Solutions of CA-FINAL IDTL (G-2) MAY 2013 Paper

Disclaimer Clause : *These solutions are prepared by expert faculty team of Resonance. Views and answers provided may differ from that would be given by ICAI due to difference in assumptions taken in support of the answers. In such case answers as provided by ICAI will be deemed as final.*

1 (a) (i) COMPUTATION OF AMOUNT OF CENVAT CREDIT ALLOWABLE FOR FINANCIAL YEARS 2010-11 AND 2011-12

Cum duty price of the machinery	₹ 15,14,240
Rate of duty including education cess and secondary and higher education cess	16.48%
Duty paid on machinery = ₹ 15,14,240 × $\frac{16.48}{116.48}$ =	₹ 2,14,240

CENVAT CREDIT ALLOWABLE DURING THE :–

Financial Year 2010-11 @ 50% of ₹ 2,14,240 =	**₹ 1,07,120**
Financial Year 2011-12 @ 50% of ₹ 2,14,240 =	**₹ 1,07,120**

(ii) AMOUNT PAYABLE TOWARDS CENVAT CREDIT ON DISPOSAL OF MACHINERY DURING THE YEAR 2012-13

Total CENVAT credit availed on the machinery	₹ 2,14,240	
Less: Amount of reduction from the said credit on		
(i) First 50% = [₹ 1,07,120 × 2.5%] × 10 quarters	₹ 26,780	
(ii) Next 50% = [₹ 1,07,120 × 2.5%] × 7 quarters	₹ 18,746	**₹ 1,68,714**

Duty leviable on transaction value = ₹ 12,00,000 x12.36%= ₹ 1,48,320

AMOUNT PAYABLE ON DISPOSAL OF MACHINERY

Hence, amount payable towards CENVAT Credit = ₹ 1,68,714 (₹ 1,68,714 or ₹ 1,48,320 whichever is higher)

Notes :

1. In respect of capital goods, CENVAT credit shall be taken only for an amount not exceeding 50% of duty in the same financial year and balance may be taken in any subsequent year **[Rule 4(2)(a) of the CENVAT Credit Rules, 2004]**.

2. If the capital goods, on which CENVAT credit has been taken, are removed after being used, whether as capital goods or as scrap or waste, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by 2.5% of each quarter of a year or part thereof from the date of taking the CENVAT credit

Provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.

[Rule 3(5A) of the CENVAT Credit Rules, 2004]

3. It is assumed that first 50% of the CENVAT credit has been taken on 01.09.2010 and the balance 50% of the credit has been taken on 01.04.2011.

1 (b) COMPUTATION OF THE VALUE OF FIRST CLEARANCES AND THE DUTY LIABILITY

Particulars		**₹**
1. Value of clearances of goods with own brand name		50,00,000
2. Value of clearance of goods with brand name of other parties (Note-1)		1,00,00,000
Total value of first clearances		**1,50,00,000**
Value on which duty is chargeable (₹ 1,50,00,000 – ₹ 1,50,00,000)	=	NIL
Excise duty payable @ 12% of NIL	=	NIL
Education cess payable @ 2% of NIL	=	NIL
Secondary and higher education cess @ 1% of Excise duty. (NIL × 1 %)	=	NIL
Total excise duty liability		**NIL**

Notes:

1. SSI units in rural areas are eligible to clear goods with others' brand name availing the exemption as per Notification No. 8/2003.
2. Notification No. 8/2003 also provides that value of clearances of goods totally exempt under other notifications need not be taken into account for calculation of aggregate value of first clearances.
3. As per Notification No. 8/2003. assesse eligible for exemption is not required to pay duty on first clerance of ₹ 1,50,00,000, Hence in the above question M N O & Co. is not liable to pay excise duty beacuse total value of fisrt cleanace is not exceeding ₹ 1,50,00,000.

1 (c).

