AL-AMEEN COLLEGE OF LAW
Hosur road, Bangalore- 27.

TAXATION LAWS

(VIth semester/5 yrs BA, LL.B course and 3rd semester/3yrs LL.B course)

MODEL ANSWER PAPER FOR THE ACADEMIC SEMESTER, 2019

PREPARED BY:

Prof. Abdul Rawoother,
Lecturer,
Al-Ameen College of law.

Q1`What is gst and dual gst provisions and applicability

. Definition of Goods – Section 2(52) of GST Act

"*Goods*'' means every kind of movable property other than money and securities but includes actionable claims ,growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

The above is summarized as under:

Goods include:

- Every kind of movable property
- Actionable claims
- Growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

A goods does not include:

- Money and
- Securities
    - **Definition of Service – Section 2(102) of GST Act**
    - **"Services'' :** means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;
    - **Explanation 1** Services include transactions in money but does not include money and securities. Meaning thereby that if transaction is done without any seprate charge /consideratopn no service ;

- **Explanation 2** But transaction in money relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination ***for which a separate consideration is charged then it is service*** .

Meaning:- The Goods and Services Tax (GST) is a comprehensive value added tax (VAT) on the supply of goods or services. France was the first country to introduce this value added tax system in 1954 devised by a public servant. In India, due to non consensus between central and state government, the proposal is to introduce a Dual GST regime i.e. **Central and State GST**.

Dual GST:- Many countries in the world have a single unified GST system i.e. a single tax applicable throughout the country. However, in federal countries like Brazil and Canada, a dual GST system is prevalent whereby GST is levied by both the federal and state or provincial governments. In India, a dual GST is proposed whereby a Central Goods and Services Tax (CGST) and a State Goods and Services Tax (SGST) will be levied on the taxable value of every transaction of supply of goods and services.

Impact on Prices of Goods and Services:-The GST is expected to foster increased efficiencies in the economic system thereby lowering the cost of supply of goods and services. Further, in the Indian context, there is an expectation that the aggregate incidence of the dual GST will be lower than the present incidence of the multiple indirect taxes in force. Consequently, the implementation of the GST is expected to bring about, if not in the near term but in the medium to long term, a reduction in the prices of goods and services. The expectation is that the dealers would start passing on the benefit of the reduced tax incidence to the customers by way of reduced prices. As regards services, it could be that their short term prices would go up given the expectation of an increase in the tax rate from the present 10% to approximately 14% to 16%.

Benefits of Dual GST: – The Dual GST is expected to be a simple and transparent tax with one or two CGST and SGST rates. The dual GST is expected to result in:-

- reduction in the number of taxes at the Central and State level

- decrease in effective tax rate for many goods
- removal of the current cascading effect of taxes
- reduction of transaction costs of the taxpayers through simplified tax compliance
- increased tax collections due to wider tax base and better compliance

Certainty of implementation:- The Finance Minister has made a categorical statement in Parliament that GST will be implemented on April 1, 2013. In his subsequent media interactions, he has further indicated that he is keen to implement the GST even if some of the States are not ready or willing to implement GST by this date. Accordingly, based on the present indications, as also on the basis of our subsequent interactions with senior Government Officials, we believe that the April 1, 2013 timeline for introduction of the dual GST will be met.

GST collection model :- GST is collected on the value added at each stage of sale or purchase in the supply chain. The tax on value addition is ensured through a tax credit mechanism throughout the supply chain. GST paid on the procurement of goods and services is available for set-off against the GST payable on the supply of goods or services. The idea is that the final consumer will bear the GST charged to him by the last person in the supply chain. It is thus a consumption based indirect tax.

Applicability of taxes on imports of goods:- It must be understood that customs duties will remain outside the GST regime. Thus, the applicable basic customs duty will continue to be leviable on import of goods. In addition, both the CGST and the SGST are expected to be levied on imports of goods. Thus, the additional duty of customs in lieu of excise (CVD) and the additional duty of customs in lieu of sales tax / VAT will both be subsumed in the import GST.

Tax on import of services and person liabile to pay:- Importation of services will be taxed and both the CGST & the SGST will apply on such imports. The tax will be payable on a reverse charge mechanism and the importer of services will hence need to self declare and pay the tax. As to which State will have authority to collect the relevant SGST, this will be determined based on the place of supply rules that the government is expected to notify for this purpose.

Separate enactments for the Central and State GST:-There will be separate enactments. The CGST will be a common code throughout India. Further, each State will legislate its own enactment to levy and collect the SGST. However, it is understood that a white paper will be released by the Federal Government/Empowered Committee of State Finance Ministers based on which each State will legislate. The expectation is therefore is that a majority of the provisions will be uniform across the States.

Uniformity in classification of goods, procedures, forms etc. across the States:- Based on the current discussions in the Empowered Committee, it is expected that there should be uniformity in classification of goods, procedures and forms across States.

Carry forward of Input Tax Credits (ITC) and CENVAT Credit (CC) balances:-Going by the precedence at the time of VAT implementation, it is believed that the accumulated ITC and CC will both be allowed to be carried forward under the GST regime, albeit upon fulfilment of prescribed conditions, if any.

Refund of un-utilised CC on inputs and input services :-It is envisaged that under the proposed Dual GST model there would be refund of unutilized accumulated CCs at the end of each fiscal year and that refunds would not be restricted only to those relating to exports.

Cross utilization of credits between goods and services:- Under the GST regime, the incidence of tax will be on supplies, be it supplies of goods or services. The taxes will be levied in parallel by the Centre and the States who will levy the CGST and SGST respectively on each supply of goods/services. Accordingly, the cross utilization of credits for goods and services would be allowed subject to the fact that cross utilization of credits between the CGST and SGST would not be permissible.

Threshold limits for e levy of GST:-No threshold limits have been prescribed as yet. However, it has been indicated that the thresholds will be uniform and will be based on the cumulative turnover of goods and services. Dealers with turnover below these thresholds will not be covered under the ambit of the GST.

Uniformity under the various indirect tax legislations:- The Dual GST model envisages uniform threshold limits under both the Central and the State GST .

Exemptions from GST, lists of exempted goods and exempted services:- Under the GST, exemptions are expected to be minimal. Further, a common list of exemptions for both the Central and State GST with little flexibility for States to deviate therefrom is envisaged.

Q2Types of gst ,What is IGST and its impact on interstate trade

Types of GST

Since GST subsumed indirect taxes of both central government (excise duty, service tax, custom duty, etc.) and state governments (VAT, Luxury tax, etc.), both the governments now depend on GST for their indirect tax revenue. Therefore, the GST rate is composed of two rates. Intra-state transactions will carry one of CGST and one of SGST (in case of state) or CGST and UTGST (in case of union territory). Therefore, while making an intra-state sale (i.e., sale within the same state), the CGST collected will go to the central government and the SGST collected will go the respective state government in which sale is made. Similarly, SGST or UTGST are replaced with IGST when intra-state transactions are involved.

Hence, you can say that there are four types of GST:

- Central Goods and Services Tax
- State Goods and Services Tax
- Integrated Goods and Services Tax
- Union Territory Goods and Services Tax
-

CGST full form is Central Goods and Services Tax.

CGST refers to the Central GST tax that is levied by the Central Government of India on any transaction of goods and services tax taking place within a state. It is one of the two taxes charged on every intrastate (within one state) transaction, the other one being SGST (or UTGST for Union Territories). CGST replaces all the existing Central taxes including Service Tax, Central Excise Duty, CST, Customs Duty, SAD, etc. The rate of CGST is usually equal to the SGST rate. Both taxes are charged on the base price of the product.

SGST full form is State Goods and Services Tax.

SGST (State GST) is one of the two taxes levied on every intrastate (within one state) transaction of goods and services. The other one is CGST. SGST is levied by the state where the goods are being sold/purchased. It will replace all the existing state taxes including VAT, State Sales Tax, Entertainment Tax, Luxury Tax, Entry Tax, State Cesses and Surcharges on any kind of transaction involving goods and services. The State Government is the sole claimer of the revenue earned under SGST.

IGST full form is Integrated Goods and Services Tax.

Integrated GST (IGST) is applicable on interstate (between two states) transactions of goods and services, as well as on imports. This tax will be collected by the Central government and will further be distributed among the respective states. IGST is charged when a product or service is moved from one state to another. IGST is in place to ensure that a state has to deal only with the Union government and not with every state separately to settle the interstate tax amounts

What is UTGST (or UGST)?

UTGST full form is Union Territory Goods and Services Tax.

