

# INTERMEDIATE EXAMINATION

## GROUP II

(SYLLABUS 2008)

### SUGGESTED ANSWERS TO QUESTIONS

DECEMBER 2010

#### Paper-10 : APPLIED INDIRECT TAXATION

Time Allowed : 3 Hours

Full Marks : 100

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

*Answer Question No. 1 which is compulsory and any five from the rest.*

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

All questions relate to the assessment year 2010-11 unless stated otherwise in the questions.

**Q. 1. (a) Fill in the blanks :**

1×7=7

- (i) Waste and Scrap will not be excisable unless it is specified in \_\_\_\_\_.
- (ii) In addition to departmental audit, C & AG carries out selective audits which is termed as \_\_\_\_\_.
- (iii) A passenger returning to India after stay in Germany for one week is entitled to bring goods up to Rs. \_\_\_\_\_ without payment of any Custom duty.
- (iv) In case of imports other than imports by EOU the imported goods can be kept in Customs bonded ware-house for \_\_\_\_\_ days without paying any interest.
- (v) An out-door caterer is providing full and substantial meals. His invoice does not show breakup between value of food and value of service. He is liable to pay service tax on \_\_\_\_\_ of the bill amount.
- (vi) \_\_\_\_\_ is payable on inter state sales, while \_\_\_\_\_ is payable on sale within the State.
- (vii) Central Sales Tax applies to the whole of India \_\_\_\_\_ the State of Jammu & Kashmir.

**(b) State with reasons, whether the following statements are true or false (Answer without reasoning will not receive any credit) :** 2×5=10

- (i) Repacking of an already manufactured product would amount to manufacture in Excise Law.
- (ii) Customs duty is not paid by an importer and it was found that such non-payment was on account of fraud committed by him. In such case, there is no time limit for issue of show cause notice demanding duty and penalty.
- (iii) A service provider is required to file return in form ST-4 on quarterly basis within 15 days from close of quarter.
- (iv) Appeal against an order passed by the Registration authority must be filed within 90 days of the service of order to the Central Sales Tax Authority.
- (v) Levy of VAT will have effect on retail price of goods.

- (c)**
- (i) Define Excisable goods as mentioned in Central Excise Act, 1944. 2
  - (ii) A sub-contractor is a taxable service provider. Do you agree? Discuss. 2
  - (iii) Goods under CST includes all kinds of movable property. Comment. 1
  - (iv) Is it possible for a Trader to claim refund of special CVD from customs department? State your views. 1
  - (v) VAT is termed as 'Consumption based' Tax. Explain. 2

**Answer 1. (a)**

- (i) CETA
- (ii) CERA (Central Revenue Audit)
- (iii) 25,000
- (iv) 90 Days
- (v) 50%
- (vi) C.S.T/VAT (State Sales Tax)
- (vii) including

**Answer 1. (b)**

- (i) **False** — In *CCe Vs Prabhat Packaging Ltd.*, the Tribunal has held that repacking of an already manufactured product would not amount to manufacture in excise law, since repacking does not result into a new Commercially distinct product.

But in the following cases it would amount to manufacture :

Packing of goods mentioned in 3rd schedule of CETA (on which section 4A is applicable) from bulk to small container section 2(f) (ii)

Packing, if specified in relation to any goods in the Section or Chapter notes of the Schedule to the Central Excise Tariff Act, 1985 as amounting to Manufacture. section 2(f)(iii)

- (ii) **False** — Time limit of 5 years is applicable under Section 28 of the Customs Act even if non payment of Customs duty was on account of fraud.
- (iii) **False** — He has to file Returns in ST-3 Form on half yearly basis within 25 days of close of half year.
- (iv) **False** — The Appeal shall be filed by the aggrieved dealer within 45 days from the date on which the order is served on him. However, the Authority may entertain any appeal after the expiry of 45 days, but not later than 60 days from the date of such Service, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
- (v) **False** — VAT is ultimately charged to customers as such it will have effect on retail price of goods.

