Advanced Tax Laws and Practice 376

Roll No…………………

Time allowed : 3 hours | *Maximum marks : 100*

Total number of questions : 8 | *Total number of printed pages : 8*

NOTE : *All the references to sections mentioned in Part-A and Part-C of the Question Paper relate to the Income-tax Act, 1961 and relevant Assessment Year 2012-13, unless stated otherwise.*

PART — A

(Answer ANY TWO questions from this part.)

1. (a) State, with reasons in brief, whether the following statements are true or false :

(i) The minimum penalty for failure to get accounts audited under section 44AB or furnish audit reports along with return of income is ₹1 lakh and is imposed by the assessing officer.

(ii) The minimum penalty for failure to deduct tax at source or failure to pay wholly or partly the tax under section 115-O(2) or second proviso to section 194-B is a sum equal to the amount of tax failed to be deducted or paid.

(iii) A non-resident company's tax liability arises in India when the resident company credit the royalty payable for the amount due before making payments to it outside India based on the contract which was signed and executed outside India.

(iv) It is mandatory for a corporate assessee to file a return in electronic form even if there is a loss or nil income as per section 139(1) read with section 139D.

(v) The law declared by the Supreme Court upon a judgment of a High Court is binding on that High Court only.

(2 marks each)

(b) "Assets which are included in the definition of 'intangible assets' under section 32(1)(ii) include, along with other things, any other business or commercial rights of similar nature; goodwill, when appositely understood, does convey a positive reputation built by a person/ company/business concern over a period of time and hence, it is an asset, eligible to depreciation."

Critically examine the proposition stated in the above para. Support your answer with relevant case law.

(5 marks)

2. (a) Lucent Ltd. purchased a machinery on 1st April, 2011 for ₹10 crore by availing 70% loan facility from bank. The machine was put to use into effective production on 1st February, 2012. The interest on loan works out to 12% per annum. Advise Lucent Ltd. on the treatment of interest payment made on this loan and depreciation allowable for the previous year 2011-12. You may assume that this is the only machine in its block.

(5 marks)

(b) Various houses owned by the assessee-company were allotted for the residential purposes to its employees having salaries less than ₹5 lakh per annum. The company claimed wealth-tax exemption in respect of the said houses (including the land appurtenant comprising of garden, pathway, tennis court, *etc*.). The department has denied such exemption. Examine whether the action of the department is tenable in law ? Cite relevant case law.

(5 marks)

(c) Can the Appellate Tribunal rectify the mistake in the following separate cases —

(i) if a different interpretation of law is available.

(ii) if a retrospective amendment is made to the provision.

(iii) if a subsequent decision of the Supreme Court is available on the subject after the Appellate Tribunal's order.

(iv) if a ruling cited before the Appellate Tribunal is not considered.

(v) if fresh grounds are raised before the Appellate Tribunal.

(1 mark each)

3. What is the difference between 'minimum alternate tax' under section 115JAA and 'alternate minimum tax' under section 115JC ? Who is subject to these taxes ? Also discuss the implication of these taxes in the case of an overseas entity having a permanent establishment (PE) in India.

(15 marks)

PART — B

(Answer Question No.4 which is compulsory and any two of the rest from this part.)

4. (a) Write the most appropriate answer from the given options in respect of the following :

(i) What is the source of power of levying VAT under the Constitution of India —
   (a) Entry 84 of List I
   (b) Entry 97 of List I
   (c) Entry 52 of List II
   (d) Entry 54 of List II.

(ii) National Calamity Contingent Duty of customs is not imposed on —
   (a) Mobile phones
   (b) Pan masala
   (c) Chewing tobacco
   (d) Cigarettes.

(iii) What is the amount of prescribed fees which should be accompanied with an application to settlement commission —
   (a) ₹500
   (b) ₹1,000
   (c) ₹2,500
   (d) ₹5,000.

(iv) Section 114 of the Customs Act, 1962 provides for levy of penalty in case of goods in respect of which any prohibition is in force not exceeding —
   (a) One time of the value of the goods
   (b) Three times of the value of the goods
   (c) Two times of the value of the goods
   (d) Four times of the value of the goods.

(v) Credit balance as on 31st January, 2012 is ₹75,000 and on 5th February, 2012 it is ₹87,000. Duty payable for January, 2012 is ₹90,000. How much credit can the assessee utilise from the CENVAT credit account —

(a) ₹87,000

(b) ₹75,000

(c) ₹37,500

(d) ₹43,500.

(1 mark each)

(b) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :

(i) Service tax is a ____________ based consumption tax on commercial activities.

(ii) Residual penalty for violation of CENVAT Credit Rules can be imposed _______ under Rule 15A of CENVAT Credit Rules, 2004.

(iii) Refund of export duty under section 26 of the Customs Act, 1962 is ____________ provisions of unjust enrichment.

(iv) Promissory estoppel plea fails where ____________ intervenes.

(v) _______ means the value of imported goods determined in accordance with Rule 8 of Customs Valuation (Determination of Price of Imported Goods) Rules, 2007.

