance.

11.(a) State the situations where provisional assessment of duty can be granted under customs. [3]

(b) State the incentives and facilities offered to units in Special Economic Zone. [9]

Answer:

(a) Provisional assessment can be granted in the following three situations:

- An importer or exporter is unable to produce any document or furnish any information necessary for the assessment of duty.
- Any imported goods or export goods need to conduct any chemical or other test for the purpose of assessment of duty thereon.
- Where the importer or the exporter has produced all the necessary documents and furnished full information for the assessment of duty but the proper officer deems it necessary to make further enquiry for assessing the duty.

(b) The Special Economic Zones Act, 2005 is a special enactment applicable to the Special Economic Zones or Units, which has been given overriding effect over any other law for the time being in force.

The said Act provides following benefits to Developer/Entrepreneur of special economic zone/unit -

(1) Exemption from all duties of customs chargeable under any law on -

- (a) goods imported into, or services provided in a SEZ/unit to carry on authorised operations;
- (b) goods exported from, or services provided, from a SEZ/unit, to any place outside India;

(2) Exemption from all duties of excise /GST chargeable under any law on the goods brought from DTA (Domestic Tariff Area) to a SEZ/unit to carry on authorised operations.

(3) Drawback or other admissible benefits on goods brought or services provided from the DTA into a SEZ/unit or services provided in a SEZ/unit by the service providers located outside India to carry on the authorised operations.

(4) Exemption from Securities Transaction Tax in case the taxable securities transactions are entered into by a non-resident through the International Financial Services Centre.

(5) 100% Income Tax exemption on export income for SEZ units under Section 10AA of the Income Tax Act for first 5 years, 50% for next 5 years thereafter and 50% of the export profit for next 5 years which are transferred to Special Economic Zones reserve account.

(6) External commercial borrowing by SEZ unit's upto US \$ 500 million in a year without any maturity restriction through recognized banking channels.

(7) Single window clearance for Central and State level approvals.

(8) Exemption from State sales tax and other levies as extended by the respective State Governments.

(9) Exemption to capital gains tax on shifting on undertaking to special economic zone.