Answer Keys- Paper-I

DEPARTMENTAL EXAMINATION OF INSPECTORS OF CENTRAL EXCISE
(PAPER-I)CENTRAL EXCISE (Without Books)  Date : 21.06.2016

Time : 10.00 am To 1.00 PM

MAXIMUM MARKS: 100
PASS MARKS: 50

Note:
1. All Questions are compulsory.
2. Candidates have options to answer in Hindi.
3. Use of Mobile/Smart Phones is strictly prohibited during examination.

Q.No.1 Please indicate whether the following statements are TRUE or FALSE? All parts of this question are compulsory and each part is of one mark. [1x10]

(i) Payment of Central Excise duty can be made by utilizing the CENVAT Credit lying in balance at the end of the month of which excise duty is payable.
(ii) In the case relating to Rebate of duty, an appeal against the order of Commissioner (Appeals) lies before the Central Government.
(iii) Any decision or order passed or any summons or notices issued under Central Excise Act/ Rules may be served by sending it through the Courier approved by the Central Board of Excise and Customs.
(iv) First Stage Dealer is not bound to file monthly return with the Central Excise Department.
(v) The Central Government issues notification under Section 5A of Central Excise Act, 1944 granting exempting from payment of Central Excise duty.
(vi) Commissioner (Appeals) has power to condone delay in filing appeal only upto 30 days.
(vii) After Confiscation of goods, the property vests in the Central Government.
(viii) In case of valuation, an appeal against the CESTAT’s Order can be directly filed before the Supreme Court.
(ix) The Commissioner of Central Excise (Appeals) is not Adjudicating Authority.
(x) The Provisions of Central Excise Law have not been extended to Jammu and Kashmir.

Answers:

(i) True - Cenvat credit Rule 3 (4) of Cenvat Credit Rules 2004.
(ii) True - 35EE Section 35EE of Central Excise Act 1944.
(iii) True - Section 37 (2) of Central Excise Act 1944.
(v) True - Section 5A of Central Excise Act 1994.
(vi) True - 35 (1) of Central Excise Act 1944.
(viii) True - 35 L (2) of Central Excise Act 1944.
(ix) True - Section 2 (9) of CE Act 1944.
(x) False - Section 1 (2) of CE Act 1944.
Q.No.2  Fill in the blanks. All parts of the question are compulsory and are of one mark each. [1x5=5]

(i) The goods are not sold at factory gate but are transferred to premises of consignment agent, the assessable value of such goods shall be determined in accordance with Rule...... of ......

(ii) A person is getting his goods manufactured at another factory by sending the raw material to them and clearing the same from there. The assessable value of such goods shall be determined in accordance with Rule ..............of ..................

(iii) If the goods are classifiable under two or more headings of Central Excise Tariff Act, 1985, then the appropriate classification for such goods is to be determined in terms of Rule ...... of .....  

(iv) The rates for Special Excise Duty are specified under .................. to ..................................

(v) Adhoc exemption can be granted by issuing .................. in the Section 5 A (2) of the Central Excise Act, 1944.

Answers:

(iii) 3(a) of Rules for interpretation to Central Excise Tariff Act 1985.
(v) Special order in each case

Q.No.3  Please indicate the relevant section of the Central Excise Act, 1944 and /or Rules made there under which following subjects are governed :- [1x10=10]

(i) Compounded levy scheme  
(ii) Power to grant exemption from duty of excise  
(iii) Provisional attachment of property to protect revenue  
(iv) Power to arrest in Central Excise cases  
(v) Self-assessment of Central Excise duty  
(vi) Remission of Central Excise duty  
(vii) Confiscation & penalty for wrongful availment & utilization of Cenvat credit  
(viii) Rebate of duty paid on export of goods  
(ix) Removal of capital goods as such  
(x) Interest on delayed Refund

Answers:

(i) Section 3 A of Central Excise Act 1994.
(iii) Section 11DDA Central Excise Act 1994.
(iv) Section 13 Central Excise Act 1994.
Q.No.4  Indicate the legal authority for the levy and collection of any four of the following duties/Taxes/Cess? Also indicate the rate of tax and commodities which are subjected to this levy. Each part of the question is of three marks. 

