

CA FINAL

INDIRECT TAX LAWS

Question Bank with Solutions

(Relevant for **MAY/NOV 2021** examination)

It covers:

- ✓ All ICAI SM Questions
- ✓ All RTP & MTP Questions upto Nov 20)
- ✓ All Past Exam Questions (upto Nov 19)
- ✓ All Additional Questions given by ICAI

This Question Bank has been prepared by **CA AMIT KHANDAL**. He has more than 15 years of Practical & Teaching experience in Indirect Taxes.

It contains **More than 550 Questions**. **Part I contains 400+ GST Questions and Part B contains 150+ Custom Act Questions**. The solutions of all the questions in this question bank are as per ICAI.

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Question 1

In case of local supply of goods/ services, the supplier would charge dual GST i.e., CGST and SGST at specified rates on the supply.

Answer:

Supply of goods/ services by A to B

Particular	Amount (in)
Value charged for supply of goods/ services	10,000
Add: CGST @ 9%	900
Add: SGST @ 9%	900
Total price charged by A from B for local supply of goods/ services	11,800

The CGST & SGST charged on B for supply of goods/ services will be remitted by A to the appropriate account of the Central and State Government respectively.

A is the first stage supplier of goods/ services and hence, does not have credit of CGST, SGST or IGST.

Supply of goods/services by B to C - Value addition @ 20%

B will avail credit of CGST and SGST paid by him on the purchase of goods/ services and will utilize such credit for being set off against the CGST and SGST payable on the supply of goods/ services made by him to C.

Particular	Amount (in)
Value charged for supply of goods/ services (10000x120%)	12000
Add: CGST @ 9%	1080
Add: SGST @ 9%	1080
Total price charged by B from C for local supply of goods/ services	14160

Particular	Amount (in)
CGST payable	1080
Less: Credit of CGST	900
CGST payable to Central Government	180
SGST payable	1080
Less: Credit of SGST	900
SGST payable to State Government	180

Note: Rates of CGST and SGST have been assumed to be 9% each for the sake of simplicity.

Statement of revenue earned by Central and State Government



Transaction	Revenue to Central Government	Revenue to State Government
Supply of goods/services by A to B	900	900
Supply of goods/services by B to C	180	180
Total	1080	1080

Inter-State Supply

Question 2

In case of inter-State supply of goods/ services, the supplier would charge IGST at specified rates on the supply.

1. Supply of goods/services by X of State 1 to A of State 1

Particular	Amount (in ₹)
Value charged for supply of goods/services	10000
Add: CGST @ 9%	900
Add: SGST @ 9%	900
Total price charged by X from A for intra-State supply of goods/services	11800

X is the first stage supplier of goods/services and hence, does not have any credit of CGST, SGST or IGST.

2. Supply of goods/services by A of State 1 to B of State 2 - Value addition @ 20%

Particular	Amount (in ₹)
Value charged for supply of goods/services (₹ 10000x120%)	12000
Add: IGST @ 18%	2160
Total price charged by A from B for inter-State supply of goods/services	14,160

Computation of IGST payable to Government

Particular	Amount (in ₹)
IGST payable	2160
Less: Credit of CGST	900
Less: Credit of SGST	900
IGST payable to Central Government	360

The IGST charged on B of State 2 for supply of goods/services will be remitted by A of State 1 to the appropriate account of the Central Government. State 1 (Exporting State) will transfer SGST credit of ₹ 900 utilized in the payment of IGST to the Central Government.

3. Supply of goods/services by B of State 2 to C of State 2 - Value addition @ 20%

B will avail credit of IGST paid by him on the purchase of goods/services and will utilize such credit for being set off against the CGST and SGST payable on the local supply of goods/services made by him to C.

Particular	Amount (in ₹)
Value charged for 14400 of goods/services (₹ 12000x120%)	14400
Add: CGST @ 9%	1296
Add: GGST @ 9%	1296
Total price charged by B from C for local supply of goods/services	16,992

Central Government will transfer IGST credit of ₹ 864 utilized in the payment of SGST to State 2 (Importing State).

Note: Rates of CGST, SGST and IGST have been assumed to be 9%, 9% and 18% respectively for the sake of simplicity.

Statement of revenue earned by Central and State Governments

Transaction	Revenue to Central Government (₹)	Revenue to Government of State 1 (₹)	Revenue to Government of State 2 (₹)
Supply of goods/services by X to A	900	900	
Supply of goods/services by A to B	360		
Transfer by State 1 to Centre	900	(900)	
Supply of goods/services by B to C			432
Transfer by central to State 2	(864)		864
Total	1296	Nil	1296

Question 3

Write a short note on various Lists provided under Seventh Schedule to the Constitution of India.

Answer:

The constitutional provisions in India on the subject of distribution of legislative powers between the Union and the States are defined under several articles; the most important in this regard being specifically under articles 245 & 246 of the Constitution of India. The Seventh Schedule to the Constitution of India defines and specifies allocation of powers and functions between Union & States. It contains three lists; i.e. 1) Union List, 2) State List and 3) Concurrent List

Union List

The Union List is a list of 98 (Originally 97) numbered items as provided in the Seventh Schedule to the Constitution of India. The Union Government or Parliament of India has exclusive power to legislate on matters relating to these items.

State List

The State List is a list of 61 (Originally 66) items in the Schedule Seven to the [Constitution of India](#). The respective state governments have exclusive power to legislate on matters relating to these items.

Concurrent List

There are 52 (Originally 47) items currently in the list: This includes items which are under joint domain of the Union as well as the respective States.

Question 4

Discuss how GST resolved the double taxation dichotomy under previous indirect tax laws

Answer:

Before implementation of GST we have Excise Duty, Service Tax and Customs as Indirect Taxes in India at Central Level.

Coming to States every state had its own VAT Laws (Value Added Tax).

In pre-GST regime you will not get credit of Interstate purchases in any State because Inter State purchases will be dealt by CST (Central State Tax).

As there are many laws governing a single transaction and we could not get credit of Tax paid in One law in other law.

But after GST Implementation all these laws were subsumed in to GST Except Customs duty we will be getting credit of all the taxes paid from the stage of Purchase of Raw Material to Stage of Finished Goods.

Question 5

Enumerate the deficiencies of the existing indirect taxes which led to the need for ushering into GST regime.

Answer:

The GST is a welcome step in the Indirect Taxation. The GST is a tax regime which will subsume various tax which are levied currently in India by the Center & the State Authorities. GST will ensure transparency in the indirect tax system and avoid double Taxation. The major change is the avoidance of double taxation which will help in reducing the prices. In the current regime, VAT is charged on an amount inclusive of Excise which happens to be tax on tax, increasing the prices. In the proposed GST regime, dealer will be eligible for Credit on tax paid by his supplier. As states in the Model GST Law as released by the government

The GST would be following matching concept i.e. Statement of Outward Supply filed by the supplier should be in sync with the Statement of Inward Supply filed by the recipient. If the supplier did not file a Statement of Outward Supply or makes an error in his Statement, the recipient would not be eligible for Credit and his return would be deemed to be invalid. The council needs to make sure that suitable mechanism is in place to ensure the taxpayers complying with all the provisions are not denied the benefit.

The GST is the new regime in India which will revolutionize the Indian Taxation System which will be key to bringing India in sync with the world taxation regime which has mostly adopted GST & better understanding in the International markets

Question 6

Discuss the dual GST model as introduced in India

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

Question 7

List the Central and State levies which have been subsumed in GST in India.

Answer:

Central Indirect Taxes:

Following Central Indirect Taxes and Levies would be subsumed in GST:

- Central Excise Duty
- Additional Excise Duties
- Excise Duty levied under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955
- Service Tax
- Additional Customs Duty commonly known as Countervailing Duty
- Special Additional Duty of Customs
- Central Surcharges and Cess, so far as they relate to the supply of goods and services.

State Indirect Taxes:

Following State Indirect Taxes and Levies would be subsumed in GST:

- State Value Added Tax/Sales Tax
- Entertainment Tax (other than the tax levied by the local bodies)
- Central Sales Tax (levied by the Centre and collected by the States)
- Octroi and Entry Tax
- Purchase Tax
- Luxury Tax
- Taxes on lottery
- Betting and gambling
- State cess and surcharges insofar as they relate to supply of goods and services.

The above taxes are directly relatable to the supply of goods and services and fall in the supply chain from the point of procurement of the raw material to the consumption of the goods and services by the end customer.

Question 8

List some of the benefits that GST accrues to the economy.

Answer :

GST accrues following benefits to the economy:

- (a) Creation of unified national market:** GST has made India a common market with common tax rates and procedures. Further, it has removed the economic barriers resulting in an integrated economy at the national level.
- (b) Boost to 'Make in India' initiative:** GST has given a major boost to the 'Make in India' initiative of the Government of India by making goods and services produced in India competitive in the national as well as international market. This will make India a manufacturing hub.
- (c) Enhanced investment and employment:** The subsuming of major Central and State taxes in GST, complete and comprehensive set-off of input tax on goods and services and phasing out of Central Sales Tax (CST) has reduced the cost of locally manufactured

goods and services. Resultantly, the competitiveness of Indian goods and services in the international market has increased which has given boost to investments and Indian exports. With a boost in exports and manufacturing activity, more employment is likely to be generated and GDP is likely to be increased.

Question 9

Explain with the help of examples how a particular transaction of goods and services is taxed simultaneously under Central GST (CGST) and State GST (SGST)?

Answer :

The Central GST and the State GST is levied simultaneously on every intra-State supply of goods or services or both made by registered persons except the exempted goods and services as well as goods and services which are outside the purview of GST. Further, both are levied on the same price or value. The same can be better understood with the help of following examples:

Example I: Suppose that the rate of CGST is 10% and that of SGST is 10%. When a wholesale dealer of steel in Uttar Pradesh supplies steel bars and rods to a construction company which is also located within the same State for, say

₹ 100, the dealer would charge CGST of ₹ 10 and SGST of ₹ 10 in addition to the basic price of the goods. He would be required to deposit the CGST component into a Central Government account while the SGST portion into the account of the concerned State Government (viz. U.P.). It is important to note that he might not actually pay ₹ 20 (₹ 10 + ₹ 10) in cash as he would be entitled to set-off this liability against the CGST or SGST paid on his eligible purchases (inputs, input services and capital goods) assuming that all his purchases are intra-State. However, for paying CGST, he would be allowed to use only the credit of CGST paid on his purchases while for U.P. GST he can utilize the credit of U.P. GST alone. In other words, CGST credit cannot, in general, be used for payment of SGST. Nor can SGST credit be used for payment of CGST.

Example II: Suppose, again the rate of CGST is 10% and that of SGST is 10%. When an advertising company located in Mumbai supplies advertising services to a company manufacturing soap also located within the State of Maharashtra for, let us say ₹ 100, the ad company would charge CGST of ₹ 10 as well as Maharashtra GST of ₹ 10 at the basic value of the service. He would be required to deposit the CGST component into a Central Government account while the Maharashtra GST portion into the account of the Maharashtra Government. He might not actually pay ₹ 20 (₹ 10+₹ 10) in cash as it would be entitled to set-off this liability against the CGST or SGST paid on his eligible purchases (say, of inputs such as stationery, office equipment, services of an artist etc.) assuming that all his purchases are intra-State. However, for paying CGST, he would be allowed to use only the credit of CGST paid on its purchase while for Maharashtra GST, he can utilise the credit of Maharashtra GST alone. In other words, CGST credit cannot, in general, be used for payment of SGST. Nor can SGST credit be used for payment of CGST.

Question 10

Why was the need to amend the Constitution of India before introducing the GST?

Answer :

Earlier, the fiscal powers between the Centre and the States were clearly demarcated in the Constitution with almost no overlap between the respective domains. The Centre had the powers to levy tax on the manufacture of goods (except alcoholic liquor for human consumption, opium, narcotics etc.) while the States had the powers to levy tax on the sale of goods. In the case of inter-State sales, the Centre had the power to levy the Central Sales Tax but the tax was collected and retained entirely by the States. As for services, it was the Centre alone that was empowered to levy service tax.

Introduction of the GST necessitated the amendments in the Constitution so as to simultaneously empower the Centre and the States to levy and collect this tax. The Constitution of India was amended by the Constitution (101st Amendment) Act, 2016 for this purpose. Article 246A of the

Constitution introduced thereby empowered the Centre and the States to simultaneously levy and collect the GST.

Question 11

GST is a destination-based tax on consumption of goods or services or both. Discuss the validity of the statement

Answer :

The given statement is valid. GST is a destination-based tax on consumption of goods or services or both. GST is known as destination-based tax since the tax would accrue to the taxing authority which has jurisdiction over the place of consumption which is also termed as place of supply.

For example, if A in Delhi produces the goods and sells the goods to B in Haryana. In this case, the tax would accrue to the State of Haryana and not to the State of Delhi. On the other hand, under pre-GST regime, origin-based taxation was prevailing in such cases. Under origin-based taxation, the tax used to accrue to the State from where the transaction originated. In the given case, under origin-based taxation, the central sales tax would have been levied by Centre and collected by the State of Delhi and not by the State of Haryana.

Question 12

Discuss the leviability of GST or otherwise on the following:

- (a) Alcoholic liquor for human consumption
- (b) Petroleum crude, diesel, petrol, ATF and natural gas
- (c) Tobacco
- (d) Opium, Indian hemp and other narcotic drugs and narcotics

Answer :

(a) Alcoholic liquor for human consumption: is outside the realm of GST. The manufacture/production of alcoholic liquor continues to be subjected to State excise duty and inter-State/intra-State sale of the same is subject to CST/VAT respectively.

(b) Petroleum crude, diesel, petrol, ATF and natural gas: As regards petroleum crude, diesel, petrol, ATF and natural gas are concerned, they are not presently leviable to GST. GST will be levied on these products from a date to be notified on the recommendations of the GST Council.

Till such date, central excise duty continues to be levied on manufacture/production of petroleum crude, diesel, petrol, ATF and

natural gas and inter-State/intra-State sale of the same is subject to CST/ VAT respectively.

(c) Tobacco: Tobacco is within the purview of GST, i.e. GST is leviable on tobacco. However, Union Government has also retained the power to levy excise duties on tobacco and tobacco products manufactured in India. Resultantly, tobacco is subject to GST as well as central excise duty.

(d) Opium, Indian hemp and other narcotic drugs and narcotics: Opium, Indian hemp and other narcotic drugs and narcotics are within the purview of GST, i.e. GST is leviable on them. However, State Governments have also retained the power to levy excise duties on such products manufactured in India. Resultantly, Opium, Indian hemp and other narcotic drugs and narcotics are subject to GST as well as State excise duties.

natural gas and inter-State/intra-State sale of the same is subject to CST/ VAT

respectively.

- (e) **Tobacco:** Tobacco is within the purview of GST, i.e. GST is leviable on tobacco. However, Union Government has also retained the power to levy excise duties on tobacco and tobacco products manufactured in India. Resultantly, tobacco is subject to GST as well as central excise duty.
- (f) **Opium, Indian hemp and other narcotic drugs and narcotics:** Opium, Indian hemp and other narcotic drugs and narcotics are within the purview of GST, i.e. GST is leviable on them. However, State Governments have also retained the power to levy excise duties on such products manufactured in India. Resultantly, Opium, Indian hemp and other narcotic drugs and narcotics are subject to GST as well as State excise duties.

Question 13

Under Goods and Services Tax (GST), only value addition is taxed and burden of tax is to be borne by the final consumer. Examine the statement.

Answer :

The statement is correct. Goods and Services Tax is a destination-based tax on consumption of goods and services. It is levied at all stages right from manufacture up to final consumption with credit of taxes paid at previous stages available as setoff. Resultantly, only value addition is taxed and burden of tax is to be borne by the final consumer.

Question 14

Which are the commodities which have been kept outside the purview of GST? Examine the status of taxation of such commodities after introduction of GST?

Answer :

Article 366(12A) of the Constitution as amended by 101st Constitutional Amendment Act, 2016 defines the Goods and Services tax (GST) as a tax on supply of goods or services or both, except supply of alcoholic liquor for human consumption. Therefore, alcohol for human consumption is kept out of GST by way of definition of GST in the Constitution. Five petroleum products viz. petroleum crude, motor spirit (petrol), high speed diesel, natural gas and aviation turbine fuel have temporarily been kept out of the purview of GST; GST Council shall decide the date from which they shall be included in GST. The erstwhile taxation system (CST/VAT & central excise) still continues in respect of the said commodities.

Question 15

Discuss Article 269A pertaining to levy and collection of GST on inter-State supply.

Answer :

Article 269A of the Constitution stipulates that Goods and Services Tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

Here, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

The amount so apportioned to a State shall not form part of the Consolidated Fund of India. Where an amount collected as IGST has been used for payment of SGST or vice versa, such amount shall not form part of the Consolidated Fund of India/State respectively. This is to facilitate transfer of funds between the Centre and the States.

Parliament is empowered to formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Discuss Article 246A which grants the power to make laws with respect to Goods and Services Tax.

Article 246A stipulates that Parliament, and, the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

However, in respect to petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel, the aforesaid provisions shall apply from the date to be notified by the Government on the recommendations by the GST Council.



Question 1

What is the taxable event under GST?

Answer:

Taxable event under GST is supply of goods or services or both. CGST and SGST/ UTGST will be levied on intra-State supplies. IGST will be levied on inter-State supplies.

Question 2

What is the tax treatment of composite supply and mixed supply under GST?

Answer:

Composite supply shall be treated as supply of the principal supply. Mixed supply would be treated as supply of that particular goods or services which attracts the highest rate of tax.

Question 3

Whether transfer of title and/or possession is necessary for a transaction to constitute supply of goods?

Answer:

Title as well as possession both have to be transferred for a transaction to be considered as a supply of goods. In case title is not transferred, the transaction would be treated as supply of service in terms of Schedule II (1) (b) of the CGST Act. In some cases, possession may be transferred immediately but title may be transferred at a future date like in case of sale on approval basis or hire purchase arrangement. Such transactions will also be termed as supply of goods.

Question 4

Examine whether the following activities would amount to supply under section 7 read with Schedule I of the CGST Act:

- a. Sulekha Manufacturers have a factory in Delhi and a depot in Mumbai. Both these establishments are registered in respective States. Finished goods are sent from factory in Delhi to the Mumbai depot without consideration so that the same can be sold.

Answer:

Title as well as possession both have to be transferred for a transaction to be considered as a supply of goods. In case title is not transferred, the transaction would be treated as supply of service in terms of Schedule II (1)(b) of the CGST Act. In some cases, possession may be transferred immediately but title may be transferred at a future date like in case of sale on approval basis or hire purchase arrangement. Such transactions will also be termed as supply of goods.

- b. Raman is an architect in Chennai. His brother who is settled in London is a well-known lawyer. Raman has taken legal advice from him free of cost with regard to his family dispute.

Answer: Schedule I of CGST Act, inter alia, stipulates that import of services by a taxable person from a **related person** located outside India, without consideration is treated as supply if it is provided in the course or furtherance of business. Explanation to section 15, inter alia, provides that

persons shall be deemed to be “related persons” if they are members of the same family. Further, as per section 2(49) of the CGST Act, 2017, family means, –

- i. the spouse and children of the person, and
- ii. the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person.

In the given case, Raman has received free of cost legal services from his brother. However, in view of section 2(49)(ii) above, Raman and his brother cannot be considered to be related as Raman’s brother is a well-known lawyer and is not wholly/mainly dependent on Raman. Further, Raman has taken legal advice from him in personal matter and not in course or furtherance of business. Consequently, services provided by Raman’s brother to him would not be treated as supply under section 7 of the CGST Act read with Schedule.

- c. Would your answer be different if in the above case, Raman has taken advice in respect of his business unit in Chennai?

Answer: In the above case, if Raman has taken advice with regard to his business unit, services provided by Raman’s brother to him would still not be treated as supply under section 7 of the CGST Act read with Schedule I as although the same are provided in course or furtherance of business, such services have not been received from a related person.

Question 5

State whether the following supplies would be treated as supply of goods or supply of services as per Schedule II of the CGST Act

- a) Renting of immovable property
- b) Goods forming part of business assets are transferred or disposed of by/under directions of person carrying on the business, whether or not for consideration.
- c) Transfer of right in goods without transfer of title in goods.
- d) Transfer of title in goods under an agreement which stipulates that property shall pass at a future date

Answer:

- a) Supply of services
- b) Supply of goods
- c) Supply of services
- d) Supply of goods

Question 6

Determine whether the following supplies amount to composite supplies

- a. A hotel provides 4 days-3 night’s package wherein the facility of breakfast and dinner is provided along with the room accommodation.
- b. A toothpaste company has offered the scheme of free toothbrush along with the toothpaste.

Answer:

Under composite supply, two or more taxable supplies of goods or services or both, or any combination thereof, are naturally bundled and supplied in conjunction with each other, in the ordinary course of business, one of which is a principal supply [Section 2(30) of the CGST Act]. In view of the same,

- (a) since, supply of breakfast and dinner with the accommodation in the hotel are naturally bundled, said supplies qualify as 'composite supply'.
- (b) since supply of toothbrush along with the toothpaste are not naturally bundled, said supplies do not qualify as 'composite supply'

Question 7

Whether goods supplied on hire purchase basis will be treated as supply of goods or supply of services? Give reason.

Answer:

Supply of goods on hire purchase shall be treated as supply of goods as there is transfer of title, albeit at a future date

Question 8

Diligent Force, a professional training institute, gets its training material of 'Aptitude Quotient' printed from 'Durga Printing House' - a printing press. The content of the material is provided by the Diligent Force who owns the usage rights of the same while the physical inputs including paper used for printing belong to the Durga Printing House.

Ascertain whether supply of training material by the Durga Printing House constitutes supply of goods or supply of services

Answer:

Circular No. 11/11/2017 GST dated 20.10.2017 has clarified that supply of books printed with contents supplied by the recipient of such printed goods, is composite supply and the question, whether such supplies constitute supply of goods or services would be determined on the basis of what constitutes the principal supply.

Principal supply has been defined in section 2(90) of the CGST Act, 2017 as supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

In the case of printing of books where content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore, such supplies would constitute supply of service.

Thus, in view of the above-mentioned provisions, the supply of training material by the Durga Printing House would constitute supply of services.

Question 9

Agrawal Carriers is a Goods Transport Agency (GTA) which is engaged in transportation of goods by road. As per the general business practice, Agrawal Carriers also provides intermediary and

ancillary services like loading/ unloading, packing/ unpacking, transshipment and temporary warehousing, in relation to transportation of goods by road. With reference to the provisions of GST law, analyze whether such services are to be treated as part of the GTA service, being a composite supply, or as separate supplies.

Answer:

Composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply [Section 2(30) of the CGST Act, 2017].

Mixed supply means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply [Section 2(74) of the CGST Act, 2017].

The various intermediary and ancillary services provided by GTA are not provided as independent services, but as ancillary to the principal service, namely, transportation of goods by road. The invoice issued by the GTA for providing the said service includes the value of intermediary and ancillary services. In view of this, if any intermediary and ancillary service is provided in relation to transportation of goods by road, and charges, if any, for such services are included in the invoice issued by Aggarwal Carriers, such service would form part of the GTA service, and thus will be composite supply, and not a mixed supply even though a single price is charged for the supply.

Further, if such incidental services are provided as separate services and are billed separately, whether in the same invoice or separate invoices, they will be treated as separate supply and not composite supply and there being no single price, the supply will also not be treated as mixed supply.

Question 10

M₹ Kajal, a registered supplier of Jaipur (Rajasthan), has made the following supplies in the month of January, 20XX:

- a. Supply of a laptop bag along with the laptop to a customer of Mumbai for ₹ 55,000 (exclusive of GST).
- b. Supply of 10,000 kits (at ₹ 50 each) amounting to ₹ 5,00,000 (exclusive of GST) to Ram Fancy Store in Kota (Rajasthan). Each kit consists of 1 hair oil, 1 beauty soap and 1 hair comb.
- c. 100 kits are given as free gift to Jaipur customers on the occasion of M₹ Kajal's birthday. Each kit consists of 1 hair oil and 1 beauty soap. Cost of each kit is ₹ 35, but the open market value of such kit of goods and of goods of like kind and quality is not available. Input tax credit has not been taken on the goods contained in the kit.
- d. Event management services provided free of cost to her brother for his son's marriage function in Indore (Madhya Pradesh). Cost of providing said services is ₹ 80,000, but the open market value of such services and of services of like kind and quality is not available.
- e. 1,400 chairs and 100 coolers hired out to Function Garden, Ajmer (Rajasthan) for ₹ 3,30,000 (exclusive of GST) including cost of transporting the chairs and coolers from M₹ Kajal's godown at Jaipur to the Function Garden, Ajmer.

M₹ Kajal has paid the cost of transportation of chairs and coolers to an unregistered Goods Transport Agency (GTA) [located in the State of Rajasthan] @ ₹ 20 (exclusive of GST) for each chair and each cooler and in turn, has charged ₹ 20 only for each chair and each cooler from Function Garden for transportation of the same.

Interest of ₹ 6,400 (inclusive of GST) was collected by M₹ Kajal in January from Ram Fancy Store, Kota for the payment received with a delay of 30 days.

Assume rates of GST to be as under:

S. No.	Particulars	Rate of CGST (%)	Rate of SGST (%)	Rate of IGST (%)
1.	Laptop	9	9	18
2.	Laptop bag	14	14	28
3.	Hair oil	9	9	18
4.	Beauty soap	14	14	28
5.	Hair comb	6	6	12
6.	Event management service	2.5	2.5	5
7.	Service of renting of chairs and coolers	6	6	12
8.	Transportation service	2.5	2.5	5

From the above information, compute the GST liability (CGST and SGST and/ or IGST, as the case may be) of M₹ Kajal for the month of January, 20XX

Answer:

S. No.	Particulars	Amount (₹)	CGST (₹)	SGST (₹)	IGST (₹)
(i)	Supply of laptop bag along with laptop to Mumbai customer [Being naturally bundled, supply of laptop bag along with the laptop is a composite supply which is treated as the supply of the principal supply [viz. laptop] in terms of section 8(a) of the CGST Act, 2017 and is an inter-State supply. Accordingly, IGST @ 18% will be charged]	55,000			9,900
(ii)	Supply of kits to Ram Fancy Store [It is a mixed supply and is treated as supply of that particular supply which attracts highest tax rate [viz. beauty soap] in terms of section 8(b) of the CGST Act, 2017. Also, it's an intra-State supply. Accordingly, CGST and SGST @ 14% each will be charged.]	505000	70700	70700	
	Further, interest of ₹ 6,400 charged for delayed payment as collected from Ram Fancy Store will be included in the value of supply in terms of section 15(2) of the CGST Act, 2017.				
	Therefore, total value of supply = ₹ 5,05,000 [₹ 5,00,000 + (₹ 6,400 × 100/128)]				

S. No.	Particulars	Amount (₹)	CGST (₹)	SGST (₹)	IGST (₹)
(iii)	Free gifts to customers [Cannot be considered as supply under section 7 read with Schedule I of the CGST Act as the gifts are given to unrelated customers without consideration]		Nil	Nil	Nil
(iv)	Event management services provided free of cost to brother for his son's marriage [Cannot be considered as supply under section 7 read with Schedule I of the CGST Act as the service is provided to unrelated person without consideration.] [Note-1]				
(v)	Chairs and coolers hired out to Function Garden [Since M ^{rs} Kajal is not a GTA, transportation services provided by her are exempt [Notification No. 12/2017 CT(R) dated 28.06.2017].	330000	19800	19800	
(vi)	However, since chairs and coolers are hired out along with their transportation, it is a case of composite supply wherein the principal supply is hiring out of chairs and coolers. Also, it's an intra-State supply. Accordingly, transportation service will also be taxed at the rate applicable for renting of chairs and coolers, viz. CGST and SGST @ 6% each.] [Note-2]	30000 (₹200×1500)	750	750	
	Transportation of chairs and coolers by GTA [GST on GTA services availed is payable under reverse charge mechanism since GST is payable @ 5%. Being an intra-State supply, CGST and SGST will be chargeable @ 2.5% each.]				
	Total GST Liability		91250	91250	9900

Note: As per section 2(30) of the CGST Act, 2017, composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies. Since in point (v), service of hiring out of chairs & coolers is taxable while transportation service is exempt (being provided by a person other than a GTA), it is possible to take a view that this is not a case of composite supply. In that case, the two services will be treated as independent services and taxed accordingly.

Question 11

Mr. Zombi, a supplier registered in Hyderabad (Telangana), procures goods from China and directly supplies the same to a customer in US. With reference to the provisions of GST law, examine whether the said activity of supply of goods by Mr. Zombi to customer in US is taxable under GST. If yes, determine the place of supply of the same

Answer:

Schedule III to the CGST Act specifies transactions/ activities which shall be neither treated as supply of goods nor supply of services. One of such activity/transaction is supply of goods from a place in

the non-taxable territory to another place in the non-taxable territory without such goods entering into India. Thus, it seeks to exclude from the tax net such transactions which involve movement of goods, caused by a registered person, from one non-taxable territory to another non-taxable territory.

Therefore, in view of the above-mentioned provisions, the said activity is not a supply. Hence, it is not leviable to GST since "supply" is the taxable event for chargeability of GST. Therefore, since the transaction is not leviable to GST, the question of place of supply does not arise in the given case.

Question 12

Satyamev Printers is a printing house registered under GST. It receives an order for printing 5000 copies of a book on yoga and meditation authored by a well-known yoga guru. The content of the book is to be provided by the yoga guru to Satyamev Printers. It is agreed that Satyamev Printers will use its own paper to print the said books.

You are required to determine the rate of GST applicable on supply of printed books by Satyamev Printers assuming that rate of GST applicable on printing services is 18% whereas the rate of GST applicable on supply of paper used in printing the books is 12%.

Answer:

Satyamev Printers is a printing house registered under GST. It receives an order for printing 5000 copies of a book on yoga and meditation authored by a well-known yoga guru. The content of the book is to be provided by the yoga guru to Satyamev Printers. It is agreed that Satyamev Printers will use its own paper to print the said books.

You are required to determine the rate of GST applicable on supply of printed books by Satyamev Printers assuming that rate of GST applicable on printing services is 18% whereas the rate of GST applicable on supply of paper used in printing the books is 12%.

Question 13

Answer the following questions:

- (a) Sudama Associates, a registered supplier, disposes the computers owned by the business without consideration and it has not claimed input tax credit on such computers.

Examine whether the disposal of computers by Sudama Associates qualifies as deemed supply under Schedule I of the CGST Act.

- (b) Prithvi Enterprises appoints Champak to procure certain goods from the market. Champak identifies various suppliers who can provide the goods as desired by Prithvi Enterprises, and asks a supplier - Satya Manufacturers to send the goods and issue the invoice directly to Prithvi Enterprises.

You are required to determine whether Champak can be considered as an agent of Prithvi Enterprises in terms of Schedule I of the CGST Act.

Answer :

(a) As per section 7(1)(c) read with Schedule I of the CGST Act, permanent transfer or disposal of business assets is treated as supply even though the same is made without consideration. However, this provision would apply only if input tax credit has been availed on such assets. Therefore, the disposal of computers by Sudama Associates is not a supply as the input tax credit has not been availed on the same.

(b) As per section 7(1)(c) read with Schedule I of the CGST Act, supply of goods by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal qualifies as supply even if the same is made without consideration. Further, Circular No.

57/31/2018 GST dated 04.09.2018 clarifies that principal-agent relationship falls within the ambit of the Schedule I only where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent. In that case, further provision of the said goods by the agent to the principal without consideration, would be covered in Schedule I and thus would qualify as supply.

In the given case, Champak is only acting as the procurement agent, and has in no way involved himself in the supply or receipt of the goods. The invoice is being issued in the name of Prithvi Enterprises and not Champak. Hence, Champak is not an agent of Prithvi Enterprises for the supply of goods in terms of Schedule I of the CGST Act

Question 14

Ajatasatru Industries enters into a contract with an actor - Chandragupta - to act as a brand ambassador of products manufactured by Ajatasatru Industries. The duration of the contract is 5 years and the contract fee payable to Chandragupta for being a brand ambassador is ₹ 50 lakh per annum. As per the terms of the contract, in case the contract is terminated by Chandragupta before the end of the contract period, Chandragupta will have to repay to Ajatasatru Industries, 50% of the contract fee received by him till the time of termination of contract.

At the end of 3rd year, Chandragupta terminates the contract with Ajatasatru Industries. He has received the contract fee for 3 years at the time of termination of contract.

You are required to determine whether the given transaction(s) qualifies(y) as supply(ies).

Answer :

As per section 7(1)(a), supply includes all forms of supply of goods or services or both made or agreed to be made for a consideration by a person in the course or furtherance of business. In the given case, Chandragupta has agreed to provide his services as a brand ambassador of the products manufactured by Ajatasatru Industries at an agreed annual consideration. Thus, his services fall within the purview of the term "supply" under GST where the consideration charged for such supply is ₹ 50 lakh per annum.

