

Multiple Choice

1. Answer (d)

Outsourcing decision is depending upon the quality, reliability, and relationships with suppliers. Further, design secrecy is also important for a publishing house due to copyright issue.

2. Answer (d)

As per section 186(2), no company shall directly or indirectly —

- (a) give any loan to any person or other body corporate;
- (b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and
- (c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,

exceeding sixty per cent. of its paid-up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more.

3. Answer (b)

Five per cent of 9+10+11 crores.

Section 181: The Board of Directors of a company may contribute to bona fide charitable and other funds:

4. Answer (d)

As per the proviso to Section 230(4) of the Companies Act, 2013, objection can be raised only by persons holding 10% or more of shareholding or having debt amounting 5% of the total outstanding debt as per the latest audited financial statement.

5. Answer- (a)

As per section 173(5) of the Companies Act, 2013, a One Person Company, small company, dormant company and a private company (if such private company is a start-up) shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days. (Inclusion of Private start up company was made vide notification 13th June 2017 by MCA)

6. Answer (a)

Foreign Trade Policy requires an importer/exporter to compulsorily have Import Export Code for import/export.

7. Answer (c)

According to section 46(3) of the Customs Act, 1962, the importer should present the bill of entry before the end of the next day following the day (excluding holidays) on which the aircraft/vessel/vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing.

8. Answer (d)

Buying commission is not includible in the assessable value of the imported goods in terms of rule 10(1)(a)(i) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

9. Answer (d)

Members of the same family, one person indirectly controlling the other person, employer and employee are all related persons in terms of clauses (viii), (v), (iii) respectively under rule 2(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

10. Answer (a)

As per third proviso to section 14 of the Customs Act, 1962, for export goods, the conversion in value shall be done with reference to the rate of exchange prevalent on the date of filing shipping bill (vessel or aircraft) or bill of export (vehicle) under section 50.

11. (a) Raman Bal is an ambitious person and wishes to diversify into an related area of content creation. To some extent the experience of the organization in creating designed contents precludes the printing work and a diversification into printing can be a natural extension. Moreover, the existing customer base can be developed as customer of new business. Thus the organization can make synergistical gains by entering into printing work.

At the same time the company is taking significant risk as the printing press would be a different kind of work that would require different skill sets. The company needs to make huge capital expenditure. As there is significant competition, the alternative of testing waters by outsourcing printing work could have been a viable alternative at least during the initial years. This way risk could have been reduced. Moreover, a new team with different skillsets would be required to manage the new business. There can be manpower challenges as the organization has no experience in the work related to printing press.

- (b) The categories of costs would be as follows:
- ◆ Environmental Prevention Costs– Those costs associated with preventing adverse environmental impacts. Examples include
 - Evaluating and picking pollution control equipment
 - Site and feasibility studies
 - Investment in protective equipment
 - ◆ Environmental Appraisal Costs– The cost of activities executed to determine whether products, process and activities are in compliance with environmental standards, policies and laws. Examples include
 - Regulatory compliances
 - Performing contamination tests
 - ◆ Environmental Internal Failure Costs – Costs incurred from activities that have been produced but not discharged into the environment. Examples include

- Recycling scrap
- Disposing toxic material i.e. printing ink
- ◆ Environmental External Failure Costs – Costs incurred on activities performed after discharging waste into the environment. These costs have adverse impact on the organisation's reputation. Examples include
 - Cleaning up
 - Restoration

12. As per section 135 of the Companies Act, 2013 for the applicability of the provisions of Corporate Social Responsibility to the Company following are the requirements:

- ◆ Every company having net worth of rupees five hundred crore or more, or
- ◆ turnover of rupees one thousand crore or more or
- ◆ a net profit of rupees five crore or more

during any financial year shall constitute a Corporate Social Responsibility Committee and the Board of every such company shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy, provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities.

It is further provided that if the company fails to spend such amount, the Board shall, in its report made under clause (0) of sub-section (3) of section 134, specify the reasons for not spending the amount.

The definition of net profits under Rule 2(f) of the Companies (CSR Policy) Rules, 2014 means the net profit of a company as per its Financial Statement prepared in accordance with the applicable provisions of the Act, but does not include the following namely:-

- (a) Any profit arising from any overseas branch or branch of the company, whether operated as a separate company or otherwise; and
- (b) Any dividend received from other companies in India which are covered and complying with the provisions of section 135 of the Act.

According to the above provisions, following are the answers to the above issues-

- (1) In terms of Section 135(5) of the Companies Act, 2013, the Board of every company to which section 135 is applicable, shall ensure that the company spends, in every Financial year at least 2 per cent of average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR policy. There is no provision for carry forward of excess expenditure to the next year(s). The words used in the section are 'at least'. Therefore, any expenditure over 2% would be considered as voluntary higher spending.
 - (2) Where all the branches located in India have not earned any profit since 2013-14 onward, meaning thereby all the net profits being earned by the Company pertains to the overseas branches. As provided in the definition of net profit, under the CSR Rules, it does not include the net profit earned by the overseas branch(s); therefore, the provisions of CSR for incurring expenses during the Financial Year 2016-17 are not applicable.
 - (3) In the light of the facts of the question and the related legal provisions, it is clear that though the company has spent 1.10 per cent of the average net profits of the Company made during the three preceding immediately financial years, which is not statutorily required for the Company to spend and as such there is no violation of the provisions of the Companies Act.
13. The customs duties/taxes payable on imported goods is computed in accordance with the provisions prescribed under Customs Act, 1962 read with Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Accordingly, the applicable customs duties/taxes are computed as under:

Computation of total custom duty/tax payable

Particulars	Amount (€)
CIF value (negotiated price) [Note-1]	7,60,000
Less: Air freight	10,000
Less: Insurance	<u>3,800</u>
FOB value	7,46,200
Add: Vendor inspection charges [Note-2]	Nil

Freight [Note-3]	10,000
Insurance [Note-4]	<u>3,800</u>
	7,60,000
Exchange rate is ₹ 102 per € [Note-5]	
	₹
Value in rupees	7,75,20,000
Add: Commission payable to local agent [1% of FOB value] [Note-6] = (€7,46,200 × ₹ 102) × 1%	7,61,124
Total (Assessable Value)	7,82,81,124
Add: Basic custom duty @ 10% (rounded off) [Note-7] [A]	78,28,112
EC and SHEC (3% of ₹ 78,28,112) [rounded off] [B]	2,34,843
Value for levying integrated tax	8,63,44,079
Integrated tax leviable under section 3(7) of Customs Tariff Act, 1975 @ 18% (rounded off) [Note 8] [C]	1,55,41,934
Total customs duty/tax payable [A]+[B]+[C]	2,36,04,889

Notes:

- As per section 14 of the Customs Act, 1962, the value of the imported goods is the transaction value, which means the price actually paid or payable for the goods. In this case, since the contract was re-negotiated and the importer paid the re-negotiated price, the transaction value would be such re-negotiated price and not the contract price.
- Only the payments actually made as a condition of sale of the imported goods by the buyer to the seller are includible in the assessable value under rule 10(1)(e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [Customs Valuation Rules]. Charges of vendor inspection on the goods carried out by foreign supplier on his own and not required for making the goods ready for shipment, are not includible in the assessable value of the imported goods [Bombay Dyeing & Mfg. v. CC 1997 (90) ELT 276 (SC)].

3. Actual amount incurred towards freight will be considered since air freight is not more than 20% of customs FOB value [Fifth proviso to rule 10(2) of the Customs Valuation Rules].
4. Actual insurance charges paid are includible in the assessable value as per rule 10(2)(b) of the Customs Valuation Rules.
5. Rate of exchange notified by CBEC on the date of filing of bill of entry will be considered as per third proviso to section 14 of the Customs Act, 1962.
6. Commission paid to local agent of the exporter (since it is not buying commission) is includible in the assessable value [Rule 10(1)(a)(i) of the Customs Valuation Rules].
7. As per proviso to section 15 of the Customs Act, 1962, rate of duty will be the rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later.
8. Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is levied on the sum total of the assessable value of the imported goods, customs duties and applicable education cess and secondary and higher education cess.

Input tax credit of import duties/taxes paid on import of goods

Goods and Service Tax (GST) Laws enable a supplier to avail credit of input tax charged on supply of goods and services used in the course or furtherance of business to be set off against the GST leviable on output supplies. Basic customs duty and education cesses leviable thereon do not fall within the scope of input tax as defined under section 2(62) of CGST Act. However, integrated tax charged on import of goods is input tax in terms of sub-clause (a) of section 2(62). Therefore, integrated tax amounting to ₹ 1,55,41,934 paid on import of the machinery will be available as input tax credit to the company.

The company cannot avail credit of basic customs duty and education cesses leviable thereon.

Tax optimization on second machinery

Since Quality e-Contents India (P) Ltd intends to export the designed and printed material to its foreign clients, it can avail the benefits extended to exporters under Foreign Trade Policy (FTP). Exports are promoted through various promotional schemes offered under FTP. The principle is that goods and services should be exported and not taxes. Hence, the taxes on

exports are either exempted or adjusted or refunded on both outputs and inputs, through schemes of Duty Exemption, Duty Refund (Drawbacks and Rebates).

Capital goods can be imported at NIL duty for the purpose of exports under Exports Promotion Capital Goods Scheme (EPCG). EPCG permits exporters to import capital goods for pre-production, production and post-production at zero customs duty or procure them indigenously without paying duty in the prescribed manner. In return, exporter is under an obligation to fulfill the export obligation (EO).

Import under EPCG scheme shall be subject to an export obligation equivalent to 6 times of duty saved on capital goods to be fulfilled in 6 years reckoned from the date of issue of authorization. Import of capital goods shall be subject to 'Actual User' condition till export obligation is completed. After export obligation is completed, capital goods can be sold or transferred.

There is one more scheme under FTP through which import duty on capital goods can be neutralised namely, Post Export EPCG Duty Credit Scrip(s). Under this scheme, capital goods can be imported on full payment of applicable duties in cash. Later, basic customs duty paid on Capital Goods is remitted in the form of freely transferable duty credit scrip(s). Duty remission shall be in proportion to the EO fulfilled. These Duty Credit Scrip(s) can be utilized in the similar manner as the scrips issued under reward schemes can be utilised.

Thus, Quality e-Contents India (P) Ltd can import the second machinery under EPCG scheme or Post Export EPCG Duty Credit Scrip scheme to neutralise the import duties.