**Answer 1. (c)**

- (i) Section 2(d) of the Act define 'Excisable goods' as follows : Excisable goods' means goods specified in the Schedule to the Central Excise Tariff Act, 1985 as being subject to a duty of Excise and includes salt.
- (ii) A Sub-Contractor is also a taxable service provider. His services are taxable even if these are used by main provider for completion of his work. The Sub-contractor is liable even if the service is input service of the main Contractor and main contractor is paying Service Tax on entire value of Contract.
- (iii) 'Goods' includes all materials, articles, commodities and all other kinds of movable property, but does not include newspapers, actionable claims, stocks, shares and securities.
- (iv) Traders selling imported goods in India after charging Sales Tax/VAT can claim refund of special CVD of 4% from Customs department.
- (v) Basically VAT is multipoint tax, with provisions for granting set off (Credit) of the tax paid at the earlier stage. Thus tax burden is passed on when goods are sold. This process continues till goods are finally consumed. Hence VAT is termed as 'Consumptions based' tax. It is a tax on consumptions of goods and services. VAT works on the principle of 'tax credit systems'.

- Q. 2. (a)** Briefly discuss about the general exemption and concessions given to SSI units for excise duty purposes. 4
- (b)** Can an importer, exporter or 'person in charge' amend the documents submitted to customs authorities? If yes, from what date is the amendment effective? 3
- (c)** Explain briefly the provisions of CST Act, relating to Inter-State sale by transfer of document of title to goods. 4
- (d)** What is the "taxable event" in the case of export of goods under customs law? Is export duty payable in case of applicable goods where ship travels 40 nautical miles from Indian port and the title passes to the buyer, but the ship returns to India because of engine trouble? What is the relevant date for export duty? 4

**Answer 2. (a)****Excise concessions for SSI units**

The Government has given various concessions to small scale industries. The most important notification governing these concessions is Notification No 8/2003 CE dated 1.3.2003. The provisions of the notification are :

- (i) A unit entitled for SSI exemption only if its turnover in previous year does not exceed Rs. 4 crore e.g. a unit whose turnover is more than Rs.4 crore in financial year 2007-2008 will not be eligible for any SSI concession in financial year 2008-2009. SSI exemption is available in respect of the goods specified in the said notification.
- (ii) For a unit entitled for SSI exemption, turnover up to Rs. 150 lakhs is fully exempt if the unit does not avail of CENVAT credit on inputs. However, if the SSI unit avails of CENVAT credit on inputs, it has to pay normal duty on all clearances.
- (iii) A unit availing SSI exemption can avail of CENVAT credit on capital goods but such credit can be utilized only after the turnover crosses Rs. 150 Lakhs.
- (iv) The limit of Rs. 150 Lakhs or Rs. 4 crore is calculated by taking into account the clearances in respect of one manufacturer from one or more factories or from a factory by one or more manufacturers.
- (v) SSI exemption is not available if the SSI unit uses a brand name of another person on its clearances.

**Answer 2. (b)**

Importer, exporter or 'Person in Charge' have to submit various documents to customs authorities like Bill of Entry, Importer Manifest, Export Manifest etc., Sometimes, it may become necessary to amend the document due to various reasons like change in classification, clerical mistake in document, change in unloading/loading plan of vessel etc.

In such case, permission to amend these documents have to be obtained from customs authorities. [Section 149]. Such permission can be given if there are no fraudulent intentions.

As per decision of the Supreme Court, amendment to Bill of Entry will relate back to the original date on which Bill of Entry was submitted.

**Answer 2. (c)**

**Inter-State sale by transfer of documents of title to goods :**

Section 3(b) provides for Inter-State sale by transfer of documents of title to goods during the movement from one State to another.

As per section 3(b), a sale or purchase of goods shall be deemed to take place in the course of Inter-State trade or commerce if the sale or purchase is effected by a transfer of documents of title to the goods during their movement from one State to another.

This definition is important as all subsequent Inter-State sales to registered dealers by transfer of documents during movement of goods are exempt from sales tax, if the necessary Forms are submitted.

'Section 3(a) requires that sale should 'occasion movement of goods'. There is no such requirement in section 3(b). Hence, for purpose of section 3(b), the movement of goods from one State to another need not be occasioned by sale. For example, if the goods are being sent to a branch by transport, sale during movement by transfer of document will also be an 'Inter-state sale' u/s 3(b).

Explanation 1 to section 3 of CST Act specifically states that the movement of goods commences when goods are delivered to carrier and terminates when delivery is taken from the carrier. Goods will be deemed to be "in movement" for sales tax purpose till physical delivery is taken at destination.