Further, section 7(1A) provides that when certain activities or transactions constitute a supply in accordance with the provisions of section 7(1), they shall be treated either as a supply of goods or supply of services as referred to in Schedule II of the CGST Act. Tolerating non-performance of a contract is an activity or transaction which is treated as a supply of service as per Schedule II and the person is deemed to have received the consideration in the form of fines or penalty and is, accordingly, required to pay tax on such amount.

In the given case, since Ajatasatru Industries is tolerating the act of Chandragupta of terminating the contract before the expiry of its contract period, 50% of contract fee for 3 years amounting to ₹ 75 lakh is being received by it as a penalty for the same. The act of tolerating the non-performance of a contract by Chandragupta by Ajatasatru Industries is a supply of service where the consideration charged for such supply is ₹ 75 lakh [50% of (₹ 50 Lakh × 3 years)]

Question 15

Shivaji Pvt. Ltd., a registered supplier, supplies the following goods and services for construction of buildings and complexes -

- excavators for required period at a per hour rate
- manpower for operation of the excavators at a per day rate
- soil-testing and seismic evaluation at a per sample rate.

The excavators are invariably hired out along with operators. Similarly, excavator operators are supplied only when the excavator is hired out For a given month, the receipts

(exclusive of GST) of Shivaji Pvt. Ltd. are as follows:

- Hire charges for excavators - ₹ 18,00,000
- Service charges for supply of manpower for operation of the excavator - ₹ 20,000
- Service charges for soil testing and seismic evaluation at three sites - ₹ 2,50,000

Compute the GST payable by Shivaji Pvt. Ltd. for the given month. Assume the rates of GST to be as under:

Hiring out of excavators - 12%

Supply of manpower services and soil-testing and seismic evaluation services - 18%

Answer :

Computation of GST payable by Shivaji Pvt. Ltd.

Particulars	Value received (₹)	Rate of GST	GST payable (₹)
Hiring charges for excavators	18,00,000	12%	2,16,000
Service charges for supply of manpower for operation of excavators [Refer Note 1]	20,000	12%	2,400
Service charges for soil testing and seismic evaluation [Refer Note 2]	2,50,000	18%	45,000
GST liability			2,63,400

Notes:

1. Since the excavators are invariably hired out along with operators and excavator operators are supplied only when the excavator is hired out, it is a case of composite supply under section 2(30) wherein the principal supply is the hiring out of the excavator.

As per section 8(a), the composite supply is treated as the supply of the principal supply. Therefore, the supply of manpower for operation of the excavators will also be taxed at the rate applicable for hiring out of the excavator (principal supply), which is 12%.

2. Soil testing and seismic evaluation services being independent of the hiring out of excavator will be taxed at the rate applicable to them, which is 18%.

Question 16

Vikramaditya is a salaried employee and is planning to invest in stocks. He has opened a trading account with Vaydaa Brokers. During the month, Vikramaditya undertook future contracts (without a physical delivery option, but are cash settled on the expiry of the contract date), amounting to

₹ 35,00,000. Vikramaditya needs your advice whether such future contracts undertaken by him amount to supply and are liable to GST.

Answer

For a transaction to fall within the purview of supply, it must be a supply of either goods or services or both. The definitions of the terms “goods” and “services” specifically exclude “securities” from their purview. Further, ‘derivatives’ are included in the definition of ‘securities’. As ‘derivatives’ fall in the definition of securities, they are neither goods nor services and hence, are not liable to GST.

Future contracts are in the nature of financial derivatives, the price of which is dependent on the value of underlying stocks or index of stocks or certain approved currencies and the settlement happens normally by way of net settlement with no actual delivery.

Since future contracts are in the nature of derivatives, these qualify as ‘securities’ and thus, are not subject to GST.

In view of the above discussion, it can be inferred that since the future contracts undertaken by Vikramaditya are in the nature of derivatives, these qualify as ‘securities’ and do not qualify as supply and thus, are not subject to GST.

Question 17

Angad Private Ltd. is engaged in the business of distribution of construction material. As an incentive, Angad Private Ltd. pays an amount of ₹ 75,000 to its employees upon achieving a specified sales target. The incentive is part of the salary of the employees and applicable tax is deducted at source as per relevant income tax provisions. Angad Private Ltd. is of the view that GST is not leviable on such incentive paid to the employees. Whether the view taken by Angad Private Ltd. is correct?

Answer

Yes, Angad Private Ltd.’s view is correct. In terms of section 7(2) read with Schedule III of the CGST Act, services by an employee to employer in the course of or in relation to his employment shall not be treated as supply under GST. Further, the amount paid as incentive by Angad Private Ltd. is not in the nature of gift, and thus, is not covered under Schedule I of the CGST Act. In fact, in the given case, the incentive is part of the salary and is directly linked to the sales target. Therefore, the services provided by the employees in return of the incentive given to them shall not be treated as a “supply”.

In the light of above discussion, GST is not leviable on the incentive paid by Angad Private Ltd. to employees.

Question 18

Nandeeshwar Manufacturers sends certain category of yarn for processing to the job worker. The job worker undertakes the processing work on the yarn as per the requirement of Nandeeshwar Manufacturers. During the process, the job worker uses his own material also. The processed yarn is sold by Nandeeshwar Manufacturers directly from the job worker premises. Balance quantity of yarn and waste material is sent back by the job worker to Nandeeshwar Manufacturers. The job worker is of the opinion that he is using his own material also in the processing and hence the supply to Nandeeshwar Manufacturers is in the nature of supply of goods as well as services. Do you agree with the opinion of job worker?

Answer

No, the opinion of the job worker is not fully correct. Section 7(1A) provides that when certain activities or transactions constitute a supply in accordance with the provisions of section 7(1), they shall be treated either as a supply of goods or supply of services as referred to in Schedule II of the CGST Act. Any processing activity carried on any other person’s goods is treated as supply of service in terms of Schedule II. The job worker, in addition to the goods received from the principal, can use his own goods for providing the services of job work. These goods are not supply per se, but being used in the processing activity carried out by it.

Thus, the activity undertaken by the job worker, in the given case, squarely falls within the purview of Schedule II and shall be considered as supply of service by the job worker to Nandeeshwar Manufacturers.

Question 19

Mokshabhumi Industries has its manufacturing unit in the State of Maharashtra. It stores the finished goods manufactured by it at a depot located in the State of Gujarat. The depot is owned by Punyabhumi Ltd. – a related person of Mokshabhumi Industries. Punyabhumi Ltd. has not charged any consideration from Mokshabhumi Industries for usage of depot for storage purpose. Whether the storage of goods permitted by Punyabhumi Ltd. to Mokshabhumi Industries qualifies as supply under GST?

Answer

As per section 7(1)(c) read with Schedule I of the CGST Act, supply of goods or services or both between related persons without consideration when made in the course or furtherance of business qualifies as supply. Thus, the storage services provided by Punyabhumi Ltd. to Mokshabhumi Industries in course or furtherance of business qualifies as supply under GST even though no consideration has been charged for the same.

Question 20

Rob Shareholding Ltd., an approved intermediary, has entered into a transaction wherein certain securities were to be lent to Dhandhan Bank, under Securities Lending Scheme, 1997. Dhandhan Bank shall pay specified lending fee against such lending of securities to it. Explain the taxability of transactions involved in the Securities Lending Scheme, 1997.

Answer

Securities Lending Scheme, 1997 (hereafter referred to as SLS) facilitates the lending and borrowing of securities. Securities are neither covered in the definition of goods nor covered in the definition of services. Therefore, a transaction in securities which involves disposal of securities is not a supply in GST and hence not taxable.

However, SLS doesn't treat lending of securities as disposal of securities and therefore is not excluded from the definition of services. The lending fee charged from the borrowers of securities has the character of consideration and is taxable under GST. Apart from above, the activities of the intermediaries facilitating lending and borrowing of securities for commission or fee are also taxable separately [Circular No. 119/38/2019 GST dated 11.10.2019].

Question 21

Krishnadev is a trader based in India. Ramakrishna, brother of Krishnadev, is located in China and is also engaged in business of trading of goods. Krishnadev places an order with Ramakrishna for procurement of certain goods from local market in China. Before the shipment of goods from China to India, Krishnadev sold such goods to Christiano, a trader located in Brazil. The goods were subsequently shipped from China to Brazil. Comment on the taxability of transaction between Krishnadev and Christiano under GST in India.

Answer

The transaction between Krishnadev and Christiano is in the nature of merchant trading. As per Schedule III of the CGST Act, transactions involving sale of goods from a place in non-taxable territory to another place in non-taxable territory, without such goods entering into India, shall not be treated as supply under GST. Therefore, the transaction between Krishnadev and Christiano shall not be treated as supply and is thus not leviable to GST.

Question 22

Mohandas International entered into a transaction for import of goods from a vendor located in Italy. Due to financial issues, Mohandas International was not in a situation to clear the goods upon payment of import duty. Mohandas International sold the goods to Radhakrishnan Export House by endorsement of title to the goods, while the goods were in high seas. The agreement further provided that Mohandas International shall purchase back the goods in future from Radhakrishnan Export House. Discuss the taxability of transaction(s) involved, under the GST law.

Answer

As per Schedule III of the CGST Act, high seas sale transactions i.e. supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption shall not be considered as supply under GST. Thus, the sale of goods by Mohandas International to Radhakrishnan Export House in high seas shall not be liable to GST.

Further, the import duty including IGST shall be payable by Radhakrishnan Export House at the time of clearance of goods at port of import. In case the goods are sold back by Radhakrishnan Export House to Mohandas International at a subsequent point of time, the same shall be treated as normal domestic sale transaction and GST shall be applicable on the same subject to other conditions prescribed under GST Law.

Question 23

Mr. Happy has a huge residential property located at a prime location in Mumbai, Maharashtra. He has let out the 1st and 2nd floor to Mr. Peace for residential purposes in April. Mr. Peace surrenders his tenancy rights to Mr. Serene for a tenancy premium of ₹ 10,00,000 on 1st June. Mr. Serene has also paid the applicable stamp duty and registration charges on transfer of tenancy rights. Moreover, Mr. Serene has agreed to pay a monthly rent of ₹ 1,00,000 to Mr. Happy from June.

Determine the taxability of the transaction(s) involved in the given case, for the month of June.

Answer

Circular No. 44/2018 CT dated 02.05.2018 clarifies that the activity of transfer of tenancy right against consideration [i.e. tenancy premium] is squarely covered under supply of service liable to GST. It is a form of lease or renting of property and such activity is specifically declared to be a service in Schedule II i.e. any lease, tenancy, easement, licence to occupy land is a supply of services.

Although stamp duty and registration charges have been levied on such transfer of tenancy rights, it shall be still subject to GST. Merely because a transaction/supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the 'scope of supply' and from payment of GST.

The transfer of tenancy rights cannot be treated as sale of land/ building in Schedule III. Thus, it is not a non-supply under GST and consequently, a consideration for the said activity shall attract levy of GST. Services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST. Hence, in the given case, the tenancy premium of ₹ 10,00,000 received by Mr. Peace for surrendering his tenancy rights to Mr. Serene is liable to GST.

The circular further clarifies that since renting of residential dwelling for use as a residence is exempt [Entry 12 of Notification No. 12/2017 CT (R) dated 28.06.2017³²], grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt. Consequently, monthly rent ₹ 1,00,000 received by Mr. Happy

from Mr. Serene is exempt.

Question 24

(a) Rudraksh Kapoor, owner of Rudraksh Publishing House, Ghaziabad, U.P., donated some money to a Divyaprakash Charitable Trust in the memory of his late father. The Divyaprakash Charitable Trust constructed a room in the school run by it from such donation and wrote "Donated by Rudraksh Kapoor in the memory of his father" on the door of the room so constructed. Examine whether the money donated by Rudraksh Kapoor is leviable to GST.

(b) In the above question, if the Divyaprakash Charitable Trust had written on the door of the room constructed in the school run by it from the money donated by Rudraksh Kapoor "Donated by Rudraksh Publishing House, Ghaziabad, U.P.", would the given transaction/activity qualifies as supply.

Answer

Circular No. 116/35/2019 GST dated 11.10.2019 has clarified that in case of donations received by a charitable institution, when the name of the donor is displayed in recipient institution's premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). Donations received by the charitable organisations are treated as consideration only if there exists, quid pro quo, i.e., there is an obligation on part of recipient of the donation or gift to do anything (supply a service).

Thus, GST is not leviable where all the following three conditions are satisfied namely:

- Gift or donation is made to a charitable organization
 - Payment has the character of gift or donation
 - Purpose is philanthropic (i.e., it leads to no commercial gain) and not advertisement.
- (a) In the backdrop of the above discussion, since in the given case, the way the name of Rudraksh Kapoor is displayed on the door of the room constructed in the school run by Divyaprakash Charitable Trust, it is only an expression of gratitude and public recognition of Rudraksh's act of philanthropy and is not aimed at advertising or promoting his business. There is no reference/mention of his publishing house which otherwise would have got advertised.

Thus, the money donated by Rudraksh Kapoor is not a leviable to GST.

(b) In the given case, since the name of Rudraksh Publishing House has been displayed on the door of the room constructed in the school run by Divyaprakash Charitable Trust, it might be aimed at advertising or promoting his business. There is a direct mention of his publishing house which is being advertised. In such a case, it is a supply of service by Divyaprakash Charitable Trust for a consideration received in the form of donation.



Question 1

State person liable to pay GST in the following independent cases provided recipient is located in the taxable territory:

- a) Services provided by an arbitral tribunal to any business entity.
- b) Sponsorship services provided by a company to an individual.
- c) Renting of immovable property service provided by the Central Government to a registered business entity.

Answer:

- a) Since GST on services provided or agreed to be provided by an arbitral tribunal to any business entity located in the taxable territory is payable under reverse charge, in the given case, GST is payable by the recipient - business entity.
- b) GST on sponsorship services provided by any person to anybody corporate or partnership firm located in the taxable territory is payable under reverse charge. Since in the given case, services have been provided to an individual, reverse charge provisions will not be attracted. GST is payable under forward charge by the supplier - company.
- c) GST on services supplied by Central Government, State Government, Union territory/ local authority by way of renting of immovable property to a person registered under CGST Act, 2017 is payable under reverse charge. Therefore, in the given case, GST is payable under reverse charge by the recipient - registered business entity.

Question 2

A person availing composition scheme in Haryana during a financial year crosses the turnover of ₹ 1.5 crore during the course of the year i.e. he crosses the turnover of ₹ 1.5 crore in December? Will he be allowed to pay tax under composition scheme for the remainder of the year, i.e. till 31st March?

Answer:

No. The option to pay tax under composition scheme lapses from the day on which the aggregate turnover of the person availing composition scheme during the financial year exceeds the specified limit (₹ 1.5 crore). Once he crosses the threshold, he is required to file an intimation for withdrawal from the scheme in prescribed form within 7 days of the occurrence of such event.

Every person who has furnished such an intimation, may electronically furnish at the common portal, a statement in prescribed form containing details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn, within a period of 30 days from the date from which the option is withdrawn.

Question 3

Determine whether the supplier in the following cases are eligible for composition levy provided their turnover in preceding year does not exceed ₹ 1.5 Crore:

- d) Mohan Enterprises is engaged in trading of pan masala in Rajasthan and is registered in the same State.

- e) Sugam Manufacturers has registered offices in Punjab and Haryana and supplies goods in neighbouring States.

Answer:

- i. A supplier engaged in the manufacture of goods as notified under section 10(2)(e), during the preceding FY is not eligible for composition scheme. Ice cream and other edible ice, whether or not containing cocoa, Pan masala and Tobacco and manufactured tobacco & **Manufacturer of aerated water & supplier of aerated water cannot opt to pay tax under composition levy** substitutes are hereby notified. However, in the given case, since Mohan Enterprises is engaged in trading of pan masala and not manufacture and his turnover does not exceed ₹ 1.5 crore, he is eligible for composition scheme subject to fulfilment of specified conditions.
- ii. Since supplier of inter-State outward supplies of goods is not eligible for composition levy, Sugam Manufacturers is not eligible for composition levy.

Question 4

Subramanian Enterprises has two registered places of business in Delhi. Its aggregate turnover for the preceding year for both the places of business was ₹ 120 lakh. It wishes to pay tax under composition levy for one of the place of business in the current year while under normal levy for other. You are required to advise Subramanian Enterprises whether he can do so ?

Answer:

A registered person with an aggregate turnover in a preceding financial year up to ₹ 1.5 crore is eligible for composition levy in Delhi. Since the aggregate turnover of Subramanian Enterprises does not exceed ₹ 1.5 crore, it is eligible for composition levy in the current year. However, all registered persons having the same Permanent Account Number (PAN) have to opt for composition scheme. If one such registered person opts for normal scheme, others become ineligible for composition scheme. Thus, Subramanian Enterprises either have to opt for composition levy for both the places of business or under normal levy for both the places of business.

Question 5

Examine whether the suppliers are eligible for composition scheme in the following independent cases. Is there any other option available for concessional tax payment with any of these suppliers, wherever composition scheme cannot be availed?

- a) M/s. Devlok, a registered dealer, is dealing in intra-State trading of electronic appliances in Jaipur (Rajasthan). It has turnover of ₹ 130 lakh in the preceding financial year. In the current financial year, it has also started providing repairing services of electronic appliances.
- b) M/s. Narayan & Sons, a registered dealer, is running a "KhanaKhazana" Restaurant near City Palace in Jaipur. It has turnover of ₹ 140 lakh in the preceding financial year. In the current financial year, it has also started dealing in intra-State trading of beverages in Jaipur (Rajasthan).
- c) M/s. Indra & Bro, a registered dealer, is providing restaurant services in Uttarakhand. It has turnover of ₹ 70 lakh in the preceding financial year. It has started providing intra-State interior designing services in the current financial year and discontinued rendering restaurant services.

- d) M/s. Him Naresh, a registered dealer, is exclusively providing intra-State architect services in Uttarakhand. It has turnover of ₹ 40 lakh in the preceding financial year.

Answer:

As per section 10 of the CGST Act, 2017, the following registered persons, whose aggregate turnover in the preceding financial year did not exceed 1.5 crore, may opt to pay tax under composition levy:

- a) Manufacturer,
- b) Persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II (restaurant services), and Any other supplier eligible for composition levy.

Thus, essentially, the composition scheme can be availed in respect of goods and only one service namely, restaurant service. However, the scheme permits supply of other marginal services for a specified value along with the supply of goods and restaurant service, as the case may be. Such marginal services can be supplied for a value up to 10% of the turnover in the preceding year or ₹ 5 lakh, whichever is higher.

Further, the registered person should not be engaged in making any inter- State outward supplies of goods.

Furthermore, an option of availing benefit of concessional payment of tax has been provided to a registered person whose aggregate turnover in the preceding financial year is upto ₹ 50 lakh and who is not eligible to pay tax under composition scheme. Said person can pay tax @ 3% [Effective rate 6% (CGST+ SGST/UTGST)] on first supplies of goods and/or services up to an aggregate turnover of ₹ 50 lakh made on/after 1st April in any financial year (FY), subject to specified conditions vide Notification No. 2/2019 CT(R) dated 07.03.2019 as amended. One of such condition is that the registered person should not be engaged in making any inter-state outward taxable supplies.

In view of the above-mentioned provisions, the answer to the given independent cases is as under:-

- a. The turnover limit for composition scheme in case of Jaipur (Rajasthan) is ₹ 1.5 crore. Thus, M/s. Devlok can opt for composition scheme as its aggregate turnover is less than ₹ 1.5 crore and he is making intra-State supplies. Further, since the registered person opting for composition scheme can also supply services (other than restaurant services) for a value up to 10% of the turnover in the preceding year or ₹ 5 lakh, whichever is higher. Thus, M/s. Devlok can supply repair services up to a value of ₹ 13 lakh [10% of ₹ 130 lakh] in the current financial year.
- b. In the given case:-
 - i. the turnover in the preceding year is less than the eligible turnover limit, i.e. ₹ 1.5 crore.
 - ii. the supplier is engaged in providing restaurant service which is an eligible supply under composition scheme.
 - iii. the supplier wants to engage in trading of goods which is also an eligible supply under composition scheme.

Thus, M/s. Narayan & Sons is eligible for composition scheme.

- c. The turnover limit for composition scheme in case of Uttarakhand is ₹ 75 lakh. Further, a registered person who is exclusively engaged in supplying services other than restaurant services are not eligible for composition scheme. Thus, M/s. Indra & Bro cannot opt for composition scheme.

Further, the benefit of concessional tax payment under Notification No. 2/2019 CT (R) dated 07.03.2019 is available in case of a registered person whose aggregate turnover in the preceding financial year does not exceed ₹ 50 lakh.

Thus, in view of the above-mentioned provisions, M/s. Indra & Bro cannot avail the benefit of concessional tax payment as its aggregate turnover in the preceding financial year is more than ₹ 50 lakh.

- d. An service provider can opt for the composition scheme only if he is engaged in supply of restaurant services. The composition scheme permits supply of marginal services for a specified value, but only when the same are supplied along with goods and/ or restaurant service.

Since M/s. Him Naresh is exclusively engaged in supply of services other than restaurant services, it is not eligible for composition scheme even though its turnover in the preceding year is less than ₹ 75 lakh, the eligible turnover limit for Uttarakhand.

However, since M/s. Him Naresh is not eligible to opt for composition scheme, its aggregate turnover in the preceding financial year does not exceed ₹ 50 lakh and it is exclusively engaged in supply of intra-State services other than restaurant services, M/s. Him Naresh is entitled to avail benefit of concessional payment of tax under Notification No. 2/2019 CT (R) dated 07.03.2019.

Question 6

B & D Company, a partnership firm, in Nagpur, Maharashtra is a wholesaler of a taxable product 'P' and an exempt product 'Q'. The firm supplies these products only in the eastern part of Maharashtra

All the procurements (both goods and services) of the firm are from the suppliers registered under regular scheme in the State of Maharashtra. The firm pays tax under composition scheme.

B & D Company has furnished the following details with respect to its turnover (exclusive of taxes) and stock (exclusive of taxes):

Particulars	Turnover for the quarter ended 30.06.20XX (₹)	Turnover for the quarter ended 30.09.20XX (₹)
"P"	60,00,000	50,00,000
"Q"	17,65,000	17,00,000

Particulars	Stock for the quarter ended 30.06.20XX (₹)	Stock for the quarter ended 30.09.20XX (₹)	Stock as on 31.10.20XX (₹)
"P"	25,00,000	10,00,000	3,60,000
"Q"	10,00,000	2,00,000	1,20,000

The entire stock of the products 'P' and 'Q' available with the firm as on 30.09.20XX is purchased during the said half year except a consignment of product 'P' valuing ₹ 3,00,000, which was purchased in the April month of the preceding financial year. In the current financial year, in the month of October, no purchases were made, and the products were sold with a profit margin of 20% on sales [exclusive of taxes].

The extract of the only bill book maintained by the firm showed the following details

Bill No.	Date	Value of products (exclusive of Taxes)		
		"P" (₹)	"Q" (₹)	Total (₹)
2306	01.10.20XX	2,00,000	3,000	2,03,000
2307	01.10.20XX	1,36,000	2,250	1,38,250
2308	02.10.20XX	67,000	39,250	1,06,250
2309	03.10.20XX	58,750	33,750	92,500
2310	05.10.20XX	1,00,000	-	1,00,000
2311	06.10.20XX	94,000	6,000	1,00,000
2312	06.10.20XX	-	17,000	17,000
2313	08.10.20XX	50,000	6,000	56,000
2314	09.10.20XX	60,000	9,000	69,000
2315
.....
.....

The details of services availed by B & D Company is as follows:

Sr. No.	Particular	(₹)
i.	Freight paid to Goods Transport Agency during the period April 20XX to October 20XX. Assume equal amount of freight is paid each month on the 10 th day of each month. Also, assume that the goods for which the freight is paid on 10 th day of the month are transported between 11 th to 20 th day of the month.	1,40,000
ii.	Special packing charges paid to a Packing Company, having expertise in such specialized packing, during the period January 20XX to October 20XX. The packing charges are paid for the goods which are transported between 11 th to 20 th day of the month (as mentioned in point (i) above). The goods are packed on 10 th day and then transported from 11 th day onwards. Assume equal amount of packing charges are paid each month on the 9 th day of each month.	3,00,000

All the above amounts are exclusive of taxes, wherever applicable.

Compute the net GST liability of B & D Company for the period April, 20XX to October, 20XX under composition scheme showing calculations for each quarter separately.

Note: Make suitable assumptions wherever required. Rate of CGST and SGST on service of transportation of goods by GTA is 2.5% each. Stock is valued at cost price

Answer:

As per section 10(3) of the CGST Act, 2017 read with Notification No.14/2019 CT dated 07.03.2019 as amended, the option availed of by a registered person to pay tax under composition scheme shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds ₹ 1.5 crore [₹ 75 lakh in case of Special Category States except Assam, Himachal Pradesh and Jammu and Kashmir].

As per section 2(6) of the CGST Act, 2017, aggregate turnover means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same PAN, to be computed on all India basis but excludes CGST, SGST/UTGST, IGST and GST Compensation Cess.

In the given case, the firm is registered under the composition scheme in the State of Maharashtra. The aggregate turnover of the firm exceeds ₹ 1.5 crore on 03.10.20XX [aggregate of both taxable and exempt turnover from 01.04.20XX to 03.10.20XX, i.e. ₹ 1,50,05,000 (₹ 1,44,65,000 + ₹ 2,03,000 + ₹ 1,38,250 + ₹ 1,06,250 + ₹ 92,500)]

The inward supplies of goods transportation services in respect of which the firm has to pay tax under reverse charge have not been included in the aggregate turnover in terms of section 2(6) of the CGST Act, 2017. The tax is payable under reverse charge on such services as the applicable rate of tax on such services is given as 5% and not 12%, in which case the GTA would have been liable to pay tax under forward charge [Notification No. 13/2017 CT (R) dated 28.06.2017 as amended].

Thus, the firm will have to pay tax under regular scheme (Section 9 of the CGST Act, 2017) from 03.10.20XX

Output tax liability of B & D Company under composition scheme

During the period when the firm pays tax under composition scheme, i.e. from 01.04.20XX to 02.10.20XX, tax will be payable on quarterly basis and no ITC will be available [Section 10(4) read with sub-sections (2) and (7) of section 39 of the CGST Act, 2017]. Further, since the firm is trading in goods, tax will be payable @ ½% [Effective rate - 1% (½% CGST + ½% SGST)] of the turnover of **taxable** supplies of goods and services (i.e. 'P') in the State [Section 10(1) read with rule 7 of CGST Rues, 2017].

The tax liability for the quarters ended June, 20XX, September, 20XX and December, 20XX under composition scheme will be computed as under-

Particulars	Quarter ended 30.06.20XX (₹)	Quarter ended 30.09.20XX (₹)	Quarter ended 31.10.20XX (₹)
Turnover of 'P' (Taxable supplies)	60,00,000	50,00,000	4,03,000 [2,00,000 + 1,36,000 + 67,000]
CGST @ 0.5% [A1]	30,000	25,000	2015
SGST @ 0.5% [B1]	30,000	25,000	2015
Inward supply on which tax is payable under reverse charge [Service of goods transportation availed from a GTA @ 5%]	60,000 [(1,40,000/7)×3]	60,000 [(1,40,000/7)×3]	Nil [Paid on 10 th day for goods transported between 11 th to 20 th day of the month, so the same

CGST @ 2.5% [A2]	1,500	1,500	will be assessed under regular scheme]	-
SGST @ 2.5% [B2]	1,500	1,500		-
Total CGST [A1 + A2]	31,500	26,500	2015	
Total SGST [B1 + B2]	31,500	26,500	2015	
Total CGST liability for the period from 01.04.20XX to 02.10.20XX				60,015 [31,500 + 26,500 + 2015]
Total SGST liability for the period from 01.04.20XX to 02.10.20XX				60,015 [31,500 + 26,500 + 2015]

Question 6A

Keeping all the facts and figures of above unchanged, compute the ITC credited to the Electronic Credit Ledger of the B & D Company, when it exits composition scheme and becomes liable to pay tax under regular scheme, in accordance with the provisions of section 18(1)(c) of the CGST Act, 2017.

Following additional information is also available:

Particulars relating to capital goods owned by the firm	Date of purchase	Value (₹)	GST (₹)
Computers	01.02.20XX	2,00,000	36,000
Printers	January 1, two years prior to 01.01.20XX	80,000	14,400
Motor cycle used by the staff for collecting payments from the debtors	23.09.20XX	85,000	15,300
Furniture & fixtures	12.06.20XX	4,00,000	72,000
Air conditioner used in the office	15.10.20XX	2,00,000	36,000
Exhaust fan used in the godown	10.03.20XX	50,000	9,000

Note: The company has not claimed depreciation on the tax component of any of the capital goods (mentioned above) under the Income-tax Act, 1961. All the conditions necessary for availing the ITC have been complied with. Rate of CGST and SGST is 9% each.

Answer

As per section 18(1)(c) of the CGST Act, 2017 read with rule 40 of CGST Rules, 2017, where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day

Immediately preceding the date from which he becomes liable to pay tax under section 9. However, the credit on capital goods shall be reduced by 5% per quarter of a year or part thereof from the date of invoice.

Further, ITC on supplies of inputs and capital goods shall not be available after the expiry of one year from the date of issue of tax invoice [Section 18(2) of the CGST Act, 2017].

In the light of the above-mentioned provisions, the ITC credited to the Electronic Credit Ledger of the B & D Company on inputs held in stock and capital goods on 02.10.20XX will be computed as under:

Particulars		Amount (₹)
A. ITC on inputs		
Stock of taxable inputs as on 30.09.20XX [Since no tax is paid on exempt purchases, there does not arise any question of availing ITC on the same. Hence, stock of only taxable inputs are considered]		10,00,000
Add: Purchases [No purchases are made in October, 20XX]		Nil
Less: Cost of taxable goods sold from 01.10.20XX to 02.10.20XX [(₹ 1,00,000 + ₹ 31,250 + ₹ 43,750) x 80%]		<u>1,40,000</u>
Stock of taxable inputs as on 02.10.20XX [Since the bill numbers are in continuation, it can be concluded that no sales are missing from the extract]		8,60,000
Less: More than one year old stock		<u>3,00,000</u>
Stock of inputs on which ITC can be claimed		5,60,000
ITC of CGST @ 9%	[Since all purchases are intra-State and from the suppliers registered under regular scheme]	50,400
ITC of SGST @ 9%		50,400
B. ITC on capital goods		
Particulars	CGST @ 9% (₹)	SGST @ 9% (₹)
Computers [₹ 36,000 - (5% x 4 quarters)] ÷ 2	14,400	14,400
Printers [Being more than one year old, no ITC is available]	-	-
Motor cycle	-	-
[Section 17(5)(a) of CGST Act, 2017 allows ITC on motor vehicles only when the same are used: (1) for making taxable supply of- (i) further supply of such vehicles, (ii) transportation of passengers, (iii) imparting training on driving, flying, navigating such vehicles and		
BY CA DR AMIT KHANDAL		

(2) for transportation of goods. Since B & D Company is a trader and it does not use the motor cycle for transportation of goods, ITC thereon will not be available]		
Furniture and Fixtures [₹ 72,000 - (5% x 3 quarters)] ÷ 2	30,600	30,600
Air conditioner used in the office [Since purchased after 03.10.20XX, full ITC will be available and will be computed separately]	-	-
Exhaust fan used in the godown [₹ 9,000 - (5% x 4 quarters)] ÷ 2	3,600	3,600
ITC to be claimed on capital goods	48,600	48,600
Total ITC on inputs and capital goods credited to Electronic Credit Ledger on 02.10.20XX	99,000 [50,400 + 48,600]	99,000 [50,400 + 48,600]

Question 6 B

Keeping all the facts and figures of Q.6 and Q.6A unchanged, compute the GST liability of B & D Company payable from Electronic Credit Ledger and/or Electronic Cash Ledger, as the case may be, for the period covered under regular scheme.

Answer**Output tax liability of B & D Company under regular scheme**

From 03.10.20XX, firm will pay tax under regular scheme on monthly basis in terms of sub-sections (1) and (7) of section 39 of the CGST Act, 2017 and will be eligible to avail ITC on inputs held in stock and capital goods as on 02.10.20XX in terms of section 18 of the CGST Act, 2017 as also on goods and services procured on or after 03.10.20XX and used in the course or furtherance of business in accordance with section 16 of the CGST Act, 2017. However, since common input services and capital goods are used in effecting taxable supplies as well as exempt supplies, ITC attributable to the exempt supplies will need to be added to the output tax liability of the month of October, 20XX in terms of section 17(2) read with rules 42 and 43 of the CGST Rules, 2017 respectively. Further, since all the sales are made within the State (eastern part of Maharashtra), CGST and SGST @ 9% each will be payable on the outward supplies.

