

CA Final Indirect Tax Solutions

Answer 1(a)

Computation of value of clearances during preceding financial year for determining the eligibility for SSI exemption in the current year

Particulars	Rs. In Lakhs
Total value of clearances during preceding financial year	950
Less: VAT included in above	80
	870
Less: Exports excluding exports to Bhutan (Rs. 500 - Rs. 250) lakh	250
Clearances of goods without payment of duty to a unit in Electronic Hardware Technology Park	20
Job work under Notification No. 84/94 CE dated 11.04.1994 and under Notification No. 83/94 CE dated 11.04.1994	200
Value of eligible clearances during preceding financial year	400

Conclusion: Since the value of clearances in the previous financial year does not exceed Rs. 400 lakh, Balaji & Company is eligible to claim the benefit of Notification No. 8/2003 CE dated 01.03.2003 in the current financial year

Answer 1(b)(i)

Goods and Services tax (GST) is a tax on supply of goods or services or both, except supply of alcoholic liquor for human consumption. So, alcohol for human consumption is kept out of GST by way of definition of GST on constitution. Five petroleum products viz. petroleum crude, motor spirit (petrol), high speed diesel, natural gas and aviation turbine fuel have temporarily been kept out and GST Council shall decide the date from which they shall be included in GST.

Answer 1(b)(ii)

Schedule I of CGST Act, 2017 provides the following activities to be treated as supply even if made without consideration:

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:
Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
3. Supply of goods—
 - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
 - (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
4. Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

Answer 1(b)(iii)

As per section 7(1)(b) of CGST Act, 2017 supply includes the importation of services for a consideration whether or not in the course or furtherance of business. Thus, import of services with consideration is taxable in both of the following situations:

- (a) in course or furtherance of business
- (b) not in course or furtherance of business

Further, Schedule I of CGST Act, inter alia, stipulates that import of services by a taxable person from a related person or from his establishments located outside India is treated as "supply" even if made without consideration if it is provided in the course or furtherance of business.

Answer 1 (b)(iv)

Schedule III in the CGST Act is akin to the negative list under the service tax regime. This schedule specifies transactions/ activities which shall be neither treated as supply of goods nor a supply of services.

1. Services by an employee to the employer in the course of or in relation to his employment.
2. Services by any court or Tribunal established under any law for the time being in force.
3. Functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;

Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

Duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.

4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5. Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building.
6. Actionable claims, other than lottery, betting and gambling.

Explanation - For the purposes of paragraph 2, the term "Court" includes District Court, High Court and Supreme Court.

Answer 1 (b)(v)

Composite supply means a supply made by a taxable person to a recipient and:

- (i) Comprises two or more taxable supplies of goods or services or both, or any combination thereof.
- (ii) are naturally bundled and supplied in conjunction with each other, in the ordinary course of business.

This means that in a composite supply, goods or services or both are bundled owing to natural necessities. The elements in a composite supply are dependent on the 'principal supply'.



Determination of tax liability on composite supplies:

A composite supply comprising of two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply.

Mixed supply means:

- (i) two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person
- (ii) for a single price where such supply does not constitute a composite supply.

The individual supplies are independent of each other and are not naturally bundled.

Determination of tax liability on mixed supplies:

A mixed supply comprising of two or more supplies shall be treated as supply of that particular supply that attracts highest rate of tax.

Answer 1 (c)

Computation of customs duty payable:-

Particulars	Rs.
Total CIF value in INR = US \$ 40,000 x Rs. 45	18,00,000
Add: Landing charges @1%	18,000
Assessable value (AV)	18,18,000
Basic customs duty (BCD) @10%	1,81,800
Education cess (EC) @ 3% on BCD	5,454
Landed value of imported goods	20,05,254
Total customs duty payable (BCD + EC+ SAHEC)	1,87,254

Computation of Anti dumping duty payable

Particulars	Rs.
Value of goods in INR as per Notification = 1,000 Kgs x US \$ 60 x Rs. 45	27,00,000
Less : Landed value of goods	20,05,254
Anti-dumping duty payable	6,94,746

Answer 2 (a)

The Supreme Court observed that since physician samples were capable of being sold in open market, the same were marketable and thus, liable to excise duty.