(1 mark each)

(c) State whether the following goods are 'input' as per Rule 2(k) of the CENVAT Credit Rues, 2004 :

(i) All goods used for generation of electricity for captive use

(ii) Light diesel oil

(iii) Motor vehicles

(iv) Goods used for making of structures for support of capital goods

(v) Goods used for providing free warranty for final products.

(1 mark each)

(d) Pradhan imported a consignment valuing ₹8 lakh *vide* a bill of entry presented before the proper officer on 25th April, 2011 on which date the rate of customs duty was 10%. On Pradhan's failing to produce requisite documents for the purpose of assessment, the goods were provisionally assessed at a value of ₹8 lakh and the duty was paid accordingly on the same date. The goods were finally assessed at ₹12 lakh on 9th June, 2011 and the differential duty was paid on 12th June, 2011.

Compute the amount of interest, if any, under section 18 of the Customs Act, 1962.

(5 marks)

5. (a) Avon Plastic Ltd. is a company manufacturing plastic goods. It has two factories — one at Jaipur and another at Noida. Following information in respect of the two factories is available for the financial year 2011-12 :

		(₹ in lakhs)	
	Particulars	*Jaipur Factory*	*Noida Factory*
(i)	Goods cleared with own brand name	75	100
(ii)	Clearances of plastic containers bearing brand name of Jolly Jams (to pack jam by them)	45	70
(iii)	Goods cleared to 100% EOU against Form CT–3	90	80
(iv)	Export to Bhutan	50	60
(v)	Job work under Notification No.214/86–CE dated 25.03.1986	65	55
(vi)	Job work under Notification No.84/94–CE dated 11.04.1994	85	95

On the basis of above information, you are required to ascertain whether Avon Plastic Ltd. is eligible for the benefit of small scale exemption under Notification No.8/2003-CE dated 1st March, 2003 during the financial year 2011-12.

(6 marks)

(b) From the following information, compute the amount of basic customs duty and additional duty of customs payable under section 3(1) of the Customs Tariff Act, 1975 in respect of import of readymade garments :

— Assessable value under customs : ₹1,50,000;

— Tariff value notified under central excise for levy of excise duty : 45% of the retail sale price;

— Retail sale price : ₹4,00,000 (readymade garments are not notified under section 4A of the Central Excise Act, 1944);

— Basic customs duty : 10%;

— Central excise duty : 10%; and

— Education cess : as applicable.

(5 marks)

(c) Vishal has made an unauthorised import of 1,000 pieces of a product. Other particulars are as under :

Total assessable value	:	₹ 5,00,000
Total customs duty payable	:	₹ 1,20,000
Market price in India	:	₹ 1,000 per piece

Customs authorities have confiscated the said goods and importer has been given an option to get the said goods released on payment of a fine equal to margin of profit.

Compute — (i) amount of fine payable; and (ii) maximum amount of fine under section 125 of the Customs Act, 1962.

(4 marks)

6. (a) Menz Car Co. is manufacturing cars and discharging duty liability thereon by including cost of mandatory one year warranty in the transaction value of cars. An option was given to customers to obtain extended warranty for a further period of two years against payment of separate charges. This extended warranty was introduced by assessee and administered through dealers for which dealers were allowed commission. Such extended warranty charges were not included in assessable value.

The department contended that the same were includible in assessable value of manufactured cars. Discuss, in the light of decided case law, if any, whether contention of the department is tenable in law.

(5 marks)

(b) Explain the validity of the following statements with reference to Chapter IX of the Customs Act, 1962 containing the provisions relating to warehousing :

(i) Owner of any warehoused goods cannot carry on any manufacturing process or other operations in relation to warehoused goods.

(ii) Warehoused goods may be transferred from one warehouse to another warehouse.

(iii) The importer must execute a bond equal to the amount of duty assessed with necessary surety or security.

(2 marks each)

(c) Briefly discuss whether the following powers vest with the Commissioner (Appeals) under the Central Excise Act, 1944/Customs Act, 1962 :

(i) Remanding the case back to the adjudicating authority; and

(ii) Condoning the delay in filing appeal before him.

(2 marks each)

7. (a) What are the goods notified under section 3A of the Central Excise Act, 1944 liable to duty based on annual capacity of production ? Whether declaration of retail sale price is mandatory in case of such notified goods ?

(5 marks)

(b) Briefly explain with reference to section 11AC of the Central Excise Act, 1944 the circumstances under which penalty has to be imposed mandatorily. State whether it can be reduced statutorily.

(5 marks)

(c) Discuss the provisions of the Customs Act, 1962 relating to the determination of duty where imported goods consist of articles liable to different rates of duty.

(5 marks)

PART — C

8. Attempt ***any two*** of the following :

(i) You are a tax consultant to an overseas manufacturing company which is going to start a permanent establishment in India with manufacturing facility in Madurai District of Tamilnadu. Prepare a report for the Chairman of the company highlighting latest transfer pricing provisions applicable in India.

(10 marks)

(ii) Explain the provisions relating to 'advance ruling' in the Income-tax Act, 1961.

(10 marks)

(iii) How foreign institutional investors are taxed on the income and capital gains arising from the transfer of securities ?

(10 marks)

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