The tax liability for the month of October, 20XX under regular scheme will be computed as under-

Particulars	Value (₹)	CGST (₹)	SGST (₹)
Tax on outward supply of 'P' Taxable supplies from 03.10.20XX to 31.10.20XX chargeable to CGST and SGST 9% each [₹ 8,00,000 (Refer Working Note 4)]	6,25,000	56,250	56,250

Tax on inward supplies attracting reverse charge	20,000	500	500
GTA services availed chargeable to CGST and SGST @ 2.5% each (₹ 1,40,000 / 7)			
ITC reversal on input services [Refer Working Note 1 below]		363	363
ITC reversal on capital goods [Refer Working Note 2 below]		<u>126</u>	<u>126</u>
Total GST liability		57,239	57,239
Less: ITC [Refer Working Note 3 below]		56,739	56,739

Working Note 1

Particulars	Value (₹)	CGST (₹)	SGST (₹)
CGST & SGST @ 2.5% each paid under reverse charge on freight paid to GTA on 10.10.20XX (for the goods transported between 11.10.20XX & 20.10.20XX) will be available as ITC under regular scheme	20,000	500	500
CGST & SGST @ 9% each paid to Packing Agency on 09.10.20XX (for specialized packing to be carried out on 10.10.20XX on goods to be transported between 11.10.20XX & 20.10.20XX) will be available as ITC under regular scheme.	30,000	2,700	2,700
Total common credit		3,200	3,200
Common credit on input services attributable to exempt supplies (rounded off) Common credit on input services availed during the period under regular scheme x (Exempt turnover made during the period under regular scheme / Total turnover during the period under regular scheme) = ₹ 3,200 x ₹ 80,000 / ₹ 7,05,000 Turnover of 'Q' (exempt turnover) from 03.10.20XX to 31.10.20XX - ₹ 80,000 [Refer Working Note 4] Total turnover from 03.10.20XX to 31.10.20XX - ₹ 7,05,000 [Refer Working Note 4]		363	363

Working Note 2

Particulars	CGST @ 9% (₹)	SGST @ 9% (₹)
ITC claimed on capital goods on 02.10.20XX [Refer Ans. 13]	48,600	48,600
Air conditioner used in the office purchased on 15.10.20XX	<u>18,000</u>	<u>18,000</u>
Common ITC [Since all the capital goods are used for effecting both taxable and exempt supplies, the entire ITC on capital goods is common]	66,600	66,600
Common credit for a tax period [Common credit ÷ 60] (rounded off)	1,110	1,110
Common credit on capital goods attributable to exempt supplies (rounded off) Common credit on capital goods during the period under regular scheme x (Exempt turnover made during the period under regular scheme / Total turnover during the period under regular scheme) = ₹ 1,110 x ₹ 80,000 / ₹ 7,05,000	126	126

Working Note 3

Particulars	CGST (₹)	SGST (₹)
ITC on inputs and capital goods claimed on 02.10.20XX [Refer Ans. 13]	99,000	99,000
ITC on air conditioner used in the office purchased on 15.10.20XX	18,000	18,000
ITC on freight paid to GTA	500	500
ITC on packing charges	2,700	2,700
Total ITC available with the firm	1,20,200	1,20,200

Working Note 4

Particulars	Total turnover for the month of October, 20XX* (₹)	Turnover in the month of October under regular scheme [03.10.20XX-31.10.20XX] (₹)
'P'	8,00,000 [(10,00,000 - 3,60,000) x 125%]	6,25,000 [8,00,000 - 1,00,000 - 31,250 - 43,750]
'Q'	1,00,000 [(2,00,000 - 1,20,000) x 125%]	80,000 [1,00,000 - 3,000 - 2,000 - 15,000]
Aggregate turnover	9,00,000	7,05,000

Note - Turnover for October, 20XX will be computed as under:

*Turnover = Cost of goods sold** × 125% (20% margin on sales = 25% margin on cost)

**Cost of goods sold = Stock as on 30.09.20XX *less* stock as on 31.10.20XX (since no purchases are made after September, 20XX)

Question 7

XYZ Ltd., New Delhi, manufactures biscuits under the brand name 'Tastypicks'. Biscuits are supplied to wholesalers and distributors located across India on FOR basis from the warehouse of the company located at New Delhi. The company uses multiple modes of transport for supplying the biscuits to its customers spread across the country. The transportation cost is shown as a line item in the invoice and is billed to the customers with a mark-up of 2% on total amount of freight paid (inclusive of taxes).

Flour used for the production process is procured from vendors located in Madhya Pradesh on ex-factory basis. The company engages goods transport agencies (GTA) to transport the flour from the factories of the vendors to its factory located in New Delhi.

The company has provided the following data relating to transportation of biscuits and flour in the month of April 20XX:

- For sales within the NCR region (₹ 20,00,000), the company arranged a local mini-van belonging to an individual and paid him ₹ 54,000.
- For sales to locations in distant States (₹ 1,78,00,000), the company booked the goods by Indian Railways and paid rail freight of ₹ 3,17,000.
- For sales to locations in neighbouring States (₹ 55,00,000), the company booked the goods by road carriers (GTAs) and paid road freight of ₹ 3,73,000. Out of the total sales to neighbouring States, goods worth ₹ 10,00,000 were booked through a GTA which paid tax @ 12%. Freight of ₹ 73,000 was paid to such GTA.
- For purchase of flour from Madhya Pradesh (₹ 25,00,000), the company booked the goods by a GTA and paid road freight of ₹ 55,000.
- For purchase of butter from Punjab (₹ 15,00,000), the company booked the goods by a GTA and paid road freight of ₹ 35,000.
- For local purchase of baking powder, the company booked the goods by a GTA in a single carriage and paid road freight of ₹ 1,500.
- For transferring the biscuits (open market value - ₹ 4,00,000) to one of its sister concern in Rajasthan, the company booked the goods by a GTA and paid road freight of ₹ 40,000.

- i. Based on the particulars given above, compute the GST payable on the amount paid for transportation by XYZ Ltd. when it avails the services of different transporters
- ii. Compute the GST charged on transportation cost billed by the company to its customer

Note: - Assume the rate of GST on transportation of goods to be 5% [except where any other rate is specified in the question] and GST on supply of biscuits to be 12%.

Answer:

- i. **Computation of GST payable on amount paid for transportation by XYZ Ltd. when it avails the services of different transporters**

Particular	Freight [₹]	GST Payable [₹]
Transportation of biscuits in a local minivan belonging to an individual Only the transportation of goods by road by a GTA is liable to GST. Therefore, transportation of goods by road otherwise than by a GTA is exempt from GST - Notification No. 12/2017 CT(R) & 9/2017 IT (R) both dated 28.06.2017.]	54,000	Nil
Transportation of biscuits by Indian Railways	3,17,000	15,850
Transportation of biscuits by GTA [GST is payable by XYZ Ltd. under reverse charge in terms of section 5(3) of the IGST Act, 2017 read with Notification No. 10/2017 IT (R) dated 28.06.2017.]	3,00,000	15,000
Transportation of biscuits by GTA @ 12% [When the GTA pays tax @ 12%, tax is payable by the GTA under forward charge and not by the recipient under reverse charge - Notification No. 10/2017 IT (R) dated 28.06.2017.]	73,000	8,760
Transportation of flour by GTA		
[Services provided by GTA by way of transport (in a goods carriage) of, inter alia, flour are exempt from GST vide Notification No. 9/2017 IT (R) dated 28.06.2017.]	55,000	Nil
Transportation of butter by GTA [Though services provided by GTA by way of transport (in a goods carriage) of, inter alia, milk is exempt from GST vide Notification No. 9/2017 IT (R) dated 28.06.2017, road transport of butter will not be exempted as butter is milk product and not milk.	35,000	1,750
GST is payable by XYZ Ltd. under reverse charge in terms of section 5(3) of the IGST Act, 2017 read with Notification No. 10/2017 IT (R) dated 28.06.2017.]		
Transportation of baking powder by GTA [Services provided by a GTA by way of transport in a goods carriage of goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed ₹ 1,500, are exempt from GST vide Notification No. 9/2017 IT (R) dated 28.06.2017.]	1,500	Nil
Transportation of biscuits by GTA to sister concern [GST is payable by XYZ Ltd. under reverse charge in terms of section 5(3) of the IGST	40,000	2,000

Particular	Freight [₹]	GST Payable [₹]
Act, 2017 read with Notification No. 10/2017 IT (R) dated 28.06.2017.]		
Total tax payable by XYZ Ltd. on availing services of different transporters		43,360

ii. Computation of GST charged on transportation cost billed by XYZ Ltd. to its customers

Since XYZ Ltd. is supplying biscuits on FOR basis, the service of transportation of biscuits gets bundled with the supply of biscuits. Thus, the supply of biscuits and transportation service is a composite supply, chargeable to tax at the rate applicable to the principal supply (biscuits) i.e., 12% [Section 8(a) of the CGST Act, 2017 read with the definition of 'composite supply' under section 2(30) of the CGST Act, 2017 and 'principal supply' under section 2(90) of the CGST Act, 2017].

Particular	Freight paid [₹] [A]	GST paid on freight [₹] [B]	Freight billed (with mark-up@2% on [A] + [B]) (₹)	GST charged @ 12% [₹]
Transportation of biscuits in a local minivan belonging to an individual	54,000	-	55,080	6,610
Transportation of biscuits by Indian Railways	3,17,000	15,850	3,39,507	40,741
Transportation of biscuits by GTA	3,00,000	15,000	3,21,300	38,556
Transportation of biscuits by GTA @12%	73,000	8,760	83,395	10,007
Total tax charged by XYZ Ltd. on transportation cost billed to the customers*				95,914

*Note: It has been assumed that there is no mark-up on transportation cost billed to sister concern (non-customer).

Question 8

Shubhlaxmi Foods is engaged in supplying restaurant service in Maharashtra. In the preceding financial year, it has a turnover of ₹ 140 lakh from the restaurant service. You are required to advise Shubhlaxmi Foods whether it is eligible for composition scheme in the current year assuming that in the current financial year, his turnover is expected to be ₹ 130 lakh from supply of restaurant services and ₹ 10 lakh from the supply of farm labour in said State. Further, it also expects to earn bank interest of ₹ 20 lakh from the fixed deposits Also compute the estimated tax payable by Shubhlaxmi Foods in the current FY.

Answer:

As per section 10(1) of the CGST Act, 2017 read with Notification No. 14/2019 CT dated 7.03.2019, a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5



crore, may opt to pay, in lieu of the tax payable by him, an amount calculated at the specified rates if, inter alia, he is not engaged in the supply of services other than restaurant services.

However, the scheme permits supply of other marginal services for a specified value along with the supply of goods and restaurant service, as the case may be. Such marginal services can be supplied for a value up to 10% of the turnover in the preceding year or ₹ 5 lakh, whichever is higher.

It is important to note that the exempt services are included in the definition of aggregate turnover [Section 2(6) of the CGST Act, 2017]. However, Order No. 01/2019 CT dated 01.02.2019 has been issued to clarify that the value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account -

- i. for determining the eligibility for composition scheme under second proviso to section 10(1) i.e. supplying services of value not exceeding 10% of the turnover in the preceding financial year in a State or ₹ 5 lakh, whichever is higher;
- ii. in computing aggregate turnover in order to determine eligibility for composition scheme.

Thus, exempt services shall also be considered for determining the eligibility for composition scheme under second proviso to section 10(1) and in computing aggregate turnover in order to determine eligibility for composition scheme. The only exception is interest received from deposits, loans etc.

In the given case, the aggregate turnover of Shubhlaxmi Foods from restaurant services in the preceding FY is ₹ 140 lakh. Therefore, it is eligible to opt for composition scheme in the current FY.

Further, apart from restaurant services, it can provide services upto ₹ 14 lakh [i.e. 10% of ₹ 140 lakh or ₹ 5 lakh, whichever is higher], in the current FY. As already seen, bank interest of ₹ 20 lakh from fixed deposits will not be considered while determining this limit.

Further, Shubhlaxmi Foods is expected to provide the exempt services of supply of farm labour worth ₹ 10 lakh in current financial year. Thus, turnover of supply of farm labour [₹ 10 lakh] alongwith the turnover of restaurant services [₹ 130 lakh] will be eligible for composition scheme, in the current financial year. Tax rate applicable for restaurant services under composition scheme is 5% [2.5% CGST and 2.5% SGST]. Estimated tax payable by Shubhlaxmi Foods is as under:

$$= ₹ 140 \text{ lakh} [₹ 130 \text{ lakh} + ₹ 10 \text{ lakh}] \times 5\%$$

$$= ₹ 7 \text{ lakh} [\text{CGST} = ₹ 3.5 \text{ lakh and SGST} = ₹ 3.5 \text{ lakh}]$$

Question 9

Bansal and Chandiook started a partnership firm of Chartered Accountants in Jaipur (Rajasthan) on 1.04.20XX. The firm specializes in providing audit services to banks, in Rajasthan. It provided the following details of its turnover

Quarter	Amount (in ₹)
Apr-Jun	10 lakh
Jul-Sep	20 lakh

It crossed the threshold limit of ₹ 20 lakh on 1.08.20XX. Bansal and Chandiook wishes to opt to pay tax at concessional rate under Notification No. 2/2019 CT (R) dated 07.03.2019. Examine whether the firm is eligible for this scheme? If yes, then determine the tax payable by it in quarters (i) Apr-Jun & (ii) Jul-Sep?

Answer:

Notification No. 2/2019 CT (R) dated 07.03.2019 provides an option to a registered person whose aggregate turnover in the preceding financial year is upto ₹ 50 lakh and who is not eligible to pay tax under composition scheme, to pay tax @ 6% [CGST @ 3% and SGST @ 3%] on first supplies of goods and/or services upto an aggregate turnover of ₹ 50 lakh made on or after 1st April in any financial year, subject to specified conditions.

Further, for the purposes of this notification, the expression “first supplies of goods or services or both” shall, for the purposes of determining eligibility of a person to pay tax under this notification, include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the said Act but for the purpose of determination of tax payable under this notification shall not include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the Act.

In the given case, Bansal and Chandiook Firm is eligible to opt for the scheme to pay tax at concessional rate since his turnover in the preceding financial year was nil and he is not eligible to opt for composition scheme since he is dealing exclusively in services other than restaurant services.

Tax payable by the firm is as follows:

- i. **Apr-Jun quarter:** Tax payable by the firm in first quarter is nil since the firm’s turnover [₹ 10 lakh] has not yet exceeded the threshold limit of ₹ 50 lakh.
- ii. **July-Sep quarter:** While computing the tax payable by the firm in second quarter, the turnover from 01.04.20XX to the date from which he becomes liable for registration under the Act is to be excluded. Tax payable will be computed as under-

Total Turnover	₹ 30,00,000/-
Less: Threshold Limit for registration	₹ 20,00,000/-
Taxable Turnover	₹ 10,00,000/-
Tax @ 6%	₹ 60,000/-*

*CGST = ₹ 30,000 and SGST = ₹ 30,000

Question 10

Mr. Prem is running a restaurant in New Delhi. In the preceding financial year, it has turnover of ₹ 120 lakh from the restaurant services. In the current financial year, apart from restaurant service, he also wants to provide food delivery services to other restaurants. He estimated the turnover of such services upto ₹ 5 lakh.

Mr. Prem wishes to opt for composition scheme in the current financial year. You are required to advise him for same. Further, also advise the documents to be issued by him for billing the restaurant services as well as food delivery services in case he opts for composition scheme.

Answer:

As per section 10(1) of the CGST Act, 2017 read with Notification No.14/2019 CT dated 07.03.2019, a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5 crore, may opt to pay, in lieu of the tax payable by him, an amount calculated at the specified rates if, inter alia, he is not engaged in the supply of services other than restaurant services.

However, the scheme permits supply of other marginal services for a specified value along with the supply of goods and restaurant service, as the case may be. Such marginal services can be supplied for a value up to 10% of the turnover in the preceding year or ₹ 5 lakh, whichever is higher.

In the present case, since the turnover of Mr. Prem is ₹ 120 lakh in preceding financial year, he is eligible for composition scheme in the current financial year. Further, in the current financial year, he can also supply services other than restaurant services for a value upto ₹ 12 lakh (10% of ₹ 120 lakh) or ₹ 5 lakh, whichever is higher. Thus, till the time his turnover from food delivery services does not exceed ₹ 12 lakh, he is eligible for the scheme.

In terms of section 31(3)(c) of the CGST Act, 2017, Mr. Prem is required to issue Bill of Supply in both the cases i.e. while providing restaurant services and food delivery services. He shall also mention the words "composition taxable person, not eligible to collect tax on supplies" at the top of the bill of supply issued by him.

Question 11

M/s Heeralal and Sons registered in Karnataka has opted to avail the benefit of composition scheme. It has furnished the following details for the tax period ended on 30-06-20XX.

Sr. No.	Items	₹
i.	Taxable turnover of goods within the State	15,00,000
ii.	Exempted turnover of goods within the State	17,00,000
	Total Turnover	32,00,000

Using the above information, calculate tax to be paid by the firm for the tax period ended on 30.06.20XX in following independent situations

- I. M/s Heeralal and Sons is a manufacturer
- II. M/s Heeralal and Sons is a trader

Computation of amount payable under composition scheme

Answer:

I. If M/s Heeralal and Sons is a manufacturer:

Tax is to be paid @ 1% (CGST+ SGST) of the turnover in the State as under:

1% of ₹ 32,00,000 [₹ 15,00,000 + 17,00,000]

= ₹ 32,000 [CGST = ₹ 16,000 and SGST = ₹ 16,000]

II. If M/s Heeralal and Sons is a trader:

Tax is to be paid @ 1% (CGST+ SGST) of the turnover of taxable supplies of goods and services in the State as under:

= 1% of ₹ 15,00,000 = ₹ 15,000 [CGST = ₹ 7,500 and SGST = ₹ 7,500]

Question 12

Mr. Sanjay of New Delhi made a request for a Motor cab to "Super ride" for travelling from New Delhi to Gurgaon (Haryana). After Mr. Sanjay pays the cab charges using his debit card, he gets details of the driver Mr. Jorawar Singh and the cab's registration number.

"Super ride" is a mobile application owned and managed by D.T. Ltd. located in India. The application "Super ride" facilitates a potential customer to connect with the persons providing cab service under the brand name of "Super ride".

D.T. Ltd. claims that cab service is provided by Mr. Jorawar Singh and hence, he is liable to pay GST. With reference to the provisions of IGST Act, 2017, determine who is liable to pay GST in this case?

Would your answer be different, if D.T. Ltd. is located in New York (USA)? Also briefly state the statutory provisions involved.

Answer:

Section 5 of IGST Act, 2017 provides that tax on inter-State supplies of specified services notified by Government shall be paid by the electronic commerce operator (ECO) located in taxable territory if such services are supplied through it. Services by way of transportation of passengers by a motor cab supplied through ECO is one of the notified service.

Electronic commerce operator means any person who owns, operates or manages digital or electronic facility or platform for supply of goods or services or both, including digital products over digital or electronic network.

Since DT Ltd. owns and manages a mobile application to facilitate supply of passenger transportation service in motor cabs over a digital network, it is an ECO. Thus, DT Ltd., an ECO located in India is liable to pay GST in the given case.

However, where an ECO does not have a physical presence in the taxable territory, person representing ECO is liable to pay tax. Further, where ECO has neither the physical presence nor any representative in the taxable territory, person appointed by the ECO for the purpose of paying the tax is liable to pay tax.

Accordingly, if D.T. Ltd. is located in New York (USA), any person representing DT Ltd. for any purpose in India is liable to pay tax.

Further, if D.T. Ltd. also does not have a representative in India, it shall appoint a person in India for the purpose of paying tax and such person shall be liable to pay tax.

Question 13

MN Ltd. has two registered places of business in the State of Haryana. Its aggregate turnover during the previous financial year for both the places of business was ₹ 62 lakh. It wishes to opt for composition levy for one of the place of business in the current year and wants to continue with registration and pay taxes at the normal rate for the other place of business. Can MN Ltd. do so? Explain with reason.

Answer:

As per proviso to section 10(2) of the CGST Act, 2017, where more than one registered persons are having the same PAN issued under the Income-tax Act, 1961, the registered person shall not be eligible to opt for the composition scheme unless all such registered persons opt to pay tax under composition scheme.

In the given case, since MN Ltd. has two places of business (they are not separate entities under Income-tax Act, 1961), they would be registered under the same PAN. Therefore, MN Ltd. cannot opt for composition levy for only one of the places of business and pay tax under regular scheme for other place of business.

Question 14

M/s. Ranveer Industries, registered in Himachal Pradesh, is engaged in making inter-State supplies of readymade garments. The aggregate turnover of M/s. Ranveer Industries in the preceding financial year is ₹ 90 lakh. It has opted for composition levy in the current financial year and paid tax for the July-Sep quarter of current year under composition levy.

The proper officer has levied penalty for wrongly availing the scheme on M/s. Ranveer Industries in addition to the tax payable by it.

Examine the validity of the action taken by proper officer.

Answer:

As per section 10 of the CGST Act, 2017, a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5 crore in a State/UT [₹ 75 lakh in case of Special Category States except Assam, Himachal Pradesh and Jammu and Kashmir], may opt for composition scheme. However, he shall not be eligible to opt for composition scheme if, inter alia, he is engaged in making any inter-State outward supplies of goods.

In the given case, since M/s Ranveer Industries is engaged in making inter-State supplies of readymade garments, it is not eligible to opt for composition scheme in current year irrespective of its turnover in the preceding FY.

Further, if the proper officer has reasons to believe that a taxable person has paid tax under composition scheme despite not being eligible, such person shall, in addition to any tax payable, be liable to a penalty.

Thus, the action taken by the proper officer of levying the penalty for wrongly availing the composition scheme is valid in law.

Question 15

(i) Examine whether the suppliers are eligible for composition levy under section 10 of the CGST Act, 2017 in the following independent cases in the beginning of the current financial year.

- (a) Technology Enterprises, registered in Jalandhar, Punjab, is engaged in manufacturing computer systems. Its aggregate turnover in the preceding financial year is ₹ 125 lakh. Technology Enterprises supplies the computer systems manufactured by it within the State of Punjab only. With a view to expand its business operations, it will also start providing the repairing services of computer systems in the current financial year.
- (b) M/s. Siddharth & Sons, registered in Delhi, owns a restaurant 'Tasty Foods' with a turnover of ₹ 112 lakh in the preceding financial year. In view of the growing customer demand, it will also start intra-State trading of beverages in Delhi.
- (c) Sitaram Associates, registered in Sikkim, is engaged in running a food chain 'Veg Kitchen' in the State. It has a turnover of ₹ 73 lakh in the preceding financial year. In the current financial year, it decides to shut down the food chain owing to huge losses being incurred in the said business. Instead, it will

start providing intra-State architect services.

- (d) Deepti Services Ltd., registered in Uttarakhand, is exclusively providing hair styling services. It has turnover of ₹ 34 lakh in the preceding financial year.

Will your answer be different, if Deepti Services Ltd. also start supplying beauty products alongwith providing hair styling services in the current financial year?

- (ii) Varun & Arun Associates started a partnership firm of architects in Bhopal (Madhya Pradesh) on 01.04.2020. The firm provides architecture services, in Madhya Pradesh. It provided the following details of its turnover:

April - June	₹ 20lakh
July - Sept	₹ 30lakh
Oct - Dec	₹ 20lakh

The firm has obtained the registration under section 22 of the CGST Act, 2017 and pays tax under composition scheme. Determine the tax liability of Varun & Arun Associates for the quarters: Apr-Jun, Jul-Sept and Oct-Dec.

Note: The rates of tax on architectural services are CGST- 9% and SGST-9%.

Answer :

(i) As per section 10(1) of the CGST Act, 2017, the following registered persons, whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5 crore, may opt to pay tax under composition levy:

- (i) Manufacturer,
- (ii) Persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II (restaurant services), and
- (iii) Any other supplier eligible for composition levy.

The composition scheme under sub-sections (1) and (2) of section 10 can essentially be availed in respect of goods and only one service namely, restaurant service. However, the scheme permits supply of other marginal services for a specified value along with the supply of goods and restaurant service, as the case may be. Such marginal services can be supplied for a value up to 10% of the turnover in the preceding year or ₹ 5 lakh, whichever is higher. Further, the registered person should not be engaged in making any inter-State outward supplies of goods.

Furthermore, newly inserted section 10(2A) of the CGST Act, 2017 provides an option to a registered person, who is not eligible to pay tax under section 10(1) and

10(2), of paying tax @ 6% (CGST-3% and SGST/UTGST-3%) provided his aggregate turnover in the preceding financial year is upto ₹ 50 lakh. Said person can pay tax @ 6% of the turnover in State or turnover in Union territory up to an aggregate turnover of ₹ 50 lakh, subject to specified conditions. One of such condition is that the registered person should not be engaged in making any inter - State outward supplies of goods or services.

In view of the above-mentioned provisions, the answer to the given independent cases is as under:-

- (a) The turnover limit for being eligible for composition scheme under sub-sections (1) and (2) of section 10 of the CGST Act, 2017 for Jalandhar (Punjab) is ₹ 1.5 crore in the preceding financial year. Thus, Technology Enterprises can opt for said composition scheme as its aggregate turnover is

less than ₹ 1.5 crore in the preceding financial year and it is making intra-State supplies. Further, since the registered person opting for composition scheme can also supply services (other than restaurant services) for a value up to 10% of the turnover in the preceding year or ₹ 5 lakh, whichever is higher. Thus, Technology Enterprises can supply repair services up to a value of ₹ 12.5 lakh [10% of ₹125 lakh] in the current financial year.

(b) In the given case:-

- (i) the turnover in the preceding year is less than the eligible turnover limit under composition scheme under sub-sections (1) and (2) of section 10 of the CGST Act, 2017 for Delhi, i.e. ₹ 1.5 crore.
- (ii) the supplier is engaged in providing restaurant service which is an eligible supply under said composition scheme.
- (iii) the supplier wants to engage in trading of goods which is also an eligible supply under said composition scheme.

Thus, M/s. Siddharth & Sons is eligible for composition scheme under sub-sections (1) and (2) of section 10 of the CGST Act, 2017.

(c) The turnover limit for being eligible for composition scheme under sub-sections

(1) and (2) of section 10 of the CGST Act, 2017 for Sikkim is ₹ 75 lakh in the preceding financial year. However, a registered person who is exclusively engaged in supplying services other than restaurant services are not eligible for said composition scheme. Thus, Sitaram Associates cannot opt for composition scheme under sub-sections (1) and (2) of section 10.

However, the benefit of composition scheme under section 10(2A) of the CGST Act, 2017 is available in case of a registered person who is not eligible to pay tax under sub-sections (1) and (2) of section 10 provided its aggregate turnover in the preceding financial year does not exceed ₹ 50 lakh.

Thus, in view of the above-mentioned provisions, Sitaram Associates cannot avail the benefit of composition scheme under section 10(2A) also as its aggregate turnover in the preceding financial year is more than ₹ 50 lakh.

(d) A service provider can opt for the composition scheme under sub-sections (1) and (2) of section 10 of the CGST Act, 2017 only if he is engaged in supply of restaurant services. Said scheme permits supply of marginal services for a specified value, but only when the same are supplied along with goods and/or restaurant service.

Since Deepti Services Ltd. is exclusively engaged in supply of services other than restaurant services, it is not eligible for composition scheme sub-sections (1) and (2) of section 10 even though its turnover in the preceding year is less than ₹ 75 lakh, the eligible turnover limit for Uttarakhand.

However, since Deepti Services Ltd. is not eligible to opt for composition scheme under sub-sections (1) and (2) of section 10 and its aggregate turnover in the preceding financial year does not exceed ₹ 50 lakh, Deepti Services Ltd. is entitled to avail benefit of composition scheme under section 10(2A) of the CGST Act, 2017 in the current financial year.

Further, the answer will remain the same even if Deepti Services Ltd. also start supplying beauty products along with providing hair styling services in the current financial year since it fulfils the conditions laid down for availing the benefit of composition scheme under section 10(2A) of the CGST Act. It can

avail the benefit of composition scheme under section 10(2A) till the time its aggregate turnover in the current year doesn't exceed ₹ 50 lakh.

- (ii) The composition scheme under sub-sections (1) and (2) of section 10 of the CGST Act, 2017 is available in case of goods and restaurant service. Further, marginal services upto specified limit can be provided along with the supply of goods or restaurant service, as the case may be. Since, in the given case, Varun & Arun Associates is supplying services other than restaurant services, it is not eligible to pay tax under sub-sections (1) and (2) of section 10. However, section 10(2A) of the CGST Act, 2017 provides an option to a registered person, who is not eligible to pay tax under sub-sections (1) and (2) of section 10, of paying tax @ 6% (CGST-3% and SGST/UTGST-3%) provided his aggregate turnover in the preceding financial year is upto ₹ 50 lakh. Said person can pay tax @ 6% of the turnover in State or turnover in Union territory up to an aggregate turnover of ₹ 50 lakh, subject to specified conditions.

In the given case, Varun & Arun Associates has started the supply of services in the current financial year. Therefore, its aggregate turnover in the preceding financial year is Nil. Consequently, it is eligible to avail the benefit of composition scheme under section 10(2A) of the CGST Act in the current financial year. It becomes eligible for the registration when its aggregate turnover exceeds ₹ 20 lakh. While registering under GST, it has to opt for composition scheme under section 10(2A).

For determining its turnover of the State for payment of tax under composition scheme for services, turnover of April-June quarter [₹ 20 lakh] shall be excluded as the value of supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act are to be excluded for this purpose.

On next ₹ 30 lakh [turnover of July-Sept quarter], it shall pay tax @ 6% [3% CGST and 3% SGST], i.e. CGST ₹ 90,000 and SGST ₹90,000.

By the end of July-Sept quarter, its aggregate turnover reaches ₹ 50 lakh*.

Consequently, its option to avail composition scheme under section 10(2A) shall lapse by the end of July-Sept quarter and thereafter, it is required to pay tax at the normal rate. Thus, the tax payable for Oct-Dec quarter is ₹20 lakh × 9%, i.e. CGST - ₹ 1,80,000 and SGST - ₹1,80,000.

*Note - While computing aggregate turnover for determining Varun & Arun Associates' eligibility to pay tax under composition scheme, value of supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act (i.e. turnover of April-June quarter), are included.

Question 16

Panini Private Limited agrees to sponsor a sports event organized by Pink City Club in Jaipur. Panini Private Limited has paid an amount of ₹ 50,00,000 for such sponsorship of the sports event. Consequently, said event was named after the brand name of Panini Private Limited. Examine who is the person liable to pay tax in the given case.

Answer

Notification no 13/2017 CT (R) dated 28.06.2017 as amended (hereinafter referred to as reverse charge notification), provides that sponsorship services provided by any person to a body corporate or partnership firm located in the taxable territory, shall be liable to GST under reverse charge in the hands of recipient.

In the present case, Pink City Club is the supplier of sponsorship services which is receiving the consideration in the form of sponsorship fee of ₹ 5,00,000 from Panini Private Limited, against the provision of sponsorship service. Since the recipient of sponsorship services- Panini Private Limited is a body corporate, the tax on said services is payable by the recipient - Panini Private Limited, under reverse charge.

Question 17

Arpan Singhania is a director in Narayan Limited. The company paid him the sitting fee amounting to ₹ 25,000, for the month of January. Further, salary was paid to Arpan Singhania amounting to ₹ 1.5 lakh for the month of January on which TDS was also deducted as per applicable provisions under Income-tax law. Tapasya & Associates, in which Arpan Singhania is a partner, supplied certain professional services to Narayan Limited in the month of January for an amount of ₹ 2 lakh. Discuss the person liable to pay tax in each of the supplies involved in the given case.

Answer

Sitting fee paid to director – As per reverse charge notification, tax on services supplied by a director of a company/ body corporate to the said company/ body corporate, located in the taxable territory, is payable under reverse charge. Hence, in the present case, the sitting fee amounting to

₹ 25,000, payable to Arpan Singhania by Narayan Limited, is liable to GST under reverse charge and thus, recipient of service - Narayan Limited – is liable to pay GST on the same.

Salary paid to director - As per Circular No.140/10/2020 GST dated 10.06.2020, the part of director's remuneration which is declared as salary in the books of a company and subjected to TDS under section 192 of the Income-tax Act, are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III. Therefore, in the given case, the salary received by Arpan Singhania of ₹ 1.5 lakh is not liable to GST.

Services provided by Tapasya & Associates – Tapasya & Associates have rendered certain professional services to Narayan Limited. The fact that Arpan Singhania is a partner in Tapasya & Associates and a director in Narayan Limited does not have any impact on the taxability of the professional services supplied by Tapasya & Associates to Narayan Limited. The professional services provided by Tapasya & Associates to Narayan Limited are liable to GST under forward charge and thus, supplier - Tapasya & Associates – is liable to pay GST on the same.