**What is 'Document of Title of goods' :** Documents of title to goods means a document which evidences that the person holding the document has title to goods represented by the document. Handing over the

document is as 'goods as handing over the goods which the document represents. Such handing over can be by simple delivery. However, normally, it is transferred by endorsement as evidence that person in possession of the document has obtained it by legal means. Such document is usually a transport document or godown receipt.

"Title" need not be by ownership. It is sufficient if the person has right of possession to those goods or has control over goods.

### Answer 2. (d)

#### Taxable event in case of export of goods :

The Supreme Court, in various decisions, has held that the export of goods is complete when the ship leaves the territorial waters of India.

Export cannot be said to have taken place where the ship sinks before it crosses the territorial waters of India.

In the case of **Sun Exports** 71 STC 149, the apex Court held that export is complete where the ship leaves the territorial waters of India and the title in the goods has passed on to the buyers; it was further held that even if the ship returns to India because of engine trouble, the position is not reversed.

As per section 16 of the Customs Act, the relevant date for export duty is the date on which the clearance for export is permitted by the customs officer.

**Q. 3. (a)** Who is liable to pay Excise Duty in case goods are produced or manufactured on Job Work? 2

**(b)** Discuss the includibility or otherwise to the assessable value under the Customs Act, 1962 of the following payments made by an importer to the overseas supplier of a second hand Plant in India : 2×2=4

- (i) Dismantling charges for removing the second hand Plant at the supplier's place and shipping to the Indian importer.
- (ii) Fees for supervision of erection and commissioning of plant in India. For this purpose the Foreign Supplier deputed their technicians in India.

**(c)** What are the sources of Service Tax Law? 3

**(d)** Discuss the validity or otherwise of the following statements with reasons : 2×2=4

- (i) Subsidy given by Government to manufacturer to compensate cost of production will form part of sale price.
- (ii) When goods are sent by VPP, the sale is said to take place in the State from where the parcel is sent.

**(e)** State briefly the basic distinction between V AT and Sales Tax. 2

### Answer 3. (a)

The following persons shall be liable to pay Excise Duty in case goods are produced or manufactured, on Job Work, under Cenvat provision.

- (i) The person on whose account goods are produced or manufactured by the Job Work, or

**Answer 4. (c)**

Following dealers are not eligible for composition scheme under Vat— (a) Dealers who make inter-state purchases, (b) Dealers who make inter-state sales (c) Dealers who import the goods and then sale in India (d) Dealers who stock transfer goods outside the State (e) Dealers who export the goods (f) Dealers who want to show Vat in their invoice.

**Answer 4. (d)**

Sl. No,	Particulars	Rate of Tax
(i)	Buyer furnish H Form.	Nil.
(ii)	Buyer furnish J Form.	Nil.

**Answer 4. (e)**

**False.** As per rule 4 of Classification Rules, if goods cannot be classified by any of classification Rules, it should be classified under the heading appropriate to goods to which they are most akin. This is residuary rule and can be followed only if classification is impossible under any other rule.

**Q. 5. (a)** What do you understand by advance ruling under Service Tax? State briefly the question on which "Advance Ruling" can be sought? 5

**(b)** How would you arrive at the assessable value for the purpose of levy of Excise Duty from the following particulars? 2

Cum-duty selling price exclusive of sales Tax Rs. 20,000. Rate of Excise duty applicable to the product 10%; Trade discount allowed Rs. 2,400, Freight Rs. 1,500.

**(c)** A dealer purchased 22,000 kgs. of inputs on which VAT paid @ 4% was Rs. 8,000. He manufactured 20,000 kgs. of finished product from the inputs. 2,000 kgs. was the process loss. The final product was sold at uniform price of Rs. 10 per kg. as follows :

Good sold within State 8,000 kgs. Finished product sold in inter-state sale against 'C' Form 5,000 kgs. Goods sent on stock Transfer to consignment agents outside the State 4,000 kgs. Goods sold to Government departments outside the state 3,000 kgs. There was no opening or closing stock of inputs, WIP or finished products. The state VAT rate on the finished product of dealer is 12.5%. Calculate liability of VAT and CST. Find VAT credit available to dealer and tax required to be paid in cash. 8

**Answer 5. (a)**

As per section 96A(a), "Advance Ruling" means the determination, by Authority for Advance Rulings (Central Excise, Customs and Service Tax), of a question of law or fact specified in the application, regarding the liability to pay service tax in relation to a service proposed to be provided, by applicant.