COMPUTATION OF THE VALUE OF TAXABLE SERVICES & SERVICE TAX

Amount in ₹

(1)	Commission charged on debt collection service	10,00,000
(2)	Discount earned on Bills Discount - Not taxable (since this is specifically covered under negative list.)	Not taxable
(3)	Sale and purchase of forward contract - Not taxable (since it is transaction only in money which is specifically excluded from the definition of service.)	Not taxable
(4)	Credit card and debit card related charges	3,80,000
(5)	Penal Interest recovered from the customer for the delay in repayment of loan (Not taxable as covered in negative list.	Not taxable
(6)	Commission received for service rendered to government for tax collection	6,00,000
(7)	Interest earned on Reverse repo transaction (Reverse repo transaction are excluded excluded from the definition of service.]	Not taxable
	Value of taxable service	**19,80,000**
	Service tax @ 12.36 %	**2,44,728**

1. (d) **(I) COMPUTATION OF AMOUNT OF INPUT TAX CREDIT AVAILABLE FOR THE MONTH OF SEPTEMBER 2012.**

	₹
(1) Purchase for resale with in state	
₹ 8,00,000 × 12.5%	1,00,000
(2) Purchase from Registered dealar who opted for composition scheme	WN.
(3) Purchase to be used as consumable stores for Manufactore or taxable goods	
₹ 6,00,000 × 12.5%	75,000
(4) Purchase of goods where invoice does not show the amount or taxes separately	WN.
(5) Purchase of goods for personal consumption	WN.
(6) Purchase of capital goods (not eligible for input credit)	---
(7) Purchase of capital goods (eligible for input credit)	3,000
₹ 5,76,000 × 12.5% × 1/24	
Total VAT credit Available	**1,78,000**

(ii) Computation of Net Amount of VAT Payable for the month of september 2012.

(a) Output VAT

On sale made within state ₹ 50,00,000 × 4 % = **₹ 2,00,000**

(b) Net VAT = Output VAT – Input VAT credit available

= ₹ 2,00,000 – ₹ 1,78,000 = **₹ 22,000**

(iii) The balance of input VAT credit available on capital goods to be carried forward = 69,000 (i.e., 5,76,000 × 12.5% = 72,000 – 3,000) .

Working note :

Purchases not eligible for input tax credit

1. Purchases from registered dealer who opt for composition scheme under the provisions of the Act ;

2. Purchase of goods where invoice does not show the amount of tax separately ;

3. Purchase of goods used for personal use/ consumption or provided free charge as gifts ;

1 (e)

COMPUTATION OF ASSESSABLE VALUE FOR THE PURPOSE OF CUSTOM DUTY PAYABLE OF BSA & COMPANY LTD.

F.O.B. Cost of Machine		10,000 U.K. Pounds
Add : Air frieght :– **Least of the following**		
(1) Actual frieght paid	3,000 U.K Pounds	
or		
(2) 20 % of F.O.B.		
i.e., 20% of 10,000	2,000 U.K. Pounds	2,000 U.K. Pounds
Add : Engineering and design changes paid to a firm in U.K.		500 U.K. Pounds
Add: License fee relating to imported goods payable by the buyer as a condition or sale 20 % of F.O.B cost i.e. 10,000 × 20 %		2,000 U.K. Pounds
CIF excluding material supplied by buyer free of cost, Insurance paid to insurer and demurrage charges paid		14,500 U.K. Pounds
Converted CIF In indian Rupee		₹
14,500 × 70.25		10,18,625
Add : Insurance paid to insurer In India		6,000
Add : Materials and components supplied by the buyer free of cost		20,000
Add : Damages changes		5,000
CIF		**10,49,625**
Add : Landing charges @ 1 % of CIF i.e. 1 % of 10,49,625		10,496
Assessable Value		**10,60,121**

Working Note :

1. The air freight should not exceed 20% of FOB value.Hence actual air freight of 3,000 pounds has been restricted to 2,000 pounds.(10,000 x 20%)

2. Insurance has been assumed to be in respect of the cost of the equipment till the place of importation and is thus, includible [Rule 10(2)(c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

3. As per rule 10(1)(a)(i) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, buying commission is not includible in the value of the imported goods. Since the agent's commission does not represent buying commission, hence, it is includible.

4. Landing charges have been considered as per clause (ii) of the proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

5. The rate of exchange notified by the CBEC has been considered [Clause (a) of the explanation to section 14 of the Customs Act, 1962].