(i) Levy of Education Cess
(ii) Levy of Secondary and Higher Education Cess
(iii) Infrastructure Cess
(iv) Clean Environment Cess
(v) NCCD

Answers:
(i) Clause 81,82 and 83 of Finance Bill (No. 2) 2004/Section 91,92 and 93 of the Finance Act (No. 2) 2004.
(iii) Clause 159 of the Finance Bill, 2016 / Section 162 of the Finance Act, 2016
(iv) Notification No.1/2010-Clean energy Cess dd.22.10.2010 vide section 83 and 84 read write 10th schedule to the Finance Act 2010 (14 of 2010)
(v) Section 136 of Finance Act 2001 for goods specified in seventh schedule.

Q.No.5  Answer any five parts of this question. Each question is of two marks. 

(i) What is the constitutional provision which allows Central Government to levy and collect Central Excise duty on manufactured goods?
(ii) What is the taxable event for levy of Central Excise duty under Central Excise Act, 1944?
(iii) What is the difference between Central Excise duty and VAT?
(iv) Which section of the Central Excise Act, 1944 provides for levy of Central Excise duty on goods manufactured in India?
(v) What is the charging section for goods manufactured and cleared into DTA by EOU?
(vi) What is the difference in Central Excise duty payable by EOU and non-EOU Unit in respect of goods manufactured by them?
Answers:

(i) Entry 84 of the union list (List I), Seventh schedule read with Article 246 of the constitution of India. The constitution assigns the power to collect excise duties on potable alcohol, alcoholic preparation and narcotic substances to the state.

(ii) Manufacture is Taxable event for levy of C.E. duty.

(iii) VAT (Sales Tax) is leviable on sale of goods whether actual or deemed while excise duty is a levy on a taxable event of manufacture of goods.

(iv) Section 3 of Central Excise Act, 1944.

(v) Section 3 of Central Excise Act, 1944.

(vi) Excise duty is payable as per Notification No.23/2003 C.E. dated 31.03.2003 by the EOU unit whereas duty is payable as per tariff rate which is applicable as per Notification if any, issued under Section 5(A).

Q.No.6 Each part of the Question is of 3 marks. All parts of the question are compulsory. Determine the assessable value for purpose of excise duty under the Central Excise Act, 1944 in the following cases:– [3x3=9]

(a) An assessee sells his excisable goods for Rs.120 per piece and does not charge any duty of excise in his invoice. Subsequently it was found that the goods were not exempted from excise duty but were liable at 20% ad valorem.

(b) Certain excisable goods were sold for Rs.120 per piece and 20% ad valorem is the rate of excise duty. Subsequently it was found that the price cum duty was in fact Rs.140 per piece as the assessee had collected Rs.20 per piece separately.

(c) The Cum duty price per piece was Rs.120 and the assessee had paid duty at 20% ad valorem. Subsequently it was found that the rate of duty was 30% ad valorem and assessee had not collected anything over and above Rs.120 per piece.

Answers:

(a) Assessable Value = cum duty selling price- permissible deduction / (1+ (Rate of duty)/100)

= 120 – 0 / (1+ (20)/100)

= 120 / (120/100)

= 120 * 100 / 120

= 12000 / 120

= Rs.100

(b) Assessable Value = cum duty selling price- permissible deduction / (1+ (Rate of duty)/100)

= 140/100 = 140*100/120 =700/6 == Rs.116.66

(c) Assessable Value = cum duty selling price- permissible deduction / (1+ (Rate of duty)/100)

= 120-0 / (1+ (30)/100

= 120/(130/100)

= 120 * 100 / 130

= 12000 / 130

= Rs.92.31
Q.No.7  Attempt all parts of the Questions. Each part is of 3 marks.  

(a) Explain the difference between exemption granted under section 5A (1) and 5A (2) of the Central Excise Act, 1944.

(b) An exemption notification issued under section 5A(1) of Central Excise Act, 1944 exempts Central Excise duty which is in excess of 5% of the duty leviable. The tariff rate is 20% adv. What will be the effective rate of duty in this case?

(c) A notification has been issued on 1.4.2016 under Section 5A (1) of the Central Excise Act, 1944 carries some ambiguity. To remove ambiguity, Government wants to add an explanation in this notification. What is the time limit within which it can be added and what would be its effective date?

Answers:

(a) Section 5A(I) of the Central Excise Act, general Exemption in public interest, is granted by Notification in official gazette.

Section 5A(II) of the Central Excise Act, Government may, by special order, in each case exempt from payment of duty of excise under Circumstances of an exceptional nature to be stated in such order, any excisable goods on which duty of excise is leviable.

