

Suggested Answers for CA Final IDT May 2016



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1. (a)

Divine Ltd. Manufactures product K which is a notified product under Section 4 A of central excise act, 1944.

Therefore, the assessable value of such goods shall be “**MRP – Abatement**”.

Section 4A applies only when the manufacturer is mandatorily required to print MRP on the goods. Moreover, in case of captive consumption no MRP is required to be printed hence value cannot be ascertained under section 4A. It will be determine under section 4 read with rule 8.

As per rule 8 of central excise valuation rule, 2000 where the goods are captively consumed its assessable value shall be 110% of cost.

Calculation of Assessable value and excise duty payable on 2000 units (8000-6000) as per section 4A.

MRP of units (2000 x 10)	20,000
Less:- Abatement @ 20%	4,000
Assessable value	16,000
Excise duty payable @ 12.5% (16,000 x 12.5%)	2000

Calculation of Assessable value as per rule 8 and excise duty payable on 6000 unit.

Cost of production(Refer working note 1) * 110%
i.e 30,000 * 110% = 33,000

excise duty @ 12.5% = 4125

therefore, total duty payable

Duty payable on 2000 units	2,000
Duty payable on 6000 units	4,125
Less:- CENVAT credit of duty paid on raw material	(1,800)
Total excise duty payable	4,325

Working note :- 1

Calculation of cost of production of 6000 unit. (As per CAS – 4)

Cost of direct material	18,800
Less: excise duty	1800
Add: Direct wages and salary	11,000
Add: Administrative cost (only production related)	5,000
Add: Research and development cost	8,000
Les: Sale of by - product	(1,000)
Total cost of production of 8000 unit	40,000

Therefore the cost of production of 6,000 unit = 40,000/8000*6,000 = 30,000

1(b)

Calculation of Value of taxable service and service tax payable by Mr. Navab.

Particular	Amount
Performing classical dance (not taxable as covered under mega exemption notification as consideration is less than 1 lakh)	--
Performing in television serial (Fully taxable)	2,80,000
Service as a brand ambassador	12,00,000
Coaching in recreational activities relating to art (not taxable as covered under mega exemption notification)	--
Activities in sculpture making (fully taxable)	3,10,000
Performing western dance (fully taxable)	90,000
Value of Taxable service	18,80,000
Service tax payable @ 14%	2,63,200

1(c)

Calculation of taxable service and service tax payable by Manogram Ltd.

Particular	Eligible Amount	Non-eligible
Service provided in its own brand name of 'Monogram'	2,85,000	
Service provided in the brand name of 'Tonogram'		6,40,000

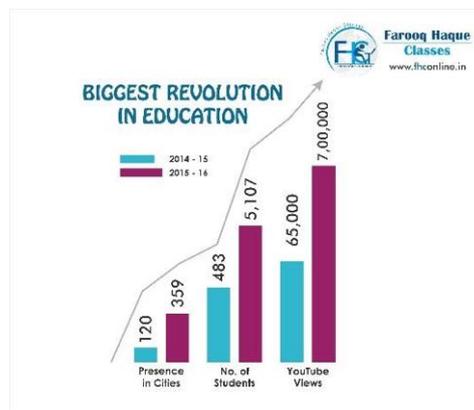
Consideration on transfer of Mall for which completion certificate has been obtained in June 2015 (Not a service as the whole consideration is received after the date of completion certificate)	--	
Advance received toward construction of residential unit (Taxable service subject to abatement of 75% as carpet area is not more than 1200 sq.feet and total consideration received is not more than 1 crore rs., therefore taxable value of service = 30,00,000 – 75%)	7,50,000	
Gross amount charged for transportation of goods in a single goods carriage (Exempt as covered under mega exemption notification as the value is less than 1500)	--	
Freight charges paid to goods transport agency (taxable on reverse charge basis) 46,000 – Rebate 70%		13,800
Total value of taxable service	10,35,000	6,53,800
Less:- Small scale industry exemption (upto 10 lakhs) (see note below)	10,00,000	Nil
Total taxable turn over	35,000	6.53,800
Service tax payable @ 14%		96,432

Note* As Monogram Ltd has started his business for the very first time he shall be eligible for small service provider exemption.

1(d)

Calculation of Assessable value and Basic custom duty payable by Mr. Backpack.