6. Value of design work under taken elsewhere than in India is includible in the value of impoted goods. (Rule 10(1) (b)(iv)]

7. As per Rule 10(1) (c), Royalty and Licence fee is added to the transaction value of the imported goods only if the following conditions are satisfied–

(a) such royalties or licence fees are related to the imported goods &

(b) The buyer is required to pay the same as a condition of sale of goods being valued.

2 (a) (i) The said statement is not valid. With effect from 01.03.2012 vide Notifications Nos. 24-29 CE (NT) all dated 05.12.2011, the export procedures for Nepal has been amended.

The procedures prescribed for export under claim for rebate (Rule 18 of Central Excise Rules, 2002) vide Notification No. 19/2004 CE (NT) dated 06.09.2004 and export without payment of duty under bond (Rule 19 of Central Excise Rules, 2002) vide Notifications Nos. 42 to 44/2001 CE (NT) all dated 26.06.2001 would apply to Nepal as well. This has been done in view of the revised treaty between India and Nepal.

(ii) The said statement is not valid. Rule 5 of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 has been amended vide Notification No. 13/ 2012-CE (NT) dated 17.03.2012 to, inter alia, provide that the manufacturer, receiving goods at concessional rate of duty, has to submit a quarterly return instead of a monthly return.

(iii) The said statement is false. Annual Financial Information Statement (ER- 4) is required to be submitted latest by 30th November of succeeding financial year by the assessees paying duty of Rs.1 crore or above per annum either through PLA or CENVAT Credit or both together.

2 (b) (i) First of all, it is worth highlighting that by virtue of its aforementioned shares in Wilson Ltd., Apte & Apte Ltd. becomes the holding company of Wilson Ltd as per section 4 of Companies Act, 1956. Resultantly, both Apte & Apte Ltd. and Wilson Ltd. will fall within the ambit of the term "associated enterprises" as per section 92A of Income Tax Act, 1961. As a result, second proviso to Rule 7 of Point of Taxation Rules, 2011 becomes applicable in the present case. Thus, Point of Taxation will be determined in the following manner:

Earlier of the following two dates :

Date of debit in the books of account of person receiving the service	**31.09.2012**
[which is Apte & Apte Ltd. in the present case]	
Date of making the payment	**23.12.2012**
[by Apte & Apte Ltd. in the present case]	

Thus, Point of Taxation will be 31.09.2012.

2 (b) (ii) In the definition of 'service' given under section 65B(44) of the Act it has been stated that service include a **'declared service'.** The phrase 'declared service' means any activity carried out by a person for another person for consideration and declared as such under section 66E.

The objective of bringing certain services within the purview of 'declared service' is to remove any ambiguity for the purpose of uniform application of law all over the country.

Following services have been brought within the ambit of 'Declared Service' under section 66E of Finance Act, 1994 with effect from 01.07.2012:

S.No.	Description	Section
(a)	Renting of Immovable Property	66E(a)
(b)	Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion certificate by the competent authority	66E(b)
(c)	Temporary transfer or permitting the use or enjoyment of any intellectual property right	66E(c)
(d)	Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software	66E(d)
(e)	Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act	66E(e)
(f)	Transfer of goods by way of hiring, leasing, licensing or in any such	

	manner without transfer of right to use such goods	66E(f)
(g)	Activities in relation to delivery of goods on hire purchase or any system of payment by installments;	66E(g)
(h)	Service portion in the execution of a works contract;	66E(h)
(i)	Service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity	66E(i)

[NOTE :- WRITE DOWN ANY THREE FROM ABOVE]

2 (c) (i) The statement is not correct. Since the canalizing agent is not the agent of the importer nor does he represent the importer abroad, purchases by canalizing agency from foreign seller and subsequent sale by it to Indian importer are independent of each other. Hence, the commission or service charges paid to the canalizing agent are includible in the assessable value as these cannot be termed as buying commission **[Hyderabad Industries Ltd. v. UOI (SC)]**.