Question 18

Suvidha Technologies is in the business of development of e-commerce platforms for various customers. Chennai Creations obtained the ownership rights of an e-commerce platform developed by Suvidha Technologies by paying a specified amount against ownership rights of said portal. Chennai Creations also entered into an annual maintenance contract with Suvidha Technologies for technical maintenance of the said portal. Chennai Creations supplies its own goods and services through the said portal to ultimate customers. Examine who is the e-commerce operator in the given case as per the provisions of the GST law

Answer

As per section 2(44), electronic commerce means the supply of goods or services or both, including digital products over digital or electronic network. Further, as per section 2(45), electronic commerce operator means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

In the given transaction, the e-commerce platform is developed by Suvidha Technologies.

However, the ownership of the electronic platform is sold by Suvidha Technologies to Chennai Creations. Thus, Chennai Creations is the owner of the e-commerce platform and is also operating/ managing the said platform for supply of its own goods and services. In view of the definition of e-commerce operator, it is Chennai Creations which owns, operates or manages digital or electronic facility or platform for electronic commerce. Suvidha Technologies is merely providing the annual management services for the electronic platform, but the ownership rights lie with Chennai Creations. Thus, Suvidha Technologies cannot be termed as electronic commerce operator in the given case and Chennai Creations is the e-commerce operator



Question 1

An individual acts as a referee in a football match organized by Sports Authority of India. He has also acted as a referee in another charity football match organized by a local sports club, in lieu of a lump sum payment. Discuss whether he is required to pay any GST?

Answer:

Services provided to a recognized sports body by an individual inter alia as a referee in a sporting event organized by a recognized sports body is exempt from GST.

Since in the first case, the football match is organized by Sports Authority of India, which is a recognized sports body, services provided by the individual as a referee in such football match will be exempt.

However, when he acts as a referee in a charity football match organized by a local sports club, he would not be entitled to afore-mentioned exemption as a local sports club is not a recognized sports body and thus, GST will be payable in this case.

Question 2

RXL Pvt. Ltd. manufactures beauty soap with the brand name 'Forever Young'. RXL Pvt. Ltd. has organized a concert to promote its brand. Ms. Ahana Kapoor, its brand ambassador, who is a leading film actress, has given a classical dance performance in the said concert. The proceeds of the concert worth ₹ 1,20,000 will be donated to a charitable organization. Whether Ms. Ahana Kapoor will be required to pay any GST?

Answer:

Services by an artist by way of a performance in folk or classical art forms of

- (i) music, or (ii) dance, or (iii) theatre are exempt from GST, if the consideration charged for such performance is not more than ₹ 1,50,000. However, such exemption is not available in respect of service provided by such artist as a brand ambassador.

Since Ms. Ahana Kapoor is the brand ambassador of 'Forever Young' soap manufactured by RXL Pvt. Ltd., the services rendered by her by way of a classical dance performance in the concert organized by RXL Pvt. Ltd. to promote its brand will not be eligible for the above-mentioned exemption and thus, be liable to GST. The fact that the proceeds of the concert will be donated to a charitable organization will not have any bearing on the eligibility or otherwise to the above-mentioned exemption.

Question 3

Determine taxable value of supply under GST law with respect to each of the following independent services provided by the registered persons:

Particulars	Gross amount charged (₹)
Fees charged for yoga camp conducted by a charitable trust registered under section 12AA of the Income-tax Act, 1961	50,000

Particulars	Gross amount charged (₹)
Amount charged by business correspondent from banking company for the services provided to the rural branch of a bank with respect to Savings Bank Accounts	1,00,000
Amount charged by cord blood bank for preservation of stem cells	5,00,000
Amount charged for service provided by commentator to a recognized sports body	5,20,000

Answer:

Computation of value of taxable supply

Particulars	(₹)
Fees charged for yoga camp conducted by a charitable trust registered under section 12AA of the Income-tax Act, 1961 [Note-1]	Nil
Amount charged by business correspondent for the services provided to the rural branch of a bank with respect to Savings Bank Accounts [Note-2]	Nil
Amount charged by cord blood bank for preservation of stem cells [Note-3]	Nil
Service provided by commentator to a recognized sports body [Note-4]	5,20,000

Notes:

1. Services by an entity registered under section 12AA of the Income-tax Act, 1961 by way of charitable activities are exempt from GST. The activities relating to advancement of yoga are included in the definition of charitable activities. So, such activities are exempt from GST.
2. Services by business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch have been exempted from GST.
3. Services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation are exempt from GST.
4. Services provided to a recognized sports body only by an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body are exempt from GST. Thus, services provided by commentators are liable to GST.

Question 4

Examine whether GST is exempted on the following independent supplies of services:

- 1) Service provided by a private transport operator to Scholar Boys Higher Secondary School in relation to transportation of students to and from the school.
- 2) Services provided by way of vehicle parking to general public in a shopping mall.

Answer

- i. Yes, Services provided to an educational institution by way of transportation of students are exempted from GST.

- ii. No, Services provided by way of vehicle parking to general public are not exempted from GST. Therefore, GST is payable on the same.

Question 5

Discuss whether GST is payable in respect of transportation services provided by Raghav Goods Transport Agency in each of the following independent cases:

Customer	Nature of services provided	Amount charged
A	Transportation of milk	₹ 20,000
B	Transportation consignment goods carriage	₹ 3000
C	Transportation of chairs for a single consignee in the goods carriage	₹ 600

Answer:

Customer	Nature of services provided	Amount charged	Taxability
A	Transportation of milk	₹ 20,000	Exempt Transportation of milk by goods transport agency is exempt.
B	Transportation consignment goods carriage	₹ 3000	GST is payable. Exemption is available for transportation of goods only where the consideration for transportation of goods on a consignment transported in a single goods carriage does not exceed ₹ 1,500.
C	Transportation of chairs for a single consignee in the goods carriage	₹ 600	Exempt. Transportation of goods where consideration for transportation of all goods for a single consignee does not exceed ₹ 750 is exempt.

Question 6

Shiva Medical Centre, a Multi-speciality hospital, is a registered supplier in Mumbai. It hires senior doctors and consultants independently, without entering into any employer-employee agreement with them. These doctors and consultants provide consultancy to the in-patients - patients who are admitted to the hospital for treatment - without there being any contract with such patients. In return, they are paid the consultancy charges by Shiva Medical Centre.

However, the money actually charged by Shiva Medical Centre from the in-patients is higher than the consultancy charges paid to the hired doctors and consultants. The difference amount retained by the hospital, i.e. retention money, includes charges for providing ancillary services like nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure, etc.

Further, Shiva Medical Centre has its own canteen - Annapurna Bhawan

- which supplies food to the in-patients as advised by the doctor/nutritionists as also to other patients (who are not admitted) or their attendants or visitors

The Department took a stand that senior doctors and consultants are providing services to Shiva Medical Centre and not to the patients. Hence, their services are not the health care services and must be subject to GST. Further, GST is applicable on the retention money kept by Shiva Medical Centre as well as on the services provided by its canteen - Annapurna Bhawan alleging that such services are not the health care services.

You are required to examine whether the stand taken by the Department is correct provided the services provided by Shiva Medical Centre are intra-State services.

Answer:

As per Notification No. 12/2017 CT (R) dated 28.06.2017, services by way of health care services by a clinical establishment, an authorized medical practitioner or para-medics are exempt from GST.

Health care services have been defined to mean any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

Circular No. 32/06/2018 GST dated 12.02.2018 has clarified that in view of the above definition, it can be inferred that hospitals also provide healthcare services. The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt from GST. In view of the same, GST is not applicable on the retention money kept by Shiva Medical Centre.

The circular also clarified that services provided by senior doctors/ consultants/ technicians hired by the hospitals, whether employees or not, are also healthcare services exempt from GST. Hence, services provided by the senior doctors and consultants hired by Shiva Medical Centre, being healthcare services, are also exempt from GST.

The circular further explained that food supplied by the hospital canteen to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare services and is not separately taxable. Thus, it is exempt from GST. However, other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable. In view of the same, GST is not applicable on the food supplied by Annapurna Bhawan to in-patients as advised by doctors/nutritionists while other supplies of food by it to patients (not admitted) or their attendants/visitors are taxable.

Question 7

“Chanakya Academy” is registered under GST in the State of Uttar Pradesh. The Academy runs the following educational institutions:

- 1) ‘Keshav Institute of Technology’ (KIT), a private engineering college in Ghaziabad. KIT also runs distance learning post graduate engineering programmes. Exams for such programmes are conducted in select cities at centres appointed by the KIT. All the engineering courses including the distance learning post graduate engineering programme run by KIT are recognised by the law [The All India Council for Technical Education (AICTE)].
- 2) ‘Little Millennium’, a pre-school in Lucknow.

- 3) 'Bright Minds', a coaching institute in Kanpur. The Institute provides coaching for Institute of Banking Personnel Selection (IBPS) Probationary Officers Exam.
- 4) 'Spring Model' a higher secondary school affiliated to CBSE Board.

The Academy provides the following details relating to the expenses incurred by the various institutions run by it during the period April 20XX to September 20XX:

S. No.	Particulars	KIT (₹)	Little Millennium (₹)	Bright Minds (₹)	Spring Model (₹)
(i)	Printing services for printing the question papers (paper and content are provided by the Institutions)	2,50,000		1,50,000	2,00,000
(ii)	Paper procured for printing the question papers	4,30,000		2,58,000	3,44,000
(iii)	Honorarium to paper setters and examiners (not on the rolls of the Institution)	5,00,000			
(iv)	Rent for exam centers taken on rent like schools etc., for conducting examination	8,00,000		1,00,000	
(v)	Subscription for online educational journals [Little Millennium has taken the subscription for online periodicals on child development and experiential learning]	4,00,000	80,000	2,20,000	2,40,000
(vi)	Hire charges for buses used to transport students and faculty from their residence to the institutions and back	4,80,000	5,50,000	1,30,000	7,50,000
(vii)	Catering services for running a canteen in the campus for students (Catering services for KIT include a sum of ₹ 60,000 for catering at a student event organized in a banquet hall outside the campus)	3,20,000	2,60,000	1,80,000	5,00,000
(viii)	Security and housekeeping services for the institution(s) (Security and housekeeping services for Spring Model include a	6,00,000	4,00,000	3,75,000	4,65,000

S. No.	Particulars	KIT (₹)	Little Millennium (₹)	Bright Minds (₹)	Spring Model (₹)
	sum of ₹ 80,000 payable for security and housekeeping at the student event organized in a banquet hall outside the campus)				

The academy further provides the following details relating to the receipts of the various institutions run by it during the period April 20XX to September 20XX:

Sr. No.	Particular	Kit (₹)	Little Millennium (₹)	Bright Minds (₹)	Spring Model (₹)
(i)	Tuition Fee	35,00,000	15,00,000	20,00,000	25,00,000
(ii)	Transport fee charged from students	5,00,000	6,00,000	1,30,000	8,50,000

With the help of the above details -

- determine the amount of GST payable, if any, on goods and services received during April 20XX to September 20XX by the various educational institutions run by the 'Chanakya Academy';
- Compute net GST liability of the 'Chanakya Academy' payable from the Electronic Cash Ledger, for the period April 20XX to September 20XX.

All the amounts given above are exclusive of taxes, wherever applicable.

Notes:

- Rate of GST on goods is 12%, catering service is 5% and on other services is 18%.
- Wherever relevant, all the conditions necessary for availing the ITC have been complied with.

Answer:

- Notification No. 12/2017 CT(R) dated 28.06.2017 (hereinafter referred to as exemption notification) which exempts various services from GST leviable thereon exempts select **services** provided to an educational institution.

Here, the "educational institution" means an institution providing services by way of,-

- pre-school education and education up to higher secondary school or equivalent;
- education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;
- education as a part of an approved vocational education course;

The select services which are exempt when provided to an educational institution are-

- transportation of students, faculty and staff;

- b. catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;
- c. security or cleaning or house-keeping services performed in such educational institution;
- d. services relating to admission to, or conduct of examination by, such institution;
- e. supply of online educational journals or periodicals

However, the services mentioned in points (i), (ii) and (iii) are exempt only when the same are provided to an educational institution providing services by way of pre-school education and education up to higher secondary school or equivalent.

Also, the supply of online educational journals or periodicals is not exempt from GST when provided to-

- I. pre-school education and education up to higher secondary school or equivalent; or
- II. education as a part of an approved vocational education course.

Further, as per S. No. 22 of Notification No. 12/2017 CT (R) services by way of giving on hire motor vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent is exempt.

In the given case, all the engineering courses including the distance learning post graduate engineering programme run by KIT are recognized by the law [The All India Council for Technical Education (AICTE)]. Therefore, since KIT imparts education as a part of a curriculum for obtaining a qualification recognized by the Indian law, the same is an educational institution in terms of the exemption notification.

Similarly, Little Millennium and Spring Model, being a pre-school and a higher secondary school respectively are also educational institutions in terms of the exemption notification.

However, Bright Minds, being a coaching centre, training candidates to secure a banking job, is not an educational institution in terms of the exemption notification. Hence, none of the select services (mentioned above) will be exempt when provided to Bright Minds

In the light of the foregoing provisions, the amount of GST payable on goods and services received by these educational institutions during April 20XX to September 20XX is computed as under:

Particulars	Kit (₹)	Little Millennium (₹)	Bright Minds (₹)	Spring Model (₹)
Printing services for printing the question papers (paper and content are provided by the Institutions)	Exempt [Services provided to educational institution in relation to Conduct		27,000 [1,50,000 x 18%]	Exempt
Paper procured for printing the question papers - [Supply of select services to educational institutions is exempt and not supply of goods	51,600 [4,30,000 x 12%]		30,960 [2,58,000 x 12%]	41,280 [3,44,000 x 12%]

Particulars	Kit (₹)	Little Millennium (₹)	Bright Minds (₹)	Spring Model (₹)
to such educational institutions]				
Honorarium to paper setters and examiners (not on the rolls of the educational institution)	Exempt [Services provided to educational institution in relation to conduct of examination]			
Rent for exam centers taken on rent like schools etc., for conducting examination	Exempt [Services provided to educational institution in relation to conduct of examination]		18,000 [1,00,000 x 18%]	
Subscription for online educational journals [Little Millennium has taken the subscription for online periodicals on child development and experiential learning]	Exempt	14,400 [80,000 x 18%]	39,600 [2,20,000 x 18%]	43,200 [2,40,000 x 18%]
Hire charges for buses used to transport students and faculty from their residence to the institutions and back	86,400 [4,80,000 x 18%]	Exempt	23,400 [1,30,000 x 18%]	Exempt
Catering services for running a canteen in the campus for students [Catering service provided to pre-school and the higher secondary school is exempt irrespective of whether the same is provided within or outside the premises of the pre-school and the higher secondary school]	16,000 [3,20,000 x 5%]	Exempt	9,000 [1,80,000 x 5%]	Exempt
Security and housekeeping services for the institution(s) [Security and	1,08,000 [6,00,000 x 18%]	Exempt	67,500 [3,75,000 x 18%]	14,400 [80,000 x 18%]

Particulars	Kit (₹)	Little Millennium (₹)	Bright Minds (₹)	Spring Model (₹)
housekeeping service provided to pre-school and the higher secondary school for the student event organized in a banquet hall will be taxable as only the security and housekeeping service provided within the premises of the pre-school and the higher secondary school are exempt.]				
Total GST payable on goods and services received by the educational institutions	2,62,000	14,400	2,15,460	98,880

- ii. (1) Sl. No. 66 of Notification No. 12/2017 CT(R) dated 28.06.2017 also exempts services provided by an educational institution to its students, faculty and staff. All the educational institutions run by the Chanakya Academy except Bright Minds are educational institutions in terms of the exemption notification (as explained under point (i) above). Therefore, the education services and the transport services provided by KIT, Little Millennium, and Spring Model to its students will be exempt from GST under Sl. No. 66 of the exemption notification. Thus, only the educational services provided by Bright Minds will be liable to GST @ 18%.

(2) No input tax credit (ITC) will be availed on inputs and input services used in providing exempt education services, i.e. education services by KIT, Little Millennium, and Spring Model. Only Bright Minds will be entitled to avail ITC on inputs and input services used in providing taxable education services. However, ITC on outdoor catering services will be blocked in terms of section 17(5)(b)(i) of the CGST Act, 2017.

(3) Since there are no common inputs and input services being used for providing taxable and exempt services, the need for reversal of ITC attributable to exempt supplies will not arise.

In the light of the foregoing provisions, the net GST liability of Chanakya Academy, which will comprise of only the tax liability of Bright Minds, is computed as under:

Particular	Bright Minds (₹)
Tuition fee	20,00,000
Transport fee charged from students	1,30,000
Value of output supply taxable @ 18%	21,30,000
GST liability @ 18%	3,83,400

Less: ITC [Total tax payable by Bright Minds on the service received by it as computed in point (i) above less the tax payable on catering charges (2,15,460 - 9,000)]	2,06,460
Net GST payable from Electronic Cash Ledger	1,76,940

Question 8

Determine taxable value of supply under the GST law with respect to each of the following independent services provided by the registered persons:

- 1) Fees charged from office staff for in-house personality development course conducted by M.V. College - ₹ 10,000.
- 2) Bus fees collected from students by M.V. College - ₹ 2,500 per month.
- 3) Housekeeping service provided by M/s. Clean well to Himavarsha Montessori school, a play school - ₹ 25,000 per month.
- 4) Info link supplied "Tracing Alphabets", an online educational journal, to students of UKG class of Sydney Montessori School - ₹ 2,000.

Answer:

- (1) As per Notification No. 12/2017 CT (R) dated 28.06.2017, services provided by an educational institution to its students, faculty and staff are exempt from GST. Educational Institution has been defined to mean, inter alia, an institution providing services by way of education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force. Assuming that M. V. College provides education as a part of a curriculum for obtaining a qualification recognized by a law, the services provided by it to its staff by way of conducting personality development course would be exempt from GST.
- (2) As assumed above that M. V. College provides education as a part of a curriculum for obtaining a qualification recognized by a law, the transport services provided by it to its students would be exempt from GST.
- (3) As per Notification No. 12/2017 CT (R) dated 28.06.2017, services provided to an educational institution, by way of, inter alia, house- keeping services performed in such educational institution are exempt from GST. However, such an exemption is available only when the said services are provided to a pre-school education and a higher secondary school or equivalent.

Therefore, house-keeping services provided to Himavarsha Montessori Play School would be exempt from GST on the presumption that housekeeping services have been performed in such play school itself.
- (4) As per Notification No. 12/2017 CT (R) dated 28.06.2017, services provided to an educational institution by way of supply of online educational journals or periodicals is exempt from GST. However, such an exemption is available only when the said services are provided to an educational institution providing education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force.

Therefore, supply of online journal to students of UKG class of Sydney Montessori School will not be exempt from GST. Hence, the taxable value in this case will be ₹ 2,000.

Question 9

Sarva Sugam Charitable Trust, a trust registered under section 12AA of the Income Tax Act, 1961, provides the following information relating to supply of its services for the month of August 20XX:

Particular	Amount
Renting of residential dwelling for use as a residence	18,00,000
Renting of rooms for pilgrims (Charges per day ₹ 1,200)	8,00,000
Renting of rooms for devotees (Charges per day ₹ 750)	6,00,000
Renting of kalyanamandapam (Charges per day ₹ 15,000)	12,00,000
Renting of halls and open space (Charges per day ₹ 7,500)	10,75,000
Renting of shops for business (Charges per month ₹ 9,500)	4,75,000
Renting of shops for business (Charges per month ₹ 12,000)	7,50,000

Compute the total taxable value of supply for the month of August 20XX assuming that the above amounts are exclusive of GST and the rooms/ Kalyan Mandapam/ Halls/ Open space/ shops owned by the trust are located within the precincts of the religious place meant for general public.

Answer:

Notification No. 12/2017 CT (R) dated 28.06.2017/Notification No. 9/2017 IT(R) dated 28.06.2017 [exemption notification] provides exemption to renting of precincts of a religious place meant for general public, owned/managed by, inter alia, an entity registered as a charitable trust under section 12AA of the Income-tax Act. However, exemption is not available if:

- charges for rented rooms are more than ₹ 1,000 per day
- charges for rented community halls, Kalyan mandapam, open area are ₹ 10,000 per day or more;
- charges for rented shops are ₹ 10,000 per month or more.

In view of the aforesaid provisions, value of supply of Sarva Sugam Charitable Trust for August, 20XX has been computed as under:

Computation of value of supply of Sarva Sugam Charitable Trust for August, 20XX

Particulars	Amount (₹)
Renting of residential dwelling for use as residence [Exempt vide exemption notification]	Nil
Renting of rooms for pilgrims* [Since charges per day are not below ₹ 1,000]	8,00,000
Renting of rooms for devotees [Since charges per day are not more than ₹ 1,000]	Nil
Renting of Kalyana Mandapam [Since charges per day are not below ₹ 10,000]	12,00,000
Renting of halls and open spaces	Nil

Particulars	Amount (₹)
[Since charges per day are below ₹ 10,000] Renting of shops for business	Nil
[Since charges per month are below ₹ 10,000] Renting of shops for business	7,50,000
[Since charges per month are not below ₹ 10,000] Value of taxable supply	27,50,000

Note: It is also possible to take a view that renting of rooms for pilgrims/devotees is a charitable activity relating to advancement of religion. In that case, said activity will be exempt under Entry 1 of Notification No. 12/2017 CT (R) dated 28.06.2017 (in case services are intra- State supplies)/Entry 14(b) of Notification No. 9/2017 IT (R) dated 28.06.2017 (in case services are inter-State supplies).

Question 10

Examine whether the following independent intra-State services are exempt from GST:

- Legal services provided by BMC & Partners, Delhi, a partnership firm of advocates, to Vastukaar Enterprises, registered in Delhi, providing architect services (with preceding financial year's aggregate turnover as ₹ 21 lakh).
- Minimum balance charges collected by Dhanvarsha Bank from current account and saving account holders.

Answer :

- Services provided by a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to a business entity with an aggregate turnover up to such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act, 2017, are exempt from GST vide *Notification No. 12/2017 CT (R) dated 28.06.2017* (hereinafter referred to as exemption notification).

Since in the given case, services are being provided by the partnership firm of advocates - BMC & Partners to a business entity - Vastukaar

Enterprises whose aggregate turnover in the preceding FY exceeded 20 lakh i.e. the threshold limit for registration applicable to a service provider in Delhi, said services are not exempt from GST.

- Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) are exempt from GST vide exemption notification.

However, service charges/ fees, documentation fees, broking charges, administrative charges, entry charges or such like fees or charges collected over and above interest on loan, advance or a deposit are not exempt and liable to GST.

In view of the above, minimum balance charges collected by Dhanvarsha Bank from current account and saving account holders are not exempt and are liable to GST.

Question 11

Vedanta Hospital, Gurgaon has its own restaurant - Annapurna Bhawan - in the basement which supplies food to its in-patients (patients admitted in the hospital) as per the advice of the doctor/nutritionist. Annapurna Bhawan also supplies food to other patients (who are not admitted) or their attendants or visitors. The food is prepared by the employees of the hospital and nothing is outsourced to any third-party vendors. Vedanta Hospital is of the view that all services provided by a clinical establishment are exempt from GST and thus, it is not liable to pay any tax. You are required to test the correctness of the view taken by Vedanta Hospital.

Answer

Services by way of health care services by a clinical establishment, an authorised medical practitioner or para-medics are exempt from GST vide exemption notification. Circular No. 32/06/2018 GST dated 12.02.2018 has clarified that food supplied by the hospital canteen to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare services and is not separately taxable. Thus, it is exempt from GST. However, other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.

In view of the same, GST is not applicable on the food supplied by Annapurna Bhawan to in-patients as advised by doctors/nutritionists while other supplies of food by it to patients (not admitted) or their attendants/visitors are taxable.

Question 12

Indian Institutes of Management (IIM), Indore organizes a placement drive for the students studying in the campus. Many multinational companies register for the placement program and pay the registration fee of ₹ 1,00,000. IIM, Indore is of the view that such consideration received from multinational companies for participating in the placement program is exempt from GST. Explain whether the view taken by IIM, Indore is correct.

Answer

Indian Institutes of Management Act, 2017 (IIM Act, 2017) empowers IIMs to

(i) grant degrees, diplomas, and other academic distinctions or titles, (ii) specify the criteria and process for admission to courses or programmes of study, and (iii) specify the academic content of programmes. Resultantly, all the IIMs fall under purview of "educational institutions" as they provide education as a part of a curriculum for obtaining a qualification recognized by law for the time being in force.

Further, the services provided by an educational institution to its students, faculty and staff are exempt from GST vide exemption notification.

However, in the given case, services have been provided by the educational institution (viz. IIM, Indore), to the multinational companies. Therefore, the same is not exempt from GST.

Question 13

India Corporations Ltd., a Public Sector Undertaking (PSU), has taken loan from a banking company - Wellness Bank. The loan was guaranteed by the Central Government. India Corporations Ltd. defaulted in the repayment of such loan. Examine whether the services of guaranteeing of loan by the Central Government, in the given case, is liable to GST.

Answer

Services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings (PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions are exempt

from GST vide exemption notification.

In the present case, Central Government has guaranteed the loan taken by India Corporations Ltd. [a PSU], from Wellness Bank, [a banking company]. Consequently, services provided by the Central Government, in the form of guarantee of loan, are exempt from tax

Question 14

British High Commission, chief diplomatic mission of the United Kingdom in India, is providing advisory services to the students willing to travel to UK for further studies. The mission has organized a seminar for such students and a registration fee of ₹ 5,000 per student has been charged from the students for the same. You are required to determine whether the advisory services provided by British High Commission are liable to GST.

Answer

Services by a foreign diplomatic mission located in India are exempt from GST vide exemption notification. Hence, in the given case, advisory services by British High Commission located in Delhi to the students are exempt from GST.

Question 15

Bhushan Biomedical Waste Ltd. is providing service of bio-medical waste treatment to Vishudhi Pharma Company. For such services, Bhushan Biomedical Waste Ltd. has charged a fixed sum on monthly basis. Whether the service provided by Bhushan Biomedical Waste Ltd. is exempt under GST?

Answer

Services provided by operators of the common bio-medical waste treatment facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto are exempt GST vide exemption notification. Further, the term "clinical establishment" means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases

In the present case the bio-medical waste treatment services are being provided to a pharma company. The definition of term "clinical establishment" does not cover a pharma company within its purview. Therefore, services provided by Bhushan Biomedical Waste Ltd. to Vishudhi Pharma Company are not exempt from GST.

Question 16

Determine whether GST is payable in respect of each of the following independent services provided by the registered persons:

- (1) Fees charged from office staff for in-house personality development course conducted by Mungerilal College providing education as part of a curriculum for obtaining a qualification recognised by Indian law - ₹ 10,000.
- (2) Bus fees collected from students by Rosemary College providing education as part of a curriculum for obtaining a qualification recognised by Indian law - ₹ 2,500 per month.
- (3) Housekeeping service provided by M/s. Clean Well to Himavarsha Montessori school, a play school, for cleaning its playground and classrooms - ₹ 25,000 per month.
- (4) Info link supplied 'Tracing Alphabets', an online educational journal, to students of UKG class of Sydney Montessori School - ₹ 2,000.

Answer



(1) Services provided by an educational institution to its students, faculty and staff are exempt from GST vide exemption notification. Educational Institution has been defined to mean, inter alia, an institution providing services by way of education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force.

Since Mungerilal College provides education as part of a curriculum for obtaining a qualification recognised by Indian law, the services provided by it to its staff by way of conducting personality development course would be exempt from GST.

- (2) Since Rosemary College provides education as a part of a curriculum for obtaining a qualification recognised by Indian law, the transport services provided by Rosemary College to its students are exempt from GST.
- (3) Services provided to an educational institution, by way of, inter alia, house-keeping services performed are exempt from GST vide exemption notification where such services are performed in such educational institution. However, such exemption is available only when the said services are provided to a pre-school education and a higher secondary school or equivalent.

In view of the above discussion, house-keeping services provided to Himavarsha Montessori Play School are exempt from GST since housekeeping services have been performed in such play school itself.

- (4) Services provided to an educational institution by way of supply of online educational journals or periodicals is exempt from GST vide exemption notification. However, such exemption is available only when the said services are provided to an educational institution providing education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force.

Therefore, supply of online journal to students of UKG class of Sydney Montessori School is not exempt from GST.

Question 17

Vividh Pvt. Ltd. is a supplier of goods and services at Bangalore, registered in the State of Karnataka, having turnover of ₹ 200 lakh in the last financial year. It has furnished the following information for the month of June

Particulars	Amount (₹) excluding GST
Services provided by way of a labour contract for repairing a single residential unit otherwise than as a part of residential complex	1,30,000
Fee received from students of a competitive exam training academy run by Vividh Pvt. Ltd.	5,40,000
4 buses each with a seating capacity of 72 passengers given on hire to State Transport Undertaking	6,00,000
Rent paid to Local Municipal Corporation for premises taken on rent for competitive exam training academy	2,50,000
Goods transport services received from GTA, tax is payable on such services @ 12%	1,80,000

Compute gross GST liability (ignoring ITC provisions) of Vividh Pvt. Ltd. for the month of June assuming that the above amounts are exclusive of GST and rate of GST, wherever applicable, is 18% unless otherwise mentioned

Question 1

In case of a domestic supply, what is the place of supply where goods are removed?

Answer:

As per section 10(1)(a), the place of supply of goods is the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.

Question 2

What will be the place of supply if the goods are delivered by the supplier to all person on the direction of a third person?

Answer:

As per section 10(1)(b), it would be deemed that the third person has received the goods and the place of supply of such goods will be the principal place of business of such person.

Question 3

What is the place of supply where the goods or services are supplied on board a conveyance, such as a vessel, an aircraft, a train or a motor vehicle?

Answer:

As per section 10(1)(e), in respect of goods, the place of supply is the location at which such goods are taken on board.

However, in respect of services, the place of supply is the location of the first scheduled point of departure of that conveyance for the journey in terms of sections 12(10) and 13(11).

Question 4

The place of supply in relation to immovable property is the location of immovable property. Suppose a road is constructed from Delhi to Mumbai covering multiple states.

What will be the place of supply of construction services?

Answer:

Where the immovable property is located in more than one State, the supply of service is treated as made in each of the States in proportion to the value for services separately collected or determined, in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf [Explanation to section 12(3) for domestic supplies].

In the absence of a contract or agreement between the supplier and recipient of services in this regard, the proportionate value of services supplied in different States/Union territories (where

the immovable property is located) is computed on the basis of the area of the immovable property lying in each State/ Union territories [Rule 4 of the IGST Rules].

Question 5

What would be the place of supply of services provided by an event management company for organizing a sporting event for a Sports Federation which is held in multiple States?

Answer:

In case of an event, if the recipient of service is registered, the place of supply of services for organizing the event is the location of such person. However, if the recipient is not registered, the place of supply is the place where event is held.

Since the event is being held in multiple states and a consolidated amount is charged for such services, the place of supply will be deemed to be in each State in proportion to the value for services determined in terms of the contract or agreement entered into in this regard [Explanation to section 12(7)].

In the absence of a contract or agreement between the supplier and recipient of services, the proportionate value of services made in each State (where the event is held) will be computed in accordance with rule 5 of the IGST Rules by the application of generally accepted accounting principles.

Question 6

What is the place of supply of services by way of transportation of goods, including mail or courier when the both the supplier and the recipient of the services are located in India?

Answer:

If the recipient is registered, the location of such person is the place of supply. However, if the recipient is not registered, the place of supply is the place where the goods are handed over for transportation. Further, if the goods are transported outside India, the destination of such goods is the place of supply [Section 12(8)].

Question 7

What will be the place of supply of passenger transportation service, if a person travels from Mumbai to Delhi and back to Mumbai?

Answer:

If the person is registered, the place of supply will be the location of recipient. If the person is not registered, the place of supply for the forward journey from Mumbai to Delhi will be Mumbai, the place where he embarks [Section 12(9)].

However, for the return journey, the place of supply will be Delhi as the return journey has to be treated as separate journey [Explanation to section 12(9)].

Question 8

What is the place of supply for mobile connection? Can it be the location of supplier?

Answer:

For domestic supplies

The location of supplier of mobile services cannot be the place of supply as the mobile companies are providing services in multiple states and many of these services are inter-state. The consumption principle will be broken if the location of supplier is taken as place of supply and all the revenue may go to a few states where the suppliers are located.

The place of supply for mobile connection would depend on whether the connection is on postpaid or prepaid basis. In case of postpaid connections, the place of supply is the location of billing address of the recipient of service.

In case of pre-paid connections, the place of supply is the place where payment for such connection is received or such pre-paid vouchers are sold. However, if the recharge is done through internet/e-payment, the location of recipient of service on record will be taken as the place of supply.