The Drugs and Cosmetics Act, 1940 (Drugs Act) and the Central Excise Act, 1944 operated in two different fields, the restrictions imposed under Drugs Act could not lead to non-levy of excise duty under the Central Excise Act.

Therefore, in view of the above-mentioned ruling of the Supreme Court, the contention of the assessee is not valid in law.

Answer 2(b)

Computation of refund of service tax (including cesses) available under Notification No. 12/2013 ST dated 01.07.2013

Particulars	Service tax (Rs. in lakh)	SBC (Rs. in lakh)	KKC (Rs. in lakh)
Service tax, SBC and KKC paid on services exclusively used for authorized SEZ operations	14.00	0.50	0.50

Refund of service tax, SBC & KKC paid on services used for authorized SEZ operations (A)	14.00	0.50	0.50
Refund of service tax paid, SBC & KKC on services exclusively used for DTA operations	Nil	Nil	Nil
Service tax, SBC and KKC paid on services commonly used for authorized SEZ operations and DTA operations	42.00	1.50	1.50
Refund of service tax, SBC & KKC paid on services commonly used for authorized SEZ operations and DTA operations (B)	16.80	0.60	0.60
Net refund = (A) + (B)	30.80	1.10	1.10
Total refund = Rs. 33 lakh			

Answer 2 (c)(i)

- (i) Yes, the applicant manufacturer has to submit a quarterly return in terms of rule 6 of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable and Other Goods) Rules, 2016.
- (ii) If the goods received at concessional rate of duty are not used for intended purpose, the applicant manufacturer is liable to pay an amount equal to the concession in duty plus interest.

Amount payable = Full duty leviable on such goods (excluding any exemption) -Duty already paid, if any, at the time of removal from the factory of the supplier manufacturer of the subject goods.

Answer 2 (c)(ii)

- (i) The relevant date for rate of exchange is the date on which the bill of entry is presented for warehousing under section 46 of the Customs Act, 1962 and not when bill of entry is presented under section 68 for clearance from warehouse.
- (ii) As per section 15(1)(b) of the Customs Act, 1962 rate of duty as prevalent on date of presentation of bill of entry for home consumption for clearance from warehouse is applicable and not the rate prevalent when goods were removed from customs port.
- (iii) Goods which are not removed within the permissible period are deemed to be improperly removed on the day it should have been removed. Thus, duty applicable on such date i.e. last date on which the goods should have been removed is relevant and not the date on which the goods were actually removed.

Answer 3(a)(i)

Computation of the Value of taxable Services & Service tax (Amount in Rs)

S. No.	Particulars	Rs.
(1)	Air freight relating to goods imported into India	Exempt
(2)	Freight relating to domestic transported into India	35,00,000
(3)	Air freight charged from M/s. XYZ. Ltd., for transport of goods from its Dubai branch to Sydney branch	Nil
(4)	Freight relating to goods exported by aircraft	Nil
	Value of Taxable Service	35,00,000
	Total Service Tax Payable @ 15%	5,25,000

Answer 3(a)(ii)

Computation of the Value of taxable Services & Service tax (Amount in Rs)

S. No.	Particulars	Rs.
1	Royalty for providing technical knowhow for manufacture of products – Taxable	25,00,000
2	Royalty for permanent transfer of trademark – Not taxable (as it amounts to sale of IPR. Temporary transfer of IPR amounts to Declared service)	-
3	Royalty from authorship of books (Copyright relating to original literary work is exempt from service tax as per mega exemption Notification No. 25/2012-ST)	Exempt
4	Royalty from temporary transfer of patent registered outside India (Since, there is no condition regarding the law under which IPR should be registered, hence, it will be liable for tax)	3,00,000
5	Royalty received for allowing recording of song composed by him (Copyright relating to original work of composing song is exempt from service tax as per mega exemption Notification No. 25/2012)	Exempt
6	Receipts from providing use of some secret information –Taxable	<u>2,00,000</u>
	Value of Taxable Service	30,00,000
	Service-Tax u/s 66B @ 14% of taxable value	4,20,000
	Less: Research and Development Cess paid on import of technology	<u>50,000</u>
	Service tax payable	3,70,000
	Add: SBC @ 0.5% of Rs. 30,00,000	15,000
	Add: KKC @ 0.5% of Rs. 30,00,000	15,000
	Total Service tax (Including SBC & KKC)	4,00,000

Answer 3(a)(iii)

- (i) In the given case, Mr. Lalit Jain has only availed CENVAT credit and not utilised the same, prosecution provisions will not be applicable to him.
- (ii) In the given case, Mr. Kanha Goel has wilfully evaded payment of service tax of Rs. 14 crore, which is more than the prescribed limit (Rs. 2 crore), he will be liable for imprisonment for a period of 6 months to 3 years.