(ii) The statement is correct. Where there is no requirement in the contract for independent inspection and the inspection is carried out by foreign supplier on his own and is not required for the purpose of fulfilling the condition of the contract, then such charges incurred on inspection are not includible in assessable value **[Bombay Dyeing & Mfg. v. CC (SC)]**

3 (a) The facts of above questions are similar to facts of Case of *CCEx, Mumbai v. Fiat India Pvt. Ltd.* decided by supreme court during 2012.

The Supreme Court held duty has to be paid on the "transaction value". Section 4(1)(a) of the Central Excise Act, 1944 defines transaction value as under "in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value

If any of the ingredients in the above definition is missing then the price shall not be considered as the sole consideration as transaction value.

Supreme Court opined that this is a case of extra commercial consideration in fixing of price, and artificially depressing it. Full commercial cost of manufacturing and selling was not reflected in the price as it was deliberately kept below the cost of production. Thus, price could not be considered as the sole consideration for sale. No prudent business person would continuously suffer huge loss only to penetrate market; they are expected to act with discretion to seek reasonable income, preserve capital and, in general, avoid speculative investments. It is immaterial that the cars were not sold to related persons.

In view of the above resorting to best judgment assessment was proper.

3(b) (i) The facts of above questions are similar to facts of Case of *CCE (A), v. KVR Construction* decided by Hon'ble High Court of Karnataka during 2012.

The Hon'ble High Court of Karnataka, distinguishing the landmark judgment by Supreme Court in the case of Mafatlal Industries v. UOI 1997 (89) E.L.T. 247 (S.C.) relating to refund of duty/tax, held that service tax paid mistakenly under construction service although actually exempt, is payment made without authority of law. Mere payment of amount would not make it 'service tax' payable by the respondents. When once there is lack of authority to collect such service tax from the respondent, it would not give authority to Department to retain such amount and validate it. In view of the above, it was held that refund of an amount mistakenly paid as service tax could not be rejected on ground of limitation under section 11B of the Central Excise Act, 1944.

3(b) (ii) The facts of above questions are similar to facts of Case of *Rashtriya Ispat Nigam Ltd. v. Deewanchand Ram Saran* decided by supreme court during 2012.

The Supreme Court observed that reading the agreement between the parties as a whole and harmonizing various provisions thereof, it can be inferred that service provider (contractor) accepted liability to pay service tax, since it arose out of discharge of their obligations under contract.

With regard to the submission of shifting of tax liability, Supreme Court held that service tax is indirect tax which may be passed on. Thus, assessee can contract to shift their liability. Finance Act, 1994 is relevant only between assessee and tax authorities; it is irrelevant to determine rights and liabilities between service provider and recipient as agreed in contract between them. There is nothing in law to prevent them from entering into agreement regarding burden of tax arising under contract between them.

Note: In present context, liability to pay service tax does not lie on service recipient under clearing and forwarding agent's services. However, the principle derived in the above judgment that 'service tax liability can be shifted by one party on to the other by way of contractual clause' still holds good.

3(c) The facts of above questions are similar to facts of Case of *Commissioner of Customs (Import), Mumbai v. Konkan Synthetic Fibres* decided by supreme court during 2012.

The Supreme Court stated that it was a settled position in a fiscal or taxation law that while ascertaining the scope or expression used in a particular entry, the opinion of expert in the field of trade, who deals in those goods, should not be ignored rather it should be given due importance. The Supreme Court on refering to the case of Collector of Customs v. Swastik Woollens (P) ltd. held that when no statutory definition was provided in respect of an item in the custom act or excise act, the trade understanding, i.e. the understanding in the opinion of those who deal with the goods in question was the safest guide.

Thus the Supreme Court concluded that the imported goods were covered under the exemption notification.

4 (a) The facts of above questions are similar to facts of Case of *Flex Engineering Ltd.v. Commissioner of Central Excise, U.P.* decided by supreme court during 2012.

The Supreme Court held that the process of manufacture would not be complete if a product is not saleable as it would not be marketable. Thus, the duty of excise would not be leviable on it.