Particular	Amount
CIF Value (See note below)	5500
Less: Air Freight	500
Less: Insurance	600
FOB Value	4400
Add: Air freight (20% of FOB or Actual whichever is less)	500
Add: Insurance (Actual)	600
CIF Value	5500
Add: Handling charges @ 1 %	55
Landed cost	5555
Rupee value of landed cost (5555*102)(see note below)	5,66,610
Basic custom duty @ 10% (See note below)	56661



Q 2 (a)

Calculation of turnover of Urs. & Co. for determination of eligibility of SSI benefit.

Particular	Amount (in lakhs)
Value of clearance in the preceding financial year	665
Less: clearance of non-excisable goods	25
Less: Clearances to a unit in the STP without payment of duty and VAT	60
Less: Abatement eligible @ 30% on clearance of goods under section 4A (200 * 60%)	60
Turnover of Urs. & Co.	520

As the total turnover of Urs. & Co. is more than 400 lakhs, he shall not be eligible for SSI Exemption.

Note:-

1. Export to Nepal and Bhutan shall be included in the total turnover.
2. Value of goods u/s 4A = MRP – Abatement.
3. Value of Job-work not fulfilling the conditions u/n 84/94 & 214/186 is not to be reduced.

Q2(b)

Computation of taxable value of service and service tax payable by Mega star hotels Pvt. Ltd.

Particular	Amount
Rent from delux room [30x30x80% x (1200 -25% discount) [Taxable as the declared tariff is more than 1,000)= 6,48,000 – Abatement @40%	3,38,800
Rent from semi delux rooms with declared tariff of 800 – shall be exempt as covered under mega exemption notification	--
Receipt for serving food from Air – conditioned restaurant (6,00,000 - 2,00,000) * 40%	1,60,000
Goods sold on MRP basis across the counter shall not be taxable	
Gross receipt for serving food from Non – Air conditioned Restaurant (exempt as same is covered under Mega exemption notification)	--
Total value of taxable service	5,48,800
Service tax @ 14%	76,832

Q2(C)

Computation Of value of taxable service and service tax payable by Fortune Ltd.

Particular	Amount
Running a Boarding school (exempt as covered under mega exemption notification, assuming that the school is providing pre- School education and education upto higher secondary school or equivalent.	--
Service provided by way of renting of residential dwelling (Not taxable as same is covered under negative list)	--
Conducting Private tuition (Fully taxable)	16,00,000
Education service for obtaining a qualification recognised by law of a foreign country (fully taxable as same is not covered under negative list)	8,00,000
Conducting modular employable skill course, approved by National council of vocation training (Not taxable as same is covered under mega exemption notification)	--
Fees from prospective employers for campus interview (fully taxable)	6,00,000
Renting of furnished flats for temporary stay to different person (taxable value subject to abatement @ 40%, Assuming it as a hotel service) (6,00,000 – 40%)	3,60,000
Value of taxable service	33,60,000
Service tax payable @ 14%	4,70,400

2(d)

Calculation of custom duty including safeguard duty payable.

Particular	Amount
Value of importation of sodium nitrite from a developing country	30,00,000
Basic custom duty @ 10%	3,00,000
Total	33,00,000
Add: CVD of excise u/s 3(1)	4,95,000
Add: CESS @ 3% (3,00,000 + 4,95,000)*3%	23,850
Total	38,18,850
Add: Safeguard duty @ 30% of 30,00,000	9,00,000
Total duty payable (3,00,000+4,95,000+23,850+9,00,000)	17,18,850



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3(a)

Manufacturing takes place when a new identifiable product comes into existence. The same has to be entered in RG 1 register on daily basis.

However, in the given case, the assessee manufactured aerated water which in some cases is contaminated under filled, over filled, badly crowned and therefore is not entered in RG 1 register.

The assessee contends that as the goods are not marketable it cannot be considered as manufactured goods, consequently there was no requirement to enter the same in RG 1 register.

The facts of the case are similar to facts in the case of Amrit bottlers Pvt. Vs CCE (2014) where in Allahabad HC concluded that such bottles were not marketable goods and hence were not required to be entered in RG1 register and no duty was payable on them.

Therefore, the show cause notice issued by excise officer is not tenable in law.

3(b)

Outdoor catering service is a service where the service provider provides food, drink etc. on the requirement of service receiver.

In the given case NT Ltd. has appointed P to run a canteen in its premises for its employees. It also reimburses certain expenses for maintain and running the canteen.

P charges cash from customers for food and beverages.