(iii) In the given case, the amount collected but not paid is Rs. 5 crore and the same has not been paid beyond the period of six months. Therefore, Mr. Chirag Sharma will be liable for imprisonment for a period of 6 months to 7 years.

If Mr. Kanha Goel and Mr. Chirag Sharma are convicted for subsequent offences, then as per section 89(2) of the Finance Act, 1994, Mr. Kanha Goel would be liable for imprisonment for a period which may extend to 3 years, whereas Mr. Chirag Sharma would be liable for imprisonment for a period which may extend to 7 years.

Answer 3(b)

Status Holders are business leaders who have excelled in international trade and have successfully contributed to country's foreign trade. All exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder. Status recognition depends upon export performance.

In order to be categorized as One Star Export House, an exporter needs to achieve the export performance of 3 million US \$ million [FOB/ FOR (as converted)] during current and previous three financial years. Thus, export performance of Skyfly Pvt. Ltd. and Landup Pvt. Ltd. would have been at least 3 million US \$ million [FOB/ FOR (as converted)] during current and previous three financial years.

Further, Two Star Export Houses and above are permitted to establish export warehouses. Therefore, Skyfly Pvt. Ltd. and Landup Pvt. Ltd. can establish export warehouses in India only if they achieve the status of Two Star Export House and above. In order to achieve said status, export performance of the exporters during current and previous three financial years should be as indicated below:

Status Category	Export Performance [FOB/FOR (as converted) value in US \$ million]
Two Star Export House	25
Three Star Export House	100
Four Star Export House	500
Five Star Export House	2,000

Answer 3(c)

Journal entries in the books of M/s. Royal Industries

On the date of purchase	Purchases A/c Dr.	1,50,000	
	CENVAT Credit Receivable A/c Dr	12,000	
	To Sundry Creditors A/c		1,62,000
	(Purchase of 1,000 units of raw material & CENVAT credit receivable on it)		
At the time of sale	Sundry Debtors A/c Dr.	1,51,200	
	To Sales A/c		1,40,000
	To Excise Duty A/c		11,200
	(Sold goods & excise duty payable on it)		
On payment of duty	Excise Duty A/c Dr.	11,200	
	To CENVAT Credit Receivable A/c		11,200
	(Excise duty paid out of CENVAT credit available)		

Balance sheet as on 31st March, 2017
(Relevant portion of Assets side only)

Current Assets, Loans and Advances		Amt(Rs.)
(A)	Current Assets Inventory of raw material	30,000
(B)	Loans and Advances CENVAT Credit Receivable	800

Answer 4

(a) **EVEREADY INDUSTRIES INDIA LTD. V. CESTAT, CHENNAI 2016 (337) ELT 189 (MAD.)**

The High Court held that once an application for refund is allowed under section 11B, the expression 'erroneous refund' appearing in sub-section (1) of section 11A cannot be applied.

If an order of refund is passed after adjudication, the amount refunded will not fall under the category of erroneous refund so as to enable the order of refund to be revoked under section 11A(1).

One authority cannot be allowed to say in a collateral proceeding that what was done by another authority was an erroneous thing. Therefore, the High Court answered the question of law in favour of the appellant/assessee and allowed the appeal.

(b) **KUNJ POWER PROJECTS V. UOI 2016 (41) STR 3 (ALL.)**

In the light of the aforesaid discussion, the High Court quashed the order for provisional attachment of property. It further held that the respondents need to be careful while resorting to exercise the powers of provisional attachment of property. Such exercise of power has to be resorted to with utmost circumspection and with maximum care and caution.