The Union Territory Goods and Services Tax, commonly referred to as UTGST, is the GST applicable on the goods and services supply that takes place in any of the five Union Territories of India, including Andaman and Nicobar Islands, Dadra and Nagar Haveli, Chandigarh, Lakshadweep and Daman and Diu. This UTGST will be charged in addition to the Central GST (CGST) explained above. For any transaction of goods/services within a Union Territory: CGST + UTGST

The reason why a separate GST was implemented for the Union Territories is that the common State GST (SGST) cannot be applied in a Union Territory without legislature. Delhi and Puducherry UTs already have their own legislatures, so SGST is applicable to them.

Inter-State Goods and Services (IGST) – Inter-State Transactions

According, to model IGST law, IGST shall mean the tax levied under the IGST act on the supply of any goods and services in the course of inter-state trade or commerce. IGST act shall apply to whole of India.

According, to the report of the Task Force on GST,13th Finance commission(2009), it had recommended that adoption of the IGST model for implementation with the caveat that a strong IT infrastructure and complete information of the inter-state transactions is a precondition and essential perquisite for considering the IGST model. Without addressing these fundamental concerns of IT infrastructure and information support systems, the adoption of IGST model which is still at a conceptual stage.

Central government would levy IGST (which would be CGST + SGST) on all inter-state transactions of taxable goods and services with appropriate provisions for consignment or stock transfer of goods and services. The inter-state seller will pay IGST on value addition after adjusting available credit of IGST, CGST and SGST on his purchases. The exporting state will transfer to the centre the credit of IGST while discharging his output tax liability in his own state. The centre will transfer to the importing state the credit of IGST used in payment of SGST.

The empowered committee has accepted the recommendation for adoption of IGST model for taxation of inter-state transaction of goods and services. The scope of IGST model is that centre would levy IGST which would be CGST plus SGST on all inter-state transactions of taxable goods and services. The inter-state on his purchases. The exporting state will transfer to the centre the credit of SGST used in the payments of IGST. The importing dealer will claim credit of IGST while discharging his output tax liability in his own state. The centre will transfer to the importing state the credit of IGST used in the payment of SGST. The relevant information is also submitted to the central agency which will act as a clearing house mechanism, verify the claims and inform the respective government to the transfer the funds.

The inter-state adjustment will be made by central clearing agency and the assesses will not be concerned with such adjustment at all. Under IGST, a dealer can establish hub and spoke approach for distribution of his final products. He can maintain depots at few strategic locations in country and from those locations; he can distribute goods to nearby states. This will be very cost effective distribution network for assesses.

Revenue from IGST will be apportioned among union and states by parliament on basis of recommendation of goods and service tax council [proposed article 269A (2) and article 270(1A) of constitution of India].

9. Advantages of IGST model

The major advantages of IGST model are:-

(i) Maintenance of uninterrupted ITC chain on inter-state transactions.

(ii) No upfront payment of tax or substantial blockage of funds for the interstate seller or buyer.

(iii) No refund claim in exporting state, as ITC is used up while paying the tax.

(iv) Self-monitoring model.

(v) Level of computerization is limited to inter-state dealers and central and state government should be able to computerize their process expeditiously.

(vi) As all inter-state dealers will be e-registered and correspondence with them will be by e-mail the compliance level will improve substantially.

(vii) Model can take business to business as well as business to consumer transactions into account.

10. Salient features of Integrated GST

(a) On inter-state and cross border transactions.

(b) Centre would levy and collect IGST in lieu of CGST and;

(c) To be shared between centre/states

(d) Single IGST rate.

(e) IGST would be levied on all inter-state transactions of taxable goods and services with appropriate provisions for consignment or stock transfer of goods and services.

(f) Inter-state dealer will pay IGST after adjusting available, input IGST, CGST and SGST on purchases.

The IGST model would remove all these deficiencies

. IGST is a mechanism to monitor the inter-State trade of goods and services and ensure that the SGST(WBGST) component accrues to the consumer State. It would maintain the integrity of ITC chain in inter-State supplies. The IGST rate would broadly be equal to CGST rate plus SGST rate. IGST would be levied by the Central Government on all inter-State transactions of taxable goods or services.

Cross-utilisation of credit

It requires the transfer of funds between respective accounts. The utilisation of credit of CGST & SGST for payment of IGST by “B” would require the transfer of funds to IGST accounts. Similarly, the utilisation of IGST credit for payment of CGST & SGST by “C” would necessitate the transfer of funds from IGST account. As a result, CGST account and SGST (of, say, Rajasthan) would have Rs. 1300/- each, whereas, there will not be any amount left in IGST and SGST (of, say, Maharashtra) after the transfer of ITC.

Inter-State Supply:

Subject to the place of supply provisions, where the location of the supplier and the place of supply are in: (a) Two different States; (b) Two different Union territories; or (c) A State and a Union Territory. Such supplies shall be treated as the supply of goods or services in the course of inter-State trade or commerce. Any supply of goods or services in the taxable territory, not being an intra-State supply, shall be deemed to be a supply of goods or services in the course of inter-State trade or commerce. Supplies to or by SEZs are defined as inter-State supply. Further, the supply of goods imported into the territory of India till they cross the customs frontiers of India or the supply of services imported into the territory of India shall be treated as supplies in the course of inter-State trade or commerce. Also, the supplies to international tourists are to be treated as inter-State supplies.

Intra- State supply

• Supply of goods within the same State or Union Territory

. • Supply of services within the same State or Union Territory

Location of Supplier

Broadly, it is the registered place of business or the fixed establishment of the supplier from where the supply is made. Sometimes, a service provider has to go to a client location for providing service. However, such place would not be considered as the location of the supplier. It has to be either a regular place of business or a fixed establishment, which is having sufficient degree of permanence and suitable structure in terms of human and technical resources

Place of supply

Places of supply provisions have been framed for goods and services, keeping in mind the destination/consumption principle. In other words, the place of supply is based on the place of consumption of goods or services. As goods are tangible, the determination of their place of supply, based on the consumption principle, is not difficult. Generally, the place of delivery of goods becomes the place of supply. However, the services being intangible in nature, it is not easy to determine the exact place where services are acquired, enjoyed and consumed. In respect of certain categories of services, the place of supply is determined with reference to a proxy.

Zero rated supply

Exports and supplies to SEZs are considered as 'zero rated supply' on which no tax is payable. However, ITC is allowed, subject to such conditions, safeguards and procedure as may be prescribed, and refunds in respect of such supplies may be claimed by following either of these options:

- Supply made without the payment of IGST under Bond and claim refund of unutilised ITC or
- (ii) Supply made on payment of IGST and claim refund of the same

Refund of integrated tax paid on supply of goods to tourist leaving India

Section 15 of the IGST Act provides for refund of IGST paid to an international tourist leaving India on goods being taken outside India, subject to such conditions and safeguards as may be prescribed. An international tourist has been defined as a nonresident of India who enters India for a stay of less than 6 months. IGST would be charged on such supplies as the same in the course of export.

Q3 Various authorities under income tax act

Income tax authorities

According to section 116 of the Income Tax Act, there shall be the following types of income tax authorities for the purposes of this Act . they are as follows ;

(a) The Central Board of Direct Taxes constituted under the Central Board of Revenue Act, 1963.

(b) Directors-General of Income-tax or Chief Commissioners of Income-tax.

(c) Directors of Income-tax or Commissioners of Income-tax or Commissioner of Income-tax (Appeals).

(d) Additional Directors of Income-tax, or Additional Commissioners of Income-tax or Additional Commissioners of Income-tax (Appeals).

(e) Deputy Directors of Income-tax or Deputy Commissioners of Income-tax or Deputy Commissioners of Income-tax (Appeals).

(f) Assistant Directors of Income-tax or Assistant Commissioners of Income-tax.

(g) Income-tax Officers.

(h) Tax Recovery Officers.

(i) Inspector of Income-tax.

The authorities acting under the Income-tax Act have to act judicially and one of the requirements of judicial action is to give a fair hearing to the person before deciding against him. The taxing authorities exercise quasi-judicial powers and in doing so they must act in a fair and not a partisan manner.

Powers of the authorities :

For all purposes of the Income-tax Act, the IT authorities are vested with the various powers which are vested in a Court of Law under the Code of Civil Procedure while trying a suit in respect of any case. More particularly, the provisions of the Code of Civil procedure and the powers granted to the tax authorities under the code would be in respect of :

- Discovery and inspection
- enforcing the attendance, including any officer of a bank and examining him on oath
- compelling the production of books of account and the documents
- collection certain information [section 133B-inserted by the finance act, 1986]
- Issuing commissions and summons

It shall be duty of every person who has been allotted permanent account number to quote such number in all his returns or correspondence with income tax authorities, in all challans for the payment of any sum, in all documents prescribed by the board in the interest of revenue.

