

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Law of Taxation-II
Semester-VIII (Batch: 2013-18)

End Semester Examination: April-May 2017

Date: 5th May, 2017

Duration: 3 hours

Max. Marks: 50

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write any thing on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.
- Read CEA as Central Excise Act, 1944, CA as Customs Act, 1962, CCR and Cenvat Credit Rules, 2004.
- Cite suitable authorities to support your answer, even where ever not provided. Mention correct section & complete name of the Act for correct reference. Answers citing wrong sections will receive no marks.
- Bare Acts not allowed.

Marks

- Q.1 Assessee 'A' Ltd., an importer of India, entered into a joint venture with a foreign collaborator 'B' for promotions and selling of antennas, accessories and other communication equipment's. The agreements between them indicates that 'B' owned majority of equity shares in 'A' Ltd. Technical services were provided by 'B' to 'A' Ltd. For various functions that were carried out in respect of manufacture of antenna system in India, technical services fee was paid to 'B' by 'A' Ltd. Based on the above facts, the revenue opined that both 'A' and 'B' were related parties, and technical fee paid by 'A' Ltd. should be includible in the AV of the imported goods. Assessee denied this claim and seek your legal advice in this issue.
- (a) Discuss on the facts given above, citing suitable case laws, whether the contention of assessee is correct or not. Also cite suitable Sections of the CA and applicable rules. (5+4=09)
- (b) Discuss transaction value method of valuation for goods imported in India.
- OR**
- Discuss different valuation rules under Customs valuation (Determination of value of Imported Goods) rules, 2007 and Customs valuation (Determination of value of Export Goods) rules, 2007. (4.5+4.5=09)
- Q.2 The assessee is a company registered under the Companies Act, 1956 and is engaged, inter alia, in the manufacture of excisable goods, namely, synthetic yarn. Assessee is a 100% Export Oriented Unit (EOU). Assessee procured partial oriented yarn (POY) without payment of duty for the manufacture of various types of yarn, namely, polyester texturized yarn, nylon covered yarn and polyester covered yarn etc. It was found that assessee removed some of these goods to DTA (domestic tariff area) without taking permission from the Development Commissioner as per the provisions of the EXIM policy. This was denied by the assessee that they had duly complied with the provisions of law. The assessee argued that it was eligible to clear goods up to a certain specified limit after obtaining due permission from the Development Commissioner in terms of EXIM policy, and no duty is liable to be paid. But revenue was not satisfied by such document. (5+4=09)

The assessee contended that, in case the goods cleared by the 100% EOU and allowed to be sold in India, whether with or without permission, the assessment shall be made under proviso to Section 3(1) of the CE Act and no other formality is required at their end.

The section read as under,

Section 3. Duties specified in First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 to be levied. -

(1) There shall be levied and collected in such manner as may be prescribed, -

(a) a duty of excise to be called the Central Value Added Tax (CENVAT)] on all excisable goods (excluding goods produced or manufactured in special economic zones) which are produced or manufactured in India as, and at the rates, set forth in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(b) a special duty of excise, in addition to the duty of excise specified in clause (a) above, on excisable goods excluding goods produced or manufactured in special economic zones specified in the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) which are produced or manufactured in India, as, and at the rates, set forth in the said Second Schedule.

Provided that the duties of excise which shall be levied and collected on any excisable goods which are produced or manufactured, -

(i) Omitted.

(ii) by a hundred per cent export-oriented undertaking and brought to any other place in India, shall be an amount equal to the aggregate of the duties of customs which would be leviable under the Customs Act, 1962 (52 of 1962) or any other law for the time being in force, on like goods produced or manufactured outside India if imported into India, and where the said duties of customs are chargeable by reference to their value; the value of such excisable goods shall, notwithstanding anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs Act, 1962 (52 of 1962) and the Customs Tariff Act, 1975 (51 of 1975).

Explanation 1. - Where in respect of any such like goods, any duty of customs leviable for the time being in force is leviable at different rates, then, such duty shall, for the purposes of this proviso, be deemed to be leviable at the highest of those rates.

Explanation 2. - In this proviso, -

(i) Omitted.

(ii) "hundred per cent export-oriented undertaking" means an undertaking which has been approved as a hundred per cent export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), and the rules made under that Act;

(iii) "Special Economic Zone" has the meaning assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005).

(1A) The provisions of sub-section (1) shall apply in respect of all excisable goods other than salt which are produced or manufactured in India by, or on behalf of, Government, as they apply in respect of goods which are not produced or manufactured by Government.

(2) The Central Government may, by notification in the Official Gazette, fix, for the purpose of levying the said duties, tariff values of any articles enumerated, either specifically or under general headings, in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as chargeable with duty ad valorem and may alter any tariff values for the time being in force.

(3) Different tariff values may be fixed -

(a) for different classes or descriptions of the same excisable goods; or

(b) for excisable goods of the same class or description -

(i) produced or manufactured by different classes of producers or manufacturers; or

(ii) sold to different classes of buyers :

Provided that in fixing different tariff values in respect of excisable goods falling under sub-clause (i) or

sub-clause (ii), regard shall be had to the sale prices charged by the different classes of producers or manufacturers or, as the case may be, the normal practice of the wholesale trade in such goods.

On the basis of above mentioned facts discuss the following issues:

- (a) Whose contentions are correct and why?
- (b) Different valuation methods under CE Act.

- Q.3 Discuss under CCR (06)
- (a) The assessee claimed the Cenvat credit on the duty paid on capital goods which were later destroyed by fire. The insurance company reimbursed the amount includible of excise duty. Revenue demanded the Cenvat credit to be reversed, but denied by assessee. Whose contention is correct and why?
 - (b) Whether the wrongful availment of 100% Cenvat credit on capital goods in the year of purchase be correct if wrongly availed credit of 50% is not utilized in said year?
- Q.4 Discuss the following under Baggage Rules 2016, citing suitable rules: (06)
- (a) Concept of Resident and Tourist
 - (b) Import and Export of currency in India
- OR**
- (a) Provisions regarding Unaccompanied Baggage
 - (b) Rules applicable to the members of crew
- Q.5 Write the full form and details of following incoterms. Incorrect full form will receive no marks: (04)
- (a) DAP
 - (b) CIF/CFR
 - (c) DDP
 - (d) EXW
- Q.6 Discuss the concept of job worker. Also analyze in detail the valuation of goods manufactured by job worker under CEA. (05)
- Q.7 Critically analyze the GST Act, 2016. What suggestions would you like to give to remove the drawbacks in the Act? (05)
- Q.8 Discuss with suitable case laws, Sections of the CEA applicable there on the following situations: (any three) (3x2= 06)
- (a) Are Physician samples excisable goods in view of the fact that they are statutorily prohibited from being sold?
 - (b) Does the process of cutting and embossing aluminum foil for packing the cigarettes amount to manufacture?
 - (c) How will a cream which is available across the counters as also on prescription of dermatologists for treating dry skin conditions, be classified, as medicament or as cosmetics, if it has subsidiary pharmaceutical content?
 - (d) Whether assembling of the testing equipment's for testing the final product in the factory amount to manufacture?