Question on which 'advance ruling' can be sought: The questions on which Advance Ruling may be sought shall be in respect of :

- (i) Classification of service under Chapter V of finance Act, 1944
- (ii) The valuation of taxable services for charging service tax;

- (iii) The principles to be adopted for the purposes of determination of value of the taxable service under the provisions of chapter;
- (iv) Applicability of notifications issued under Chapter V;
- (v) Admissibility of credit of service tax; and
- (vi) Determination of liability to pay service tax on a taxable service under the provisions of Chapter V. The definition of 'applicant' and other procedural provisions relating to advance rulings are similar to those applicable under Central Excise.

**Answer 5. (b)**

In computation of assessable value for the purpose of levy of Excise Duty, Trade Discount and Freight are allowed as deduction

$$\begin{aligned} \text{Net Price} &= \text{Selling Price} - (\text{T.D} + \text{Freight}) \\ &= 20,000 - (2400 + 1500) = 16100. \end{aligned}$$

Since the price is exclusive of Excise Duty @ 10%.

$$\text{Therefore Excise Duty will be } 16100 \times \frac{1}{11} = 1463.64$$

$$\text{Assessable value: } 16100 - 1463.64 = 14636.36$$

**Note :** It is assumed that the 'sale' was at factory gate. So freight is deducted from the sale price to arrive at the assessable value.

**Answer 5. (c)**

CST against C Form is 2%, sale to Government will be treated as sale to unregistered dealer and tax payable is 12.5%. Thus Tax payable would be as follows :

Description	Quantity Sold.	Value of Goods sold Rs.	CST payable Rs.	State Vat payable Rs.
State within State @ 12.5%.	8000	80,000	-	10,000
Goods sent on stock transfer.	4000	40,000	-	-
Goods sold against C Form, Tax rate 2%.	5000	50,000	1,000	-
Goods sold to Government Tax Rate 12.5%	3000	30,000	3,750	-
<b>Total</b>	<b>20,000</b>	<b>2,00,000</b>	<b>4,750</b>	<b>10,000</b>

Tax paid on inputs - Rs. 8,000. Credit (Set Off) will not be available in case of goods sent on stock Transfer. Tax on inputs attributable to goods sent on Stock Transfer is 20%, i.e. Rs. 1600. Out of this, credit will be available of tax paid in excess of 2%. Thus Credit of Rs. 800 will be available in respect of goods stock transferred and credit of Rs.800 will not be available (since Vat rate is 4%). Thus total credit of Rs. 7200 (Tax paid on inputs) is available.

Thus tax payable is as follows :

- (A) Total Tax payable (State VAT + CST) Rs. 14,750.  
 (B) Set Off (Credit) available - Rs. 7,200.  
 (C) Tax payable in cash - Rs. 7,550.

**Q. 6. (a)** (a) CIF value of imported goods is Rs. 10,00,000. Basic Customs Duty payable is 10%. If the goods were produced in India, Excise Duty payable would have been 8%. Education cess is 2% and Special Education Cess is 1%. Spl. CVD is payable at appropriate rates. Find the Customs duty payable. What are the duty refunds/benefits available if the importer is (a) manufacturer (b) Service provider (c) Trader? 11

(b) Define 'Works contract' as per CST Act. Can Sales Tax is levied on activity of textile processing? 4

**Answer 6. (a)**

Assessable value = CIF value plus 1 % landing charges = 10,00,000 plus 10,000 i.e. 10,10,000.

Calculation of duty payable is as follows —

	Duty %	Amount	Total Duty
(A) Assessable Value Rs.		10,10,000	
(B) Basic Customs Duty	10	1,01,000.00	1,01,000.00
(C) Sub-Total for calculating CVD '(A+B)'		11,11,000.00	
(D) CVD 'C' x excise duty rate	8	88,880.00	88,880.00
(E) Education cess of excise - 2% of 'D'	2	1,777.60	1,777.60
(F) SAH Education cess of excise - 1 % of 'D'	1	888.80	888.80
(G) Sub-total for edu cess on customs 'B+D+E+F'		1,92,546.40	
(H) Edu Cess of Customs - 2% of 'G'	2	3,850.93	3,850.93
(I) SAH Education Cess of Customs - 1 % of 'G'	1	1,925.46	1,925.46
(J) Sub-total for Spl CVD 'C+D+E+F+H+I'		12,08,322.79	
(K) Special CVD u/s 3(5) - 4% of 'J'	4	48,332.91	48,332.91
(L) Total Duty			<b>2,46,655.70</b>
(M) Total duty rounded to		Rs.	246,656