The Supreme Court was of the opinion that the process of testing the customized F&S machines was inextricably connected with the manufacturing process, in as much as, until this process is carried out in terms of the afore-extracted covenant in the purchase order, the manufacturing process is not complete; the machines are not fit for sale and hence, not marketable at the factory gate. The Court was, therefore, of the opinion that the manufacturing process in the present case gets completed on testing of the said machines. Hence, the afore-stated goods viz. the flexible plastic films used for testing the F&S machines are inputs used in relation to the manufacture of the final product and would be eligible for CENVAT credit under rule 57A of the erstwhile Central Excise Rules, 1944 [now rule 2(k) of the CENVAT Credit Rules, 2004].

4(b) (i) The facts of above questions are similar to facts of Case of *CCE & ST, v. Adecco Flexione Workforce Solutions Ltd.* decided by Hon'ble High Court of Karnataka during 2012.

The Karnataka High Court held that the authorities had no authority to initiate proceedings for recovery of penalty under section 76 of the Act when the tax payer paid service tax along with interest for delayed payments promptly. As per section 73(3), no notice shall be served against persons who had paid tax with interest; the authorities can initiate proceedings against defaulters who had not paid tax and not to harass persons who had paid tax with interest on their own. If the notices were issued contrary to this section, the person who had issued notice should be punishable and not the person to whom it was issued.

4(b) (ii) The facts of above questions are similar to facts of Case of *Tirumala Tirupati Devasthanams , Tirupati , v. Supritendent of Customs, Central Excise, Service Tax* decided by Hon'ble High Court of Andhra Pradesh during 2012.

Decision of the Case: The Andhra Pradesh High Court held that the petitioner was religious and charitable institution and was running guest houses by whatever name called, whether it was a shelter for pilgrims or any other name for a considerable time and thus was liable to get itself registered under 'Short term accommodation service' and pay service tax on the same.

Note: In the new regime, this case would be relevant in context of short accommodation service.

4(c) The facts of above questions are similar to facts of Case of *Commissioner of Customs, Vishakhapatnam v. Agrawal Industries ltd.* decided by supreme court during 2011.

The Supreme Court held that in the instant case, the contract for supply of crude sunflower seed oil @ US $ 435 CIF/ metric ton was entered into on 26th June 2001. It could not be performed on time because of which extension of time for shipment was agreed between the contracting parties. It is true that the commodity involved had volatile fluctuations in its price in the international market, but having delayed the shipment; the supplier did not increase the price of the commodity even after the increase in its price in the international market. There was no allegation of the supplier and importer being in collusion. Thus, the appeal was allowed in the favour of the respondent- assessee.

5(a) (i) The provisions relating to valuation of excisable goods based on MRP are dealt with in section 4A of the Central Excise Act, 1944. The conditions under which the MRP based valuation shall apply are as follows :

(a) the excisable goods to be valued are covered under Legal Metrology Act 2009 or related rules or under any other law and such law requires to declare on the package the retail sale price thereof; and

(b) the Central Government has notified the said goods as goods in relation to which the payment of excise duty shall be on the basis of the MRP less such deductions/abatements as it may allow in the notification. However, it must be noted that if the goods have been so notified, Legal Metrology Act 2009 or the rules made thereunder must require a declaration of the retail sale price on the package of such goods

5(a) (ii) Following duties are eligible for rebate under rule 18 of CER,2002 :

(a) duties of excise collected under the Central Excise Act, 1944;

(b) duties of excise collected under the Additional Duties of Excise (Goods of Special Importance) Act, 1957;

(c) duties of excise collected under the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978;

(d) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001, as amended from time to time;

(e) special excise duty collected under a Finance Act;

(f) additional duty of excise as levied under section 157 of the Finance Act, 2003;

(g) education cess on excisable goods levied under Finance (No.2) Act, 2004;

(h) additional duty of excise leviable on pan masala and specified tobacco products under Finance Act, 2005.

5(b) (i) (i) Works Contract [65B(54)] :- "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property.

(ii) Bundled Service [66F(3)] :- "bundled service" means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service . In order to truly appreciate the concept of 'bundled service', a couple of examples are given below:

(A) Service of stay in a hotel is often combined with a service of laundering of certain specified items of clothing per day.

(B) Transport by air is often combined by catering on board.

5(b) (ii) (i) Lease of an asset in the course of inter-State or import trade cannot be taxed under a State VAT law. It can be taxed under the Central Sales-tax Act, 1956 as deemed sales.