Section 113 of the income tax act, 1961 deals with the powers of the income tax officers,

113. Power to call for information.

--The Deputy Commissioner of Taxes, the Inspecting Joint

Commissioner, the Commissioner or any other officer authorised in this behalf by the Commissioner or the Board may, for the purposes of this Ordinance, by notice in writing, require--

(a) any firm, to furnish him with a statement of the names and addresses of the partners and their respective shares;

(b) any Hindu undivided family, to furnish him with a statement of the names and

addresses of the manager and the members of the family;

(c) any person, whom he has reason to believe to be a trustee, guardian or agent to furnish him with a statement of the names and addresses of the persons for or of whom he is trustee, guardian or agent;

(d) any assessee to furnish him with a statement of the names and address of all persons to whom he has paid in any income year any rent, interest, commission, royalty or brokerage, or any annuity, not being an annuity classifiable under the head "Salaries", amounting to more than three thousand taka, together with particulars of all such payment;

(e) any dealer, broker or agent, or any person concerned in the management of a Stock Exchange, to furnish a statement of the names and addresses of all person to whom he or the Exchange has paid any sum in connection with the transfer of capital assets, or on whose behalf or from whom he or the Exchange has received any such sum, together with the particulars of all such payments and receipts; or

(f) any person, including a banking company, to furnish information in relation to such points or matters, or to furnish such statements or accounts giving such particulars, as may be specified in the notice: Provided that no such notice on a banking company shall be issued by the Deputy Commissioner of Taxes or the Inspector, without the approval of the Commissioner, and by any other officer, without the approval of the Board.

114. Power to Inspect registers of companies.—

The Deputy Commissioner of Taxes, the Joint

Commissioner of Taxes or any person authorised in writing in this behalf by either of them, may inspect and, if necessary, take copies, or cause copies to be taken, of any register of the members, debenture-holders or mortgagees of any company or any entry in such register.

115. Power of survey.—

(1) For the purpose of survey of liability of any person to tax under this Ordinance, an income tax authority may, notwithstanding anything contained in other provisions of this Ordinance but subject to such directions or instructions as the Board may issue in this behalf, enter any place of premises within the limits of its jurisdiction and--

(a) inspect any accounts or documents and check or verify any article or thing;

(b) make an inventory of any cash, stock or other valuable articles or things checked or verified by it;

(c) place marks of identification on or stamp the books of accounts or other documents inspected by it and make or cause to be made extracts or copies therefrom;

(d) record the statement of any person which may be useful for, or relevant to, any proceeding under this Ordinance; and

(e) make such enquiries as may be necessary.

(2) Subject to the provisions of section 117, any income-tax authority exercising powers under sub-section (1), shall not remove or cause to be removed from any place or premises wherein he has entered, any books of accounts or other documents, or any cash, stock or other valuable article or thing.

(3) Every proprietor, employee or other person who may be attending in any manner to, or helping in, the carrying on of any business or profession, or every person who may be

residing in the place or premises in respect of which an income tax authority may be exercising power under sub-section (1), shall in aid of the exercise of such power,--

(a) afford the authority necessary facilities for inspection of books of accounts or other documents, or for checking or verifying the cash, stock or other valuable article or thing found in such place or premises; and

(b) furnish such information as the authority may require in respect of any matter which may be useful for, or relevant to, any proceeding under this Ordinance.

116. Additional powers of enquiry and production of documents.—

(1) The Directors-General of Inspection, the Commissioner and the Inspecting Joint Commissioner may, without prejudice to other powers which they may have under other provisions of this Ordinance, make any enquiry which they consider necessary as respects any person liable, or believed by them to be liable, to assessment under this Ordinance, or require any such person to produce, or cause to be produced, any accounts or documents which they may consider necessary.

(2) For the purposes of sub section (1), the Directors-General of Inspection, the Commissioner and the Inspecting Joint Commissioner shall have the same powers as the Deputy Commissioner of Taxes has under this Ordinance for the purposes of making enquiry or requiring the production of accounts or documents including the powers under section 117(2).

(3) The Commissioner, the Inspecting Joint Commissioner, the Deputy Commissioner of Taxes or an Inspector, if he is so authorised in writing, may, for the purpose of making any enquiry which he considers necessary, enter the premises in which a person liable or believed by him to be liable to assessment, carries on his business or profession, and may call for and inspect any such person's

accounts or any documents in his possession, and may stamp any accounts or documents so inspected, and may retain such accounts or documents for so long as may be necessary for examination thereof or for the purposes of a prosecution: Provided that the Deputy Commissioner of Taxes or an Inspector shall not make any enquiries from any scheduled bank regarding any client of such bank except with the prior approval of the Commissioner.

117. Power of search and seizure.—

(1) Where the Directors-General of Inspection or the Commissioner, or such other officer empowered in this behalf by the Board, has, on account of information in his possession, reason to believe that

(a) any person, to whom a summons or notice under this ordinance has been or might be issued to produce, or cause to be produced, any books of accounts or other documents, has failed to, or is not likely to, produce or cause to be produced such books of accounts or other documents, or

(b) any person is in possession of any money, bullion, jewellery or other valuable article or thing which represents, wholly or partly, income or property which is required to be disclosed under this Ordinance but has not been so disclosed, he may authorise any officer subordinate to him, being not below the rank of the Deputy Commissioner of Taxes, to exercise the powers under sub-section (2).

(2) An officer authorised under sub-section (1) (hereinafter referred to as the authorised officer) may, notwithstanding anything contained in any other law for the time being in force,--

(a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that any books of accounts, documents, money, bullion, jewellery or other valuable article or thing referred to in sub-section (1) are or have been kept ;

(b) break-open the lock of any door, box, locker, safe, almirah or other receptacle for the purpose of the said entry, and search, if keys thereof are not available;

(c) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if he has reason to suspect that such person has secreted about his person any such books of accounts, documents, money, bullion, jewellery or other valuable article or thing;

(d) seize any such books of accounts, documents, money, bullion, jewellery or other valuable article or thing found as a result of such search;

(e) place marks of identification on or stamp any books of accounts or other document or make or cause to be made extracts or copies therefrom; and

(f) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing.

(3) The authorised officer may requisition the services of any police officer or other officer of the Government to assist him for all or any of the purposes specified in sub-section (2); and it shall be the duty of every such officer to comply with such requisition.

(4) The authorised officer may, where it is not practicable to seize any such books of accounts, documents, money, bullion, jewellery or other valuable article or thing, by order in writing, require the owner or the person who is in immediate possession or control thereof not to remove, part with or otherwise deal with it without obtaining his previous permission; and the authorised officer may take such steps as may be necessary for ensuring compliance with the order.

(5) The authorised officer may, during the course of the search or seizure, examine on oath any

person who is found to be in possession or control of any books of accounts, documents,

money, bullion, jewellery or other valuable article or thing and any statement made by such person during the examination may thereafter be used in evidence in any proceeding under this Ordinance, or the Income-tax Act, 1922 (XI of 1922).

(6) Where any books of accounts, documents, money, bullion, jewellery or other valuable article or thing is found in the possession or control of any person in the course of a search, it may be presumed that--

(a) the books of accounts, documents, money, bullion, jewellery, article or thing belongs to such person;

(b) the contents of the books of accounts and documents are true ; and

(c) the signature on, or the handwriting in, any such books or documents is the signature or handwriting of the person whose signature or handwriting it purports to be.

(7) The person from whose custody any books of accounts or other documents are seized under sub-section (2) may make copies thereof, or take extracts therefrom, in the presence of the authorised officer or any other person designated by him, at such place and time as the authorised officer may appoint in this behalf.

(8) The books of accounts or other documents seized under sub-section (2) shall not be retained by the authorised officer for a period exceeding one hundred and eighty days from the date of the seizure unless for reasons recorded in writing, approval of the Commissioner has been obtained for such retention:

Provided that the Commissioner shall not approve such retention for a period

exceeding thirty days after all the proceedings under this Ordinance in respect of the years for which the books of accounts or other documents, as are relevant, have been completed.

(9) If any person, legally entitled to the books of accounts or other documents seized under subsection

(2) objects to the approval given by the Commissioner under sub-section (8), he may

make an application, stating therein the reasons for his objection, to the Board for the return of the books of accounts or other documents; and the Board may, after giving the applicant an opportunity of being heard, pass such orders thereon as it may think fit.