Simply because consideration is received from customer, it does not mean that food sold to customer, is not a catering service, more so because the premises and other facility provided by NIT Ltd. It is clearly a catering service provided by P to NT Ltd.

The facts of the case are similar to **Indian Coffee Workers' Co-operative Society Limited v. CCE & ST 2014**, where the High court held that the assessee supplying food and beverages is a caterer. The company has engaged the assessee as a caterer. The fact of consumption of food and payment by customer is immaterial.

Hence Notice issued by the officer is correct. Assessee is liable to pay service tax.

3(c)

1. M/s Anila caterer has entered into contract with Mr. Rohit to provide catering service at Marriage ceremony of Rohit's daughter. It has also undertaken to provide other service of erection/ laying of pandal and shamiana and supply of crockery, furniture, sound system, lighting arrangement etc.

This clearly establishes that M/s Anila caterers is providing a bundle of service. As all the individual component of the bundled service are taxable, the bundled service will also be liable to service tax.

2. For the purpose of classification of bundled service, section 66F(3)(a) specifies that if various element of such service are naturally bundled in ordinary course of business, it shall be classified as that service which gives the bundle, its essential character. In the given case the catering service is giving the essential character and therefore it will be classified as catering service.

3(d)

The principal of natural justice requires that before any action is taken against the assessee, he should be served with show cause notice, must be given a reasonable opportunity of being heard, and the order must be a speaking order.

In the present case, the officer relied upon certain computer printout and concluded that the assessee has undervalued the imported goods. No copy of such print out was provided to the assessee and no opportunity to prove that printout were incorrect or there was no under valuation was given to the assessee. Hence the principal of natural justice were not followed. The fact of the case are similar to **Gira enterprise vs CCUS (2014) (SC)**. In the given case the apex court held, that mere existence of alleged computer printouts was not a proof of existence of comparable imports. Even if it was, such printout must have been supplied to the appellant and given reasonable opportunity to establish the two transaction were not comparable. In absence of such opportunity the order was quashed.

Hence the demand of differential duty and penalty and interest is not tenable in law.

4(a)(i)

- i. The authorized officer shall verify the premises physically within 7 days from the date of receipt of application through online. Where errors are noticed during the verification process or any clarification is required, the authorized Officer shall immediately intimate the same to the assessee for rectification of the error within 15 days of the receipt of intimation failing which the registration shall stand cancelled. The assessee shall be given a reasonable opportunity to represent his case against the proposed cancellation, and if it is found that the reasons given by the assessee are reasonable, the authorized Officer shall not cancel the registration to the premises.
- ii. On the physical verification of the premises, if it is found to be non-existent, the registration shall stand cancelled. The assessee shall be given a reason opportunity to represent his case against the proposed cancellation, and if it is found that the reasons given by the assessee are reasonable, the authorized Officer shall not cancel the registration to the premises recording the complete and correct address.

4(a)(ii)

Particular	Amount	Eligibility to claim Rebate of Duty
Duty payable on excisable goods used in the manufacture of other goods for being supplied to SEZ	18,000	Yes, as it is export
Duty payable on raw material used in the processing and supply as provision of stores to an aircraft flying to Australia. Processed goods are to be supplied at Mumbai Airport.	16,000	Yes, as it is export
Duty Payable on excisable goods and raw material used in manufacturing of such goods to be supplied to 100% EOU	6,000	No, as it is not export of goods

4(b)

As per the Amendment in section 73 by FA, 2015 w-e-f 14/May/2015, where the assessee shows any service tax payable in his return, on self-assessment, but has not paid the same, the recovery of such non-payment shall be made in the manner laid down in section 87. There is no need to issue any show cause notice u/s 73.

Hence the argument of Ragini is not valid.

4(c)

- i. The service by way of transportation of a patient in an ambulance by an entity which is not a clinical establishment or an authorized medical practitioner or paramedics is now covered under mega exemption notification, hence exempt from service tax.
- ii. Service by way of Goods Transport Agency (GTA) service provided for transport of exports goods by road from place of removal/ CFS, ICD to land customs station is covered under exemption notification number N/N 31/12 as amended by N/N 4/15. Hence exempt from service tax.

Q4(d)

As per the recent amendment of FA, 2015 w-e-f 14-5-2015, a proviso has been inserted in sub section (2) to lay down that where notice under section 28(1)(a) has been served (non-fraud cases), penalty will not be imposed if the proper officer is of opinion that the amount of duty along with interest leviable under section 28AA or the amount of interest, as the case may be, as specified in the notice, has been paid in full within 30 days from the date of receipt of the notice, and the proceedings in respect of such person or other persons to whom the notice is served will be deemed to be conducted.