For international supplies

The place of supply of telecom services is the location of the recipient of service.

Question 9

A person from Mumbai goes to Kullu-Manali and takes some services from ICICI Bank in Manali. What is the place of supply?

Answer:

If the service is not linked to the account of person, place of supply will be Kullu i.e., the location of the supplier of services. However, if the service is linked to the account of the person, the place of supply will be Mumbai, the location of recipient on the records of the supplier.

Question 10

An unregistered person from Gurugram travels by Air India flight from Mumbai to Delhi and gets his travel insurance done in Mumbai. What is the place of supply of insurance services?

Answer:

When insurance service is provided to an unregistered person, the location of the recipient of services on the records of the supplier of insurance services is the place of supply. So Gurugram is the place of supply [Section 12(13)].

Question 11

Priyank of Pune, Maharashtra enters into an agreement to sell goods to Bisht of Bareilly, Uttar Pradesh. While the goods were being packed in Pune godown of Priyank, Bisht got an order from

Sahil of Shimoga, Karnataka for the said goods. Bisht agreed to supply the said goods to Sahil and asked Priyank to deliver the goods to Sahil at Shimoga.

You are required to determine the place of supply(ies) in the above situation.

Answer:

The supply between Priyank (Pune) and Bisht (Bareilly) is a bill to ship to supply where the goods are delivered by the supplier [Priyank] to a recipient [Sahil (Shimoga)] or any other person on the direction of a third person [Bisht]. The place of supply in case of domestic bill to ship to supply of goods is determined in terms of section 10(1)(b) of IGST Act, 2017.

As per section 10(1)(b) of IGST Act, 2017, where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person.

Thus, in the given case, it is deemed that the Bisht has received the goods and the place of supply of such goods is the principal place of business of Bisht. Accordingly, the place of supply between Priyank (Pune) and Bisht (Bareilly) will be Bareilly, Uttar Pradesh.

This situation involves another supply between Bisht (Bareilly) and Sahil (Shimoga). The place of supply in this case will be determined in terms of section 10(1)(a) of IGST Act, 2017.

Section 10(1)(a) of IGST Act, 2017 stipulates that where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.

Thus, the place of supply in second case is the location of the goods at the time when the movement of goods terminates for delivery to the recipient (Sahil), i.e. Shimoga, Karnataka.

Question 12

Musicera Pvt. Ltd., owned by NitishDaani - a famous classical singer - wishes to organize a 'NitishDaani Music Concert' in Gurugram (Haryana). Musicera Pvt. Ltd. (registered in Ludhiana, Punjab) enters into a contract with an event management company, Supriya (P) Ltd. (registered in Delhi) for organizing the said music concert at an agreed consideration of ₹ 10,00,000. Supriya (P) Ltd. books the lawns of Hotel Dumdum, Gurugram (registered in Haryana) for holding the music concert, for a lump sum consideration of ₹ 4,00,000. Musicera Pvt. Ltd. fixes the entry fee to the music concert at ₹ 5,000. 400 tickets for 'NitishDaani Music Concert' are sold.

You are required to determine the CGST and SGST or IGST liability, as the case may be, in respect of the supply(ies) involved in the given scenario.

Will your answer be different if the price per ticket is fixed at ₹ 450?

Note: Rate of CGST and SGST is 9% each and IGST is 18%. All the amounts given above are exclusive of taxes, wherever applicable.

Answer:

In the given situation, three supplies are involved:

- (i) Services provided by Musicera Pvt. Ltd. to audiences by way of admission to music concert.
- (ii) Services provided by Supriya (P) Ltd. to Musicera Pvt. Ltd. by way of organizing the music concert.
- (iii) Services provided by Hotel Dumdum to Supriya (P) Ltd. by way of accommodation in the Hotel lawns for organizing the music concert.

The CGST and SGST or IGST liability in respect of each of the above supplies is determined as under:

- (i) As per the provisions of section 12(6) of the IGST Act, 2017, the place of supply of services provided by way of admission to, inter alia, a cultural event shall be the place where the event is actually held.

Therefore, the place of supply of services supplied by Musicera Pvt. Ltd. (Ludhiana, Punjab) to audiences by way of admission to the music concert is the location of the Hotel Dumdum, i.e. Gurugram, Haryana.

Since the location of the supplier (Ludhiana, Punjab) and the place of supply (Gurugram, Haryana) are in different States, IGST will be leviable. Therefore, IGST leviable will be computed as follows:

Consideration for supply (400 tickets @ ₹ 5,000 per ticket) = ₹ 20,00,000

IGST @ 18% on value of supply = ₹ 20,00,000 × 18% = ₹ 3,60,000.

- (i) Section 12(7)(a)(i) of IGST Act, 2017 stipulates that the place of supply of services provided by way of organization of, inter alia, a cultural event to a registered person is the location of such person.

Therefore, the place of supply of services supplied by Supriya (P) Ltd. (Delhi) to Musicera Pvt. Ltd. (Ludhiana, Punjab) by way of organizing the music concert is the location of the recipient, i.e. Ludhiana (Punjab).

Since the location of the supplier (Delhi) and the place of supply (Ludhiana, Punjab) are in different States, IGST will be leviable. Therefore, IGST leviable will be computed as follows:

Consideration for supply = ₹ 10,00,000

IGST @ 18% on value of supply = ₹ 10,00,000 × 18% = ₹ 1,80,000

- (ii) As per the provisions of section 12(3)(c) of the IGST Act, 2017, the place of supply of services, by way of accommodation in any immovable property for organizing, inter alia, any cultural function shall be the location at which the immovable property is located.

Therefore, the place of supply of services supplied by Hotel Dumdum (Gurugram, Haryana) to Supriya (P) Ltd. (Delhi) by way of accommodation in Hotel lawns for organizing the music concert shall be the location of the Hotel Dumdum, i.e. Gurugram, Haryana.

Since the location of the supplier (Gurugram, Haryana) and the place of supply (Gurugram, Haryana) are in the same State, CGST and SGST will be leviable. Therefore, CGST and SGST leviable will be computed as follows

Consideration for supply	=	₹ 4,00,000
CGST @ 9% on value of supply	=	₹ 4,00,000 × 9% = ₹36,000
SGST @ 9% on value of supply	=	₹ 4,00,000 × 9% = ₹36,000

If the price for the entry ticket is fixed at ₹450, answer will change in respect of supply of service provided by way of admission to music concert, as mentioned in point (i) above. There will be no IGST liability if the consideration for the ticket is ₹ 450 as the inter-State services by way of right to admission to, inter alia, musical performance are exempt from IGST vide Notification No. 9/2017 IT(R) dated 28.06.2017, if the consideration for right to admission to the event is not more than ₹500 per person. However, there will be no change in the answer in respect of supplies mentioned in point.

(ii) and (iii) above.

Question 13

Damani Industries has recruited Super Events Pvt. Ltd., an event management company of Gujarat, for organizing the grand party for the launch of its new product at Bangalore. Damani Industries is registered in Mumbai. Determine the place of supply of the services provided by Super Events Pvt. Ltd. to Damani Industries.

Will your answer be different if the product launch party is organized at Dubai?

Answer:

Section 12(7)(a)(i) of IGST Act, 2017 stipulates that when service by way of organization of an event is provided to a registered person, place of supply is the location of recipient.

Since, in the given case, the product launch party at Bangalore is organized for Damani Industries (registered in Mumbai), place of supply is the location of Damani Industries i.e., Mumbai, Maharashtra.

In case the product launch party is organized at Dubai, the answer will remain the same, i.e. the place of supply is the location of recipient (Damani Industries)- Mumbai, Maharashtra.

Question 14

RST Inc., a corn chips manufacturing company based in USA, intends to launch its products in India. However, the company wishes to know the taste and sensibilities of Indians before launching its products in India. For this purpose, RST Inc. has approached ABC Consultants, Mumbai, (Maharashtra) to carry out a survey in India to enable it to make changes, if any, in its products to suit Indian taste.

The survey is to be solely based on the oral replies of the surveyees; they will not be provided any sample by RST Inc. to taste. ABC Consultants will be paid in convertible foreign exchange for the assignment.

With reference to the provisions of GST law, determine the place of supply of the service. Also, explain whether the said supply will amount to export of service?

Answer:

As per section 13(2) of the IGST Act, 2017, in case where the location of the supplier of services or the location of the recipient of services is outside India, the place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services. Sub-sections (3) to (13) provide the mechanism to determine the place of supply in certain specific situations.

The given case does not fall under any of such specific situations and thus, the place of supply in this case will be determined under sub-section (2) of section 13. Thus, the place of supply of services in this case is the location of recipient of services i.e., USA.

As per section 2(6) of the IGST Act, 2017, export of services - means the supply of any service when,-

- a) the supplier of service is located in India;
- b) the recipient of service is located outside India;
- c) the place of supply of service is outside India;
- d) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
- e) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.

Since all the above five conditions are fulfilled in the given case, the same will be considered as an export of service.

Question 15

ABC Pvt. Ltd., New Delhi, provides support services to foreign customers in relation to procuring goods from India. The company identifies the prospective vendor, reviews product quality and pricing and then shares the vendor details with the foreign customer.

The foreign customer then directly places purchase order on the Indian vendor for purchase of the specified goods. ABC Pvt. Ltd. charges its foreign customer cost plus 10% mark up for services provided by it.

For the month of December, 20XX, the company has charged US \$ 1,00,000 (exclusive of GST) to its foreign customer. With reference to the provisions of GST law, examine whether the said supply will amount to export of service?

Answer:

Section 2(13) of the IGST Act, 2017 defines "intermediary" to mean a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or

both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.

In this case, since ABC Pvt. Ltd. is arranging or facilitating supply of goods between the foreign customer and the Indian vendor, the said services can be classified as intermediary services.

If the location of the supplier of services or the location of the recipient of service is outside India, the place of supply is determined in terms of section 13 of the IGST Act, 2017. Since, in the given case, the recipient of supply is located outside India, the provisions of supply of intermediary services will be determined in terms of section 13 of the IGST Act, 2017.

As per section 13(8)(b), the place of supply in case of intermediary services is the location of the supplier i.e., the location of ABC Pvt. Ltd. which is New Delhi.

As per section 2(6) of the IGST Act, 2017, export of services means the supply of any service when,-

- a) the supplier of service is located in India;
- b) the recipient of service is located outside India;
- c) the place of supply of service is outside India;
- d) the payment for such service has been received by
- e) the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and

Since, in the given case, place of supply is in India, this transactions does not tantamount to export of service.

Question 16

Mr. Murthy, an unregistered person and a resident of Pune, Maharashtra hires the services of M/s Sun Ltd. an event management company registered in Delhi, for organizing of the new product launch in Bengaluru, Karnataka.

- (i) Determine the place of supply of services provided by M/s Sun Ltd.
- (ii) What would your answer be in case the product launch takes place in Bangkok?
- (iii) What would your answer be in case Mr. Murthy is a registered person and product launches take place in Bengaluru and Bangkok?

Answer:

- (i) As per section 12(7)(a)(ii) of IGST Act, 2017, when service by way of organization of an event is provided to an unregistered person, the place of supply is the location where the event is actually held and if the event is held outside India, the place of supply is the location of recipient.

Since, in the given case, the service recipient [Mr. Murthy] is unregistered and event is held in India, place of supply is the location where the event is actually held i.e., Bengaluru, Karnataka. The location of the supplier and the location of the recipient is irrelevant in this case.

(ii) However, if product launch takes place outside India [Bangkok], the place of supply will be the location of recipient i.e., Pune, Maharashtra.

(iii) When service by way of organization of an event is provided to a registered person, place of supply is the location of recipient vide section 12(7)(a)(i) of IGST Act, 2017.

Therefore, if Mr. Murthy is a registered person, then in both the cases i.e., either when product launch takes place in Bengaluru or Bangkok, the place of supply will be the location of recipient i.e., Pune, Maharashtra.

Question 17

Mr. Mahendra Goyal, an interior decorator provides professional services to Mr. Harish Jain in relation to two of his immovable properties.

Determine the place of supply in the transactions below as per provisions of GST law in the following independent situations:

Case	Location of Mr. Mahendra Goyal	Location of Mr. Harish Jain	Properties situated at
I	Delhi	Maharashtra	New York (USA)
II	Delhi	New York	Paris (France)

Explain the relevant provisions of law to support your conclusions.

Answer:

Case I

As per section 12(3) of the IGST Act, 2017, where both the service provider and the service recipient are located in India, the place of supply of services directly in relation to an immovable property, including services provided by interior decorators is the location of the immovable property. However, if the immovable property is located outside India, the place of supply is the location of the recipient.

Since in the given case, both the service provider (Mr. Mahendra Goyal) and the service recipient (Mr. Harish Jain) are located in India and the immovable property is located outside India (New York), the place of supply will be the location of recipient i.e., Maharashtra.

Case II

As per section 13(4) of the IGST Act, 2017 where either the service provider or the service recipient is located outside India, the place of supply of services directly in relation to an immovable property including services of interior decorators is the location of the immovable property.

Since in the given case, service provider (Mr. Mahendra Goyal) is located in India and service recipient (Mr. Harish Jain) is located outside India (New York), the place of supply will be the location of immovable property i.e., Paris (France).

Question 18

Asha Enterprises, supplier of sewing machines, is located in Kota (Rajasthan) and registered for purpose of GST in the said State. It receives an order from Deep Traders, located in Jalandhar (Punjab) and registered for the purpose of GST in the said State. The order is for the supply of 100 sewing machines with an instruction to ship the sewing machines to Jyoti Sons, located in Patiala (Punjab) and registered in the said State for purpose of GST. Jyoti Sons is a customer of Deep Trade ₹ Sewing machines are being shipped in a lorry by Asha Enterprises.

Briefly explain the following:

- a) the place of supply under IGST Act, 2017;
- b) the nature of supply:- whether inter-State or intra-State and
- c) whether CGST/SGST or IGST as would be applicable in this case.

Answer:

The supply between Asha Enterprises (Kota, Rajasthan) and Deep Traders (Jalandhar, Punjab) is a bill to ship to supply where the goods are delivered by the supplier [Asha Enterprises] to a recipient [Jyoti Sons (Patiala, Punjab)] on the direction of a third person [Deep Traders].

In case of such supply, it is deemed that the said third person has received the goods and the place of supply of such goods is the principal place of business of such person [Section 10(1)(b) of the IGST Act, 2017]. Thus, the place of supply between Asha Enterprises (Rajasthan) and Deep Traders (Punjab) will be Jalandhar, Punjab.

Since the location of supplier and the place of supply are in two different States, the supply is an inter-State supply in terms of section 7 of the IGST Act, 2017, liable to IGST.

This situation involves another supply between Deep Traders (Jalandhar, Punjab) and Jyoti Sons (Patiala, Punjab). In this case, since the supply involves movement of goods, place of supply will be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient, i.e. Patiala, Punjab [Section 10(1)(a) of the IGST Act, 2017].

Since the location of supplier and the place of supply are in the same State, the supply is an intra-State supply in terms of section 8 of the IGST Act, 2017, liable to CGST and SGST.

Question 19

Determine the place of supply for the following independent cases under the IGST Act, 2017:

- (i) Grand Gala Events, an event management company at Kolkata, organizes two award functions for Kalyan Jewellers of Chennai (Registered in Chennai, Tamilnadu) at New Delhi and at Singapore.
- (ii) Perfect Planners (Bengaluru, Karnataka) is hired by Dr. Kelvin (unregistered person based in Kochi, Kerala) to plan and organize his son's wedding at Mumbai, Maharashtra.

Will your answer be different if the wedding is to take place at Malaysia?

Answer:

(i) When service by way of organization of an event is provided to a registered person, place of supply is the location of recipient in terms of section 12(7)(a)(i) of IGST Act, 2017.

Since, in the given case, the award functions at New Delhi and Singapore are organized for Kalyan Jewellers (registered in Chennai), place of supply in both the cases is the location of Kalyan Jewellers i.e., Chennai, Tamilnadu.

(ii) As per section 12(7)(a)(ii) of IGST Act, 2017, when service by way of organization of an event is provided to an unregistered person, the place of supply is the location where the event is actually held and if the event is held outside India, the place of supply is the location of recipient.

Since, in the given case, the service recipient [Dr. Kelvin] is unregistered and event is held in India, place of supply is the location where the event is actually held i.e., Mumbai, Maharashtra.

However, if the wedding is to take place outside India [Malaysia], the place of supply is the location of recipient, i.e. Kochi, Kerala.

Question 20

Raman Row, a registered supplier under GST in Mumbai, Maharashtra is directed by Nero Enterprises, Kolkata, West Bengal to deliver goods valued at ₹ 12,00,000 to Fabricana of Aurangabad in Maharashtra. Raman Row makes out an invoice at 9% tax rate under CGST and SGST respectively (scheduled rate) and delivers it locally in Maharashtra.

Discuss and comment on the above levy of tax and determine the tax liability of goods in the above circumstances

Answer:

The supply between Raman Row (Mumbai, Maharashtra) and Nero Enterprises (Kolkata, West Bengal) is a bill to ship to supply where the goods are delivered by the supplier [Raman Row] to a recipient [Fabricana (Aurangabad, Maharashtra)] or any other person on the direction of a third person [Nero Enterprises]. In such a case, it is deemed that the said third person has received the goods and the place of supply of such goods is the principal place of business of such person [Section 10(1)(b) of IGST Act, 2017].

Accordingly, the place of supply between Raman Row (Mumbai, Maharashtra) and Nero Enterprises (Kolkata, West Bengal) will be Kolkata and thus, it will be an inter-State supply liable to IGST. Hence, Raman Row should charge 18% IGST on ₹ 12,00,000, which comes out to ₹ 2,16,000.

This situation involves another supply between Nero Enterprises (Kolkata, West Bengal) and Fabricana (Aurangabad, Maharashtra). The place of supply in this case will be the location of the goods at the time when the movement of goods terminates for delivery to the recipient i.e., Aurangabad, Maharashtra in terms of section 10(1)(a) of IGST Act, 2017. Thus, being an inter-State supply, the same will also be chargeable to IGST.

Question 21

Mr. Z, a supplier registered in Hyderabad (Telangana), procures goods from China and directly supplies the same to a customer in US. With reference to the provisions of GST law, examine whether the said activity of supply of goods by Mr. Z to customer in US is taxable under GST. If yes, determine the place of supply of the same.

Answer

Schedule III to the CGST Act specifies transactions/ activities which shall be neither treated as supply of goods nor supply of services. A new activity has been added in the said Schedule III vide the CGST (Amendment) Act, 2018 namely, supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India. Thus, it seeks to exclude from the tax net such transactions which involve movement of goods, caused by a registered person, from one non-taxable territory to another non-taxable territory.

Therefore, in view of the above-mentioned provisions, the said activity is not a supply. Hence, it is not leviable to GST since "supply" is the taxable event for chargeability of GST. Therefore, since the transaction is not leviable to GST, the question of place of supply does not arise in the given case.

Question 22

'PQ', a statutory body, deals with the all the advertisement and publicity of the Government. It has issued a release order to 'Moon Plus' channel (registered in State 'A') for telecasting an advertisement relating to one of the schemes of the Government in the month of September 20XX. The advertisement will be telecasted in the States of 'A', 'B', 'C', 'D' and 'E'. The total value of the service contract entered into between 'Moon Plus' and 'PQ' is ₹ 10,00,000 (exclusive of GST).

You are required to determine the place of supply of the services in the instant case as also the value of supply attributable to the States of 'A', 'B', 'C', 'D' and 'E'.

Further, compute the GST liability [CGST & SGST or IGST, as the case may be] of 'Moon Plus' as also advise it as to whether it should issue one invoice for the entire contract value or separate State-wise invoices.

The other relevant information is given hereunder: **Table 1**

States	Viewership figures of 'Moon Plus' channel in the last week of June 20XX as provided by the Broadcast Audience Research Council
A	50,000
B + C	1,00,000
D + E	50,000

Table 2

States	Population as per latest census (in crores)
A	50
B	180
C	20

States	Population as per latest census (in crores)
D	100
E	25

The applicable rate of tax is as under:

CGST	SGST	IGST
9%	9%	18%

Answer:-

As per section 12(14) of the IGST Act, 2017, the place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for the States or Union territories identified in the contract or agreement is taken as being in each of such States or Union territories (where the advertisement is broadcasted/ run /played/ disseminated).

Therefore, in the given case, the place of supply of advertisement service is in the States of 'A', 'B', 'C', 'D' and 'E'.

The value of the supply of such advertisement services specific to each State/Union territory is in proportion to the amount attributable to the services provided by way of dissemination in the respective States/Union territories determined in terms of the contract or agreement entered into in this regard.

In the absence of such a contract or agreement between the supplier and recipient of services, the proportionate value of advertisement services attributable to different States/Union territories (where the advertisement is broadcasted/run/played/disseminated) is computed in accordance with rule 3 of the IGST Rules, 2017.

As per rule 3(f) of the IGST Rules, 2017, in the case of advertisement on television channels, the amount attributable to the value of advertisement service disseminated in a State shall be calculated on the basis of the viewership of such channel in such State, which in turn, shall be calculated in the following manner, namely: -

- (i) the channel viewership figures for that channel for a State or Union territory shall be taken from the figures published in this regard by the Broadcast Audience Research Council;
- (ii) the figures published for the last week of a given quarter shall be used for calculating viewership for the succeeding quarter;
- (iii) where such channel viewership figures relate to a region comprising of more than one State or Union territory, the viewership figures for a State or Union territory of that region, shall be calculated by applying the ratio of the populations of that State or Union territory, as determined in the latest Census, to such viewership figures;
- (iv) the ratio of the viewership figures for each State or Union territory as so calculated, when applied to the amount payable for that service, shall represent the portion of the value attributable to the dissemination in that State or Union territory.

Therefore, value of supply attributable to 'A', 'B', 'C', 'D' and 'E', will be computed as under:

States	Viewership figures of 'Moon Plus' channel as provided by the Broadcast Audience Research Council in the last week of June 20XX	Viewership ratio of 'Moon Plus' channel in the States 'A', ('B' + 'C') and ('D' + 'E')	Proportionate value of advertisement services for States 'A', ('B' + 'C') and ('D' + 'E')
A	50,000	50,000: 1,00,000: 50,000 = 1:2:1	₹ 10,00,000 × 1/4 = ₹ 2,50,000
B + C	1,00,000		₹ 10,00,000 × 2/4 = ₹ 5,00,000
D + E	50,000		₹ 10,00,000 × 1/4 = ₹ 2,50,000

States	Population as per latest census (in crores)	Population ratio in the States 'B' & 'C' and 'D' & 'E'	Proportionate value of advertisement services in the States 'A', 'B', 'C', 'D' & 'E'
A	50		₹ 2,50,000
B	180	B:C = 180:20 = 9:1	₹ 5,00,000 × 9/10 = ₹ 4,50,000
C	20		₹ 5,00,000 × 1/10 = ₹ 50,000
D	100	D:E = 100:25 = 4:1	₹ 2,50,000 × 4/5 = ₹ 2,00,000
E	25		₹ 2,50,000 × 1/5 = ₹ 50,000

Since, there are five different places of supply in the given case, 'Moon Plus' channel will have to issue five separate invoices for each of the States namely, 'A', 'B', 'C', 'D' & 'E' indicating the value pertaining to that State. The GST liability of 'Moon Plus' channel will, therefore, be worked out as under:

Computation of GST liability of 'Moon Plus'

States	Proportionate value of advertisement services (₹)	CGST @ 9% (₹)	SGST @ 9% (₹)	IGST @ 18% (₹)
A	2,50,000	22,500	22,500	
B	4,50,000			81,000
C	50,000			9,000
D	2,00,000			36,000
E	50,000			9,000

Only in case of supply of services in State 'A', the location of supplier (State 'A') and the place of supply are in the same State, hence the same is an intra-State supply in terms of section 8(1) of the IGST Act, 2017 and is thus, liable to CGST and SGST. In all the remaining cases of supply of services, the location of the supplier (State 'A') and the places of supply (States 'B', 'C', 'D' & 'E') are in two different States, hence the same are inter-State supplies liable to IGST [Section 7(1)(a) of the IGST Act, 2017 read with section 5(1) of that Act].

Question 23

XY Ltd. (registered in Rajasthan) received legal services from an attorney in UK (unrelated person) in relation to registration of a trademark in UK. A consideration of £ 8,000 was paid by the company to the attorney in UK.

Determine the place of supply for the service and suggest if XY Ltd. is required to pay tax under reverse charge on this transaction

Answer

In the given case, the service provider is outside India, and the service recipient is in India. Thus, the place of supply will be determined on the basis of the provisions of section 13. Since the given service does not get covered under any of the specific provisions of section 13, the place of supply thereof will be governed by the general rule, i.e. place of supply of services will be the location of the recipient of service, which in this case is Rajasthan (India).

Further, the given case is import of service in terms of section 2(11) as the supplier of service is located outside India, the recipient of service is located in India and the place of supply of service is in India. Since the services are imported for a consideration from an unrelated person, the same tantamounts to supply in terms of section 7(1)(b) of CGST Act and are liable to GST.

As per reverse charge *Notification No. 10/2017 IT(R) dated 28.06.2017*, if a service is supplied by a person located in a non-taxable territory to a person located in the taxable territory, other than non-taxable online recipient, the tax is payable by the recipient of service under reverse charge.

Therefore, XY Ltd. will pay GST under reverse charge on £ 8000 paid by it to the attorney in UK.



Question 1

A machine has to be supplied at site. It is done by sourcing various components from vendors and assembling the machine at site. The details of the various events are:

17 th September	Purchase order with advance of ₹ 50,000 is received for machine worth ₹ 12 lakh and entry duly made in the seller's books of account
20 th October	The machine is assembled, tested at site, and accepted by buyer
23 rd October	Invoice raised
4 th November	Balance payment of ₹ 11,50,000 received

Determine the time of supply(ies) in the above scenario for the purpose of payment of tax.

Answer:

As per Notification No. 66/2017 CT dated 15.11.2017, a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a) i.e., date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.

Therefore, the time of supply for the purpose of payment of tax for the entire amount of ₹ 12,00,000 is 20th October which is the date on which the goods were made available to the recipient as per section 31(1)(b), and the invoice should have been issued on this date [Section 12(2)(a)].

Question 2

Gas is supplied by a pipeline. Monthly payments are made by the recipient as per contract. Every quarter, invoice is issued by the supplier supported by a statement of the goods dispatched and payments made, and the recipient has to pay the differential amount, if any. The details of the various events are:

August 5, September 5, October 6	Payments of ₹ 2 lakh made in each month
October 3	Statement of accounts issued by supplier, with invoice for the quarter July - September
October 17	Differential payment of ₹ 56,000 received by supplier for the quarter July - September as per statement of accounts
4 th November	Balance payment of ₹ 11,50,000 received

Determine the time of supply for the purpose of payment of tax.

Answer:

As per Notification No. 66/2017 CT dated 15.11.2017, a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.

As per section 31(4), in case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice is issued before or at the time of each such statement is issued or, as the case may be, each such payment is received. Therefore, invoice should be issued on August 5, September 5 and October 6 when monthly payments of ₹ 2 lakh are received.

Thus, the time of supply for the purpose of payment of tax will be August 5, September 5 and October 6 respectively for goods valued at ₹ 2 lakh each. For goods valued at ₹ 56,000, the time of supply for the purpose of payment of tax will be October 3, the date of issuance of invoice.

Question 3

Determine the time of supply from the given information.

May 4	Supplier invoices goods taxable on reverse charge basis to Bridge & Co. (30 days from the date of issuance of invoice elapse on June 3)
May 12	Bridge & Co receives the goods
May 30	Bridge & Co makes the payment

Answer:

Here, May 12 will be the time of supply, being the earliest of the three stipulated dates namely, and receipt of goods, date of payment and date immediately following 30 days of issuance of invoice [Section 12(3)]. (Here, date of invoice is relevant only for calculating thirty days from that date.)

Question 4

Determine the time of supply from the given information.

May 4	Supplier invoices goods taxable on reverse charge basis to Pillar & Co. (30 days from the date of issuance of invoice elapse on June 3)
June 12	Pillar & Co receives the goods, which were held up in transit
July 30	Payment made for the goods

Answer:

Here, June 4, 31st day from the date of supplier's invoice, will be the time of supply, being the earliest of the three stipulated dates namely, receipt of goods, date of payment and date immediately following 30 days of issuance of invoice [Section 12(3)].

Question 5

Determine the time of supply from the following particulars:

6th May	Booking of convention hall, sum agreed ₹ 15000, advance of ₹ 3000 received
15th September	Function held in convention hall
27th October	Invoice issued for ₹ 15000, indicating balance of ₹ 12000 payable
3rd November	Balance payment of ₹ 12000 received

Answer:

As per section 31(2) read with rule 47 of CGST Rules, the tax invoice is to be issued within 30 days of supply of service. In the given case, the invoice is not issued within the prescribed time limit. As per section 13(2)(b), in a case where the invoice is not issued within the prescribed time, the time of supply of service is the date of provision of service or receipt of payment, whichever is earlier.

Therefore, the time of supply of service to the extent of ₹ 3,000 is 6th May as the date of payment of ₹ 3000 is earlier than the date of provision of service. The time of supply of service to the extent of the balance ₹12,000 is 15th September which is the date of provision of service.

Question 6

Investigation shows that ABC & Co carried out service of cleaning and repairs of tanks in an apartment complex, for which the Apartment Owners' Association showed a payment in cash on 4th April to them against work of this description. The dates of the work are not clear from the records of ABC & Co. ABC & Co have not issued invoice or entered the payment in their books of account.

Answer:

The time of supply cannot be determined vide the provisions of clauses (a) and (b) of section 13(2) as neither the invoice has been issued nor the date of provision of service is available as also the date of receipt of payment in the books of the supplier is also not available. Therefore, the time of supply will be determined vide clause (c) of section 13(2) i.e., the date on which the recipient of service shows receipt of the service in his books of account.

Thus, time of supply will be 4th April, the date on which the Apartment Owners' Association records the receipt of service in its books of account.

Question 7

Determine the time of supply from the given information. (Assume that service being supplied is taxable under reverse charge)

May 4	The supplier of service issues invoice for service provided. There is a dispute about amount payable, and payment is delayed.
August 21	Payment made to the supplier of service

Answer:

Here, July 4 will be the time of supply, being the earliest of the two stipulated dates namely, date of payment and date immediately following 60 days since issue of invoice.

Question 8

Determine the time of supply from the given information.

May 4	A German company issues email informing its associated company ABC Ltd. of the cost of technical services provided to it.
July 2	ABC Ltd transfers the amount to the account of the German company

Answer:

As there is no prior entry of the amount in the books of account of ABC Ltd., July 2 will be the time of supply, being the date of payment in terms of second proviso to section 13(3).

