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Answer Paper	
Indirect Tax Laws	Duration: 65
Details: Test- 4	Marks: 35

## Instructions:

- All the questions are compulsory
- Properly mention test number and page number on your answer sheet, Try to upload sheets in arranged manner.
- In case of multiple choice questions, mention option number only Working notes are compulsory wherever required in support of your solution
- Do not copy any solution from any material. Attempt as much as you know to fairly judge your performance.

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**ANS 1:**

The Central Government has the power to declare certain areas as preferential areas, the imports where from are chargeable to preferential rate of duty. Section 4 of the Customs Tariff Act, 1975 makes the following provisions in this behalf,

**(1) Duty leviable at standard rate unless conditions for charge of duty at preferential rate**

**fulfilled:** The duty shall be levied and collected at the standard rates specified in the First Schedule to the Tariff. However, where in respect of any article a preferential rate of revenue duty is specified in the First Schedule, to the Customs Tariff Act, 1975 or a preferential rate is admissible by virtue of an exemption notification under section 25 of the Customs Act, 1962, the duty shall be levied and collected at the preferential rate only if all of the following conditions are fulfilled,

- (a)** The importer/owner of the article must claim at the time of importation that the article is chargeable with a preferential rate of duty;
- (b)** the importer/owner must also claim that such article has been produced or manufactured in a preferential area ;
- (c)** such preferential area, being a country or territory, must be notified as a preferential area by the Central Government, and
- (d)** The origin of such article (i.e. identification whether such article is a produce or manufacture of notified preferential area) must be determined in accordance with rules made in this behalf.

**(2) Power to discontinue or amend preferential rate:** In the interests of trade including promotion of exports, the Central Government may direct an amendment of the First Schedule so as to,-

- (a)** Provide for discontinuance of preferential rate; or

(b) Increase the preferential rate to a rate not exceeding the standard rate; or

(c) Decrease the preferential rate.

(5 Marks)

**ANS 2:**

**The following points are to be taken note of**

- (i) The question clearly states that only basic customs duty, SWS thereon and anti-dumping duty are leviable on the goods in question and no other duty viz. Integrated tax u/s 3(7) or GST Compensation cess u/s3(9) of CTA, 1975 is leviable.
- (ii) No SWS is imposable on anti-dumping duty.

**Keeping into mind the aforesaid, the relevant computations are as under**

Particulars	Amount in Rs.
CIF Value of the consignment being Assessable Value under Customs Laws (in Indian Rs.) [US \$ 144000×Rs.65]	93,60,000
<b>Add:</b> Basic Customs Duty @10%	936,000
<b>Add:</b> SWS @10% on Basic Custom Duty	93,600
Landed value /cost of the goods	10,389,600
Cost of commodity for the purpose of anti-dumping notification [3000kg.×US \$ 80 per kg.× Rs.65per dollar]	15,600,000
<b>Anti dumping duty [B- A]</b>	<b>52,10,400</b>

(6 Marks)

**ANS 3:**

As per the provisions of the Customs Law, any notification issued by the Government of India is effective with effect from the date mentioned in it unless such notification is effective with effect from a effective with effect from a retrospective date.

In the given case notification is effective w.e.f. 13.7.2014. Section 18 of the Custom Act, 1962 was amended with the insertion of certain provisions in terms of which it became necessary for the assessee to prove that they had not passed on the amount to their customers. Prior to 13.7.2014, in order to claim refund arising out of finalization of provisional assessment, it was not necessary to prove that incidence of duty has not been passed on to the customers. The said requirement has been inserted in section 18 with effect from 13.07.2014. However, the amendment, by which the provisions of unjust enrichment are incorporated in section 18 has come into effect from 13.07.2014.

Therefore, M/s HIL will not be required to refer something as evidence or proof that in respect of the bills of entry finalized on 01.03.2014 and 15.03.2014 they have not passed on the incidence of such duty to their customers **(M/s Oriental Exports v Commissioner of Customs New Delhi (2006) 200 ELT A/138 (SC))**.

Hence, the action of department is not correct in law.

(5 Marks)

**ANS 4:**

**Computation of Assessable value:**

Particulars	Currency	Amounts
FOB value of machine with accessories	\$	50,000.00
<b>Add:</b> extra set of accessories supplied free of cost to cover for transit damages <b>[WN-1]</b>	\$	Nil
Buying commission <b>[WN-2]</b>	\$	Nil
Warranty cost <b>[WN-3]</b>	\$	4,500.00
Design and development charges <b>[WN-4]</b>	\$	6,000.00
License fee <b>[WN-5]</b>	\$	1,000.00
Value of drawings supplied by AMTL Ltd. <b>[WN-6]</b>	\$	1,000.00
<b>Customs FOB Value</b>	\$	<b>62,500.00</b>
Add: Air freight i.e.20% of US \$ 62,500	\$	12,500.00
Insurance @1.125% of US \$62,500	\$	703.13
CIF value	\$	75,703.13
Exchange rate is Rs.66.25 per \$	\$	66.25
<b>Assessable value in Rupees</b>	<b>Rs.</b>	<b>50,15,332.03</b>

#### Working Notes:

1. Sale price of machine is deemed to include the value of such accessories.
2. Buying commission is not included in the assessable value as per rule 10(1)(a)(i) of the CVR, 2007.