(10) Subject to the provisions of this Ordinance and the rules, if any, made in this behalf by the Board, the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), relating to search and seizure shall apply, so far as may be, to search and seizure under sub-section (2).

Explanation.-- For the purposes of this section, the word "proceeding" means any

proceeding in respect of any year under this Ordinance which may be pending on the date on which a search is authorised under this section or which may have been completed on or before such date and also includes all proceedings under this Ordinance which may be

commenced after such date in respect of any year.

118. Retention of seized assets.—

(1) Where any money, bullion, jewellery or other valuable article or thing (hereinafter referred to as assets) is seized under section 117, the authorised officer shall, unless he himself is the Deputy Commissioner of Taxes, forward a report thereof, together with all relevant papers, to the Deputy Commissioner of Taxes.

(2) Where he has seized any asset under section 117 or, as the case may be, he has received a report under sub-section (1), the Deputy Commissioner of Taxes shall, after giving the person concerned a reasonable opportunity of being heard and making such enquiry as the Directors-

General of Inspection or the Commissioner may direct, within ninety days of the seizure of the assets, and with the previous approval of the Commissioner,--

(a) estimate the undisclosed income (including income from the undisclosed property), in a summary manner to the best of his judgment on the basis of such materials as are available with him;

(b) calculate the amount of tax payable under this Ordinance on the income so estimated; and

(c) specify the amount that will be required to satisfy any existing liability under this Ordinance, the Income tax Act, 1922 (XI of 1922), the Gift-tax Act, 1963 (XIV of 1963), and the Wealth-tax Act, 1963 (XV of 1963), in respect of which such person is in default or is deemed to be in default:

Provided that if, after taking into account the materials available with him, the Deputy Commissioner of Taxes is of the view that it is not possible to ascertain to which particular income year or years such income or any part thereof relates, he may calculate the tax on such income or part, as the case may be, as if such income or part were the total income chargeable to tax at the rates in force in the financial year in which the assets were seized.

Explanation.-- In computing the period of ninety days for the purposes of subsection (2), any period during which any proceeding under this section is stayed by an order or injunction of any Court shall be excluded.

(3) After completing the proceedings under sub-section (2), the Deputy Commissioner of Taxes shall, with the approval of the Commissioner, make an order requiring the person concerned to pay the aggregate of the amounts referred to in sub-section (2) (b) and (c) and shall, if such person pays, or makes satisfactory arrangement for the payment of, such amounts or any part thereof, release the assets seized under section 117 or such part thereof as he may deem fit in he circumstances of the case.

(4) Where the person concerned fails to pay, or to make satisfactory arrangements for the payment of, any amount required to be paid in pursuance of the order under sub-section (3) or any part thereof, he shall be deemed to be an assessee in default in respect of the amount or part, and the Deputy Commissioner of Taxes may retain in his custody the assets seized under section 117 on any part thereof as are in his opinion sufficient for the realisation of the said amount or, as the case may be, of such part thereof as has not been paid.

(5) If the Deputy Commissioner of Taxes is satisfied that the assets seized under section 117 or any part thereof were held by a person for or on behalf of any other person, he may proceed under this section against such other person, and all the provisions of this section shall apply accordingly.

(6) If any person objects, for any reason, to an order made under sub-section (3), he may, within thirty day of the date of such order, make an application, stating therein the reasons for his objection, to the Commissioner for appropriate relief in the matter; and the Commissioner may, after giving the applicant an opportunity of being heard, pass such orders thereon as he may think fit.

119. Application of retained assets.—

(1) Where the assets retained under sub-section (4) of section 118 consist solely of money, or partly of money and partly of other assets,--

(a) the Deputy Commissioner of Taxes shall first apply such money towards payment of the amount in respect of which the person concerned is deemed to be an assessee in default under that sub-section; and thereupon such person shall be discharged of his liability to the extent of the money so applied; and

(b) where, after application of the money under clause (a), any part of the amount referred to therein remains unpaid, the Deputy Commissioner of Taxes may recover the amount remaining unpaid, by sale of such of the assets as do not consist of money in the manner movable property may be sold by a Tax Recovery Officer for the recovery of tax; and for this purposes he shall have all the powers of a Tax Recovery Officer under this Ordinance.

(2) Nothing contained in sub-section (1) shall preclude the recovery of the amount referred to in section 118 (4) by any other mode provided in this Ordinance for the recovery of any liability of an assessee in default.

(3) Any assets or proceeds thereof which remain after the discharge of the liability in respect of the amount referred to in section 118 (4) shall forthwith be made over or paid to the persons from whose custody the assets were seized.

120. Power of Inspecting Joint Commissioner to revise orders of Deputy Commissioner of Taxes.—

(1) The Inspecting Joint Commissioner may call for from the Deputy Commissioner of Taxes and examine the record of any proceeding under this Ordinance, and , if he considers that any order passed therein by the Deputy Commissioner of Taxes is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard, and after making or causing to be made, such inquiry as he thinks necessary, pass such order thereon as in his view the circumstances of the case would justify, including an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment to be made.

(2) No order shall be made under sub-section (1) after the expiry of four years from the date of the order sought to be revised.

121. Revisional power of Commissioner.—

(1) The Commissioner may, either of his own motion or on an application made by the assessee, call for the record of any proceeding under this Ordinance in which an order has been passed by any authority subordinate to him and may make such enquiry or cause such enquiry to be made and, subject to the provisions of this Ordinance, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit.

(2) The application for revision of an order under this Ordinance passed by any authority

subordinate to the Commissioner shall be made within ninety days of the date on which such order is communicated to the assessee or within such further period as the Commissioner may consider fit to allow on being satisfied that the assessee was prevented by sufficient cause from making the application within the said ninety days.

(3) The Commissioner shall not exercise his power under sub-section(1) in respect of any order--

(a) where an appeal against the order lies to the Appellate Joint Commissioner or to the

Commissioner (Appeals) or to the Appellate Tribunal and the time within which such

appeal may be made has not expired or the assessee has not waived his right of appeal;

(b) where the order is pending on an appeal before the Appellate Joint Commissioner or it

has been made the subject of an appeal to the Commissioner (Appeals) or to the

Appellate Tribunal; or

(c) where a period of more than one year has elapsed from the date of the order in the case of action by the Commissioner on his own motion, unless the Commissioner is satisfied that there is sufficient causes to be recorded in writing, for exercising his power under sub-section (1).

(4) No application under sub-section (1) shall be entertained unless--

(a) it is accompanied by a fee of two hundred taka ; and

(b) the undisputed portion of the tax has been paid.

Explanation.--The "undisputed portion of the tax" means--

(i) where the application is against an order of a Deputy Commissioner of Taxes, the tax payable under section 74; and

(ii) where the application is against an order of an Appellate Joint Commissioner, the undisputed portion of the tax as determined on the basis of that order.

(5) For the purposes of this section, an order by the Commissioner declining to interfere shall not be construed as an order prejudicial to the assessee.

(6) Notwithstanding anything contained in this Ordinance, an application for revision made under sub-section (1) shall be deemed to have been allowed if the Commissioner fails to make an order thereon within a period of one year from the end of the year in which the application was made.

Explanation. For the purposes of this section, the Appellate Joint Commissioner of Taxes shall be deemed to be an authority subordinate to the Commissioner to whom the Deputy Commissioner of Taxes, whose order was the subject-matter of the appeal order under revision, is subordinate.

122. Power to take evidence on oath, etc.—

(1) The Deputy Commissioner of Taxes, the Joint Commissioner of Taxes, the Commissioner, the Commissioner (Appeals) and the Appellate Tribunal shall, for the purposes of this Ordinance, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit in respect of the following matters, namely:-

(a) discovery and inspection;

(b) enforcing the attendance of any person and examining him on oath or affirmation;

(c) compelling the production of accounts or documents (including accounts or documents relating to any period prior or subsequent to the income year); and

(d) issuing commissions for the examination of witness.

(2) The Deputy Commissioner of Taxes shall not exercise his powers under this section for the purpose of enforcing the attendance of an employee of a scheduled bank as a witness or compelling the production of books of account of such a bank except with the prior approval of the Commissioner.

(3) Any authority mentioned in sub-section (1) may impound and retain in its custody for such period as it considers fit, any books of accounts or other documents produced before it in any proceeding under this Ordinance.