Question 9

Determine the time of supply in the following cases assuming that GST is payable under reverse charge:

S. No.	Date of receipt of goods (1)	Date of payment by the recipient of goods (2)	Date of issue of invoice by the supplier of goods (3)
(i)	July 1	August 10	June 29
(ii)	July 1	June 25	June 29
(iii)	July 1	Part payment made on June 30 and balance amount paid on July 20	June 29
(iv)	July 5	Payment is entered in the books of account on June 28 and debited in recipient's bank account on June 30	June 1
(v)	July 1	Payment is entered in the books of account on June 30 and debited in recipient's bank account on June 26	June 29
(vi)	August 1	August 10	June 29

Answer:

S. No.	Date of receipt of goods (1)	Date of payment by the recipient of goods (2)	Date of Issue of invoice by the supplier of goods (3)	Date immediately following 30 days from the date of invoice (4)	Time of supply of goods [Earlier of (1), (2) & (4)] (5)
(i)	July 1	August 10	June 29	July 30	July 1
(ii)	July 1	June 25	June 29	July 30	June 25
(iii)	July 1	Part payment made on June 30 and balance amount paid on July 20	June 29	July 30	June 30 for part payment made and July 1 for balance amount
(iv)	July 5	Payment is entered in the books of account on June 28 and debited in recipient's bank	June 1	July 2	June 28 (i.e., when payment is entered in the books of account of the recipient)

S. No.	Date of receipt of goods (1)	Date of payment by the recipient of goods (2)	Date of Issue of invoice by the supplier of goods (3)	Date immediately following 30 days from the date of invoice (4)	Time of supply of goods [Earlier of (1), (2) & (4)] (5)
(v)	July 1	account on June 30 Payment is entered in the books of account on June 30 and debited in recipient's bank account on June 26	June 29	July 30	June 26 (i.e., when payment is debited in the recipient's bank account)
(vi)	August 1	August 10	June 29	July 30	July 30 (i.e., 31st day from issuance of invoice)

Question 10

Determine the time of supply in the following cases assuming that GST is payable under reverse charge:

S. No.	Date of payment by the recipient for supply of services (1)	Date of issue of invoice by the supplier of services (2)
(i)	August 10	June 29
(ii)	August 10	June 1
(iii)	Part payment made on June 30 and balance amount paid on September 1	June 29
(iv)	Payment is entered in the books of account on June 28 and debited in recipient's bank account on June 30	June 1
(v)	Payment is entered in the books of account on June 30 and debited in recipient's bank account on June 26	June 29

Answer:

S. No.	Date of payment by the recipient for supply of services (1)	Date of Issue of invoice by the supplier of services (2)	Date immediately following 60 days from the date of invoice (3)	Time of supply of goods [Earlier of (1) & (3)]
(i)	August 10	June 29	August 29	August 10
(ii)	August 10	June 1	August 1	August 1

S. No.	Date of payment by the recipient for supply of services (1)	Date of Issue of invoice by the supplier of services (2)	Date immediately following 60 days from the date of invoice (3)	Time of supply of goods [Earlier of (1) & (3)]
(iii)	Part payment made on June 30 and balance amount paid on September 1	June 29	August 29	June 30 for part payment and August 29 for balance amount
(iv)	Payment is entered in the books of account on June 28 and debited in recipient's bank account on June 30	June 1	August 1	June 28 (i.e. when payment is entered in the books of account of the recipient)
(v)	Payment is entered in the books of account on June 30 and debited in recipient's bank account on June 26	June 29	August 29	June 26 (i.e. when payment is debited in the recipient's bank account)

Question 11

Determine the time of supply in the following cases assuming that rate of GST changes from 18% to 20% w.e.f. June 1:

Sr. No.	Date of supply of services	Date of issue of invoice	Date of receipt of payment
(i)	May 28	June 9	July 25
(ii)		May 28	July 25
(iii)		June 9	May 26
(iv)	June 10	May 28	June 25
(v)		May 28	May 16
(vi)		June 9	May 28

Answer:

S. No.	Date of supply of services	Date of issue of invoice	Date of receipt of payment	Time of supply	Applicable rate
(i)	May 28	June 9	July 25	June 9	20%
(ii)		May 28	July 25	May 28	18%
(iii)		June 9	May 26	May 26	18%

S. No.	Date of supply of services	Date of issue of invoice	Date of receipt of payment	Time of supply	Applicable rate
(iv)	June 10	May 28	June 25	June 25	20%
(v)		May 28	May 16	May 16	18%
(iv)		June 9	May 28	June 9	20%

Question 12

Kabira Industries Ltd engaged the services of a transporter for road transport of a consignment on 17th June and made advance payment for the transport on the same date, i.e. 17th June. However, the consignment could not be sent immediately on account of a strike in the factory, and instead was sent on 20th July. Invoice was received from the transporter on 22nd July.

What is the time of supply of the transporter's service? Note: Transporter's service is taxed on reverse charge basis.

Answer:

Time of supply of service taxable under reverse charge is the earlier of the following two dates in terms of section 13(3):

- Date of payment
- 61st day from the date of issue of invoice

In this case, the date of payment precedes 61st day from the date of issue of invoice by the supplier of service. Hence, the date of payment, i.e. 17th June, will be treated as the time of supply of service [Section 13(3)(a)].

Question 13

Raju Pvt Ltd. receives the order and advance payment on 5th January for carrying out an architectural design job. It delivers the designs on 23rd April. By oversight, no invoice is issued at that time, and it is issued much later, after the expiry of prescribed period for issue of invoice.

When is the time of supply of service?

Answer:

Since the invoice has not been issued within the prescribed time period, time of supply of service will be the earlier of the following two dates in terms of section 13(2)(b):

- Date of provision of service
- Date of receipt of payment

The payment was received on 5th January and the service was provided on 23rd April. Therefore, the date of payment, i.e. 5th January is the time of supply of the service in this case.

Question 14

Investigation shows that 150 cartons of ceramic capacitors were dispatched on 2nd August but no invoice was raised and the transaction (dispatch of cartons) was not entered in the accounts. There was no evidence of receipt of payment.

What is the time of supply of 150 cartons for the purpose of payment of tax?

Answer:

As per Notification No. 66/2017 CT dated 15.11.2017, a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.

In this case since the invoice has not been issued, the time of supply for the purpose of payment of tax will be the last date on which the invoice is required to be issued.

The invoice for supply of goods must be issued on or before the dispatch of goods, i.e. on 2nd August. Therefore, the time of supply for the purpose of payment of tax for the goods will be 2nd August, the date when the invoice should have been issued.

Question 15

An order is placed on Ram & Co. on 18th August for supply of a consignment of customized shoes. Ram & Co. gets the consignment ready and informs the customer and issues the invoice on 2nd December. The customer collects the consignment from the premises of Ram & Co. on 7th December and electronically transfers the payment on the same date, which is entered in the accounts on the next day, 8th December.

What is the time of supply of the shoes for the purpose of payment of tax?

Answer:

As per Notification No. 66/2017 CT dated 15.11.2017, a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.

In this case, the invoice is issued before the removal of the goods and is thus, within the time limit prescribed under section 31(1). Therefore, the time of supply for the purpose of payment of tax is the date of issue of invoice, which is 2nd December.

Question 16

Meal coupons are sold to a company on 9th August for being distributed to the employees of the said company. The coupons are valid for six months and can be used against purchase of food items. The employees use them in various stores for purchases of various edible items on different dates throughout the six months.

What is the date of supply of the coupons?

Answer:

As the coupons can be used for a variety of food items, which are taxed at different rates, the supply cannot be identified at the time of purchase of the coupons. Therefore, the time of supply of the coupons is the date of their redemption in terms of section 12(4).

Question 17

A firm of lawyers issues invoice for services to ABC Ltd. on 17th Feb. The payment is contested by ABC Ltd. on the ground that on account of negligence of the firm, the company's case was dismissed by the Court for non-appearance, which necessitated further appearance for which the firm is billing the company. The dispute drags on and finally payment is made on 3rd November.

Identify the time of supply of the legal services.

Note: Legal services are taxable on reverse charge basis.

Answer:

Time of supply of services that are taxable under reverse charge is earliest of the following two dates in terms of section 13(3):

- Date of payment [3rd November]
- 61st day from the date of issue of invoice [19th April]

The date of payment comes subsequent to the 61st day from the issue of invoice by the supplier of service. Therefore, the 61st day from the date of supplier's invoice has to be taken as the time of supply. This fixes 19th April as the time of supply.

Question 18

Modern Security Co. provides service of testing of electronic devices. In one case, it tested a batch of devices on 4th and 5th September but could not raise invoice till 19th November because of some dispute about the condition of the devices on return. The payment was made in December.

What is the method to fix the time of supply of the service?

Answer:

The time of supply of services, if the invoice is not issued in time, is the date of payment or the date of provision of service, whichever is earlier [Section 13(2)(b)]. In this case, the service is provided on 5th September but not invoiced within the prescribed time limit. Therefore, 5th September, the date of provision of service, being earlier than the date of payment, will be the time of supply.

Question 19

I buy a set of modular furniture from a retail store. Invoice is issued to me and I make the payment. The furniture is to be delivered to me later in the week when a technician is available to assemble and install it. The next day the rate of tax applicable to modular furniture is revised upward, and the store sends me a supplementary invoice with the delivery note accompanying the furniture to collect the differential amount of tax.

Is this correct on store's part?

Answer:

No, the store is not correct in issuing supplementary invoice with revised rate of tax. The revised rate of tax is not applicable to the transaction, as the issuance of invoice as well as receipt of payment occurred before the supply. Therefore, in terms of section 14(b)(ii), the time of supply is earlier of the two events namely, issuance of invoice or receipt of payment, both of which are before the change in rate of tax, and thus, the old rate of tax remains applicable.

Question 20

An online portal, Best Info, raises invoice for database access on 21st February on Roy & Bansal Ltd. The payment is made by Roy & Bansal Ltd. by a demand draft sent on 25th February, which is received and entered in the accounts of Best Info on 28th February. Best Info encashes the demand draft and thereafter, gives access to the database to Roy & Bansal Ltd from 3rd March. In the meanwhile, the rate of tax is changed from 1st March 2017.

What is the time of supply of the service of database access by Best Info?

Answer:

As issuance of invoice and receipt of payment (entry of the payment in Best Info's accounts) occurred before the change in rate of tax, the time of supply of service by the online portal is earlier of the date of issuance of invoice (21st February) or date of receipt of payment (28th February) i.e., 21st February. This would be so even though the service commences after the change in rate of tax [Section 14(b)(ii)].

Question 21

Chiku Traders is a registered supplier of plastic goods. On 10th April, 20XX, Chiku Traders received an order from Neelu Traders for supply of a consignment of plastic goods. Chiku Traders gets the consignment ready by 15th April, 20XX. The invoice for the consignment was issued the next day, 16th April, 20XX. Neelu Traders collects the consignment from the godown of Chiku Traders on 25th April, 20XX and hands over the cheque towards payment on the same date. The said payment is entered in the books of accounts of Chiku Traders on 26th April, 20XX and amount is credited in their bank account on 27th April, 20XX.

Determine the time of supply of the plastic goods supplied by Chiku Traders to Neelu Traders as per the provisions of CGST Act, 2017.

Answer:

In terms of section 12(2) of the CGST Act, the time of supply of goods is the earlier of the date of issue of invoice/last date on which the invoice is required to be issued or date of receipt of payment. However, Notification No. 66/2017 CT dated 15.11.2017 specifies that a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a) of the CGST Act, 2017, i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.

As per section 31(1), the invoice in case of supply of goods needs to be issued either before or at the time of removal/delivery of goods.

In this case, the invoice is issued before the removal of the goods and is thus, within the time limit prescribed under section 31(1). Therefore, time of supply is the date of issue of invoice, which is 16th April, 20XX.

Question 22

Mr. Mahendra Sharma, an interior decorator registered at Ahmedabad (Gujarat), provided service to one of his clients XYZ Company Ltd., registered at Pune (Maharashtra). The provision of service

was completed on 10-08-20XX and payment received was entered in the books of Mr. Mahendra Sharma on 11-08-20XX.

With effect from 16/08/20XX, applicable GST rate was increased from 5% to 12%. However, payment for the service received was credited in his bank account on 17/08/20XX and invoice for the same was raised on 23-08-20XX.

Mr. Mahendra Sharma claimed that he is liable to pay IGST @ 5%. But the department took the view that he is liable to pay IGST @12%.

Examine the correctness of Mr. Mahendra Sharma's contention and determine the time of supply and applicable rate of tax as per the statutory provisions.

Would your answer undergo any change in the above case if the payment was credited to the bank account on 14-08-20XX instead of 17-08-20XX?

Note: You may assume that all days are working days.

Answer:

As per section 14 of the CGST Act, 2017, in case of change in rate of tax, date of receipt of payment is earlier of:

- (i) date of entering payment in the books of account of the supplier (11.08.20XX)
- or
- (ii) date on which the payment is credited to his bank account (17.08.20XX).

However, if the payment is credited in the bank account after 4 working days from the date of change in the rate of tax, the date of receipt of payment will be the date of credit in the bank account.

In the given case, since the payment has been credited in the bank within 4 working days from the date of change in the rate of tax, the date of receipt of payment will be 11.08.20XX [i.e., earlier of 11.08.20XX or 17.08.20XX].

Section 14 further provides that where goods and/or services have been supplied before the change in rate of tax (10.08.20XX) and the payment has been received before the change in rate of tax (11.08.20XX), but the invoice for the same is issued after the change in rate of tax (23.08.20XX), the time of supply shall be the date of receipt of payment.

Therefore, in the given case, the time of supply will be 11.08.20XX and the applicable rate of tax will be rate prevalent at the time of supply, i.e. IGST @ 5%.

Therefore, the contention of Mahendra Sharma is correct.

Further, if the date on which the payment is credited to bank account of supplier is 14.08.20XX, the date of receipt of payment will continue to be 11.08.20XX [i.e., earlier of 11.08.20XX or 14.08.20XX] since the payment is credited in the bank account before change in rate of tax. Consequently, with other things remaining the same, the time of supply and the applicable rate of tax will remain the same.

Question 23

Determine the time of supply from the following particulars:

8th September	Community hall booked for a marriage, sum agreed ₹ 1,20,000, advance ₹ 20,000 recorded in the books of account.
10th September	Advance amount credited in bank account.
2nd November	Marriage held in the Community hall.
18th December	Invoice issued for ₹ 1,20,000 indicating the balance of ₹ 1,00,000 payable
22nd December	Balance ₹ 1,00,000 recorded in the books of account.
24th December	Payment ₹ 1,00,000 credited to the bank account

Answer:

As per section 31(2) of the CGST Act, 2017 read with rule 47 of CGST Rules, 2017 a tax invoice is to be issued within 30 days of supply of service. In the given case, the invoice is not issued within the prescribed time limit. As per section 13(2)(b) of CGST Act, 2017, in a case where the invoice is not issued within the prescribed time, the time of supply of service is -

- (i) date of provision of service
or
- (ii) date of recording the payment in the books of account of the supplier
or
- (iii) date of crediting of payment in the supplier's bank account whichever is earlier.

Therefore, the time of supply of service to the extent of advance of ₹20,000 is 8th September (date of recording the payment in the books of account) as it is earlier than the date of crediting of payment in the bank account and the date of provision of service.

The time of supply of service to the extent of the balance ₹1,00,000 is 2nd November, which is the date of provision of service as it is earlier than the other two events in this case.

Question 24

Renudhoot Ltd. enters into a contract with XYZ Ltd. on 2nd July 2019 for a period of 2 years for construction of a new building - to be used for commercial purposes - for a total consideration of ₹ 150 lakh. As per the terms of contract, Renduhoot Ltd. is required to make payment at different stages of completion of the building namely, 50%, 75% and 100%.

Determine the time of supply using relevant details given as under

Stage	Date of various stages	Date of issuance of invoice	Date of payment	Amount paid (₹)
Initial booking	02.07.2019	02.07.2019	02.07.2019	15 lakh
50% completion of building	15.03.2020	22.03.2020	29.03.2020	60 lakh
75% completion of building	20.06.2020	24.07.2020	23.07.2020	35 lakh
100% completion of building	30.09.2020	30.09.2020	20.09.2020	40 lakh

Answer

As per section 13, the time of supply of services is the earlier of the dates arrived at by methods (A) and (B), as follows:

- (A) Date of invoice or date of receipt of payment (to the extent the invoice or payment covers the supply of services), whichever is earlier, if the invoice is issued within the time prescribed under section 31;
- (B) Date of provision of service or date of receipt of payment (to the extent the payment covers the supply of services), whichever is earlier, if the invoice is not issued within the time prescribed under section 31

Since in the present case, the construction services are provided under a contract for a period exceeding three months with periodic payment obligations, such services would fall within the ambit of term "continuous supply of services" as defined under section 2(33).

As per section 31(5), in case of continuous supply of services, the invoice should be issued either (i) on/ before the due date of payment or (ii) before/ at the time when the supplier of service receives the payment, if the due date of payment is not known (iii) on/ before the date of completion of the milestone event when the payment is linked to completion of an event [Section 31(5)].

Accordingly, the time of supply with respect to each of the stages of completion is as follows

Stages of completion	Time of supply
Initial booking	Since invoice is issued within the prescribed time limit, earlier of the date of issue of invoice or date of receipt of payment is the time of supply. However, date of issuance of invoice (02.07.2019) and date of receipt of payment (02.07.2019) are the same. Therefore, time of supply is 02.07.2019.
50%	Since invoice has not been issued on or before the date of 50% completion, earlier of date of provision of service (15.03.2020) or date of receipt of payment (29.03.2020), i.e. 15.03.2020 is the time of supply.
75%	Since invoice has not been issued on or before the date of 75% completion, earlier of date of provision of service (20.06.2020) or date of receipt of payment (23.07.2020), i.e. 20.06.2020 is the time of supply.
100%	Since invoice is issued within the prescribed time limit, earlier of the date of issue of invoice (30.09.2020) or date of receipt of payment (20.09.2020), i.e. 20.09.2020 is the time of supply.

Question 24

Mint Industries Ltd., a registered supplier, imports business support services from Green Inc. of USA on 13th August. The relevant invoice for \$ 1,20,000 is raised by Green Inc on 18th August. Mint Industries Ltd. makes the payment against the said invoice as follows:

Case I	22 nd September
Case II	27 th December

Determine time of supply in each of the aforesaid cases

Answer

In case of services supplied by any person located in a non-taxable territory to any person other than non-taxable online recipient, tax is payable under reverse charge by the person located in the taxable territory. [Notification No. 10/2017 IT (R) dated 28.06.2017]. Hence, in the given case, since the business support services are provided by Green Inc (located in non-taxable territory) to Mint Ltd. (person other than non-taxable online recipient and located in taxable territory), tax is payable under reverse charge by Mint Ltd.

The time of supply of services taxable under reverse charge is the earlier of the following:

- Date of payment, or
- Date immediately following 60 days since issue of invoice (or any other document in lieu of invoice) by the supplier.

If it is not possible to determine the time of supply by using these parameters, then

the time of supply will be the date of entry of the service in the books of account of the recipient of supply located in taxable territory), tax is payable under reverse charge by Mint Ltd.

The time of supply of services taxable under reverse charge is the earlier of the following:

- Date of payment, or
- Date immediately following 60 days since issue of invoice (or any other document in lieu of invoice) by the supplier.

If it is not possible to determine the time of supply by using these parameters, then the time of supply will be the date of entry of the service in the books of account of the recipient of supply

In view of the aforesaid provisions, the time of supply in each of the given cases will be as under

CASE	Time of supply
CASE I	Since Mint Ltd makes the payment within 60 days of the date of issue of invoice, the time of supply is the date of payment, i.e. 22 nd September.
CASE II	As Mint Ltd. makes the payment after 60 days from the date of invoice, time of supply is the date immediately following the said period of 60 days, i.e. 61 st day which is 18 th October.

Question 25

Kothari Ltd., Mumbai, holds 51% of shares of Wilson Inc., a USA based company. Wilson Inc. provides business auxiliary services to Kothari Ltd. From the following details, determine the time of supply of service provided by Wilson Inc

Agreed consideration	US \$1,00,000
Date on which services are provided by Wilson Inc.	16 th June
Date on which invoice is issued by Wilson Inc.	19 th August
Date of debit in the books of account of Kothari Ltd.	30 th September
Date on which payment is made by Kothari Ltd.	23 rd December

Note: Assume that all the days covered in the above case are working days

Answer

Since Kothari Ltd. holds 51% shares of Wilson Inc., Kothari Ltd. and Wilson Inc. are 'associated enterprises' as per section 92A of the Income-tax Act, 1961. As per second proviso to section 13(3), in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply is the earlier of the following two dates:

Date of entry in the books of account of the recipient of supply [which is Kothari Ltd. in the present case]	30 th September
OR	
Date of payment [by Kothari Ltd. in the present case]	23 rd December

Thus, time of supply is 30th September.

Question 26

M/s KLM Ltd., a publishing and printing house registered in Maharashtra, is engaged in supply of books, letter cards, envelopes, guides and reference materials. The following information is provided by the company

Event	Printing of books	Printing of envelopes
Date of entering into printing contract	16 th March	20 th March
Date of receipt of advance	20 th March	25 th March
Date of completion of printing	10 th April	5 th April
Date of issue of invoice	15 th May	10 th April
Date of removal of books and letter heads to buyer	13 th May	7 th April
Date of receipt of balance payment	31 st May	30 th April

In respect of printing of books, content was supplied by the author. For printing of envelopes, the design and logo were supplied by the buyer.

Determine the time of suppl(ies) for the purpose of payment of tax.

Answer

As per Circular No. 11/11/2017 GST dated 20.10.2017, in case of printing of books where only content is supplied by the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore, such supplies would constitute **supply of service**

Question 27

Andes Pvt. Ltd., a registered supplier, manufactures product 'A' and 'B'. While 'A' is taxable under forward charge, 'B' is taxable under reverse charge. The following details are provided in relation to two individual supplies of products 'A' and 'B' made by the company

S. No.	Date	Event
(i)	10 th February	Payment of ₹ 1,00,000 made by buyer for supply of 'A' to be delivered in the month of March
(ii)	13 th February	Receipt of ₹ 1,00,000 [as mentioned in point (i) above]
(iii)	17 th February	Payment of ₹ 2,00,000 made by buyer for supply of 'B' to be delivered in the month of March

(iv)	20 th February	Receipt of ₹ 2,00,000 [as mentioned in point (iii) above]
(v)	5 th March	Product 'A' manufactured and removed
(vi)	6 th March	Receipt of product 'A' [as mentioned in point (v) above] by the buyer
(vii)	10 th March	Product 'B' manufactured and removed
(viii)	23 rd March	Receipt of product 'B' [as mentioned in point (vii) above] by the buyer
(ix)	4 th March	Invoice for ₹ 2,00,000 issued for supply of 'A'
(x)	11 th March	Invoice for ₹ 4,00,000 issued for supply of 'B'
(xi)	25 th March	Payment made by the buyer of 'A'
(xii)	31 st March	Payment [as mentioned in point (xi) above] received
(xiii)	1 st April	Payment made by the buyer of 'B'
(xiv)	4 th April	Payment [as mentioned in point (xiii) above] received

Determine the time of suppl(ies) of goods for the purpose of payment of tax.

Answer

In terms of section 12(2), the time of supply of goods is the earlier of, the date of issue of invoice/last date on which the invoice is required to be issued or date of receipt of payment. However, Notification No. 66/2017 CT dated 15.11.2017 specifies that a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.

Also, it is important to note that the relief of not paying GST at the time of receipt of advance is available only in case of supply of goods, the tax on which is payable under forward charge. In case of reverse charge, GST is payable at the time of payment, if payment is recorded/made before receipt of goods (advance payment) [Section 12(3)].

Therefore, time of supply of product 'A', which is taxable under forward charge, is 4th March being the date of issue of invoice. However, time of supply of product 'B', which is taxable under reverse charge, is 17th February to the extent of ₹ 2,00,000 paid as advance being the earliest of the three stipulated dates namely, date of receipt of goods (23rd March), date of payment (17th February) and date immediately following 30 days of issuance of invoice (11th April). For balance ₹ 2,00,000, the time of supply of product 'B' is 23rd March being the earliest of the three stipulated dates namely, date of receipt of goods (23rd March), date of payment (1st April) and date immediately following 30 days of issuance of invoice (11th April)



Question 1

Black and White Pvt. Ltd. has provided the following particulars relating to goods sold by it to Colourful Pvt. Ltd.

Particulars	₹
List price of the goods (exclusive of taxes and discounts)	50,000
Tax levied by Municipal Authority on the sale of such goods	5,000
Packing charges (not included in price above)	1,000

Black and White Pvt. Ltd. received ₹ 2000 as a subsidy from a NGO on sale of such goods. The price of ₹ 50,000 of the goods is after considering such subsidy. Black and White Ltd. offers 2% discount on the list price of the goods which is recorded in the invoice for the goods.

Determine the value of taxable supply made by Black and White Pvt. Ltd.

Answer:

Computation of value of taxable supply

Particulars	₹
List price of the goods (exclusive of taxes and discounts)	50,000
Tax levied by Municipal Authority on the sale of such goods [Includible in the value as per section 15(2)(a)]	5,000
Packing charges [Includible in the value as per section 15(2)(c)]	1,000
Subsidy received from a non-Government body [Since subsidy is received from a non-Government body, the same is included in the value in terms of section 15(2)(e)]	2,000
Total	58,000
Less: Discount @ 2% on ₹ 50,000 [Since discount is known at the time of supply and recorded in the supply, it is deductible from the value in terms of section 15(3)(a)]	1,000
Value of taxable supply	57,000

Question 2

Samriddhi Advertisers conceptualized and designed the advertising campaign for a new product launched by New Moon Pvt Ltd. for a consideration of ₹ 5,00,000. Samriddhi Advertisers owed ₹ 20,000 to one of its vendors in relation to the advertising service provided by it to New Moon Pvt Ltd. Such liability of Samriddhi Advertisers was discharged by New Moon Pvt Ltd. New Moon Pvt Ltd. delayed the payment of consideration and thus, paid ₹ 15,000 as interest. Assume the rate of GST to be 18%.

Determine the value of taxable supply made by Samriddhi Advertiser

Answer:

Computation of value of taxable supply

Particulars	₹
Service charges	5,00,000
Payment made by New Moon Pvt. Ltd to vendor of Samriddhi Advertisers [Liability of the supplier being discharged by the recipient, is includible in the value in terms of section 15(2)(b)]	20,000
Interest for delay in payment of consideration [Includible in the value in terms of section 15(2)(d) – Refer note below] (rounded off)	12,712
Value of taxable supply	5,32,712

Note: The interest for delay in payment of consideration will be includible in the value of supply but the time of supply of such interest will be the date when such interest is received in terms of section 13(6). Such interest has been assumed to be inclusive of GST and thus, the value has been computed by making back calculations

$$\frac{\text{Interest} \times 100}{100 + \text{tax rate}}$$

Question 3

Mr. X, a money changer, has exchanged US \$ 10,000 to Indian rupees @ ₹ 64 per US \$. Mr. X wants to value the supply in accordance with rule 32(2)(b) of CGST Rules.

Determine the value of supply made by Mr. X.

Answer:

As per rule 32(2)(b) of CGST Rules, the value in relation to the supply of foreign currency, including money changing, is deemed to be-

- 1% of the gross amount of currency exchanged for an amount up to ₹1,00,000, subject to a minimum amount of ₹250;
- ₹ 1,000 and 0.5% of the gross amount of currency exchanged for an amount exceeding ₹ 1,00,000 and up to ₹10,00,000.

Therefore, the value of supply, made by Mr. X, under rule 32(2)(b) of CGST Rules is computed as under:

Particulars	₹	₹
Value of currency exchanged in Indian rupees [₹64 × US \$ 10,000]	6,40,000	
Upto ₹1,00,000	1,000	
For ₹5,40,000 [0.50% × ₹5,40,000]	2,700	
Value of supply		3,700

Question 4

Mr. U is an air travel agent. Compute the value of supply of service made by him during a month with the help of following particulars furnished by him:

Particulars	Basic fare (₹)	Other charges and fee (₹)	Taxes (₹)	Total value of tickets (₹)
Domestic Bookings	1,00,900	9,510	4,990	1,15,400
International Bookings	3,16,880	20,930	15,670	3,53,480

Answer:

Computation of value of supply of services made by Mr. U in a month

Particulars	₹	₹
Basic fare in case of domestic bookings	1,00,900	
Value of supply @ 5% [A] Refer Note below		5,045
Basic fare in case of international bookings	3,16,880	
Value of supply @ 10% [B] Refer Note below		31,668
Value of supply [A] + [B] (rounded off)		36,733

Note:

As per rule 32(3) of CGST Rules, the value of the supply of services in relation to booking of tickets for travel by air provided by an air travel agent is 5% of the basic fare in the case of domestic bookings, and 10% of the basic fare in the case of international bookings.

Question 5

Arihant Life Insurance Company Ltd. (ALICL) has charged gross premium of ₹ 180 lakh from policy holders with respect to life insurance policies in the 2017-18; out of which ₹ 100 lakh have been allocated for investment on behalf of the policy holder.

Compute the value of supply of life insurance services provided by ALICL:

- 1) if the amount allocated for investment has been intimated by ALICL to policy holders at the time of supply of service.
- 2) if the amount allocated for investment has not been intimated by ALICL to policy holders at the time of providing of service.
- 3) if the gross premium charged by ALICL from policy holders is only towards risk cover.

Note: ALICL has started its operations in the year 2017-18. Thus, the entire gross premium of ₹ 180 lakh is the premium for the first year of all the policies. ALICL has not issued any single premium annuity policy.

Answer:

As per rule 32(4), of the CGST Rules, value of supply of services in relation to life insurance services is

- a) the gross premium reduced by the amount allocated for investment on behalf of the policy holder, if such an amount is intimated to the policy holder at the time of supply of service;
- b) in all other cases, 25% of the premium in the 1st year and 12.5% of the premium in subsequent years

However, where the entire premium paid by the policy holder is only towards risk cover, such gross premium is the value of supply of life insurance services.

In the light of the aforesaid provisions, value of supply of life insurance services provided by ALICL in financial year 2017-18 will be computed as follows:

- (i) Amount allocated for investment intimated to policy holder at the time of supply of service

Value of service = ₹(180-100) lakh = ₹80,00,000

- (ii) Amount allocated for investment not intimated to policyholders at the time of supply of service

Value of service = 25% of ₹180 lakh = ₹45,00,000

- (iii) Gross premium received is only towards risk cover Value of service = ₹180 lakh

Question 6

AKJ Foods Pvt. Ltd. gets an order for supply of processed food from a customer. The customer wants the consignment tested for gluten or specified chemical residues. AKJ Foods Pvt. Ltd. does the testing and charges a testing fee for the same from the customer. AKJ Foods Pvt. Ltd. argues that such testing fees should not form part of the consideration for the sale as it is a separate activity.

Is his argument correct in the light of section 15?

Answer:

Section 15(2) mandates the addition of certain elements to transaction value to arrive at taxable value. Clause (c) of section 15(2) specifies that amount charged for anything done by the supplier in respect of the supply at the time of or before delivery of goods or supply of services shall be included in taxable value.

Since AKJ Foods Pvt. Ltd. does the testing before the delivery of goods, the charges there for will be included in the taxable value. Therefore, AKJ Foods Pvt. Ltd.'s argument is not correct. The testing fee should be added to the price to arrive at taxable value of the consignment.

Question 7

A philanthropic association makes a substantial donation each year to a reputed private management institution to subsidize the education of low-income group students who have gained admission there. The fee for these individuals is reduced thereby coming to ₹ 3 lakh a year compared to ₹ 5 lakh a year for other students.

What would be the taxable value of the service of coaching and instruction provided by the institution?

Answer:

As per section 15(2)(e), the value of a supply includes subsidies directly linked to the price, excluding State Government and Central Government subsidies. In this case, the subsidy is not from the Government but is from a philanthropic association. Therefore, the subsidy is to be added back to the price to arrive at the taxable value, which comes to ₹ 5 lakh a year.

Question 8

Mezda Banners, an advertising firm, gives an interest-free credit period of 30 days for payment by the customer. Its customer ABC paid for the supply 32 days after the supply of service. Mezda Banners waived the interest payable for delay of two days.

The Department wants to add interest for two days as per contract. Should notional interest be added to the taxable value?

Answer:

This is a supply that is valued as per transaction value under section 15(1) as the price is the sole consideration for the supply and the supply is made to unrelated person. The concept of transaction value has been expanded to include certain elements like interest which are actually payable. Once waived, the interest is not payable and is therefore, not to be added to transaction value.

Question 9

Crunch Bakery Products Ltd sells biscuits and cakes through its dealers, to whom it charges the list price minus standard discount and pays GST accordingly. When goods remain unsold with the dealers, it offered additional discounts on the stock as an incentive to push the sales.

Can this additional discount be reduced from the price at which the goods were sold and concomitant tax adjustments made?

Answer:

The discounts were not known or agreed for at the time of supply of goods to the dealer. Therefore, in terms of section 15(3), such discounts cannot be reduced from the price on which tax had been paid.

Question 10

Rajesh & Co. provides financial and management consultancy to a group of companies for an annual retainer fee of ₹ 15 lakh. It is given a room in the head office of the group for its exclusive use. Rajesh & Co. pays GST on the amount of ₹ 15 lakh.

Is the value for the service provided by Rajesh & Co., correct under GST laws? If not, please elaborate.

Answer:

Rajesh & Co. gets an office room free of cost, which is an additional non-monetary consideration for its services. The market value of the rent of the room must be added to the retainer fee (₹ 15 lakh) in order to arrive at the value of the taxable service provided by Rajesh & Co, as per rule 27 of the CGST Rules relating to valuation.

Question 11

The supplies of commodity 'y' to the market are channelled through a State Marketing Corporation which conducts an auction each day to arrive at the price. Gupta and Co. supplies commodity 'y' through the State Marketing Corporation.

How will this supply of 'y' by Gupta and Co. be valued for paying tax?

Answer:

The State Marketing Corporation is an 'agent' in the meaning of the expression as defined in section 2(5), which includes an auctioneer. Therefore, the value of supply of 'y' will be determined in terms of rule 29 of CGST Rules relating to valuation.

There is no open market for the first supply of commodity 'y', as it is compulsorily supplied to the State Marketing Corporation. However, Gupta & Co. has the option of valuing the supply of 'y' at 90% of price of goods of like kind and quality sold by the State Marketing Corporation to its unrelated customer.

If the value cannot be determined by this method, it needs to be determined on the basis of the cost plus 10% mark up as per rule 30 or on the basis of Best Judgement Method as per rule 31, in that order.

Question 12

Easy Coupons Ltd. sells coupons that are redeemable against specified luxury food products at retail outlets. Each coupon has a face value of ₹ 900 but is redeemable for supplies worth ₹ 1000.