(c) **TAMIL NADU PETRO PRODUCTS LTD. (MAD.)**

The High Court held that if upon a misconception of the legal position, the assessee had paid the tax that it was not liable to pay and such assessee also happens to be an assessee entitled to CENVAT credit, the availing of the said benefit cannot be termed as illegal.

(d) **SPENDEX INDUSTRIES LTD (SC)**

The Apex Court held that the exporter is entitled for both the rebates under rule 18.

(e) **OTTO BILZ (INDIA) PVT. LTD (SC)**

The Hon'ble Supreme Court held the assessee was using the trade mark in its own right as its own trade mark and therefore, it cannot be said that is using the brand name of another person hence, eligible for SSI exemption.

(f) **AIDEK TOURISM SERVICES PVT. LTD. (SC)**

Supreme Court held that rate of additional duty leviable under section 3(1) of the Customs Tariff Act, 1975 would be only that which is payable under the Central Excise Act, 1944 on a like article. Therefore, the importer would be entitled to payment of concessional/ reduced or nil rate of countervailing duty if any notification is issued providing exemption/ remission of excise duty with respect to a like article if produced/ manufactured in India.

(g) **INDIAN COFFEE WORKERS CO-OPERATIVE SOCIETY LTD. (ALL.)**

The High Court held that the assessee was liable for payment of service tax as an outdoor caterer.



(h) **WIPRO LTD. (DEL.)**

The High Court, therefore, allowed the rebate claims filed by the appellants and held that the condition of the notification must be capable of being complied with as if it could not be complied with, there would be no purpose behind it.

Answer 5(a)(i)

Particulars	Rs.	Rs.
Amount received for merchant banking services		8,00,000
Amount received for asset management (including portfolio management) services		3,00,000
Service charges for services provided to Government of India		1,50,000
Interest received on overdraft and cash credits		Nil
Amount received for acting as banker to an issue		5,00,000
Amount received as locker rent		2,00,000
Installment amount received towards repayment of financial lease	80,00,000	
Less: Principal amount included in the above installments	50,00,000	
Interest on financial lease	30,00,000	
10% of the interest amount		3,00,000
Total value of taxable services		22,50,000
Total Service tax Payable @ 15%		3,37,500

Answer 5 (a)(ii)

The demand of interest by Revenue is justified, but penalty cannot be levied in the present case. The Apex Court, in a similar case of CCEx. v. SKF India Ltd. 2009 (239) E.L.T. 385 (S.C.), has noted that section 11A, relating the recovery of duties, can be divided in two parts-

- (i) Where the non-payment or short payment etc. of duty is not intentional and for a reason other than deceit, such cases are dealt with under sub-section (2B) of section 11A.
- (ii) Where the non-payment or short payment etc. of duty is intentional, deliberate and/or by deceitful means, such cases are dealt with under sub-section (1A) of section 11A.

The Apex Court, over ruling the Tribunal's decision in the said case, held that the present case clearly falls under the provision of sub-section (2B) of section 11A of the Central Excise Act, 1944. Further, from the combined reading of explanation 2 to section 11A(2B) and section 11AB, it can be concluded that the person who has paid the duty under sub-section (2B) of section 11A, shall, in addition to the duty, be liable to pay interest. No penalty is attracted.

Answer 5 (a)(iii)

- (i) Yes
- (ii) Yes

Answer 5(b)

Computation of assessable value of the goods imported by T Ltd.

Particulars	Amt
CIF value	6,000 US \$
Less: Freight	2,000 US \$
Less: Insurance	700 US \$
FOB value	3,300 US \$

Add : Freight (20% of FOB value)	660 US \$
Add: Insurance (actual)	700 US \$
CIF for customs purpose	4,660 US \$
Add: Landing charges (1% of CIF value)	46.60 US\$
Value for customs purpose	4,706.60 US\$
Assessable Value = Rs. 45.50 Rs. 4,706.60 US \$	Rs. 2,14,150.30

Answer 5 (c)

Yes, according to amended explanation to rule 3 of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, the gross amount charged for the works contract shall include the value of all goods used in or in relation to the execution of the works contract, whether supplied under any other contract for a consideration or otherwise.