(4) Any proceeding under this Ordinance, before any authority mentioned in sub-section (1), shall be deemed to be a judicial proceeding within the meaning of section 193 and 228, and for the purposes of section 196, of the Penal Code (Act XLV of 1860).

Q4 **Explain the provisions with regard to levy of duty as per the Customs Act, 1961. State the types of duties under the Act.**

<u>Introduction:</u>

The Customs Act, was enacted in the year 1962. The Act came into force on 13th December, 1962. The main object of the Act is to "An Act to consolidate and amend the law relating to customs".

Customs Act levies Customs duty on the import of goods into India and export of goods outside India. The importer or the exporter has to pay required amount of customs duty to the customs department.

LEVY OF CUSTOMS DUTY

The 'charging section' of the Customs Act, 1962 is section 12 which provides for levy of duty on imports as well as on exports at the rates which are prescribed under the Customs Tariff Act, 1975 read along with the relevant exemption notification. The taxable event to attract customs duty is import into or export from India. The export duties are applicable to a handful of commodities. In the case of Apar India Ltd., the Hon'ble Supreme Court has held that rate of duty will be the rate prevailing on the date of filing of bill of entry under section 46 or granting permission for entry inwards whichever is later."

TYPES OF DUTIES:

The various types of customs duties are:

i. Basic duty

ii. Additional customs duty

iii. Additional duty of customs in lieu of sales tax

iv. Antidumping/safeguard duty

v. Education Cess.

VALUATION OF GOODS

The quantification of customs duty payable essentially requires the calculation of the 'value' for customs purpose. As per the provisions, customs duty is payable as a percentage of 'value' often called 'Assessable Value' or 'Customs Value'. The value may either be (a) 'Value' as defined in section 14(1) of Customs Act, or (b) 'Tariff Value' prescribed under section 14(2) of Customs Act.

Tariff value

Tariff value is the value that is fixed by Central Government for any class of imported goods or exported goods. Government takes into consideration trends of value of such or like goods while fixing tariff value. Once so fixed, duty is payable as percentage of this value.

Customs value

Customs value as calculated as per section 14(1) is the 'value' normally used for calculating customs duty payable. As per section 14(1) 'value' for the purpose of customs duty is the

(a) Price at which such or like goods are ordinarily sold or offered for sale and the

(b) Price is for delivery at the time and place of importation and such

(c) Price is in course of international trade, where neither seller nor buyer has interest in the business of the other or one of them has no interest in the business of the other and the,

(d) Price is the sole consideration for sale or offer for sale.

The price mentioned above has to be computed for customs duty purpose at the rate of exchange, as on date of submission of bill of entry, as fixed by the Central Government. As per the provisions contained in section 14(1A) of the Act, the 'price' referred to above, in case of imported goods has to be determined in accordance of the Customs Valuation Rules, 1988. Subject to three conditions laid down in section 14(1) of Customs Act, 1962, of time, place and special circumstances, price of imported goods is to be determined in terms of provisions contained in section 14(1A) and in accordance with the provisions contained in Valuation (Determination of Price of Imported Goods) Rules, 1988. The 'Special Circumstances' have been statutorily provided in Rule 4(2) and in the absence of these exceptions it is mandatory for customs authorities to accept the price actually paid or payable for the goods in a particular transaction. Valuation Rule 4(2) deals with the extraordinary or special circumstances under which the transaction value of the goods cannot be accepted. They are as follows:

(a) The sale is not in the ordinary course of trade under fully competitive conditions.

(b) The sale involves any abnormal discount or reduction from the ordinary competitive price.

(c) The sale involves special discount limited to exclusive agents.

(d) Non-existence of objective and quantifiable data with regard to the adjustments required to be made, under the provisions of rule 9, to the transaction value.

(e) Restrictions of a non-statutory nature or non-commercial nature on the disposition or use of the goods after import, which substantially affect the value of the goods.

(f) Sale or price being subject to some condition or consideration for which a value cannot be determined.

(g) There exists an additional consideration, direct or indirect.

(h) Buyer and seller are related and the relationship has influenced the price. The assessable value has to be adjusted where the buyer has undertaken some value-adding activities in relation to the goods, and such activities fall under the adjustments provided under rule 9 of the valuation rules. If no such adjustment is provided in rule 9, and the activities of the buyer are on his own account; i.e., they do not result in an indirect payment to the seller even though they result in a benefit to the seller, then the assessable value need not be adjusted. Costs for construction, erection, assembly, maintenance or technical assistance undertaken after the import of goods like plant, machinery or equipment should be distinguished, in the contract or invoice, to ensure that these costs are not included in the assessable value. The onus is now on the customs department to prove that the invoice price is not genuine or that the price is unbelievably or ridiculously low. The department cannot plead that it has discharged the onus by merely producing the manufacturer's price list or quotation or published prices or computer print outs of previous imports by other importers as evidence of the so called ordinary international price. The department must establish the existence of special circumstances mentioned in the law. If they (revenue authorities) do not establish this by leading adequate evidence, they will have to accept the transaction value under rule 4(1). The transaction value need not be uniform for all customers. It has been consistently held by the Hon'ble Supreme Court that all customers have bargaining power and as long as the discount is based on commercial considerations, the same is permissible and the assessable shall be net of discount. According to Rule 5 of the Valuation Rules, the transaction value to be determined on the basis of identical goods imported into India at the same time. Rule 6 allows this on the basis of the value of similar goods imported into India at the same time.

The CEGAT laid down in the Hydro Krimp case that comparable goods should be of same quality and specification and from same manufacturer and country of production. They should be roughly in the same quantity. The imports should belong to the same commercial world.

Rule 7 of the Valuation Rules allows the value to be determined on the basis of deductive method in cases where there are no contemporaneous imports. Here also the decision of the CEGAT is relevant. The deductive value is based on the unit price at which the imported goods or identical goods or similar imported goods are sold in the greatest aggregate quantity to unrelated persons in India. The following deductions are available:

(i) the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind.

(ii) usual costs of transport and insurance and associated costs incurred within India.

(iii) the customs duties and other taxes payable in India by reason of importation or sale of goods. Alternatively, transaction/assessable value may be determined under rule 7A. It consists of the following:

(a) the cost or value of material and fabrication or other processing employed in producing the imported goods;

(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;

(c) the cost or value of all other relevant expenses.

In a case, where the value cannot be determined by any of the aforesaid rules, then resort will be made to Rule 8, Residual Method, under which the value shall be determined using reasonable means consistent with the principles and the general provisions of the rule.

RATE OF DUTY AND VALUATION AND TIME OF LEVY/INCIDENCE

The rate of duty and tariff valuation shall be as applicable on

(a) In the case of goods directly cleared for home consumption the date of the presentation of the bill of entry.

(b) In case of goods cleared from warehouse, the date when bill of entry is presented for home clearance of such goods from the warehouse. In case, bill of entry is submitted prior to arrival of the vessel or the aircraft, the date would be the later of the date of submission of the bill of entry and the grant of entry inward to the vessel.

ADVANCE RULINGS

The provisions relating to advance rulings are covered in Chapter VB of the Act. Advance rulings can be sought by a residents and/ or non-residents in case of joint ventures in India, and by wholly owned subsidiaries of foreign companies proposing to undertake business activity in India. The Advance Ruling can be sought on matters regarding classification and valuation of goods, notifications having a bearing on rate of duty and notifications issued under the Customs Tariff Act and any other duty chargeable in the manner as duty of customs, under any other law for the time being in force.

The advance ruling authority created under section 245(O) of the Income-tax Act, 1961 will be considered as advance ruling authority under the Central Excise Act and the Customs Act also.

Methods For Assessment Of Customs Duty:

Under the Customs Act there are basically two systems for assessment of duty. These are:

(a) First appraisement: In case of First appraisement the assessment of goods is done only after the goods are examined first. This system is generally not resorted to except in cases where complete documents are not submitted by the importer, it is not possible for the appraiser to determine the value or classification of the goods or for any other reasons, on the basis of the documents as produced by the importer, or the importer himself requests for the examination of goods before payment of goods.

(b) Second appraisement: This type of system is normally followed practically. Second appraisement means making the assessment on the basis of the declaration and submission made by the importer; i.e., on the strength of documents such as invoice, catalogue, literature showing the composition and use, price lists etc. as produced by the importers. Under this system goods are examined after assessment and collection of duty. The goods are examined on a selective basis on the basis of risk assessment or on the basis of specific intelligence report.

However, on importation of any goods capable of being easily identified, any duty has been paid on clearance of such goods for home consumption, such duty shall be refunded to the person if the goods are found defective or otherwise not in conformity with the specification agreed upon provided the goods have not been repaired or used after importation. The following conditions shall be satisfied :-—

(a) The goods are identified to the satisfaction of the Assistant Commissioner or Deputy Commissioner.