What is the value of supply of such coupon under GST laws?

Answer:

In terms of rule 32(6) of the CGST Rules relating to valuation, the value of a coupon is the money value of the goods redeemable against it. Therefore, though the coupon is sold for ₹ 900, its value is ₹ 1000.

Question 13

A pharmaceutical company supplies a drug intermediate to its own unit in another State for conversion into formulations. The product is exclusive to this company, and there is no market sale in India of this drug intermediate. Goods of like kind and quality are also not available.

How will the value of the supply of this drug intermediate be determined under GST laws?

Answer:

Since the supply is made to a distinct person, the same will be valued in accordance with rule 28 of CGST Rules relating to valuation.

There is no open market value of the drug intermediate as also there are no like goods. Therefore, value of supply of such drug intermediate will be determined in terms of clause (c) of rule 28 i.e., by using rule 30. Thus, the value of supply of such drug intermediate will be 110% of its cost of production or manufacture.

However, if the recipient unit is eligible for full ITC, the value declared in the invoice will be deemed to be the open market value of the drug intermediate and thus, the invoice value will be the value of taxable supply.

Question 14

Prada Forex Private Limited, registered in Delhi, is a money changer. It has undertaken the following purchase and sale of foreign currency:

1,000 US \$ are purchased from Nandi Enterprises at the rate of ₹ 68 per US \$. RBI reference rate for US \$ on that day is ₹ 68.60.

2,000 US \$ are sold to Menavati at the rate of ₹ 67.50 per US\$. RBI reference rate for US \$ for that day is not available.

Determine the value of supply in each of the above cases in terms of:

- A. Rule 32(2)(a) of the CGST Rules, 2017
- B. Rule 32(2)(b) of the CGST Rules, 2017.

Answer:

Rule 32(2) of the CGST Rules, 2017 prescribes the provisions for determining the value of supply of services in relation to the purchase or sale of foreign currency, including money changing.

A. Determination of value under rule 32(2)(a) of the CGST Rules, 2017

- a. Rule 32(2)(a) of the CGST Rules, 2017 provides that the value of supply of services for a currency, when exchanged from, or to, Indian Rupees, shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency. Thus, value of supply is:

$$= (\text{RBI reference for US \$} - \text{Buying rate of US \$}) \times \text{Total number of units of US \$ bought} = (68.6 - 68) \times 1,000 = ₹ 600/-$$

- b. First proviso to rule 32(2)(a) of the CGST Act, 2017 lays down that when the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received by the person changing the money. Thus, value of supply is:

$$= 1\% \text{ of the gross amount of Indian Rupees received}$$

$$= 1\% \text{ of } (67.50 \times 2,000)$$

$$= ₹ 1,350/-$$

B. Determination of value under rule 32(2)(b) of the CGST Rules, 2017

Rule 32(2)(b) provides that value in relation to the supply of foreign currency, including money changing shall be deemed to be -

S. No.	Currency exchanged	Value of supply
1.	Upto ₹ 1,00,000	1% of the gross amount of currency exchanged OR ₹ 250 whichever is higher
2.	Exceeding ₹ 1,00,000 and upto ₹ 10,00,000	₹ 1,000 + 0.50% of the (gross amount of currency exchanged - ₹ 1,00,000) ₹ 5,500 + 0.1% of the (gross amount of currency exchanged ₹ 10,00,000)
3.	Exceeding ₹ 10,00,000	OR ₹ 60,000 whichever is lower

Thus, the value of supply in the given cases would be computed as under:

- a. Gross amount of currency exchanged = ₹ 68 × 1,000 =

₹ 68,000. Since the gross amount of currency exchanged is less than ₹ 1,00,000, value of supply is 1% of the gross amount of currency exchanged i.e. 1% of ₹ 68,000 or ₹ 250, whichever is higher.

$$= ₹ 680/-$$

b. Gross amount of currency exchanged = ₹ 67.50 × 2,000 =

₹ 1,35,000. Since the gross amount of currency exchanged exceeds ₹ 1,00,000 but is less than ₹ 10,00,000, value of supply is ₹ 1,000 + 0.50% of (₹ 1,35,000 - ₹ 1,00,000).

= ₹ 1,175/-

Question 15

BC Ltd., registered in Noida (Uttar Pradesh) is a supplier of machinery used for making bottle caps. The supply of machinery is effected as under:

a. The wholesale price of the machinery (excluding all taxes and other expenses) at which it is supplied in the ordinary course of the business to various customers is ₹ 42,00,000. However, the actual price at which the machinery is supplied to an individual customer varies within a range of ± 10% depending upon the terms of contract of supply with the particular customer.

b. Apart from the price of the machinery, ABC Ltd. charges from the customer the following incidental expenses:

i. associated handling and loading charges of ₹ 10,000

ii. installation and commissioning charges of ₹ 1,00,000

The machinery can be dismantled and erected at another site, if required. The above charges are compulsorily levied in every case of supply of machinery.

iii. Transportation of machinery to the customer's premises is arranged by ABC Ltd. through a third-party service provider [Goods Transport Agency (GTA)]. The customer enters into a separate service contract with the GTA and pays the freight directly to it.

iv. The company provides one-year free warranty for the machinery. Further, the company also provides an extended two-year warranty on payment of additional charge of ₹ 3,00,000, to all its customers.

v. A cash discount of 2% on the price of the machinery is offered at the time of supply, if the customer agrees to make the payment within 15 days of the receipt of the machinery at his premises. In the event of failure to make the payment within the stipulated time, the company-

1. recovers the discount given; and

2. charges interest @ 1% per month or part of the month on the total amount due from the customer (towards the machinery supplied) from the date of making the supply till the date of payment. However, no interest is charged on the tax dues.

vi. For every machinery supplied, ABC Ltd. receives a grant of ₹ 2,00,000 from its holding company DEF Ltd.

ABC Ltd. has supplied a machinery to D Pvt. Ltd. on August 1, 20XX at a price of ₹ 40,00,000 (excluding all taxes). D Pvt. Ltd. has its corporate office in New Delhi. However, the machinery has been installed at its manufacturing unit located in Gurugram (Haryana). D Pvt. Ltd. has paid the freight directly to the GTA and the charges for two-year extended warranty. Discount @ 2% was given to D Pvt. Ltd. as it agreed to make the payment within 15 days. However, D Pvt. Ltd. paid the consideration on 31st October, 20XX.

Assume the rates of taxes to be as under:

Bottle cap making machine CGST - 6%	SGST - 6%	IGST - 12%
Service of transportation of goods CGST - 2.5%	SGST - 2.5%	IGST - 5%
Other services involved in the above supply CGST - 9%	SGST - 9%	IGST - 18%

Calculate the GST payable [CGST & SGST or IGST, as the case may be] on the machinery and support your conclusions with legal provisions in the form of explanatory notes.

Make suitable assumptions, wherever needed.

Answer:

Computation of GST liability of ABC Ltd.

Particular	(₹)
Price of machine [Note 1]	40,00,000
Handling and loading charges [Note 2]	10,000
Installation and commissioning charges [Note 3]	1,00,000
Transportation cost [Note 4]	Nil
Additional warranty cost [Note 5]	3,00,000
Grant from DEF Ltd. [Note 6]	2,00,000
Total price of the machine	46,10,000
Less: 2% cash discount on price of machinery = ₹ 40,00,000 × 2% [Note 7]	(80,000)
Taxable value of supply	45,30,000
Tax liability for the month of August 20XX [Note 11]	
IGST @ 12% [Note 8 and Note 9]	5,43,600
Tax liability for the month of October 20XX [Note 11]	
Interest collected @ 3% on ₹ 44,10,000 [Note 10]	1,32,300
Cash discount recovered [Note 10]	80,000
Cum-tax value of interest and cash discount	2,12,300
IGST = (₹ 2,12,300/112) × 12%	22,746
Total IGST payable on the machinery	5,66,346

Notes:

- 1) As per section 15(1) of the CGST Act, 2017, the value of a supply is the transaction value i.e., the price actually paid or payable for the said supply when the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply. It is assumed that ABC Ltd. and D Pvt. Ltd are not related and the price is the sole consideration for the supply.
- 2) All incidental expenses charged by the supplier to the recipient of a supply are includible in the value of supply in terms of section 15(2)(c) of CGST Act, 2017.
- 3) Any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods is includible in the value of supply in terms of section 15(2)(c) of CGST Act, 2017.
- 4) Transportation cost has not been included in the value of supply of the machinery as it is a separate service contract between the customer and the third-party service provider. The customer pays the freight directly to the service provider.

The supplier (ABC Ltd), in this case, merely arranges for the transport and does not provide the transport service on its own account. Tax will be separately levied on the supply of service of transportation of goods under reverse charge which will be paid by the customer.

- 5) Warranty cost is includible in the value of the supply since transaction value includes all elements of the price excluding those that can be specifically excluded as per section 15 of the CGST Act.
- 6) Subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments are includible in the value of supply in terms of section 15(2)(e) of the CGST Act, 2017.
- 7) Cash discount was deducted by ABC Ltd. upfront at the time of supply on August 1, 20XX and hence, the same is excluded from the value of supply as it did not form part of the transaction value.
- 8) In the given case-
 - a. the location of the supplier is in Noida (UP); and
 - b. the place of supply of machinery is the place of installation of the machinery i.e., Gurugram (Haryana) in terms of section 10(1)(d) of the IGST Act, 2017.

Therefore, the given supply is an inter-State supply as the location of the supplier and the place of supply are in two different States [Section 7(1)(a) of IGST Act, 2017]. Thus, the supply will be leviable to IGST in terms of section 5(1) of the IGST Act, 2017.

- 9) The given supply is a composite supply involving supply of goods (machinery) **and** services (handling and loading and installation and commissioning) where the principal supply is the supply of goods.

As per section 8(a) of the CGST Act, 2017, a composite supply is treated as a supply of the principal supply involved therein and charged to tax accordingly. Thus, tax rate applicable to the goods (machinery) has been considered.

- 10) Interest for the delayed payment of any consideration for any supply is includible in the value of supply in terms of section 15(2)(d) of the CGST Act, 2017. Further, cash discount recovered will also be includible in the value of supply as now the transaction value i.e., the price actually paid for the machinery is devoid of any discount.

The cash discount not allowed and interest have been considered as cum tax value on the logical assumption that tax component could not be recovered from the client. Thus, tax payable thereon has to be computed by making back calculations in terms of rule 35 of CGST Rules, 2017.

- 11) It has been assumed that the invoice for the supply has been issued on August 1, 20XX, the date on which the supply is made. Thus, the time of supply of goods is August 1, 20XX in terms of section 12(1)(a) of the CGST Act, 2017.

As per section 12(6) of the CGST Act, 2017, the time of supply in case of addition in value by way of interest, late fee, penalty etc. for delayed payment of consideration for goods is the date on which the supplier receives such addition in value. Thus, the time of supply of interest received and cash discount recovered on account of delayed payment of consideration is 31st October, 20XX, the date when the full payment was made. The supplier may issue a debit note for such interest and cash discount recovered.

Question 16

Rolly Polly Manufacturers Ltd., registered in Mumbai (Maharashtra), is a manufacturer of footwear. It imports a footwear making machine from USA. Rolly Polly Manufacturers Ltd. enters into a contract with Rudra Logistics, a licensed customs broker with its office at Ahmedabad (Gujarat), to meet all the legal formalities in getting the said machine cleared from the customs station.

Apart from this, Rolly Polly Manufacturers Ltd. authorizes Rudra Logistics to incur, on its behalf, the expenses in relation to clearance of the imported machine from the customs station and bringing the same to the warehouse of Rolly Polly Manufacturers Ltd. which shall be reimbursed by Rolly Polly Manufacturers Ltd. to Rudra Logistics on the actual basis in addition to agency charges.

Rudra Logistics raised an invoice in July, 20XX as follows:

S. No.	Particulars	Amount (₹)
(i)	Agency charges	5,00,000
(ii)	Unloading of machine at Kandla port, Gujarat	50,000
(iii)	Charges for transport of machine from Kandla port, Gujarat to its Rudra Logistics' godown in Ahmedabad, Gujarat	25,000
(iv)	Charges for transport of machine from Rudra Logistics' Ahmedabad godown to the warehouse of Rolly Polly Export Import House in Mumbai, Maharashtra	28,000
(v)	Prepared and submitted of Bill of Entry and paid customs duty	5,00,000
(vi)	Dock dues paid	50,000
(vii)	Port charges paid	50,000
(viii)	Hotel expenses	45,000
(ix)	Travelling expenses	50,000
(x)	Telephone expenses	2,000

Compute the value of supply made by Rudra Logistics with the help of given information. Would your answer be different if Rudra Logistics has charged ₹ 13,00,000 as a lump sum consideration for getting the imported machine cleared from the customs station and bringing the same to the warehouse of Rolly Polly Manufacturers Ltd.?

Answer:

As per explanation to rule 33 of the CGST Rules, 2017, a “**pure agent**” means a person who-

- a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
- c) does not use for his own interest such goods or services so procured; and
- d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

The supplier needs to fulfil **all** the above conditions in order to qualify as a pure agent.

In the given case, Rudra Logistics has entered into a contractual agreement with recipient of supply, Rolly Polly Manufacturers Ltd., to incur, on behalf of such recipient, the **expenses mentioned in S.No. (ii) to (vii)** incurred in relation to clearance of the imported machine from the customs station and bringing the same to the warehouse of the recipient. Further, Rudra Logistics does not hold any title to said services and does not them use for his own interest.

Lastly, Rudra Logistics receives only the actual amount incurred to procure such services in addition to agency charges. Thus, Rudra Logistics qualifies as a pure agent.

Further, rule 33 of the CGST Rules, 2017 stipulates that notwithstanding anything contained in the provisions of Chapter IV – Determination of Value of supply, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely-

- I. the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorization by such recipient;
- II. the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- III. the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Since conditions (I) to (III) mentioned above are satisfied in the given case, expenses (ii) to (vii) incurred by Rudra Logistics as a pure agent of Rolly Polly Manufacturers Ltd. shall be excluded from the value of supply.

Accordingly, value of supply made by Rudra Logistics is as follows:

Particular	(₹)
Agency charges	5,00,000
Add: Unloading of machine at Kandla port, Gujarat	Nil
Add: Charges for transport of machine from Kandla port, Gujarat to its Rudra Logistics' godown in Ahmedabad, Gujarat	Nil

Particular	(₹)
Add: Charges for transport of machine from Rudra Logistics' Ahmedabad godown to the warehouse of Rolly Polly Export Import House in Mumbai, Maharashtra	Nil
Add: Customs duty	Nil
Add: Dock charges	Nil
Add: Port charges	45,000
Add: Hotel expenses	50,000
Add: Travelling expenses	2,000
Add: Telephone expenses	
Value of supply	5,97,000

Yes, our answer would be different. If lump sum amount of ₹ 13,00,000 is paid then the value of supply shall be ₹ 13,00,000 and tax shall be charged on value of supply since individual cost are not given.

Question 17

Kaya Trade Links Pvt. Ltd. is a registered manufacturer of premium ceiling fans. It sells its fans exclusively through distributors appointed across the country. The maximum retail price (MRP) printed on the package of a fan is ₹ 10,000. The company sells the ceiling fans to distributors at ₹ 7,000 per fan (exclusive of applicable taxes). The applicable rate of GST on ceiling fans is 18%.

The stock is dispatched to the distributors on quarterly basis - stock for a quarter being dispatched in the second week of the month preceding the relevant quarter. However, additional stock is dispatched at any point of the year if the company receives a requisition to that effect from any of its distributors. The company charges ₹ 1,000 per fan from distributors towards packing expenses.

The company has a policy to offer a discount of 10% (per fan) on fans supplied to the distributors for a quarter, if the distributors sell 500 fans in the preceding quarter. The discount is offered on the price at which the fans are sold to the distributors (excluding all charges and taxes).

The company appoints Prakash Sales as a distributor on 1st April and dispatches 750 fans on 8th April as stock for the quarter April-June. Prakash Sales places a purchase order of 1,000 fans with the company for the quarter July-September. The order is dispatched by the company on 10th June and the same is received by the distributor on 18th June. The distributor makes the payment for the fans on 26th June and avails applicable input tax credit. The distributor reports sales of 700 fans for the quarter April-June and 850 fans for the quarter July- September.

Examine the scenario with reference to section 15 of the CGST Act, 2017 and compute the taxable value of fans supplied by Kaya Trade Links Pvt. Ltd. to Prakash Sales during the quarter July-September.

Note: Make suitable assumptions, wherever necessary.

Answer:

Section 15(3)(a) of the CGST Act allows discounts to be deducted from the value of taxable supply if the same is given before or at the time of the supply and if such discount has been duly recorded

in the invoice issued in respect of such supply. In other words, pre-supply discounts recorded in invoices are allowed as deduction.

Further, post supply discounts are also allowed as deduction from the value of supply under section 15(3)(b) of the CGST Act if-

- I. such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
- II. input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

In the given case, Prakash Sales is entitled for 10% discount on fans supplied by Kaya Trade Links Pvt. Ltd. for the quarter July-September as it has sold more than 500 fans in the preceding quarter April-June. However, since the entire stock for the quarter July-September has already been despatched by Kaya Trade Links Pvt. Ltd. in the month of June, the discounts on the fans supplied to Prakash Sales for the quarter July-September will be a post-supply discount.

Such post-supply discount will be allowed as a deduction from the value of supply since the discount policy was known before the time of such supply and the discount can be specifically linked to relevant invoices (invoices pertaining to fans supplied to Prakash Sales for the quarter July-September) provided Prakash Sales reverses the input tax credit attributable to the discount on the basis of document issued by Kaya Trade Links Pvt. Ltd.

The value of supply will thus, be computed as under:

Particulars	Amount (₹)
Price at which the fans are supplied to Prakash Sales [Note 1]	7,000
Add: Packing expenses [Note 2]	1,000
Less: Discount [Note 3]	(700)
Value of taxable supply of one unit of fan	7,300
Value of taxable supply of fans for the quarter July- September [₹ 7,300 × 1,000]	73,00,000

Notes:

1. The value of a supply is the transaction value, which is the price actually paid or payable for the said supply, in terms of section 15(1) of the CGST Act presuming that the supplier and the recipient of supply are not related and price is the sole consideration for the supply.
2. The value of supply includes incidental expenses like packing charges in terms of section 15(2)(c) of the CGST Act.
3. Since all the conditions specified in section 15(3)(b) of the CGST Act have been fulfilled, the post-supply discount will be allowed as deduction from the value of supply presuming that Prakash Sales has reversed the input tax credit attributable to such discount on the basis of document issued by Kaya Trade Links Pvt. Ltd. The input tax credit to be reversed will work out to be ₹1.26 lakh [1,000 × (7,000 × 10%) × 18%].

Question 18

Laxmi Ltd. of Bhopal (Madhya Pradesh) is a supplier of machinery. Laxmi Ltd. has supplied machinery to PQR Enterprises in Indore (Madhya Pradesh) on 1st October, 20XX. The invoice for

supply has been issued on 1st October, 20XX. Thus, the time of supply of machinery is 1st October, 20XX. Laxmi Ltd. and PQR Enterprise are not related.

Following information is provided:

Basic price of machinery excluding all taxes but including design and engineering charges of ₹ 10,000 and loading charges of ₹ 20,000 - ₹ 20,00,000.

Laxmi Ltd. provides 2 years free warranty for the machinery. Laxmi Ltd. also provides an extended one year warranty on payment of additional charges of ₹ 1,00,000. The extended warranty is given by the manufacturer at the time of supply of goods to the buyer and that the same is not available separately. PQR Enterprises opted for one year warranty.

Laxmi Ltd. has collected consultancy charges in relation to pre- installation planning of ₹ 10,000 and freight and insurance charges from place of removal to buyer's premises of ₹20,000.

Laxmi Ltd. received subsidy of ₹ 50,000 from Central Government for supplying the machinery to backward region since receiver was located in a backward region. Laxmi Ltd. also received ₹ 50,000 from the joint venture partner of PQR Enterprises for making timely supply of machinery to the recipient.

A cash discount of 1% on the basic price of the machinery is offered at the time of supply, if PQR Enterprises agrees to make the payment within 30 days of the receipt of the machinery at his premises. Discount @ 1% was given to PQR Enterprises as it agreed to make the payment within 30 days.

The machinery attracts CGST and SGST @ 18% (9% + 9%) and IGST @18%.

Compute the CGST and SGST or IGST payable, as the case may be, on the machinery.

Answer:

Computation of GST payable

Particulars	(₹)
Price of the machinery [Note 1]	20,00,000
Add: Extended warranty cost [Note 2]	1,00,000
Consultancy charges in relation to pre-installation planning [Note 3]	10,000
Freight and insurance charges [Note 4]	20,000
Subsidy received from Central Government [Note 5]	Nil
Receipts from Joint Venture of PQR Enterprises [Note 5]	50,000
Less: 1% discount on basic price* = ₹ 20,00,000 × 1% [Note 6]	(20,000)
Value of supply	21,60,000
CGST @ 9%[Note 7]	1,94,400
SGST @ 9%[Note 7]	1,94,400

Notes:

1. Laxmi Ltd. and PQR Enterprises are not related and price is assumed to be the sole consideration for the supply. Therefore, in terms of section 15(1) of the CGST Act, 2017, the

value of the supply is the transaction value i.e., price actually paid or payable for the machinery by PQR Enterprises.

Design and engineering charges are includible in the value of supply as any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods is so includible in terms of section 15(2)(c) of CGST Act, 2017.

Further, loading charges being incidental expenses charged by the supplier to the recipient of supply, are includible in the value as per section 15(2)(c) of the CGST Act, 2017.

2. Supply of machinery (goods) with supply of ancillary services like extended warranty, is a composite supply, the principle supply of which is the supply of machinery. [Section 2(30) of the CGST Act, 2017 read with section 2(90) of that Act]. Thus, value of such ancillary supply is includible in the value of composite supply.
3. Any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods is includible in the value of supply in terms of section 15(2)(c) of CGST Act, 2017.
4. Supply of machinery (goods) with supply of ancillary services like freight and insurance is a composite supply, the principle supply of which is the supply of machinery [Section 2(30) of the CGST Act, 2017 read with section 2(90) of that Act]. Thus, value of such ancillary supply is includible in the value of composite supply.
5. Subsidies provided by the Central Government and State Governments are not includible in the value of supply in terms of section 15(2)(e) of the CGST Act, 2017. However, subsidy directly linked to the price received from a non-Government body is includible in the value in terms of section 15(2)(e).
6. Cash discount has been given to PQR Enterprises upfront at the time of supply and thus, would have been recorded in the invoice and hence, the same is excluded from the value of supply in terms of section 15(3)(a) of the CGST Act, 2017.
7. In the given case-
 - a. the location of the supplier is in Bhopal (Madhya Pradesh); and
 - b. the place of supply of machinery is the location of the machinery at the time at which the movement of the same terminates for delivery to the recipient i.e., Indore (Madhya Pradesh) vide section 10(1)(a) of IGST Act, 2017.

Therefore, as per section 8(1) of IGST Act, 2017, the given supply is an intra-State supply as the location of the supplier and the place of supply are in the same State. Thus, the supply will be leviable to CGST and SGST.

*Note: It is also possible to take a view that the basic price of the machinery is ₹ 19,70,000 [₹ 20,00,000 - ₹ 10,000 - ₹ 20,000] and design and engineering charges and loading charges are added to such price. In that case, 1% of discount amount will come out to be ₹ 19,700, value of supply would be ₹ 21,60,300 and CGST and SGST would be ₹ 1,94,427 each.

Question 19

M/s Jonty India Ltd. a manufacturer of heavy machines registered at Jaipur (Rajasthan) supplied one machine to M/s. Dhanuka Ltd. of Udaipur (Rajasthan) on 05-02-20XX under an invoice of the same date. Using the information given below, compute the value of the machine and the GST payable (CGST & SGST or IGST as the case may be) in cash for the month of February, 20XX by M/s Jonty India Ltd. with appropriate working notes.

Assume Rate of CGST, SGST and IGST on the machine to be 9%, 9% and 18% respectively.

Sl. No.	Particulars	Amount in ₹
(i)	The Basic price of the machine (exclusive of taxes and discount).	28,50,000
(ii)	Trade discount is allowed at 3% on the basic price and is shown in the invoice.	85,500
(iii)	Secondary packing (in iron sheets) charges for safe transportation of the machine on the request of buyer.	30,000
(iv)	Design and engineering charges of the machine	90,000
(v)	Tax levied by Municipal Authority on the sale of the machine.	25,000
(vi)	Subsidy received by the supplier from the State Government to encourage manufacture of the machine.	80,000
(vii)	Pre-delivery inspection charges paid to an independent agency in terms of the agreement for supply. The amount was paid by M/s. Dhanuka Ltd.	22,000
(viii)	Interest amount paid by M/s. Dhanuka Ltd. for delay in payment for the machine.	12,000
	Inward Supplies	
(i)	IGST paid on food items for consumption by employees working in the factory.	8,000
(ii)	SGST and CGST (₹ 15,000 each) paid on Electrical transformer used in the manufacturing process.	30,000

Note:

- i. M/s Jonty India Ltd. has no input tax credit balance at the beginning of February, 20XX. All the other conditions necessary for availing the eligible input tax credit have been fulfilled.
- ii. There are no other transactions of supplies during the month of February, 20XX.
- iii. M/s Jonty India Ltd. and M/s. Dhanuka Ltd. are not related persons.

Answer:

Computation of value of machine sold by M/s. Jonty India Ltd.

Particulars	₹
Basic price of machine	28,50,000
Add: Secondary packing [Note 1(i)]	30,000
Design and engineering charges [Note 1(ii)]	90,000
Tax levied by Municipal Authority [Note 1(iii)]	25,000
Pre-delivery inspection charges paid by M/s. Dhanuka Ltd. [Note 1(iv)]	22,000

Particulars	₹
Interest for delay in payment [₹ 12,000 × 100/118] [Note 1(v)] – (rounded off)	10,169
Less: 3% Trade discount on basic price of machinery = ₹ 28,50,000 × 3% [Note 2]	(85,500)
Taxable value of supply	29,41,669

Computation of net GST payable (in cash) by M/s. Jonty India Ltd. for the month of February, 20XX

Particulars	CGST @ 9% (₹)	SGST @ 9% (₹)
Tax on value of ₹ 29,41,669 (rounded off) [Note 4]	2,64,750	2,64,750
Less: Input tax credit [ITC] of tax paid on electrical transformer used in the manufacturing process [Note 3]	15,000	15,000
Net GST payable	2,49,750	2,49,750

Notes:

1) As per section 15(2) of the CGST Act, 2017-

- i. All incidental expenses, including packing, charged by the supplier to the recipient of a supply are includible in the value of supply.
- ii. Any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods is includible in the value of supply.
- iii. Any taxes levied under any law for the time being in force other than CGST/SGST/UTGST/IGST, if charged separately by the supplier are includible in the value of supply.
- iv. Any amount that the supplier is liable to pay in relation to such supply, but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods and/or services is includible in the value of supply.
- v. Interest for the delayed payment of any consideration for any supply is includible in the value of supply. Further, it is assumed that such interest is inclusive of tax and that the same has been received by M/s. Jonty India Ltd. in the month of February itself. Therefore, the time of supply of such interest will be in February, 20XX and the same will be considered while paying the tax liability of that month.
- vi. Subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments are includible in the value of supply. Since in the given case, subsidy is received from State Government, the same has not been included in the value of supply presuming it to be directly linked to the price.*¹

2) Trade discount has been shown in the invoice and hence, the same is excluded from the value of supply in terms of section 15(3)(a) of the CGST Act, 2017.

3) ITC on food or beverages is specifically disallowed unless the same is used for making outward taxable supply of the same category or as an element of the taxable composite or

¹ t has been assumed that the food items are provided free of cost to the employees in the

course of employment. mixed supply [Section 17(5)(b)(i)]. Further, since transformers are used in the course or furtherance of business, ITC thereon is available in terms of section 16(1).

4) In the given case-

- i. the location of the supplier is in Jaipur (Rajasthan); and
- ii. the place of supply of machinery is the location of the machinery at the time at which the movement of the same terminates for delivery to the recipient i.e., Udaipur (Rajasthan) vide section 10(1)(a) of IGST Act, 2017.

Therefore, as per section 8(1) of IGST Act, 2017, the given supply is an intra-State supply as the location of the supplier and the place of supply are in the same State. Thus, the supply will be leviable to CGST and SGST.

Note*In the above answer, it has been assumed that the basic price of the machine has been arrived at after adjusting the subsidy and that the basic price is the price charged from the customer. Consequently, subsidy received from State Government has not been reduced from the basic price of the machine while arriving at the taxable value of supply.

However, it is also possible to assume that the subsidy has yet not been adjusted in the basic price and that the price which will be charged from the customer is ₹ 27,70,000 (₹ 28,50,000 - ₹ 80,000) i.e., after excluding subsidy. In that case, the value of supply will be ₹ 28,61,669.

Question 20

Dev Enterprises is the supplier of water coolers. Dev Enterprises supplied water coolers to Vimal Traders for consideration of ₹ 2,95,000 (inclusive of GST @ 18%). Vimal Traders also gave some materials to Dev Enterprises as consideration for such supply whose value was ₹ 10,000 (exclusive of GST).

Dev Enterprises has supplied the same goods to another person at price of ₹ 2,97,360 (inclusive of GST@18%).

You are required to:

- 1) Determine the value of goods supplied by Dev Enterprises to Vimal Traders as per the provisions of the CGST Act, 2017.
- 2) What would your answer be if price of ₹ 2,97,360 is not available at the time of supply of goods to Vimal Traders? Explain briefly.

Answer:

1. In the given case, price is not the sole consideration for the supply. Apart from monetary consideration, the buyer has given some material to the supplier as consideration for such supply. Hence, the value of the supply cannot be determined on the basis of the transaction value in terms of section 15(1) of the CGST Act, 2017.

Here, the value will be determined with the help of rule 27 of the CGST Rules, 2017 (Valuation Rules) which specifies that where the consideration for a supply is not wholly in money, the value will be the open market value.

Open market value of a supply means the full value in money, excluding the applicable GST, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made.

Therefore, in the given case, the open market value of the goods supplied is ₹ 2,52,000 (₹ 2,97,360 x 100/118) and is therefore, the value of such goods.

2. Rule 27 further provides that if open market value of the supply is not known, the value of the supply will be the consideration in money plus the money equivalent to the non-monetary consideration, if such amount is known at the time of supply.

Therefore, the value in the given case will be (₹ 2,95,000 x 100/118) + ₹ 10,000, which is ₹ 2,60,000.

Question 21

Zindagi Life Insurance Company Limited (ZLICL) has collected premium from subscribers and it does not intimate the amount allocated for investment to subscribers at the time of collection of premium. During the month of September 20XX, it has collected the following receipts:

SI. No.	Particulars	Amount
1.	Premium for only risk cover	25,00,000
2.	Premium from new sub	40,00,000
3.	Renewal Premium	80,00,000
4.	Single premium on annuity	1,00,00,000

All amounts are exclusive of tax. You are required to compute the value of supply by ZLICL in accordance with GST laws.

Answer:

As per rule 32(4) of the CGST Rules, 2017, the value of supply of services in relation to life insurance business, when the amount allocated for investment/ savings on behalf of the policy holder is not intimated to the policy holder at the time of supply of service, is-

- 1) in case of single premium annuity policies, 10% of single premium charged from the policy holder;
- 2) in all other cases, 25% of the premium charged from the policy holder in the first year and 12.5% of the premium charged from the policy holder in subsequent years;
- 3) in case the entire premium paid by the policy holder is only towards the risk cover in life insurance, the premium so paid.

Therefore, in the given case, the value of the services provided by ZLICL will be computed as under:

Computation of value of supply for ZLICL for the month of September 20XX

Particulars	Amount (₹)
Premium for only risk cover	25,00,000
Premium from new subscribers 25% of ₹ 40,00,000	10,00,000
Renewal Premium 12.5% of ₹ 80,00,000	10,00,000
Single premium on annuity policy 10% of ₹ 1,00,00,000	10,00,000

Particulars	Amount (₹)
Total value of supply	55,00,000

Question 22

Vayu Ltd. provides you the following particulars relating to goods supplied by it to Agni Ltd.:

Particulars	Amount (₹)
List price of the goods (exclusive of Taxes and discounts).	76,000
Special packing at the request of customer to be charged to the customer.	5,000
Duty levied by local authority on the sale of such goods.	4,000
CGST and SGST charged in invoice.	14,400
Subsidy received from a NGO (The price of ₹ 76,000 given above is after considering the subsidy)	5,000

Vayu Ltd. offers 3% discount of the list price of the goods which is recorded in the invoice for the goods.

Determine the value of taxable supplies made by Vayu Ltd.