**Notes - Buyer who is manufacturer, is eligible to avail Cenvat Credit of D, E, F and K above. A buyer, who is service provider, is eligible to avail Cenvat Credit of D, E and F above.**

**A trader who sells Imported goods In India after charging Vat/sales tax can get refund of Special CVD of 4% i.e. 'K' above.**

**Answer 6. (b)**

Section 2(ja) of CST Act defines 'works contract' as follows — 'Works contract' means a contract for carrying out any work which includes assembling, construction, building, altering, manufacturing, processing, fabricating, erection, installation, fitting out, improvement, repair or commissioning of any movable or immovable property.



In *CST v, Matushree Textiles Ltd.* (2003) 132 STC 539 (Born HC DB), it was held that even if part of materials is waste, the entire property of the materials used in dyeing and printing is passed on to buyer. This is deemed sale and is taxable.

- Q. 7. (a)** M/s. P Ltd. used to label its products with a foreign brand and claimed exemption under a notification. The classification list was approved by the department after carrying out verifications and all returns were regularly filed. The invoice containing description of goods were also regularly approved by the department. The department denied the benefit of exemption to the assessee for previous period of five years, by invoking extended period of limitation under section 11A on the ground that it failed to declare the particulars regarding affixing of labels. Is the department justified? Discuss. 5
- (b)** Write note on 'Input service' for purpose of Cenvat Credit as applicable to a manufacturer. 6
- (c)** Name two situations where excise duty liability is not of the actual manufacturer but of the person who has supplied the raw material to the manufacturer. 2
- (d)** Write a brief note on categories of services for classifying a service as export of service. 2

#### Answer 7. (a)

The facts of the given case are similar to the case of *Pahwa Chemicals Private Ltd. v. CCE*, Delhi 2005 (189) ELT 257 (SC) wherein the Apex Court has held that mere failure to declare the particulars does not amount to mis-declaration or willful suppression. Some positive act on the part of the assessee to establish either willful mis-declaration or willful suppression is must.

The Apex Court explained that there was no willful mis-declaration or willful suppression as all the facts were within the knowledge of the department and the assessee did not make the declaration on the belief that affixing of a label made no difference. Thus, the Apex Court held that since all the facts were within the knowledge of department, hence extended period of limitation was not invocable.

Thus, in view of the abovementioned judgement, the department is not justified in invoking the extended period of limitation in the given case.

#### Answer 7. (b)

Rule 2(1) of Cenvat Credit Rules states that "Input service" means any service —

- (i) used by a provider of taxable service for providing an output service; or
- (ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal;

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal.

*Wide coverage of input services* — The words used in the definition in relation to manufacturer are 'in relation to'. 'In relation' expands the scope of coverage. It is not restrictive.

Inclusive definition clause of rule 2(1) extends scope of 'input services' even beyond stage of 'manufacture' or 'provision of service'. The inclusive clause makes it clear that services much earlier to manufacture or provision of service or even after manufacture and after provision of provision of service will be eligible as service tax credit.

Services which do not have even any casual relation with manufacture of goods or provision ' of service have been covered in the definition of 'input service'. In fact, any service in relation to business of assessee is 'input service'.

**Answer 7. (c)**

In following cases, duty liability is of raw material supplier—

- (i) When raw material is sent under Cenvat provisions
- (ii) When raw material is sent under Notification No. 214/86-CE after submitting necessary declaration

**Answer 7. (d)**

Rule 3 of Export of Service Rules classified the taxable services in four categories —

- (i) Immovable property is situated abroad
- (ii) Service performed outside India
- (iii) Receipt is located outside India
- (iv) Services which not be treated as 'export of services' under any situation.

- Q. 8. (a)** Explain provisions in respect of valuation for excise duty purposes determined when sales are generally through a related person. 5
- (b)** Explain how DEPB scheme helps in making exported products tax free. 5
- (c)** Discuss provisions relating to mandatory penalty equal to the amount of duty under the Central Excise Act and circumstances when such penalty shall be reduced. 5

**Answer 8. (a)**

**(I)** As per section 4(3)(b) of Central Excise Act, persons shall be deemed to be 'related' if :

- (i) They are inter-connected undertakings
- (ii) They are relatives
- (iii) Amongst them, buyer is a relative and a distributor of assessee, or a sub-distributor of such distributor or
- (iv) They are so associated that they have interest, directly or indirectly, in the business of each other.

