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FINAL EXAMINATION

June 2014

P16(TMP)
Syllabus 2012

Tax Management and Practice

Time Allowed: 3 Hours

Full Marks: 100

The figures in the margin on the right side indicate full marks.

Wherever required, the candidate may make suitable assumptions and state them clearly in the answer.

Working notes should form part of the relevant answer.

All sub-divisions of a question should be answered continuously.

SECTION A

Answer **all** questions.

1. Answer *any three* sub-divisions:

5×3=15

- (a) An assessee submitted an application under section 32E of the Central Excise Act, 1944 to the Settlement Commission. Pointing out that the applicant had not made a true and full disclosure of its duty liability and the manner in which same was arrived at was also not correct, the Commission rejected the application. The assessee contended that obligation to make truthful disclosure of duty liability would arise only after the application was admitted and not prior to that. Is plea taken by the assessee, tenable in law?
- (b) The assessee was engaged in the manufacture of tooth paste. It was sold as a combo pack of tooth paste and a bought out tooth brush. No extra amount was collected from buyers for the tooth brush. The assessee availed CENVAT credit of central excise duty paid on the tooth brush. Revenue contended that the tooth brush was not an input for the manufacture of the tooth paste and the cost of tooth brush was not added in the M.R.P. of the combo pack and hence the assessee had availed CENVAT credit of duty paid on tooth brush in contravention of the provisions of the CENVAT Credit Rules, 2004. Is this contention justified?
- (c) The assessee was running a fast-food restaurant in which "soft-serves" were dispensed through vending machines. Such softy ice-creams in fast food chain outlets contain just 5 per cent milk fat, whereas hardened ice-creams served as dessert must mandatorily contain more than 8 percent. According to the assessee, soft-serve will not fall in the definition of "ice-cream" as understood under the Prevention of Food Adulteration Act. Assume that while ice-creams attracted 16 percent excise duty, edible preparations not specified elsewhere enjoyed complete exemption. The assessee contended that it dealt with only the latter. Is such claim correct?

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- (d) (i) A SSI unit has purchased new machinery in April, 2013, on which excise duty of ₹ 2 lacs has been paid.

The monthly clearances for home consumption from this unit are as under:

Month	Value (₹ in lacs)
April, 2013	30
May, 2013	40
June, 2013	60
July, 2013	52
August, 2013	55

Can the unit avail Cenvat credit for new machinery purchased? If so, how much and in which month can it avail the same? 3

- (ii) A SSI unit has paid excise duty of ₹ 15,450 during the year ended 31-3-2013. Is it required to submit its return of excise duty electronically during the subsequent year? 2

2. Answer *any two* sub-divisions:

5×2=10

- (a) Briefly discuss the Central Excise procedures to be followed by an EOU in respect of its DTA sales.
- (b) Compute the Assessable Value and Excise Duty payable u/s 4 of the Central Excise Act, 1944 from the following information:

Particulars	Amt. in ₹
Price of machinery excluding taxes and duties	6,00,000
Installation and erection expenses	25,000
Packing charges (primary and secondary)	13,000
Design and engineering charges	4,000
Cost of material supplied by buyer free of charge	10,000
Pre-delivery inspection charges	850

Other information:

- (i) Cash discount @ 2% on price of machinery was allowed as per terms of contract since full payment was received before dispatch of machinery.
- (ii) Bought out accessories supplied along with machinery valued at ₹ 7,250.
- (iii) Central Excise Duty rate 12% and cess as applicable.
- (c) M/s Action Ltd. is a manufacturer having its factory situated in Mumbai. During the financial year 2013-14, the total value of clearances from the factory was ₹ 520/- lakhs. The detailed break up of clearances are as follows:
- Clearances without payment of duty to a unit in Software Technology Park— ₹ 100/- lakhs.

- Clearances of non-excisable goods ₹ 110 lakhs.
- Clearances worth ₹ 60 lakh which are used captively to manufacture finished products that are exempt under notification other than Notification No. 8/2003.
- Clearances of excisable goods in normal course ₹ 250 lakhs.

Part of the factory at Mumbai is used by M/s Action Ltd. and another part of the same factory is used by M/s Passion Ltd. M/s Passion Ltd. has cleared the goods worth ₹ 100 lakhs during FY 2013-14, which were exempted under notification other than SSI exemption notification.

Briefly explain whether M/s Action Ltd. will be eligible to the benefits of exemption under Notification No. 8/2003 for the year 2014-15.