(ii) The maintenance of the leased asset involving supply of materials for maintenance/repair by the lessor would not amount to works contract, as there would be no transfer of property in such materials to the lessee. Thus, there would be no VAT on the value of the materials supplied during maintenance/repair of the asset. In case of computers, generally the lessor undertakes the maintenance and repair of the leased computers.

However, the materials required during such maintenance /repair would be input for sale and input tax credit will be available.

5 (c) Section 114 of the Customs Act, 1962 provides that any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable:

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under the Act, whichever is the greater.

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded or five thousand rupees, whichever is the greater;

(iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.

6(a) (i) Compounded levy scheme: Under compounded levy scheme, the manufacturer has to pay the prescribed duty for a specified period on the basis of certain factors relevant to production, like size of equipment employed, production capacity or some other criteria [Rule 15 of Central Excise Rules, 2002].

Compounded levy scheme is presently applicable to stainless steel pattas/patties and aluminum circles. It is an optional scheme, i.e. the manufacturer can opt to pay duty as per normal rules.

Duty based on production capacity: In case of certain products, Central Government, by notification, can specify that duty on such notified products will be levied and collected on the General Procedures under Central Excise on basis of annual production capacity of the factory. [Section 3A(1) of the Central Excise Act, 1944 which has been inserted w.e.f. 10-05-2008].

Excise duty on pan masala and gutkha is payable on the basis of annual production capacity under section 3A. The scheme is compulsory.

6(a) **(ii)** **Short levy:** Short levy arises when the charge itself is done at a lower rate. It may arise out of wrong classification.

Short payment : Short payment arises out of a short levy or short payment of a correct levy. It is a case of less payment of excise duty than what is due.

OR

6 (a) **Refund of Duty under Rule 5 of Cenvat credit Rules, 2004.**

In case of :

(i) Goods exported without payment of duty under bond or letter of undertaking or

(ii) Service exported without payment of service tax,

The manufacturer or output service provider, shall be allowed refund of Cenvat Credit as determined by the following formula.

$$\text{Refund Amount} = \frac{(\text{Export Turnover of Goods} + \text{Export Turnover of Service})}{\text{Total Turnover}} \times \text{Net Cenvat Credit}$$

Note : **(i)** The above rule shall apply to exports made on or after 1st April 2012.

(ii) It has been provided that refund may also be claimed as per old Rule 5 as applicable upto 31st March 2012 within a period of one year from 1st April 2012.

(iii) **No refund if duty drawback or rebate availed.**

The facility of refund will not be allowed, if the manufacturer/ provider of output service avails of drawback under the custom and central excise drawback rules, 1995 or claims rebate of duty under Rule 18 of the central excise rules 2002 or claims rebate of service tax under STR, 1994.

6(b) **(i)**

(i) **Rule 5. Place of provision of services relating to immovable property.:**

The place of provision of services provided directly in relation to an immovable property **including** services provided in this regard by experts and estate agents, provision of hotel accommodation by a hotel, inn, guest house, club or campsite, by whatever, name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including architects or interior decorators,

shall be the place where the immovable property is located or intended to be located.

Criterial to determine if a service is ' directly in relation to' immovable property

(ii) **Rule 7. Place of provision of services provided at more than one location:** Where any service referred to in rules 4, 5, or 6 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.

(iii) **Rule11.Place of provision of passenger transportation service:** The place of provision in respect of a passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey.

6(b) (ii) Following are the merits of VAT:

(i) No Tax Evasion: It is said that VAT is a logical beauty. Under VAT, credit of duty paid is allowed against the liability on the final product manufactured or sold. Therefore, unless proper records are kept in respect of various inputs, it is not possible to claim credit.

Hence suppression of purchases or production will be difficult because it will lead to loss of revenue. A perfect system of VAT will be a perfect chain where tax evasion is difficult.

(ii) Neutrality: The greatest advantage of the system is that it does not interfere in the choice of decision for purchases because it has anti-cascading effect.

(iii) Certainty: The VAT system is based simply on transactions. Thus, there is no need to go through complicated definitions like sales, sales price, turnover of purchases and turnover of sales. The tax is also broad-based and applicable to all sales in business leaving little room for different interpretations. Thus, this system brings certainty to a great extent.