In the given case the notice was **received on 24-8-2015**, and Mr, X paid the duty and interest along with penalty on **20-09-2015**, which is **within 30 days**.

Hence there is no liability to pay the penalty by Mr. X.

Q5(a)

No the statement is not true.

Only the proceeding under this Act or any other Act for the levy, assessment and collection of duty / tax, pending before an adjudicating authority on the date on which an application is made, can be settled by settlement commission.

Further in the following cases, application for settlement cannot be made-

1. A Proceeding for a fresh adjudication or decision upon remand by any court, Appellate Tribunal or any other authority, to the adjudicating authority.
2. Where the applicant has **filed returns** showing production, clearance and Central excise duty paid in the prescribed manner; Settlement Commission may allow the application after recording reasons for the same.
3. Applicant has not received the **show cause notice**
4. the **additional amount** of duty accepted by the applicant in his application is **< Rs.3 lakhs**;
5. the applicant has not **paid the additional amount** so accepted along with interest due under section 11AA :
6. if the case is **pending with the Appellate Tribunal or any court**;
7. where the application is for the **interpretation of the classification** of excisable goods under the CETA, 1985.

5(b)

- (a) Service by way of packing and labelling of agricultural product is exempt from tax as the same is covered under mega exemption notification.
- (b) Any person aggrieved any decision or order passed under this Act by the Central Excise Officer, lower in rank than a Commissioner, may appeal to the Commissioner of Central Excise (Appeals) within **2 months** from the date of the Communication to him of such decision or order: Provided that the commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of **2 months**, allow it to be presented within a **further period of 1 month**.

5(c)

The Air travel agent is entitled to pay service tax at compounded rate of tax, which is as follows:-

- @ 0.7% of basic fare in the case of domestic booking, and
- @ 1.4% of the basic fare in the case of international bookings

5(d)

Export Obligation: Export obligation means obligation to export product(s) covered by Authorisation/ permission in terms of quantity or value or both, as may be prescribed/specified by Regional or competent authority. Export obligation consists of average export obligation and specific export obligation.

Specific export obligation (Specific EO) under EPCG scheme is equivalent to 6 times of duty saved on capital goods imported under EPCG scheme, to be fulfilled in 6 years reckoned from Authorization issue-date. Specific EO is over and above the Average EO.

Note: In case countervailing duty (CVD) is paid in cash on imports under EPCG, incidence of CVD would not be taken for computation of net duty saved, provided CENVAT is not availed.

Average export obligation (Average EO) under EPCG scheme is the average level of exports made by the applicant in the preceding 3 licensing years for the same and similar products. It has to be achieved within the overall EO period (including extended period unless otherwise specified).

In case of indigeneous sourcing of capital goods, specific EO shall be 25% less than the EO mentioned above, i.e. EO will be 4.5 times (75% of 6 times) of duty saved on such goods procured.

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6(a)(i)

1. If a person who is required to furnish an **information return under section 15A** of Central Excise Act, 1944 fails to do so within the period specified in the notice issued thereunder, the prescribed authority may levy a **penalty of 100 for each day of the default**.
2. The time period allowed to rectify the defect in information return filed under section 15A is within **30 days** from the date of intimation of such defect to the said person. The period of 30 days can be extended further by the prescribe authority on request.

6(a)(ii)

- Where the assessee sold the goods to related person and the related person uses such goods for captive consumption, the assessable value of such goods is calculated as per rule 8 of Determination of Price of excisable goods Rule 2000.
Where the assessee value is = 110% of cost
Therefore, assessable value is i.e 110% of 60,000 = **66000**
- Where the assessee sold the goods to the person who is not a related person then subject to fulfilment of other condition the assessable value shall be the transaction value determined under section 4 i.e price actually paid or payable by the buyer
Therefore, in the present case the assessable value shall be **Rs. 50,000**

6(b)

Calculation of amount of refund of service tax paid on input service

Refund =

a. Balance in CENVAT A/c

Cenvat Credit availed	= 12,000
Service Tax on service rendered in DTA	14% of (45,000-15,000) = <u>4200</u>
Balance	7,800

OR

b. Maximum refund

$$= \frac{\text{turnover of output service exported}}{\text{Total turnover of output}} \times \text{service tax paid on input service}$$

$$= \frac{15,000}{45,000} \times 12,000 = 4,000$$

Therefore, refund of service tax paid on input service = 4,000 or 7,800, w-e-l i.e 4,000.