(b) The importer does not claim drawback under any of the provisions of the Act.

(c) The goods are exported or the importer relinquishes its title to the goods and abandons them to customs or such goods are destroyed.

Conclusion:

A demand for duty arises in cases where duty on goods has not been levied though such goods are leviable to duty or duty has been short levied or refunded erroneously. The Act provides the provisions for the recovery of such duty.

The refund of duty is subject to the principle of 'no unjust enrichment'. Refund of duty is granted to the importer only when he is able to substantiate that the burden of the customs duty levied and paid under Customs Act claimed in refund has not been passed on to the customer.

Therefore these are some of the provisions under the Customs Act which deal with levy and method of assessing customs duty.

Q5 Explain the provisions relating to 'income from house property' under the IT Act, 1961.

Introduction:

INCOME FROM HOUSE PROPERTY is dealt under the following sections (SEC 22 TO 27);

- Sec 22 & 23 – Income taxable under the head and how it is calculated
- Section 24 – Deductions Allowed
- Section 25 – Deductions which are not allowed and taxable
- Section 26 – Special treatment in case of co – owners of the house.
- Section 27 – Various Terms for this head of income.

Meaning:

The annual value of a property, consisting of any buildings or lands appurtenant thereto, of which the assessee is the owner, is chargeable to tax under the head 'Income from house property'.

<u>Meaning of building/s:</u>

Buildings or lands appurtenant thereto The term 'building' includes residential houses, bungalows, office buildings, warehouses, docks, factory buildings, music halls, lecture halls, auditorium etc. The appurtenant lands in respect of a residential building may be in the form of approach roads to and from public streets.

However, if a house property, or any portion thereof, is occupied by the assessee, for the purpose of any business or profession, carried on by him, the profits of which are chargeable to income-tax, the value of such property is not chargeable to tax under this head.

Rental income from a vacant plot of land (not appurtenant to a building) is not chargeable to tax under the head 'Income from house property', but is taxable either under the head 'Profits and gains of business or profession' or under the head 'Income from other sources', as the case may be. • However, if there is land appurtenant to a house property, and it is let out along with the house property, the income arising from it is taxable under this head.

CONDITIONS FOR INCOME FROM HOUSE PROPERTY :

Three conditions are to be satisfied for property income to be taxable under this head.

1. The property should consist of buildings or lands appurtenant thereto.

- The assessee should be the owner of the property.

3. The property should not be used by the owner for the purpose of any business or profession carried on by him, the profits of which are chargeable to income-tax.

OWNERSHIP OF HOUSE PROPERTY • It is only the owner (or deemed owner) of house property who is liable to tax on income under this head. • Owner may be an individual, firm, company, cooperative society or association of persons. • The property may be let out to a third party either for residential purposes or for business purposes. • Annual value of property is assessed to tax in the hands of the owner even if he is not in receipt of the income.

DEEMED OWNER Section 27 of the Income Tax Act provides that, in certain circumstances, persons who are not legal owners are to be treated as deemed owners of house property for the purpose of tax liability under this head.

1. If an individual transfers a house property to his or her spouse (except in connection with an agreement to live apart) or to a minor child (except a married daughter) without adequate consideration, he is deemed as the owner of the property for tax purposes. However, if an individual transfers cash to his or her spouse or minor child, and the transferee acquires a house property out of the gifted amount, the transferor shall not be treated as the deemed owner of the house property.

2. The holder of an Impartible Estate is deemed to be the owner of all the properties comprised in the estate. 3. A member of a co-operative society, company or association of persons, to whom a property (or a part thereof) is allotted or leased under a house building scheme of the society, company or association, is deemed to be the owner of such property. 4. A person who has acquired a property under a power of attorney transaction, by satisfying the conditions of section 53A of the Transfer of Property Act, that is under a written agreement 5. A person who has acquired a right in a building (under clause (f) of section 269UA), by way of a lease for a term of not less than 12 years (whether fixed originally or extended through a provision in the

PROPERTY INCOME EXEMPTED FROM TAX:

- Income from a farm house [section 2(1A) (c) and section 10(1)]. 2.
- Annual value of one palace in the occupation of an ex-ruler [section 10(19A)].
- Property income of a local authority [section 10(20)].
- Property income of an approved scientific research association [section 10(21)].
- Property income of an educational institution and hospital [section 10(23C)].
- Property income of a registered trade union [section 10(24)].
- Income from property held for charitable purposes [section 11].
- Property income of a political party [section 13A].
- Income from property used for own business or profession [section 22].
- Annual value of oneself occupied property [section 23(2)].

DETERMINATION OF ANNUAL VALUE • The annual value of house property has been defined as 'the amount for which the property may reasonably be expected to be let out for a year'. • However, if your property is let out for the whole or a part of the financial year, the gross annual value will be the amount received during the year as a result of the letting out of the house property. • This shall also exclude the rent that the taxpayer is unable to realize in the financial year.

The following four factors have to be taken into consideration while determining the Gross Annual Value of the property: 1. Rent payable by the tenant (actual rent) 76 2. Municipal valuation of the property. 3. Fair rental value (market value of a similar property in the same area). 4. Standard rent payable under the Rent Control Act.

- Actual Rent: It is the most important factor in determining the annual value of a let out house property. It does not include rent for the period during which the property remains vacant. Municipal Valuation: Municipal or local authorities charge house tax on properties situated in the urban areas.
- Fair Rental Value: It is the rent normally charged for similar house properties in the same locality. Standard Rent: Standard Rent is the maximum rent which a person can legally recover from his tenant under a Rent Control Act.

- The Gross Annual Value is the municipal value, the actual rent (whether received or receivable) or the fair rental value, whichever is highest. If, however, the Rent Control Act applies to the property, the gross annual value cannot exceed the standard rent under the Rent Control Act, or the actual rent, whichever is higher.
- If the property is let out but remains vacant during any part or whole of the year and due to such vacancy, the rent received is less than the reasonable expected rent, such lesser amount shall be the Annual value. • For the purpose of determining the Annual value, the actual rent shall not include the rent which cannot be realized by the owner.

DEDUCTIONS U/S SEC 24:

Standard Deduction: 30 % of the adjusted annual value is deductible irrespective of expenses incurred by the taxpayer

Interest on Borrowed Capital: Interest on Borrowed capital is allowed as deduction if capital is borrowed for the purpose of purchase, construction, repair, renewal or reconstruction of the property. It is deductible on accrual basis. It can be deductible as yearly, it is deductible even if it is not actually paid during the previous year No deduction for any brokerage or any expenses for arranging the loan is allowed interest of a fresh loan taken for the repayment of the earlier loan is allowed as deduction

DEDUCTIONS WHICH ARE TAXABLE (U/S 25):

Any interest chargeable under the Act, payable out of India on which tax has not been paid or deducted at source, and in respect of which there is no person in India who may be treated as an agent, is not deductible, by virtue of Section 25, in computing income chargeable under the head “Income from house property”.

Thus, the interest payable outside India, will not be allowable as deductions if No tax is paid thereon or No tax is deducted at source there from or There is no person in India who is liable to pay tax thereon as agent

PROPERTY OWNED BY CO – OWNER (SEC 26):

When it is applicable a house property is owned by two or more persons (co – owners) their share in the property and its income is definite and ascertainable as per the agreement between them.

Procedure in case of co – owners Determine the income of the whole house property Divide the income between the co-owners according to the shares Include the share of each co-owner in other incomes of each of them to find his total income. Tax the co-owner accordingly.

Conclusion:

Therefore for an income to be taxed under the head income from house property, the above provisions should be applied.

Q6 Explain in detail provision relating to drawback under customs act

Introduction:

The term drawback is applied to a certain amount of duties of Customs and Central Excise, sometimes the whole, sometimes only a part remitted or paid by Government on the exportation of the commodities on which they were levied. To entitle goods to drawback, they must be exported to a foreign port, the object of the relief afforded by the drawback being to enable the goods to be disposed of in the foreign market as if they had never been taxed at all. For Customs purpose drawback means the refund of duty of customs and duty of central excise that are chargeable on imported and indigenous materials used in the manufacture of exported goods. Goods eligible for drawback applies to

a.) Export goods imported into India as such;

b.) Export goods imported into India after having been taken for use

c.) Export goods manufactured / produced out of imported material

d.) Export goods manufactured / produced out of indigenous material

e.) Export goods manufactured /produced out of imported or and indigenous materials. The Duty Drawback is of two type**s:**

(i) All Industry Rate (AIR) and (ii) Brand Rate.