3. Warranty costs is includible, as the same is related to imported machine and is payable as a condition of sale of the imported goods, being machine.
4. Rule 10(1)(b) of the customs valuation rules provides for inclusion of only those design & development charges which have been paid for design & development work undertaken elsewhere than in India.
5. Licence fees is includible in the assessable value as per rule 10(1)(c) of the Customs Valuation Rules.
6. Value of Drawings supplied by the buyers free of cost is necessary for customising machine to the needs of buyer, hence will be included in the assessable value as per rule 10(1)(b) of custom Valuation Rules. However, if the same is undertaken in India, then the same shall not form part of Assessable Value
7. In case of goods imported by air, freight cannot exceed 20% of customs FOB value as per Rule 10(2) of Customs Valuation Rules.
8. Insurance charges not ascertainable are to be added @ 1.125% of customs FOB value in terms of rule 10 of customs valuation rules.
9. Rate of exchange notified by CBIC on the date of filing of bill of entry is to be considered as per section 14 of the customs Act, 1962.
10. No landing charges are to be added to the CIF value in view of the amendment in Rule 10(2) of the CVR vide Notification No.91/2017-Cus. (NT) dated 26-09-2017.

(8 Marks)

**ANS 5:**

The Apex Court in **Ranbaxy Laboratories Ltd. v. UOI [2011] 273 ELT 3 (SC)** observed that interest under section 27A becomes payable, if on expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is not refunded. Thus, the only interpretation of Section 27A that can be arrived at is that interest under the said section



becomes payable on the expiry of a period of three months from the date of receipt of the application under section 27(1).

The Apex Court further noted that Explanation appearing below the proviso to section 27A introduces a deeming fiction that where the order for refund of duty is not made by the Assistant Commissioner/Deputy Commissioner of Customs, but by an Appellate Authority or the Court, then for the purpose of this section, the order made by such higher Appellate Authority or by the Court shall be deemed to be an order made under section 27(2). It is apparent that the explanation does not have any bearing or connection with the date from which interest under section 27A becomes payable and does not postpone the said date.

**The relevant computation is as follows (amounts in Rs.)**

Amount of refund [A]	5,00,00,000
Date of making application[B]	25-12-2018
Three Months' period from the date of application expires on - [C] = [B] + 3 months	25-03-2019
Date of making refund [D]	25-03-2021
No. of years and days for which interest to be granted [E] = [D] - [C]	2 years
Interest on refund @ 6% [A] × [E] × 6%	60,00,000

**(6 Marks)**

**MCQ's**

**A 1: B**

**Explanation:** As per section 16(1)(a), the relevant date for determination of rate of duty and tariff valuation in case of export goods is the date on which the proper officer makes an order for clearance and loading of the goods for exportation under section 51. Hence, relevant date, in this case, is 1-3-2020 and rate of duty is 15%.

Export duty payable by Mr. Tapas = Rs. 800,000 x 15% = Rs. 120,000/-. No SWS is levied on export goods

## **A 2: D**

**Explanation:** The safeguard duty under section 8B of the Customs Tariff Act, 1975 is not imposed on the import of the following types of articles

- A.** Articles originating from a developing country, so long as the share of import of that article from that country does not exceed 3% of the total imports of that article into India.
- B.** Articles originating from more than one developing country, so long as the aggregate of imports from developing countries each with less than 3% import share taken together does not exceed 9% of the total imports of that article into India;
- C.** Articles imported by a 100% EOU or units in a special Economic Zone unless the duty is specifically made applicable on them or the article imported is either cleared as such into DTA or used in the Manufacture of any goods that are cleared into DTA. In such cases, safeguard duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.

## **A 3: C**

**Explanation:** Import of Refurbished/re-Conditioned spares of capital goods subject to production of chartered engineer certificate to the effect that such spares have at least @ 80% residual life of original spare



**A 4: A**

**Explanation:** A person, who is engaged in a profession abroad, or is transferred his residence to India, shall, on return, be allowed clearance free of duty in addition to what he is allowed under rule 4, articles in his bona a fide baggage to extent mentioned in column (2) of the Appendix below, subject to the conditions, if any, mentioned in the corresponding entry in column (3) of the said Appendix.

Duration of Stay abroad	Articles allowed free of duty	Conditions	Relaxation
(1)	(2)	(3)	(4)
From 3 months upto 6 months	Personal and household articles, other than those mentioned in Annexure I or II but including articles Mentioned in Annexure III upto an aggregate value of Rs.60,000.	Indian Passenger	---

**A 5: B**

**Explanation:** The maximum refund admissible in case of inverted duty structure is arrived as under:

Maximum refund amount = (turnover of inverted supply of goods or service/Adjusted Total Turnover × Net ITC) – Tax payable on such inverted rated supply of goods or services.