6(c)

As per explanation 3 to section 65B(44), an unincorporated association and its member are considered as distinct persons. it means any service given by one of them to the other, shall be liable to service tax, provided it falls within the definition of service and not covered by negative list or any exemption notification.

Hence in the given case, the argument of the member that the service given by the association to them is not liable to service tax on the principal of mutuality is not correct.

However, the capital contribution received from members by the association is not liable to service tax as it not a consideration for any taxable service.

Hence the action taken by the officer is tenable in the 1st case, but not in the 2nd case.

6(d)

Under SEIS scheme a service provider located in India and providing notified services which include accounting and auditing also is eligible for reward @ 5% on net foreign exchange earned, provided he attains net free foreign exchange earnings, in preceding FY of US\$ 10,000 (for individuals)

In the given case Mr Mukul is providing audit service and has received US\$. 12,000

Assuming that his net foreign exchange earning in the preceding FY was equal to more than 10,000 US\$, he will be entitled to **reward of 5% of 12,000 US\$.**

[Note: 2000 \$ received in INR is deemed to be received in foreign currency]

As per rule 6(3) where an assessee, has paid service tax on accrual basis on issue of invoice, but has not received the payment, and subsequently renegotiate the same due to deficiency in service and also issues a credit note for reduction in the billed amount, he is entitled to avail CENVAT credit of proportionate service tax.

This is done purely on self-assessment and there is no requirement of giving any intimation to the officer, in the present case the assessee Mr. Ganeriwala has renegotiated the invoice and has availed credit. The proper officer has disallowed the same on the ground of want of intimation which is absolutely incorrect.

On the assumption, that renegotiation is on account of deficiency in service [though not mentioned in the question] the action taken by proper officer is incorrect. More so, in many decided cases like BSNL Vs CCE (2012), The court have held that adjustment of excess service tax in subsequent month cannot be denied merely on technical ground.

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7(a)

As per rule 12D of Central Excise Rules, 2002, Every Merchant manufacturer of readymade garment is deemed to be the manufacturer and is required to **obtain registration, maintain accounts, pay duty** leviable on such goods and comply with all the provisions of these rules, as if he is an assessee. This rule is mandatory and does not allow the merchant manufacturer to delegate the responsibility to the job worker.

Therefore, the contention of textoprint Ltd. is not valid and he is liable to pay duty as if he is the assessee (Manufacturer).

7(b)

S.NO	Particular		Amount	CENVAT CREDIT available
1.	Input service P	Invoice dated 14-12-2014	88,000	88,000 (CENVAT credit can be taken)
2.	Input Service R	Invoice dated 14-7-2014	57,000	-- (CENVAT credit is not available as 1 year has expired from the dt. of invoice)
3.	Input Service K	Invoice missing	46,000	-- (CENVAT credit not available as cenvatable invoice is compulsory)
4.	Security service for guarding the office (on reverse charge basis)	Invoice dated 14-08-2015 value of service 1,60,000	22,400	22,400 (once the tax is paid on reverse charge basis cenvat credit will be allowed)

7(c)

- i. Service by way of Construction, erection, commissioning or installation of original works pertaining to an airport is now a taxable service as the same has been removed from mega exemption notification.
- ii. Service provided by way of admission to a national park is an exempt service as the same is covered under mega exemption notification.
- iii. The ambulance service provided by a Manpower recruitment agency can be examined under 2 assumptions
 1. if provided for use of its own workmen then will be a taxable service,
 2. if it is provided to the general public it will be exempt service as the same is covered under mega exemption notification.
- iv. Services by Mutual fund agent to mutual fund or Asset management company is now considered as service after Amendment of FA 2015. it is a taxable service.

7(d)

- I. 1st Appeal to CCEx (Appeals) = 7.5% of Duty i.e 7.5% of 16,00,000 = 1,20,000
- II. 2nd Appeal to CESTAT = 10 % of Duty i.e 7.5% of 24,00,000 = 1,80,000
- III. 1st Appeal to CESTAT = 7.5% of Duty i.e 7.5% of 36,00,000 = 2,70,000
- IV. There is no requirement of pre- deposit.

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