3. Answer *all* sub-division:

- (a) From the following details furnished by Mrs. Vasudha, a registered dealer for the month of March, 2014, ascertain the VAT payable for the said month, as per White Paper on VAT: 5

Particulars	Amount in (₹)
Raw materials imported from China	5,00,000
Customs duty paid in addition at 10.3%	
Intra-State purchase of raw materials	2,00,000
CST, at 2% has been charged on the above, in addition	
Intra-State purchase of raw materials from registered dealers	4,00,000
VAT paid on above, over and above the price	
Sale of finished goods within State	12,00,000
Branch transfer to other State (from goods purchased within State) at cost price	1,25,000
Closing stock of finished goods	1,00,000
Opening VAT	2,250
Input and output VAT rates are	1%

OR,

From the following particulars, calculate assessable value and total customs duty payable:

- CIF value 2000 US Dollars; Air Freight 500 US Dollars, Insurance cost 100 US Dollars; Landing Charges not available.
- Date of presentation of bill of entry: 20.01.2014 (Rate of BCD 25%; Exchange Rate: ₹ 58.60 and rate notified by CBEC ₹ 58.80)
- Date of arrival of goods in India: 30.01.2014 (Rate of BCD 20%; Exchange Rate: ₹ 58.90 and rate notified by CBEC ₹ 59.00)
- Rate of Additional Customs Duty under section 3(1): 12%
- Additional Duty of customs u/s 3(5): 5%
- Education Cess applicable 2% and SAHEC is 1%

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Please Turn Over

- (b) Are the clearance of goods from DTA to Special Economic Zone chargeable to export duty under the SEZ Act, 2005 or the Customs Act, 1962? 5

4. Answer *any two* sub-divisions: 5×2=10

- (a) Phoenix Ltd., an Indian company, has been allocated an oilfield in Sibsagar district of Assam and has engaged Beta Ltd., a Canadian company, for prospecting and exploration of the oilfield, for which Phoenix Ltd. has paid fees for prospecting & exploration to Beta Ltd. Is any service tax leviable on such fees? If so, on whom? Would your answer be different if the oilfield was located in Anantnag district of Jammu & Kashmir?
- (b) State with reasons, whether Cenvat credit is available to a manufacturer on the following:
- (i) Service tax charged by outdoor caterers in their bills (raised for outdoor catering services), for serving food in the employees' canteen.
 - (ii) Excise duty paid on purchase of steel and cement purchased for constructing factory building.
 - (iii) Service tax charged by contractor in his bill for repair of factory building.
 - (iv) Excise duty paid on purchase of machinery meant for trading.
 - (v) Excise duty paid on diesel purchased for running of diesel generators used for running of factory machinery.
- (c) Dolphin Ltd. has approached you for advice as to whether the company has any service tax liability under the reverse charge mechanism in respect of the following expenses incurred by them during the financial year 2013-14:
- (i) Fees for legal advice obtained from M/s L. Srikumaran & Associates, a firm of advocates.
 - (ii) Fees for technical consultancy paid to Macdermott Inc., a company located in New York.
 - (iii) Amount paid to N. K. Builders Ltd., an Indian company, for construction of its factory shed, where both material and labour were provided by N. K. Builders Ltd.
 - (iv) Freight paid to ABC Carriers, a Goods Transport Agency, for transporting raw materials by road, from Vasant Ltd., a supplier who is an Indian company.
 - (v) Sitting fees paid to non-whole time directors
- What would be your advice?

SECTION B

Answer all questions.

5. Answer *any three* sub-divisions: 3×5=15

- (a) ABC Ltd. paid a sum of 12,000 USD to Kiwi Consultants, based only at Singapore, relating to consultation involving the installation of play-back facilities to be used in the cricket stadium in Bangalore. The payment was made in Singapore and the entire consultation took place in Singapore. Can this amount be taxed in India on the ground that the payment related to services of a product used in India?
- (b) Mr. David had obtained an asset by virtue of adverse possession, i.e. he was enjoying uninterrupted possession of a house plot since April, 1980. His name was taken as owner in revenue and municipal records. This house was sold on 12-2-2014 for ₹ 35 lacs. The assessee contends that since the cost of

acquisition is not ascertainable, there can be no exigibility to capital gains. The Assessing Officer opines that the FMV as on 1-4-1981 can be taken to be the cost. You are required to help the assessee with your views and work out the capital gains, if any.

Cost inflation index for FY 2013-14 is 912.