'Transaction Value' can be accepted as 'Assessable Value' only when buyer is not related to seller. Price to buyer will not be normal price for the purpose of valuation, if the buyer is a related person and price is not sole consideration for sale. Both the conditions must co-exist so that the price at which manufactured goods are sold by the assessee to the buyer is taken as the value for purpose of assessment of duty.

If goods are sold by assessee exclusively to or through 'related person' as defined in clause (ii), (iii) or (iv) above (i.e. except 'inter connected undertaking'), relevant price will be 'normal transaction value' of the related person to unrelated buyer. The 'normal transaction value' shall be considered as on date of removal from the factory. Thus, the actual price at which such goods are sold later by related person will not be relevant. The price of related person ruling at the time of removal from factory of assessee will be relevant.

(II) If goods are sold only through inter connected undertaking, as per rule 10 of Excise Valuation Rules, the provision applies only when sale is to 'inter-connected undertaking' which is a holding or a subsidiary. In other cases, it is treated as sale to unrelated person.

Rules 9 and 10 make it clear that these rules apply only in cases where assessee sales goods exclusively to or through 'related person'. Thus, there is no provision in rules when assessee partly sales to related person and partly to unrelated persons. As the wording stands, even if negligible quantity is sold to unrelated buyer, rules 9 and 10 become inapplicable. Valuation cannot be done on the basis of 'transaction value' of assessee to buyer as that is prohibited U/S 4(1)(a). In such case, the only alternative seems to be residual method i.e. rule 11 of Valuation Rules, which states that if value cannot be determined under any of the foregoing rules, value shall be determined using reasonable means consistent with the principles and general provisions of section 4 and Valuation Rules.

#### Answer 8. (b)

The DEPB scheme is similar to Cenvat credit scheme. The exporter gets credit when he exports the goods. The credit is on basis of rates prescribed. This credit can be utilised for payment of customs duty on imported goods, including capital goods, which are freely importable.

The objective of the scheme is to neutralise incidence of customs duty on the import content of export product. The neutralisation shall be provided by way of grant of duty credit against the export product.

Exporter can have either DEPB or duty drawback of customs and not both.

Exporter first uses duty paid inputs in the manufacture of export products and after export gets duty credit at notified rates. Thus, instead of refund of duty in cash after exports, a scrip in form of DEPB is issued against export product as 'duty remission. Exporter can either import goods within the credit allowed in DEPB or can sell it to another exporter.

Exports under DEPB scheme are allowed only when DEPB rate for the concerned export product is finalised. The scheme is available to both manufacturer exporters as well as merchant exporters. DEPB has to be registered with customs house.

Exports under DEPB scheme are allowed only after DEPB rates of concerned product are notified.

Till 26-2-2009, DEPB was issued only after export proceeds were realised. Now, DEPB can be issued as soon as exports are made. In such case, BRC (Bank realisation Certificate) should be submitted within 12 months.

Value of exports (i.e. export earnings) should be in freely convertible currency like dollars, Euro, British Pounds, Yen etc. Thus, the DEPB scheme is not available in case of exports to Nepal or Bhutan where we have Rupee trade or to Russia etc., if the export is not in hard currency. The credit will be granted on basis of actual amount of FOB value of export realised, as per Bank certificate.

#### Answer 8. (c)

Section 11AC of Central Excise Act and section 114A of Customs Act provides for a mandatory penalty equal to the duty and/or interest short paid or not paid or erroneously refunded if such non payment or short payment or erroneous refund was due to fraud, collusion, wilful misstatement or suppression of facts. In case of non payment or short payment of duty due to fraud, wilful misstatement etc. there is mandatory penalty equal to duty and interest evaded – *neither more nor less*. CBE&C has confirmed that under section 114A of Customs Act (parallel section 11AC of Central Excise Act), there is no discretion to adjudicating authority to impose penalty less than or more than the amount of duty evaded.

As per *proviso* to section 11AC of CEA and section 114A of Customs Act, If the duty, interest and penalty is paid within 30 days from communication of order, mandatory penalty payable u/s 11AC of CEA (parallel section 114A of Customs Act) will be reduced to 25%.