(b) 5%

(c) One year, effective date would be date of issue of original notification. (Proviso 2 A of Section 5 A of Central Excise Act, 1944)

Q.No.8  M/s XYZ Pvt. Ltd. an unit registered with Central Excise department has filed ER-1 return for the month of April, 2016 showing duty payable as Rs.5,00,000 on 06.05.16. The assessee has deposited Rs.4,00,000 through Internet Banking on 6.5.2016. No payment has been made through Cenvat Credit account. Assuming the short payment has been made good on 15.5.16. Calculate the amount of interest the unit is liable to pay assuming that rate of interest is 18% per annum.

Answers:

Short payment as on 06.05.16 (Principal Amount) = Rs.1,00,000 (Rs.500000 - Rs.400000)

Rate of Interest per annum = 18%

Time [No. of Days from (06.05.2016 to 15.05.16)] = 9 Days / 365

Amount of Interest = Principal * Rate of Interest * Time
= 1,00,000 * 18/100 * 9/365
= 1,00,000*18*9/ 100*365
= 1,62,00,000 / 36500
= Rs.443.83
Q.No.9  M/s ABC Pvt. Ltd., is not eligible to avail exemption under a notification based on value of clearance in financial year, procured the following during the month of April, 2016.

<table>
<thead>
<tr>
<th>Items of Purchase</th>
<th>Duty Involved</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Raw material involving duty</td>
<td>- 1,00,000/-</td>
</tr>
<tr>
<td>(b) Manufacturing machine</td>
<td>- 5,00,000/-</td>
</tr>
<tr>
<td>(c) Light diesel Oil</td>
<td>- 50,000/-</td>
</tr>
<tr>
<td>(d) Furnace Oil for Generators</td>
<td>- 50,000/-</td>
</tr>
</tbody>
</table>

Determine the amount of Credit available with necessary explanation for treatment of these items for eligibility for availment of CENVAT Credit. [6]

Answers:

(i) Input credit Rs.1,50,000
(ii) Capital goods year 2016-17 Rs.2,50,000
(iii) No Credit admissible on light diesel oil.

Credit available for 2016-17 → 1,50,000+ 2,50,000+50,000=4,50,000
Credit available for 2017-18 → 2,50,000.

Q.No.10  M/s ABC, a private limited company, established a bottling plant within the municipal area of Kanpur for manufacturing of packaged drinking water of brand 'Kinley' and started manufacturing and clearance in the month of December, 2012. The owner of the brand 'Kinley' is M/s Coca Cola.

In the month of January, 2016, the Central Excise Officers searched the premises of M/s ABC under the authority of search warrant. On enquiry, the M.D. of the Company stated that they were exempt from payment of Central Excise duty being small scale manufacturer. His statement was recorded on the spot on 10.01.2016 under Section 14 of CEA, 1944 in which he admitted that Central Excise Registration has not been taken by them being a SSI unit and eligible for benefit and accordingly no Central Excise duty has been paid. He provided value of clearance of packaged drinking water as under:

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Value of Clearance</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012-13</td>
<td>= 50,00,000</td>
</tr>
<tr>
<td>2013-14</td>
<td>= 1,40,00,000</td>
</tr>
<tr>
<td>2014-15</td>
<td>= 1,00,00,000</td>
</tr>
<tr>
<td>2015-16</td>
<td>= 1,25,00,000</td>
</tr>
</tbody>
</table>

During stock verification, the stock of finished goods was found nil.

When explained to him, he admitted that he is not eligible for benefit of Notification No.8/2003-CX, dated 01.03.2003 and thus, liable for payment of Central Excise Duty.

In the light of above, answer following questions:-

(a) Calculate the Central Excise duty recoverable from the unit? [8]
(b) Write the provision of Central Excise Act, 1944 / Rules contravened by the manufacturer? [8]
(c) Draft charging paragraph of the SCN to be issued to the party. Mention legal authority for each of the action proposed against the noticee. [8]