- (c) The income-tax assessment of Nathan Windmills Ltd. was completed under section 143(3) of the income-tax Act, 1961 for the assessment year 2008-09, accepting the claim of the assessee for deduction under section 80-IA. The Explanation to Section 80-IA was later on substituted by the Finance (No. 2) Act, 2009, retrospectively w.e.f. 01.04.2000, whereby the deduction was denied to profits derived as mere works contractor. The assessee was a mere works contractor only. The Assessing Officer, after nearly five years, sought to initiate the reassessment proceedings in March, 2014 on the grounds that the assessee had not disclosed that he had undertaken the projects only on works contract and that in the light of the retrospective amendment, deduction u/s 80-IA was not available, as a consequence of which income chargeable to tax has escaped assessment. Is the reopening justified?
- (d) Miss Niranjana, aged 61, resident, has derived income from a country X, with which India does not have any Double Taxation Avoidance Agreement. The broad details of income for the assessment year 2013-14 are as under:

	(₹ in lacs)
Business Income in India	8
<i>Income from country X:</i>	
Income from business	3
Gross rent received for let out house	2
Life Insurance premium paid	1.2

In Country X, the rate of tax is flat 10%. Income from house property is not taxed in Country X. Compute the total income of the assessee and the tax payable.

6. Janak Pharma Ltd., a manufacturer of pharmaceuticals, started in April, 2014 requests you to compute the depreciation allowable u/s 32 of the Income-tax Act, 1961 for the assessment year 2014-15: 10

	(₹ In crores)
Items installed in May 2013:	
New machinery	84
Cold chamber	22
Items installed December 2013:	
Lorries for transporting goods within factory	4
Cranes	3
Computers installed in office premises	1
Currency counting machine for wages payment	1

Is any other allowance available while computing the business income?

Also compute the WDV of the various blocks of assets.

7. Answer **any two** sub-divisions: 2×5=10
- (a) (i) If any assessment is remanded back to Assessing Officer, can he introduce new sources of income for assessment? 3
- (ii) Can the Department make fresh computation, once tax assessment is made final? 2

- (b) Anand, an individual, had filed a Return of Income, showing an income of ₹ 5,00,000 for the assessment year 2014-15. He paid a sum of ₹ 20,000 as tax whereas the tax payable on such income was ₹ 30,900 (including cess). His income is assessed at ₹ 5,90,000 and the tax payable on the assessed income is ₹ 58,710. Anand wishes to file an appeal against the above order. Advise Anand about the procedure of filing an appeal. 5
- (c) (i) Return of Income for previous year 2010-11 was submitted by Rahim on 28-7-2011 declaring an income of ₹ 12,80,000. A revised return was filed on 18.5.2012 declaring an income of ₹ 9,80,000. Upto what time a notice for scrutiny can be served by the Assessing Officer? 3
- (ii) Can father, mother, son and his wife presently assessed as Hindu undivided family, as well as individual, form an association of persons as well as a source of income not belonging to the Hindu undivided family? 2
8. (a) Sudhir furnishes the following particulars for the compilation of his wealth tax return for assessment year 2014-15: 5
- (i) Gift of jewellery made to wife from time to time aggregating ₹ 2,00,000. market value on valuation date ₹ 4,00,000.
- (ii) Flat purchased under instalment payment scheme in 1990 for ₹ 1,00,000 used for purposes of his residence and market value as on 31.3.2014 (instalment remaining unpaid is ₹ 1,00,000) ₹ 15,00,000.
- (iii) Cash balance ₹ 2,50,000.
- (iv) Bank balance ₹ 3,00,000.
- (v) Urban land transferred to minor handicapped child valued on 31.3.2014 ₹ 30 lacs.
- Compute the net wealth as on 31.3.2014, adducing brief reason for treatment of each item.
- (b) (i) Arvind received a vacant site under his father's will. The value of the site on 31.3.2014 is ₹ 30 lakhs. As per terms of the 'will' in the event Arvind wants to sell the site, he should offer it to his brother for sale at ₹ 20 lakhs. Arvind therefore claims that the value of the site should be taken at ₹ 20 lakhs as at 31.3.2014. Is the claim correct? 3
- (ii) The cash balance of A Pvt. Ltd. as on 31-3.2014 as per books was ₹ 2.5 lakhs. Upon physical verification, actual cash balance was found to be ₹ 1.5 lacs only. What is the impact of this in the statement of net wealth as on 31.3.2014? 2
9. Answer **any two** sub-divisions: 2×5=10
- (a) Where any reference is made by the Assessing Officer to the Transfer Pricing Officer (TPO) under section 92 CA of the Income-tax Act, what are the procedures to be followed by the TPO? Can TPO exercise his jurisdiction on any international transaction not referred to him but subsequently noticed by him in course of proceeding before him?
- (b) BB India Limited produces steel furniture which is supplied to its holding company BB Inc. USA. BB India Limited raises invoice for US \$ 3,000 per piece of furniture, while the direct and indirect costs of manufacturing work out to US \$ 2,250 per piece. BB India Limited does not supply its products to any other party either in India or abroad. The data base in public domain shows that the still furniture industry in India of comparable companies has export turnover of US \$ 3,000 million and the industry average of total expenses of comparable companies is 80%. Determine whether the transaction entered into by BB India Limited is at arm's length.
- (c) Write a short note on "Safe harbour rule".