The All Industry Rate (AIR) is essentially an average rate based on the average quantity and value of inputs and duties (both Excise & Customs) borne by them and Service Tax suffered by a particular export product. The All Industry Rates are notified by the Government in the form of a Drawback Schedule every year and the present Schedule covers 2837 entries. The legal framework in this regard is provided under Sections 75 and 76 of the Customs Act, 1962 and the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995.

The Brand Rate of Duty Drawback is allowed in cases where the export product does not have any AIR of Duty Drawback or the same neutralizes less than 4/5th of the duties paid on materials used in the manufacture of export goods. This work is handled by the jurisdictional Commissioners of Customs & Central Excise. Exporters who wish to avail of the Brand Rate of Duty Drawback need to apply for fixation of the rate for their export goods to the jurisdictional Central Excise Commissionerate. The Brand Rate of Duty Drawback is granted in terms of Rules 6 and 7 of the Drawback Rules, 1995.

The **Duty Drawback facility on export of duty paid imported goods** is available in terms of Sec. 74 (It is discussed in more detail in under mention para) of the Customs Act, 1962. Under this scheme part of the Customs duty paid at the time of import is remitted on export of the imported goods, subject to their identification and adherence to the prescribed procedure.

Background:

All Industry Rate (AIR) of Duty Drawback:

The All Industry Rate (AIR) of Duty Drawback are notified for a large number of export products every year by the Government after an assessment of average incidence of Customs, Central Excise duties and Service Tax suffered by the export products. The All Industry Rate (AIR) are fixed after extensive discussions with all stake holders viz. Export Promotion Councils, Trade Associations, and individual exporters to solicit relevant data, which includes the data on procurement prices of inputs, indigenous as well as imported, applicable duty rates, consumption ratios and FOB values of export products. Corroborating data is also collected from Central Excise and Customs field formations. This data is analysed and forms the basis for the All Industry Rate (AIR) of Duty Drawback.

The All Industry Rate (AIR) of Duty Drawback is generally fixed as a percentage of FOB price of export product. Caps have been imposed in respect of many export products in order to obviate the possibility of misuse by unscrupulous exporters through over invoicing of the export value.

The scrutiny, sanction and payment of Duty Drawback claims in major Custom Houses is done through the EDI system. The EDI system facilitates credit/disbursal of Drawback directly to the exporter's bank accounts once the EGM has been filed by respective airlines / shipping lines. The correct filing of EGM is essential for speedy processing and disbursal of Drawback claims.

Notification No. 84/2010-Cus (N.T.), dated 17-9-2010 is relevant for ascertaining the current All Industry Rate (AIR) of Duty Drawback for various export products.

Brand Rate of Duty Drawback:

Where the export product has not been notified in All Industry Rate (AIR) of Duty Drawback or where the exporter considers the All Industry Rate (AIR) of Duty Drawback insufficient to fully neutralize the duties suffered by his export product, he may opt for the Brand Rate of Duty Drawback. Under this scheme, the exporters are compensated by paying the amount of Customs, Central Excise duties and Service Tax incidence actually incurred by the export product. For this purpose, the exporter has to produce documents/proof about the actual quantity of inputs / services utilized in the manufacture of export product along with evidence of payment of duties thereon.

The exporter has to make an application to the Commissioner having jurisdiction over the manufacturing unit, within 3 months from the date of the 'Let Export' order. The application should include details of materials/components/input services used in the manufacture of goods and the duties/taxes paid on such materials/ components/input services. The period of 3 months can be extended upto 12 months subject to conditions and payment of requisite fee as provided in the Drawback Rules, 1995.

In terms of Rule 6 of the Drawback Rules, 1995 on receipt of the Brand Rate application, the jurisdictional Commissioner shall verify the details furnished by the exporter and determine the amount/rate of Drawback. Where exporter desires that he may be granted Drawback provisionally, the jurisdictional Commissioner may determine the same, provided the exporter executes a general bond, binding himself to refund the Drawback amount granted to him, if it is found later that the Duty Drawback was either not admissible to him or a lower amount was payable. The Brand Rate letter is thereafter issued to the exporter. The Custom House of the port of export is also given a copy to facilitate payment of Drawback to the exporter.

Imported goods re-exported-Drawback under S*ec.* 74

In case of goods which were earlier imported on the payment of duty and are later sought to be exported within a specified period, Customs Duty paid at the time of import of the goods, with certain cuts, can be claimed as Duty Drawback at the time of export of such goods. Such Duty Drawback is granted in terms of Sec. 74 of the Customs Act, 1962 read with Re-export of Imported Goods (Drawback of Customs Duty) Rules, 1995. For this purpose, the identity of export goods is cross verified with the particulars furnished at the time of import of such goods.

Where the goods are not put into use after import, 98% of Duty Drawback is admissible under Sec. 74 of the Customs Act, 1962. In cases the goods have been put into use after import, Duty Drawback is granted on a sliding scale basis depending upon the extent of use of the goods. No

Duty Drawback is available if the goods are exported 18 months after import. Application for Duty Drawback is required to be made within 3 months from the date of export of goods, which can be extended upto 12 months subject to conditions and payment of requisite fee as provided in the Drawback Rules, 1995.

Scope:

In this category, two types of cases are covered viz.,

1. Imported goods exported as such i.e. without putting into use – 98% of duty is refunded and

2. Imported goods exported after use – the percentage of duty is refunded according to the period between the date of clearance for home consumption and the date when the goods are placed under Customs control for exports. The percentage of duty drawback is notified under Notification. No 19 Custom, dated 6^{th} Feb, 1965 as amended from time to time.

Elements necessary for drawback under S*ec.* 74:-

The elements necessary to claim drawback are;

1. The goods on which drawback is claimed must have been previously imported;

2. Import duty must have been paid on these goods when they were imported;

3. The goods should be entered for export within two years from the date of payment of duty on their importation (whether provisional or final duty). The period can be further extended to three years by the Commissioner of Customs on sufficient cause being shown.

4. The goods are identified as the goods imported.

5. The goods must be capable of being identified as imported goods.

6. The goods must actually be re-exported to any place outside India.

7. The market price of such goods must not be less than the amount of drawback claimed.

8. The amount of drawback should not be less than Rs. 50/- as per *Sec.* 76-(1) (c) of the Customs Act.

Recent Event:

The Union ministry of finance has notified an increase in the All Industry Rates (AIR) of duty drawback and higher value caps for many items. The major beneficiaries are exporters of textiles, vehicles and automobile components. When the All Industry Rate (AIR) for 2013-14 were notified on September 14, 2013, exporters had expressed disappointment over the reduction in rates for many items, as well as the value caps that limited the drawback amount payable. Exporters of electronics goods had expressed concern on the sharp decline in drawback rates on their items. Exporters of engineering goods had reacted strongly and said the reduction would negate the positive impact of rupee depreciation. The exporters of textiles represented that averaging the duty incidence of many items at the four-digit levels resulted in anomalies. The latest increase in drawback rates through the notification dated January 21, 2014, responds partly to the complaints of exporters of textiles, vehicles and auto components but ignores concerns of the electronics sector.

Salient features of AIR Duty Drawback of 2013 are as follows:

i) As in previous years, the drawback rates have been determined on the basis of certain broad average parameters including, prevailing prices of inputs, standard input output norms, share of imports in input consumption, the applied rates of central excise and customs duties, the factoring of incidence of service tax paid on taxable services which are used as input services in the manufacturing or processing of export goods, factoring incidence of duty on HSD/Furnace Oil, value of export goods, etc.

ii) The residuary All Industry Rate (AIR) of 1% (composite) and 0.3% (customs) is being provided to hitherto "Nil" rated items under chapters 4, 15, 22, few items in chapter 24 and Casein and its derivatives in chapter 35.

iii) The higher residuary rates are being reduced from 1.5% to 1.3% (customs) or from 2% to 1.7% (customs), as the case may be.

iv) In the case of most tariff items with ad valorem all industry rates above 2%, the rates are being supplemented with drawback caps (Drawback Caps means the ceiling of the rate of duty drawback of a product to that level).

v) Wherever the wordings, "Drawback when CENVAT facility has not been availed" have been used, it means that the exporter is eligible to claim the components of Customs, Excise and Service tax. Wherever the wordings, “Drawback when CENVAT facility has been availed” are used, it means that the exporter is eligible only for the Customs portion of duty drawback, so as to curb the exporters from taking double benefit

vi) Wherever the wordings, “Drawback when CENVAT facility has not been availed” have been used, the exporter shall declare, and if necessary, establish to the satisfaction of Assistant Commissioner of Customs or Assistant Commissioner of Central Excise as the case may be, that no CENVAT facility has been availed for any of the inputs or input services used in the manufacture of the export product and if required provide non-availment of CENVAT Certificate. Such Certificate is not required for products which are unconditionally exempted from Central Excise duty like handloom and handicrafts products.

vii) Wherever specific rates have been provided against tariff item in the said Schedule, the drawback shall be payable only if the amount is one per cent or more of free on board value, except where the amount of drawback per shipment exceeds five hundred rupees.

viii) The AIR of Duty Drawback is not applicable to export of product manufactured in Warehouse under Section 65 of Customs Act, 1962, Special Economic Zones, Export Oriented Units (EOUs) etc.