(iv) Transparency: Under a VAT system, the buyer knows, out of the total consideration paid for purchase of material, what is tax component. Thus, the system ensures transparency also. This transparency enables the State Governments to know as to what is the exact amount of tax coming at each stage. Thus, it is a great aid to the Government while taking decisions with regard to rate of tax etc.

(v) Better revenue collection and stability: The Government will receive its due tax on the final consumer/ retail sale price. There will be a minimum possibility of revenue leakage, since the tax credit will be given only if the proof of tax paid at an earlier stage is produced. This means that if the tax is evaded at one stage, full tax will be recoverable from the person at the subsequent stage or from a person unable to produce proof of such tax payment. Thus, in particular, an invoice of VAT will be self enforcing and will induce business to demand invoices from the suppliers. Another attribute of VAT is that it is an exceptionally stable and flexible source of government revenue.

[NOTE :- EXPLAIN ANY THREE FROM ABOVE]

6(c) Section 28BA provides that during the pendency of any proceeding under section 28 or section 28AAA or section 28B, the proper officer may provisionally attach any property belonging to the person on whom notice has been served under section 28(1) or section 28AAA(3) or section 28B(2), in accordance with section 142 of the Customs Act and the Rules made thereunder. This action requires prior approval of the Commissioner of Customs and must be necessary for protecting the interest of Revenue.

Such an attachment could be effected for a period of 6 months which shall commence from the date of the order of the Commissioner permitting such provisional attachment. This period may be extended by the Chief Commissioner of Customs by such further period or periods as may be determined by him. The reasons for such extension should be recorded in writing and the total period should not exceed 2 years.

If an application for the settlement of the case is made under section 127B, the period commencing from the date on which such an application is made and ending with the date on which order under section 127C(1) is made shall be excluded from the period of 2 years mentioned above.

7(a) (i) (i) Remission of duty is grantable if goods are destroyed during process due to spontaneous combustion which is a natural cause as has been held in CCE Vs Balrampur Chini Mills(2008) 223 ELT 34 (All HC) wherein it was pronounced that destruction by spontaneous combustion is a natural cause and question of negligence or unavoidable accident does not arise.

(ii) Remission of duty has is grantable even if the assessee has received nsurance claim in respect of fire accident as has been held in the following cases:

(a) Sarda Plywood Industries Ltd. V CCE 1987 (CEGAT);

(b) CCE V Jai Bhavani SSK (2008) (CESTAT)

7(a) (ii) Rule 27 : General Penalty :

A breach of Central Excise Rules 2002 shall, where no other penalty is provided herein or in the excise act, be punishable with a penalty which may extend to **Rs. 5,000 and with confiscation of goods** in respect of which the offence is committed.

7(b) (i) According to Rule 5(2) of the Service Tax Rules, 1994 every assessee shall furnish to the Superintendent of Central Excise at the time of filing of return for the first time a list in duplicate, of

(i) all the records prepared or maintained by the assessee for accounting of transactions in regard to,

(a) Providing of any service;

(b) Receipt or procurement of input services and payment for such input services;

(c) Receipt, purchase, manufacture, storage, sale, or delivery, as the case may be, in regard of inputs and capital goods;

(d) Other activities, such as manufacture and sale of goods, if any.

(ii) all other financial records maintained by him in the normal course of business.

7(b) (ii) Filing of Returns is designed with a view :

(a) To reduce the cost of compliance

(b) To encourage businesses to comply with their obligations and

(c) To ensure efficient processing of data.

7(c) According to provisions of section 64 of Customs Act 1962, with the sanction of the proper officer, and on payment of the prescribed fees, the owner of any goods either before or after warehousing the same -

(a) inspect the goods;

(b) separate damaged or deteriorated goods from the rest;

(c) sort the goods or change the containers for the preservation, sale, export or disposal of the goods;

(d) deal with the goods & their containers in such manner as may be necessary to prevent loss, deterioration or damage to the goods;

(e) show the goods for sale;

(f) take samples of the goods without entry for home consumption, if the proper officer so permits, without payment of duty on such samples.