Answer 6(a)(i)

Amount of CENVAT credit allowable for financial years 2014-15 and 2015-16
 Cum duty price of the machinery Rs. 18,63,680
 Rate of duty including education cess 3% 12.36%
 Duty paid on machinery = Rs. 18,63,680 x (12.36/112.36) Rs. 2,05,011
 CENVAT credit allowable during the
 Financial Year 2014-15 @ 50% Rs. 1,02,505.5
 Financial Year 2015-16 @ 50% Rs. 1,02,505.5

First Approach

2,05,011 – (2,05,011 x 2.5% x 9) = **Rs. 1,58,884**

Second Approach

Total CENVAT credit availed on the machinery Rs. 2,05,011
 Less: Amount of reduction from the said credit on
 (i) First 50% = [1,02,505 x 2.5%] x 9 quarters Rs. 23,064
 (ii) Next 50% = [1,02,506 x 2.5%] x 6 quarters Rs. 15,376
Amount payable on disposal of machinery Rs. 1,66,571

Answer 6(a)(ii)

Computation of value of taxable services provided of D & CO

Particulars	Rs.
Core extraction services for construction	1,80,000
land reclamation work	80,000
Horizontal drilling for passage of cables or drain pipes	1,00,000
Soil stabilization	90,000
Construction of transport terminals (55,000 @ 40%)	22,000
Total value of taxable services	4,72,000
Total service tax payable @ 15%	70,800

Answer 6 (b)

- (i) Yes, the statement is valid
- (ii) No, the statement is not valid.
- (iii) Yes, the statement is valid
- (iv) Yes, the statement is valid

Answer 6(c)(i)

Normal period of Limitation- 6 months from date of notice (Excise/Custom/ST)

Extended period of limitation – 2 Years for Excise and 1 Year under Custom/ST from date of notice.

Answer 6 (c)(ii)

'Risk factors' under Excise Audit, 2000 means that the assessee who have a bad track record are taken up for audit on priority as opposed to those who enjoy a clean track record.

For example:

- (i) assessee having past duty evasion cases
- (ii) late payment of duty/late filing returns
- (iii) major audit objections against them
- (iv) no cash payment of duty (all CENVAT adjustment)
- (v) past duty dues, etc

Answer 7(a)(i)

- (i) Permanent transfer of intellectual property right does not attract service tax.
- (ii) Services provided in relation to storage and warehousing of empty containers is liable to service tax.

Answer 7(a)(ii)

Particulars	Total Amt	% of total Amt	Taxable Value
New construction of commercial building	75,00,000	40%	30,00,000
Erection of Textile Plant	1,25,00,000	40%	50,00,000
Additions made to abandoned structures on land to make them workable	18,00,000	40%	7,20,000
Repairs and maintenance of air conditioners	25,00,000	70%	17,50,000
Completion and finishing service of residential project	12,00,000	70%	8,40,000
Plastering services of commercial building	12,80,000	70%	8,96,000
Taxable value of Service			1,22,06,000
Service tax payable			18,30,900

Answer 7 (b)(i)

In this case, the assessable value of the product will be computed as follows:-

Particulars	Rs.
Retails sale price per packet	30
Less: Abatement of 30% = Rs. 30 x (30/100)	9
Assessable value of each packet	21
Assessable value for the purpose of excise duty = Rs. 21 × 5,000 packets	1,05,000

The information pertaining to raw material cost, job charges, profit, transport charges etc. need not to be considered

Answer 7(b)(ii)

When imported goods on which duty has been paid on importation are exported, 98% of the customs duty will be paid back as drawback on satisfaction of the following conditions:

- (i) Goods must be easily identified.
- (ii) Proper Officer makes an order permitting clearance for loading of the goods for exportation.
- (iii) If goods are exported as baggage, the owner of the baggage makes a declaration of its contents to the proper officer which will be considered as entry for export and such officer permits clearance of the goods for exportation.
- (iv) If exported through post, the Proper Officer makes an order for clearance for export.

Answer 7(c)

- (i) Service Provider located in Taxable Territory
- (ii) Service Receiver located in Non- Taxable Territory
- (iii) Consideration received in Convertible foreign Exchange.
- (iv) POPS outside India
- (v) Services not specified in Negative List
- (vi) Not a specified Distinct person.