The new notification introduces 18 new entries at the six-digit levels and seven at the eight-digit level for textile exporters, for items covered under the four-digit classifications 6002, 6004, 6116 and 6307. About 120 entries at the six-digit level covered under Chapter 87 (vehicles and auto components) get their customs allocation of drawback raised from 1.7 per cent to two per cent. About 80 of these entries also see a marginal increase in the value caps; three others see a marginal drop.

The other changes include a marginal increase in value caps for six entries in the leather sector, four in paper products and six in textiles. Besides, there are some corrections of obvious errors in description and value caps. Hopefully, the representations from other sectors will also receive due attention.

Conclusion:-

The main worry of exporters now is the delay in getting duty drawback. They apprehend that the government's efforts to keep the fiscal deficit down will result in blocking the disbursal of their legitimate dues. Such delays will not only disrupt their cash flow but result in additional costs in raising finance to fund their operations. The increase in repo rates by the Reserve Bank can make funds costlier and, to that extent, make them relatively uncompetitive. Their sources of comfort are prospects of better growth in developed economies and weakening of the rupee against the dollar.

Answer any four of the following:

Q. No. (a)

Purpose of taxation.

Meaning:

Tax is entirely different from fee. Tax is collected on the personal income, assets, property, wealth, transactions. Etc. Tax is collected by the central government or by the state government. The state government collects tax and hands over the same to the central government.

Tax is of two types;

- Direct tax
- Indirect tax.

Tax is a means of generating revenue to the government. Money collected by way of tax is used for variou8s developmental projects and other aspects.

Taxation has four main purposes or effects:

Revenue, Re-distribution, Re-pricing, and Representation. The main purpose is revenue: taxes raise money to spend on armies, roads, schools and hospitals, and on more indirect government functions like market regulation or legal systems.

- A second is redistribution. Normally, this means transferring wealth from the richer sections of society to poorer sections.
- A third purpose of taxation is repricing. Taxes are levied to address externalities; for example, tobacco is taxed to discourage smoking, and a carbon tax discourages use of carbon-based fuels.
- A fourth, consequential effect of taxation in its historical setting has been representation. The American revolutionary slogan "no taxation without representation" implied this: rulers tax citizens, and citizens demand accountability from their rulers as the other part of this bargain. Studies have shown that direct taxation (such as income taxes) generates the greatest degree of accountability and better governance, while indirect taxation tends to have smaller effects.

Therefore, these are the essential features of taxation.

2 HSN

What is HSN Code?

The Harmonized Commodity Description and Coding System generally refers to "Harmonized System of Nomenclature" or simply "HSN". It is a multipurpose international product nomenclature developed by the World Customs Organization (WCO). It first came into effect in 1988.

How does HSN code work?

It has about 5,000 commodity groups, each identified by a six-digit code, arranged in a legal and logical structure. It is supported by well-defined rules to achieve uniform classification.

Why is HSN important?

The main purpose of HSN is to classify goods from all over the World in a systematic and logical manner. This brings in a uniform classification of goods and facilitates international trade.

HSN Worldwide

The HSN system is used by more than 200 countries and economies for reasons such as:

- Uniform classification
- Base for their Customs tariffs
- Collection of international trade statistics

Over 98% of the merchandise in international trade is classified in terms of the HSN.

Harmonized System of Nomenclature number for each commodity is accepted by most of the countries. The HSN number remains same for almost all goods. However, HSN number used in some of the countries varies little, based on the nature of goods classified.

HSN in India

India is a member of World Customs Organization(WCO) since 1971. It was originally using 6-digit HSN codes to classify commodities for Customs and Central Excise. Later Customs and Central Excise added two more digits to make the codes more precise, resulting in an 8 digit classification.

Understanding the HSN Code

The HSN structure contains 21 sections, with 99 Chapters, about 1,244 headings, and 5,224 subheadings.

- Each Section is divided into Chapters. Each Chapter is divided into Headings. Each Heading is divided into Sub Headings.
- Section and Chapter titles describe broad categories of goods, while headings and subheadings describe products in detail.

Depriciation allowance

Companies all over the world allow for depreciation on their assets. This is essential, as the value of the assets tends to diminish over time due to usage. When the company has a depreciation allowance in place, it is able to ward off the losses it would have incurred when the asset actually stops functioning. Every year, the company depreciates the asset and then transfers the money to the depreciation allowance. Each year, money keeps accruing in the account until the end of the asset's productive life.

Depreciation Allowance Account

Every year, the company reduces the value of the asset as per the depreciation method it chose at the time the asset was bought. The methods chosen could be "the straight line method," "the written-down value method," "the sum-of-years method" or "the double-declining method." The sum reduced from the asset's value is added to the deprecation allowance account. The money keeps accumulating there until the asset becomes obsolete and can no longer be used.

Purchase of New Asset

The money collected in the account enables the purchase of a new asset when the old one can longer be used. Each asset of the company has its own depreciation and allowance for depreciation accounts. The depreciation allowance account is also referred to as the "accumulated depreciation account." This account contains the sum total of the entire amount that has already been written off on the asset. The asset's value contained in the company's balance sheet is the price for which the asset was purchased minus the depreciation allowance until date.

Financial Statements and Depreciation Allowance

The depreciation allowance account usually does not appear on the company's balance sheet. The value of every asset is shown as its "Net Value." The net value of the asset is the value of the asset at the beginning of the year from which the depreciation amount for this year has been deducted. The depreciation allowance account is shown in the company's annual reports and not on its balance sheet.

Benefits of Depreciation Allowance

By using depreciation allowance, the company at all times is able to project a true picture of its finances. The assets are neither over-priced nor under-priced owing to the depreciation allowance. Also, the company is able to enjoy tax benefits due to depreciation allowance. The government does not charge taxes on the depreciation that companies provide on their assets. The money saved by the company is either paid to its shareholders as dividends or put back into the company for further expansion.

4 Tax evasion and tax avoidance

What Is Tax Avoidance?

Definition of Tax Avoidance

An arrangement made to beat the intent of the law by taking unfair advantage of the shortcomings in the tax rules is known as Tax Avoidance. It refers to finding out new methods or tools to avoid the payment of taxes which are within the limits of the law.

This can be done by adjusting the accounts in a manner that it will not violate any tax rules as well as the tax incurrence will also be minimised. Formerly tax avoidance is considered as lawful, but now it comes to the category of crime in some special cases.

The only purpose of tax avoidance is to postpone or shift or eliminate the tax liability. This can be done investing in government schemes and offers like the tax credit, tax privileges, deductions, exemptions, etc., which will result in the reduction in the tax liability without making any offence or breach of law.

Definition of Tax Evasion

An illegal act, made to escape from paying taxes is known as Tax Evasion. Such illegal practices can be deliberate concealment of income, manipulation in accounts, disclosure of unreal expenses for deductions, showing personal expenditure as business expenses, overstatement of tax credit or exemptions suppression of profits and capital gains, etc. This will result in the disclosure of income which is not the actual income earned by the entity.

Tax Evasion is a criminal activity for which the assessee is subject to punishment under the law. It involves acts like:

- Deliberate misrepresentation of material facts.
- Hiding relevant documents.
- Not maintaining complete records of all the transactions.
- Making false statements.

Conclusion

Tax Avoidance and Tax Evasion both are meant to reduce the tax liability ultimately but what makes the difference is that the former is justified in the eyes of the law as it does not make any offence or breaks any law. However, it is biased as the honest tax payers are not fools, but they can also make arrangements for postponing unnecessary tax. If we talk about the latter, it is completely unjustified because it is a fraudulent activity, because it involves the acts which are forbidden by the law and hence it is punishable.