Assume that the rate of Basic Excise duty during the period was 10%. Education Cess was 1% and Secondary & Higher Education Cess was 2%.
<table>
<thead>
<tr>
<th>Year</th>
<th>Value of clearance</th>
<th>Duty Rate</th>
<th>Duty</th>
<th>Education Cess (2%)</th>
<th>S. &amp; H. Education Cess (1%)</th>
<th>C. Ex. Duty recoverable (Year-1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012-2013</td>
<td>Rs.50,00,000</td>
<td>10% = 10/100</td>
<td>Rs.5,00,000/-</td>
<td>Rs.10,000/-</td>
<td>Rs.5,000/-</td>
<td>Rs.5,15,000/-</td>
</tr>
<tr>
<td>2013-2014</td>
<td>Rs.140,00,000</td>
<td>10% = 10/100</td>
<td>Rs.14,00,000/-</td>
<td>Rs.28,000/-</td>
<td>Rs.14,000/-</td>
<td>Rs.14,42,000/-</td>
</tr>
<tr>
<td>2014-2015</td>
<td>Rs.100,00,000</td>
<td>10% = 10/100</td>
<td>Rs.10,00,000/-</td>
<td>Rs.20,000/-</td>
<td>Rs.10,000/-</td>
<td>Rs.10,30,000/-</td>
</tr>
</tbody>
</table>
**2015-2016**

Value of clearance = Rs.1,25,00,000

Duty Rate = 10% = 10/100

Duty = Value of Clearance * Duty Rate

= 1,25,00,000 * 10/100

= Rs.12,50,000/-

Education Cess (2%) = Duty * Rate of Education Cess

= 1250000 * 2/100

= Rs.25,000/-

S. & H. Education Cess (1%) = Duty * Rate of S.& H. Education Cess

= 1250000 * 1/100

= Rs.12,500/-


= 1250000 + 25000 + 12500

= Rs.12,87,500/-

Total C. Ex. Duty recoverable = 5,15,000 + 14,42,000 + 10,30,000 + 12,87,500

(From the unit for 4 years) = Rs.42,74,500/-

(b) **Provisions Contravened**

(1) Section 6 of C.E. Act 1944 and Rule 9 of C.E. Rule 2002 Rule 4 of C.E. Rules 2002 in as much as they have not paid C.E. duty in the manner as provided under Rule 8 of the C.E. Rules.

(2) Rule 9 of CE Rules in as much as they have failed to seen registration under the rules despite being liable to pay duty.

(3) Rule 12 as much as they have failed to file prescribed statutory veluners.

(4) Rule 10 ibid is as much as they have failed to maintain daily notice account.

(5) Rule 11 ibid is as much as they have failed to issue proper invoice.

(c) **Charging Paragraph**

(i) Now, whereas, since the brand name ‘Kinley’ belongs to another person i.e. M/S Coca Cola, the claim for exemption from payment of CE. Duty under notification No.8/2003 C.E. dated 01.03.2003 is hit by exclusion clause. Therefore, it appears that the said M/s ABC is not entitled for small scale duty exemption as provided under Notification No.8/2003 C.E. dated 1.3.2003 and consequently appears to be liable to pay CE. Duty to the true of Rs.42,74,500 along with appropriate interest under section 11-A and section 11 AA the CE Act 1944 respectively on the entire quantity of packaging drinking water manufactured and cleared by them.

(ii) The manufacturer also appears to be liable for penal action in term of section 11 AC of CE Act 1944. The extended period as contained in section 11-A appears to be invocable against them as despite the fact that goods carrying brand name of others are not entitled for exemption as provided under Notification No. 8/2003 CE dated 1.3.2003, the manufacturer preferred not to pay duty in the garb of small scale exemption.
Further, it also appear that the said M/s ABC are also liable for penalty for contravention of the following provisions:

a. Rule 4 of the CE Rule 2002 is as much as they have not paid CE. Duty in the manner, as provided under Rate 8 of the CE Rules.
b. Rule 8 of the CE Rules 2002 is as much as they have not paid CE duty in accordance with the rules.
c. Rule 9 of ibid in as much as they have failed to seek registration under the rules despite being liable to pay duty.
d. Rule 12 ibid is as much as they have failed to file prescribed monthly return.
e. Rule 10 ibid is as much as they have failed to issue proper invoice
f. Rule 11 ibid in as much as they have failed to issue paper invoice

(iv) Now, therefore, the said M/s ABC Pvt. Ltd. is hereby required to show cause to the Add. Commissioner of Central Excise Kanpur within 30 days of receipt of this notice as to why:-

a. CE duty amounting to Rs.42,74,500 should not be demanded from them in terms of section 11A (4) of CE Act 1944.
b. (ii) Appropriate interest on the duty so not paid should not be demanded and recovered in terms of section 11-AA of CE Act 1944.
c. Penalty should not be imposed upon them in terms of section 11 AC of the r/w rate 25 of CE Rule 2002, for contravention of the various of CE rule as afore said.

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