Answer:

Computation of value of taxable supplies by Vayu Ltd.

Particulars	Amount (₹)
List price of the goods	76,000
Add: Special packing [Note 1]	5,000
Duty levied by local authority on sale of goods [Note 2]	4,000
CGST and SGST charged [Note 2]	-
Subsidy received from a NGO [Note 3]	5,000
Less: Discount offered = 3% of List price = ₹ 76,000 × 3% [Note-4]	(2,280)
Value of taxable supplies	87,720

Notes:

- Being incidental expenses charged by the supplier to the recipient of supply, packing charges are includible in the value as per section 15(2)(c) of the CGST Act, 2017.
- Taxes, duties, etc. levied under any law for the time being in force other than CGST, SGST/UTGST, IGST are includible in the value as per section 15(2)(a) of CGST Act, 2017. Duty levied by local authority on sale of goods has been assumed to be recovered from Agni Ltd. and not included in the list price of the goods.

3. Subsidy directly linked to the price received from a non-Government body is includible in the value in terms of section 15(2)(e) of CGST Act, 2017.
4. Since discount is known at the time of supply, it is deductible from the value in terms of section 15(3)(a) of CGST Act, 2017.

Question 23

Sacrosant Manufacturers Ltd., a manufacturer of bottle caps, is registered in Dhanbad (Jharkhand). It imports a bottle caps making machine from Japan.

Sacrosant Manufacturers Ltd. avails the services of Jhumroo Logistics, a licensed customs broker in Kolkata (West Bengal), in meeting all the legal formalities for getting the said machine cleared from the customs station.

Sacrosant Manufacturers Ltd. also authorises Jhumroo Logistics to incur, on its behalf, the expenses in relation to clearance of the imported machine from the customs station and bringing the same to its warehouse at Dhanbad. These expenses would be reimbursed by Sacrosant Manufacturers Ltd. to Jhumroo Logistics on actual basis. In addition, Sacrosant Manufacturers Ltd. will also pay the agency charges to Jhumroo Logistics for the services rendered by it

Jhumroo Logistics raised an invoice in July as follows:

S. No.	Particulars	Amount* (₹)
(i)	Agency charges	5,00,000
(ii)	Customs duty on machine	3,80,000
(iii)	Port charges	33,000
(iv)	Dock dues	56,000
(v)	Charges for transport of machine from Kolkata port, West Bengal to Jhumroo Logistics' godown in Asansol, West Bengal	48,000
(vi)	Charges for transport of machine from Jhumroo Logistics' Asansol godown to the warehouse of Sacrosant Manufacturers Ltd. in Dhanbad, Jharkhand	67,000
(vii)	Unloading of machine at Kolkata port, West Bengal	83,000
(viii)	Hotel expenses	45,000
(ix)	Travelling expenses	50,000
(x)	Telephone expenses	2,000

*exclusive of GST, wherever applicable

Compute the value of supply made by Jhumroo Logistics with the help of given information. Would your answer be different if Jhumroo Logistics charges ₹ 13,00,000 as a lump sum consideration for clearing the imported machine from the customs station and bringing the same to the warehouse of Sacrosant Manufacturers Ltd.?

Answer:

As per explanation to rule 33 of the CGST Rules, 2017, a “**pure agent**” means a person who-

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
- (c) does not use for his own interest such goods or services so procured; and
- (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

The supplier needs to fulfil **ALL** the above conditions in order to qualify as a pure agent.

In the given case, Jhumroo Logistics has been authorised by the recipient of supply - Sacrosant Manufacturers Ltd. - to incur, on its behalf, the expenses incurred in relation to clearance of the imported machine from the customs station and bringing the same to the warehouse of the recipient, i.e. expenses mentioned in S.No. (ii) to (vii). Further, Jhumroo Logistics does not hold any title to said services and does not use them for his own interest.

Lastly, Jhumroo Logistics receives only the actual amount incurred to procure such services in addition to agency charges. Thus, Jhumroo Logistics qualifies as a pure agent.

Further, rule 33 of the CGST Rules, 2017 stipulates that notwithstanding anything contained in the provisions of Chapter IV - Determination of Value of Supply, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely-

- (I) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient; the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- (II) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Since conditions (I) to (III) mentioned above are satisfied in the given case, expenses (ii) to (vii) incurred by Jhumroo Logistics as a pure agent of Sacrosant Manufacturers Ltd. shall be excluded from the value of supply.

Accordingly, value of supply made by Jhumroo Logistics will be computed as under:

Particulars	Amount (₹)
Agency charges	5,00,000
Add: Customs duty	Nil
Add: Port charges	Nil
Add: Dock charges	Nil
Add: Charges for transport of machine from Kolkata port, West Bengal to its Jhumroo Logistics' godown in Asansol, West Bengal	Nil

Particulars	Amount (₹)
Add: Charges for transport of machine from Jhumroo Logistics' Asansol godown to the warehouse of Sacrosant Manufacturers Ltd.in Dhanbad, Jharkhand	Nil
Add: Unloading of machine at Kolkata port, West Bengal	Nil
Add: Hotel expenses	45,000
Add: Travelling expenses	50,000
Add: Telephone expenses	2,000
Value of supply	5,97,000

However, if Jhumroo Logistics charges ₹ 13,00,000 as a lump sum consideration for getting the imported machine cleared from the customs station and bringing the same to the warehouse of Sacrosant Manufacturers Ltd., Jhumroo Logistics would incur expenses

(ii) to (vii) for its own interest (as the agreement requires it to get the imported machine cleared from the customs station and bring the same to the Sacrosant Manufacturers Ltd.'s warehouse). Thus, Jumroo Logistics would not be considered as a pure agent of Sacrosant Manufacturers Ltd. for said services.

Consequently, in that case, value of supply will be ₹ 13,00,000 in terms of section 15 of the CGST Act, 2017.

Question 24

Binaca Electronics Ltd. (hereinafter referred to as BEL) is engaged in manufacturing televisions. It is registered in the State of Haryana. It has appointed distributors across the country who sell the televisions manufactured by it. The maximum retail price (MRP) printed on the package of a television is ₹ 12,000. The applicable rate of GST on televisions is 18%. BEL dispatches the stock of televisions to its distributors ordered by them on a quarterly basis.

In order to promote its sales, the Sales Head of BEL has formulated a sales promotion scheme. Under this scheme, BEL offers a discount of 10% (per television) on televisions supplied to the distributors, if the distributors sell 500 televisions in a quarter. The discount is offered on the price at which the televisions are sold to the distributors (excluding all charges and taxes).

It appoints Shah Electronics (an unrelated party as per GST Law) as its distributor in Haryana on 1st April and dispatches 750 televisions on 8th April as stock for the quarter

April-June. BEL has sold the televisions to distributor - Shah Electronics at ₹ 8,400 per television (exclusive of applicable taxes). Shah Electronics has requested BEL for a special packing of the televisions delivered to it for which BEL has charged ₹ 1,200 per television.

Shah Electronics places a purchase order of 1,000 televisions with BEL for the quarter July-September. The distributor reports sales of 700 televisions for the quarter April -June and 850 televisions for the quarter July-September. The discount policy offered by BEL as explained above is also available to Shah Electronics as per the distributorship agreement.

While Shah Electronics reverses the input tax credit availed for the quarter July-September, it has failed to reverse the input tax credit availed for the quarter April-June.

Examine the scenario with reference to section 15 of the CGST Act, 2017 and compute the taxable value of televisions supplied by BEL to Shah Electronics during the quarters April-June

and July-September assuming the rate of tax applicable on the televisions as 18%.

Answer :

Section 15(3)(a) of the CGST Act, 2017 allows discounts to be deducted from the value of taxable supply if the same is given before or at the time of the supply and if such discount has been duly recorded in the invoice issued in respect of such supply. In other words, pre-supply discounts recorded in invoices are allowed as deduction.

Further, post supply discounts are also allowed as deduction from the value of supply under section 15(3)(b) of the CGST Act if-

- (i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
- (ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

In the given case, Shah Electronics is entitled for 10% discount on televisions supplied by BEL for the quarters April-June as well as July-September as it has sold more than 500 televisions in each of these quarters. However, since the sales targets are achieved after the entire stock for the respective quarters of April-June and July-September has been dispatched, the discounts on the televisions supplied to Shah Electronics for the quarters of April-June and July-September is a post-supply discount.

Such post-supply discount will be allowed as a deduction from the value of supply since the discount policy was known before the time of such supply and the discount can be specifically linked to relevant invoices (invoices pertaining to televisions supplied to Shah Electronics for the quarters of April-June and July-September) provided Shah Electronics reverses the input tax credit attributable to the discount on the basis of document issued by BEL.

The value of supply for the quarters of April-June and July-September will thus, be computed as under:

Computation of value of supply for the quarter - April-June

Particulars	Amount (₹)
Price at which the televisions are supplied to Shah Electronics [Note 1]	8,400
Add: Packing expenses [Note 2]	1,200
Less: Discount [Note 3]	<u>Nil</u>
Value of taxable supply of one unit of television	9,600
Value of taxable supply of televisions for the quarter April-June [₹9,600 x 750]	72,00,000

Notes:

- (1) The value of a supply is the transaction value, which is the price actually paid or payable for the said supply, in terms of section 15(1) of the CGST Act, 2017 presuming that the supplier and the recipient of supply are not related and price is the sole consideration for the supply as the supplier and recipient are not related parties.
- (2) The value of supply includes incidental expenses like packing charges in terms of section 15(2)(c) of the CGST Act.

- (3) Since Shah Electronics has not reversed the input tax credit attributable to such discount on the basis of document issued by BEL, the conditions specified in section 15(3)(b) of the CGST Act have not been fulfilled. Thus, the post-supply discount will not be allowed as deduction from the value of supply.

Computation of value of supply for quarter - July-September

Particulars	Amount (₹)
Price at which the televisions are supplied to Shah Electronics [Note 1]	8,400
Add: Packing expenses [Note 2]	1,200
Less: Discount [Note 3]	<u>(840)</u>
Value of taxable supply of one unit of television	8,760
Value of taxable supply of televisions for the quarter July-September [₹8,760 × 1,000]	87,60,000

Notes:

- (1) The value of a supply is the transaction value, which is the price actually paid or payable for the said supply, in terms of section 15(1) of the CGST Act presuming that the supplier and the recipient of supply are not related and price is the sole consideration for the supply as the supplier and recipient are not related parties.
- (2) The value of supply includes incidental expenses like packing charges in terms of section 15(2)(c) of the CGST Act.
- (3) Since all the conditions specified in section 15(3)(b) of the CGST Act have been fulfilled, the post-supply discount will be allowed as deduction from the value of supply. The input tax credit to be reversed will work out to be ₹1,51,200 [1,000 × (8,400 × 10%) × 18%].

Question 25

Mr. Nagarjun, a registered supplier of Chennai, has received the following amounts in respect of the activities undertaken by him during the month ended on 30th September, 2019:

S. No.	Particulars	Amount (₹)
(i)	Amount charged for service provided to recognized sports body as selector of national team.	50,000
(ii)	Commission received as an insurance agent from insurance company.	65,000
(iii)	Amount charged as business correspondent for the services provided to the urban branch of a nationalized bank with respect to savings bank accounts.	15,000
(iv)	Service to foreign diplomatic mission located in India.	28,000
(v)	Funeral services.	30,000

He received the services from unregistered goods transport agency for his business activities and paid freight of ₹ 45,000 (his aggregate turnover of previous year was ₹9,90,000).

Note: All the transactions stated above are intra-State transactions and also are exclusive of GST.

You are required to calculate gross value of taxable supply on which GST is to be paid by Mr. Nagarjun for the month of September, 2019. Working notes should form part of your answer

Answer :

Computation of gross value of taxable supply on which GST is to be paid by Mr. Nagarjun

Particulars	Amount (₹)
Supplies on which Mr. Nagarjun is liable to pay GST under forward charge	
Amount charged for service provided to recognized sports body as selector of national team [Note 1]	50,000
Commission received as an insurance agent from insurance company [Note 2]	Nil
Amount charged as business correspondent for the services provided to the urban branch of a nationalised bank with respect to savings bank accounts [Note 3]	15,000
Services provided to foreign diplomatic mission located in India [Note 4]	28,000
Funeral services [Note 5]	Nil
Supplies on which Mr. Nagarjun is liable to pay GST under reverse charge	
Services received from GTA [Note 6]	<u>45,000</u>
Value of taxable supply on which GST is to be paid	1,38,000

Notes:

- (1) Services provided to a recognized sports body by an individual only as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body are exempt from GST vide Exemption Notification No. 12/2017 CT(R) dated 28.06.2017. Thus, service provided as selector of team is liable to GST.
- (2) Though commission for providing insurance agent's services is liable to GST, the tax payable thereon is to be paid by the recipient of service i.e., insurance company, under reverse charge in terms of Notification No. 13/2017 CT(R) dated 28.06.2017. Thus, Mr. Nagarjun will not be liable to pay GST on such commission.
- (3) Services provided by business correspondent to a banking company with respect to accounts in its rural area branch are exempt from GST vide Exemption Notification No. 12/2017 CT(R) dated 28.06.2017. Thus, such services provided in respect of urban area branch will be taxable.
- (4) While services provided by a foreign diplomatic mission located in India are exempt from GST vide Exemption Notification No. 12/2017 CT(R) dated

28.06.2017, services provided to such mission are taxable.

- (5) Funeral services being covered in entry 4 of Schedule III to CGST Act, 2017 are not a supply and thus, are outside the ambit of GST.
- (6) GST on services provided by a GTA to inter alia a registered person is payable by the recipient of service i.e., the registered person, under reverse charge in terms of Notification No. 13/2017 CT(R) dated 28.06.2017. The turnover of previous year is irrelevant in this case.

Question 26

Determine taxable value of supply under the GST law with respect to each of the following independent services provided by the registered persons:

- (1) Fees charged from office staff for in-house personality development course conducted by M.V. College - ₹ 10,000. M. V. College provides education as a part of a curriculum for obtaining a qualification recognised by a law
- (2) Bus fees collected from students by M.V. College - ₹ 2,500 per month.
- (3) Housekeeping service provided by M/s. Clean well to Himavarsha Montessori school in its premises, a play school - ₹ 25,000 per month.

Info link supplied "Tracing Alphabets", an online educational journal, to students of UKG class of Sydney Montessori School - ₹2,000.

Answer

(1) As per Notification No. 12/2017 CT (R) dated 28.06.2017, services provided by an educational institution to its students, faculty and staff are exempt from GST. Educational Institution has been defined to mean, inter alia, an institution providing services by way of education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force.

Since M. V. College provides education as a part of a curriculum for obtaining a qualification recognised by a law, the services provided by it to its staff by way of conducting personality development course would be exempt from GST.

- (2) Since M. V. College provides education as a part of a curriculum for obtaining a qualification recognised by a law, the transport services provided by it to its students would be exempt from GST.

- (3) As per Notification No. 12/2017 CT (R) dated 28.06.2017, services provided to an educational institution, by way of, inter alia, house-keeping services performed in such educational institution are exempt from GST. However, such an exemption is available only

when the said services are provided to a pre-school education and a higher secondary school or equivalent.

Therefore, house-keeping services provided to Himavarsha Montessori Play School would be exempt from GST as housekeeping services have been performed in such play school itself.

- (4) As per Notification No. 12/2017 CT (R) dated 28.06.2017, services provided to an educational institution by way of supply of online educational journals or periodicals is exempt from GST. However, such an exemption is available only when the said services are provided to an educational institution providing

education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force.

Therefore, supply of online journal to students of UKG class of Sydney Montessori School will not be exempt from GST. Hence, the taxable value in this case will be ₹ 2,000.

Question 27

Rustagi & Co. manufactures customized products at its unit situated in Madhya Pradesh. Cost of production for Rustagi & Co. for 1000 products is 20,00,000. These products require further processing before sale, and for this purpose products are transferred from its Madhya Pradesh unit to its another unit in Himanchal Pradesh. The value declared on the invoice for such transfer is the cost of production of such products.

The Himanchal Pradesh unit, apart from processing its own products, engages in processing of similar products of other persons who supply the products of the same kind and quality. Thereafter, the Himanchal Pradesh unit sells these processed products to wholesalers. There are no other factories in the neighbouring area which are engaged in the same business as that of Himanchal Pradesh unit.

1,000 units of the products of same kind and quality are supplied to Himanchal Pradesh unit, at the time when goods are sent by Madhya Pradesh unit, by another manufacturer located in Himanchal Pradesh. The ex-factory price of such goods is ₹ 19,00,000. The Himanchal Pradesh unit of Rustagi & Co. is eligible for full ITC.

Determine the value of 1000 products supplied by Rustagi & Co. to its Himanchal Pradesh unit.

Answer

As per section 25(4), a person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act. Therefore, units of Rustagi & Co. in Madhya Pradesh and Himanchal Pradesh are distinct persons under GST.

As per rule 28, the value of the supply of goods between distinct persons, other than where the supply is made through an agent, shall -

- (a) be the open market value of such supply;
- (b) if open market value is not available, be the value of supply of goods of like kind and quality;

if value cannot be determined under the above methods, be cost of the supply plus 10% mark-up or be determined by other reasonable means, in that sequence Rule 28 also provides that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person.

Further, rule 28 provides that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

In the given case, the option of valuing the goods @ 90% of the price charged by the recipient to his unrelated customer is not available as the goods are not further supplied 'as such' but only after processing at Himachal Pradesh unit. However, since the Himanchal Pradesh unit is eligible for full ITC, the value declared by the Madhya Pradesh unit in the invoice for

transfer of such products, i.e. ₹ 20,00,000 shall be deemed to be the open market value of the products. Thus, the value of 1000 products supplied by Rustagi & Co. to its Himanchal Pradesh unit in terms of rule 28 is the open market value of such products which is ₹ 20,00,000.

Question 28

Chirayu Life Insurance Company Limited (CLICL) has collected premium from policy subscribers. It does not intimate the amount allocated for investment to subscribers of the policy at the time of collection of premium. The company has provided the following details in relation to its receipts:

SI. No.	Particulars	Amount
1.	Premium for only risk cover	25,00,000
2.	Premium from new policy subscribers	40,00,000
3.	Renewal premium	80,00,000
4.	Single premium on annuity policy	1,00,00,000

All amounts are exclusive of tax. You are required to compute the value of supply by CLICL in terms of rule 32(4).

Answer

As per rule 32(4), the value of supply of services in relation to life insurance business, when the amount allocated for investment/ savings on behalf of the policy holder is not intimated to the policy holder at the time of supply of service, is-

- (i) in case of single premium annuity policies, 10% of single premium charged from the policy holder;
- (ii) in all other cases, 25% of the premium charged from the policy holder in the first year and 12.5% of the premium charged from the policy holder in subsequent years;
- (iii) in case the entire premium paid by the policy holder is only towards the risk cover in life insurance, the premium so paid.

Therefore, in the given case, the value of the services provided by CLICL will be computed as under:

Computation of value of supply for CLICL

Particulars	Amount (`)
Premium for only risk cover	25,00,000
Premium from new policy subscribers 25% of ` 40,00,000	10,00,000
Renewal premium 12.5% of ` 80,00,000	10,00,000
Single premium on annuity policy 10% of ` 1,00,00,000	10,00,000
Total value of supply	55,00,000



Question 1

ABC Co. Ltd., registered under GST, is engaged in the manufacture of heavy machinery. It procured the following items during the month of July.

Sr. No.	Items	GST Paid (Rs.)
(i)	Electrical transformers to be used in the manufacturing process	5,20,000
(ii)	Trucks used for the transport of raw material	1,00,000
(iii)	Raw material	2,00,000
(iv)	Confectionery items. These items were supplied free of cost to the customers in a customer meet organized by the company	25,000

Determine the amount of ITC available with ABC Co. Ltd., for the month of July by giving necessary explanations for treatment of various items. Assume all the conditions necessary for availing the ITC have been fulfilled.

Answer:

Computation of ITC available with ABC Co. Ltd. for the month of July

Sr. No.	Items	ITC (Rs.)
(i)	Electrical transformers [Being goods used in the course or furtherance of business, ITC thereon is available in terms of section 16(1)]	5,20,000
(ii)	Trucks used for the transport of raw material [ITC on motor vehicles used for transportation of goods is not blocked under section 17(5)(a)]	1,00,000
(iii)	Raw material [Being goods used in the course or furtherance of business, ITC thereon is available in terms of section 16(1)]	2,00,000
(iv)	Confectionery items for consumption of customers at customers meet [ITC on food or beverages is specifically disallowed unless the same is used for making outward taxable supply of the same category or as an element of the taxable composite or mixed supply-Section 17(5)(b)(i)]	Nil
	Total ITC	8,20,000

Question 2

XYZ Ltd., registered under GST, is engaged in manufacture of taxable goods. Compute the ITC available with XYZ Ltd. for the month of October, 20XX from the following particulars:-

S. No.	Inward Supplies	GST (Rs.)	Remarks
(i)	Inputs 'A'	1,00,000	One invoice on which GST payable was Rs. 10,000 is missing

S. No.	Inward Supplies	GST (Rs.)	Remarks
(ii)	Inputs 'B'	50,000	Inputs are to be received in two installments. First installment has been received in October, 20XX.
(iii)	Capital goods	1,20,000	XYZ Ltd. has capitalized the capital goods at full invoice value inclusive of GST as it will avail depreciation on the full invoice value.
(iv)	Input Services	2,25,000	One invoice dated 20.01.20XX on which GST payable was Rs. 50,000 has been received in October, 20XX.

Note:

- i. All the conditions necessary for availing the ITC have been fulfilled.
- ii. The annual return for the financial year ending 31st March 20XX was filed on 15th September, 20XX.

Answer:**Computation of ITC available with XYZ Ltd. for the month of October, 20XX**

S. No.	Inward supplies	ITC (Rs.)
i.	Inputs 'A' [ITC cannot be taken on missing invoice. The registered person should have the invoice in its possession to claim ITC-Section 16(2)(a)]	90,000
ii.	Inputs 'B' [When inputs are received in installments, ITC can be availed only on receipt of last installment-First proviso to section 16(2)]	Nil
iii.	Capital goods [Input tax paid on capital goods cannot be availed as ITC, if depreciation has been claimed on such tax component - Section 16(3)]	Nil
iv.	Input services [As per section 16(4), ITC on an invoice cannot be availed after the due date of furnishing of the return for the month of September following the end of financial year to which such invoice pertains or the date of filing annual return, whichever is earlier. Since the annual return for the FY ending 31 st March, 20XX has been filed on 15 th September, 20XX (prior to due date of filing the return for September, 20XX i.e., 20 th October, 20XX), ITC on the invoice pertaining to FY ending 31 st March, 20XX cannot be availed after 15 th September, 20XX.	1,75,000
	Total	2,65,000

Question 3

Mr. X, a supplier of goods, pays GST under regular scheme. He has made the following outward taxable supplies in a tax period:

Particulars	(Rs.)
Intra-State supply of goods	8,00,000
Inter-State supply of goods	3,00,000

He has also furnished the following information in respect of purchases made by him in that tax period:

Particulars	(Rs.)
Intra-State purchases of goods	2,00,000
Inter-State purchases of goods	50,000

Mr. X has following ITCs with him at the beginning of the tax period:

Particulars	(Rs.)
CGST	57,000
SGST	Nil
IGST	70,000

Note:

- i. Rate of CGST, SGST and IGST to be 9%, 9% and 18% respectively.
- ii. Both inward and outward supplies are exclusive of taxes, wherever applicable.
- iii. All the conditions necessary for availing the ITC have been fulfilled.

Compute the minimum GST, payable in cash, by Mr. X during the tax period. Make suitable assumptions as required.

Answer:

Computation of minimum GST payable in cash by Mr. X on outward supplies

S. No.	Particulars	(Rs.)	GST (Rs.)
i.	Intra-State supply of goods		
	CGST @ 9% on Rs. 8,00,000	72,000	1,44,000
	SGST @ 9% on Rs. 8,00,000	72,000	
ii.	Inter-State supply of goods		
	IGST @ 18% on Rs. 3,00,000		54,000
	Total GST payable		1,98,000

Computation of total ITC

Particulars	CGST @	SGST @	IGST @
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	9% (Rs.)	9% (Rs.)	18% (Rs.)
Opening ITC	57,000	Nil	70,000
Add: ITC on Intra-State purchases of goods valuing Rs. 2,00,000	18,000	18,000	Nil
Add: ITC on Inter-State purchases of goods valuing Rs. 50,000	Nil	Nil	9,000
Total ITC	75,000	18,000	79,000

Computation of minimum GST payable in cash

Particulars	CGST @ 9% (Rs.)	SGST @ 9% (Rs.)	IGST @ 18%(Rs.)
GST Payable	72,000	72,000	54,000
Less: ITC	(Nil)-IGST	(25,000)-IGST	(54,000)-IGST
	(72,000)-CGST	(18,000)-SGST	
Minimum GST payable in cash	Nil	29,000	Nil

Note : Since sufficient balance of ITC of CGST is available for paying CGST liability and cross utilization of ITC of CGST and SGST is not allowed, ITC of IGST has been used to pay SGST (after paying IGST liability) to minimize cash outflow.

Question 4

What is input tax?

Answer:

Input tax means the central tax (CGST), State tax (SGST), integrated tax (IGST) or Union territory tax (UTGST) charged on supply of goods or services or both made to a registered person. It also includes tax paid on reverse charge basis and integrated goods and services tax charged on import of goods. It does not include tax paid under composition levy.

Question 5

What are the conditions necessary for obtaining ITC?

Answer:

Following four conditions are to be satisfied by the registered taxable person for obtaining ITC:

- he is in possession of tax invoice or debit note or such other tax paying documents as may be prescribed;
- he has received the goods or services or both;
- subject to section 41, the supplier has actually paid the tax charged in respect of the supply to the Government; and
- he has furnished the return under section 39.

Question 6

Can a person take ITC without payment of consideration for the supply along with tax to the supplier?

Answer:

Yes, the recipient can take ITC. However, he is required to pay the consideration along with tax within 180 days from the date of issue of invoice. This condition is not applicable where tax is payable on reverse charge basis. Further, in case of deemed supplies without consideration and additions made to the value of supplies on account of supplier's liability, in relation to such supplies, being incurred by the recipient of the supply, consideration is deemed to have been paid.

Question 7

What is the time limit for taking ITC and reasons there for?

Answer:

Time limit for availing ITC: Due date of filing return for the month of September of succeeding financial year or date of filing of annual return, whichever is earlier.

Question 8

What is the ITC entitlement of a newly registered person?

Answer:

A person applying for registration can take input tax credit of inputs held in stock and inputs contained in semi- finished or finished goods held in stock on the day immediately preceding the date of grant of registration. If the person was liable to take registration and he has applied for registration within thirty days from the date on which he became liable to registration, then ITC of inputs held in stock and inputs contained in semi- finished or finished goods held in stock on the day immediately preceding the date on which he became liable to pay tax can be taken.

In case of voluntary registration, ITC of such goods held in stock on the day immediately preceding the date of registration can be taken.

Question 9

What is the tax implication of supply of capital goods by a registered person who had taken ITC on such capital goods?

Answer:

In case of supply of capital goods or plant and machinery on which ITC has been taken, the registered person shall pay an amount equal to the ITC taken on the said capital goods or plant and machinery reduced by 5% per quarter or part thereof from the date of invoice or the tax on the transaction value of such capital goods, whichever is higher.

However, in case of refractory bricks, moulds and dies, jigs and fixtures when these are supplied as scrap, the person can pay tax on the transaction value.

Question 10

A taxable person is in the business of information technology. He buys a car (maximum seating capacity - 5 persons) for use of his Executive Directors. Can he avail the ITC in respect of GST paid on purchase of such car?

Answer:

No. As per section 17(5)(a), ITC on motor vehicles for transportation of persons with seating capacity of up to 13 persons (including driver), can be availed only if the taxable person is in the business of transport of passengers or is providing the services of imparting training on driving such motor vehicles or is in the business of supply of such motor vehicles.

Question 11

A technical testing agency tests and certifies each batch of machine tools before dispatch by BMT Ltd. Some of these tools are dispatched to a unit in a SEZ without payment of GST as these supplies are not taxable. The finance personnel of BMT Ltd. want to know whether they need to carry out reversal of ITC on the testing agency's services to the extent attributable to the SEZ supplies. Give your comments.

Answer:

Under section 16(2) of the IGST Act, credit of input tax is allowed to be taken for inward supplies used to make zero rated supplies. Under section 17 of the CGST Act also, ITC is disallowed only to the extent it pertains to supplies used for non-business purposes or supplies other than taxable and zero-rated supplies. Supplies to SEZ units are zero rated supplies in terms of section 16(1) of IGST Act. Thus, full ITC is allowed on inward supplies of BMT Ltd used for effecting supplies to the unit in the SEZ.

Question 12

A garment factory receives a Government order for making uniforms for a commando unit. This supply is exempt from tax under a special notification. The fabric is separately procured for the supply, but thread and lining material for the collars are the ones which are used for other taxable products of the factory.

The turnover of the other products of the factory and exempted uniforms in July is Rs. 4 crore and Rs. 1 crore respectively, the ITC on thread and lining material procured in July is Rs. 5000 and Rs. 15000 respectively.

Answer:

Thread and lining material are inputs which are used for making taxable as well as exempt supplies. Therefore, credit on such items will be apportioned and credit attributable to exempt supplies will be reversed in terms of rule 42 of the CGST Rules.

Credit attributable to exempt supplies = Common credit × (Exempt turnover/ Total turnover)

Common credit = Rs. 15,000 + Rs. 5,000 = Rs.20,000 Exempt turnover = Rs. 1 crore

Total turnover = Rs. 5 crore [Rs. 1 crore + Rs.4 crore]

Credit attributable to exempt supplies = (Rs. 1 crore /Rs. 5 crore) × Rs. 20,000 = Rs. 4,000.

Ineligible credit of Rs. 4,000 will be reversed. Credit of Rs. 16,000 will be eligible credit for the month of July.

Question 13

Mr. A, a registered person was paying tax under Composition Scheme up to 30th July. However, w.e.f. 31st July, Mr. A becomes liable to pay tax under regular scheme. Is he eligible for any ITC?

Answer:

Mr. A is eligible for ITC on inputs held in stock and inputs contained in semi- finished or finished goods held in stock and capital goods as on 30th July. ITC on capital goods will be reduced by 5% per quarter or part thereof from the date of invoice [Section 18(1)(c)].

Question 14

Ceramity Ltd. has following units:

- A: Factory in Tumkur, Karnataka; turnover of Rs. 27 crores in 2017-18;
- B: Service centre in Hyderabad, Telangana; turnover of Rs. 1 crore in 2017-18;
- C: Service centre in Chennai, Tamil Nadu; turnover of 2 crores in 2017-18; Ceramity Ltd.'s corporate office functions as ISD. It has to distribute ITC of Rs. 9 lakh for December, 2018. Of this, an invoice involving tax of Rs. 3 lakh pertains to technical consultancy for Tumkur unit. What should be the distribution of the credit?

Answer:

As per rule 39(d) of CGST Rules relating to ITC, -

- Rs.3 lakh is attributable to Tumkur unit, and will be transferred to Tumkur unit only.
- Rs. 6 lakh have to be distributed among Tumkur unit and the service centres in Hyderabad and Chennai in proportion of their turnover in the previous FY, that is, in 2017-18.
 - Tumkur unit will get $(27 \text{ crore} / 30 \text{ crore}) \times 6 \text{ lakh} = \text{Rs. } 5.4 \text{ lakh}$;
 - Hyderabad service centre will get $(1 \text{ crore} / 30 \text{ crore}) \times 6 \text{ lakh} = \text{Rs. } 20,000$; and
 - Chennai service centre will get $(2 \text{ crore} / 30 \text{ crore}) \times 6 \text{ Lakh} = \text{Rs. } 40,000$.

Question 15

With reference to the provisions of section 17 of the CGST Act, 2017, examine the availability of input tax credit under the CGST Act, 2017 in the following independent cases:-

- (i) MBF Ltd., an automobile company, has availed works contract service for construction of a foundation on which a machinery (to be used in the production process) is to be mounted permanently.
- (ii) Shah & Constructions procured cement, paint, iron rods and services of architects and interior designers for construction of a commercial complex for one of its clients.
- (iii) ABC Ltd. availed maintenance & repair services from "Jaggi Motors" for a truck used for transporting its finished goods.

Answer:

- (i) Section 17(5)(c) of the CGST Act, 2017 blocks input tax credit in respect of works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service.

Further, the term “plant and machinery” means apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods and/or services **and includes such foundation or structural support** but excludes land, building or other civil structures, telecommunication towers, and pipelines laid outside the factory premises.

Thus, in view of the above-mentioned provisions, ITC is available in respect of works contract service availed by MBF Ltd. as the same is used for construction of plant and machinery which is not blocked under section 17(5)(c) of the CGST Act, 2017.

- (ii) Section 17(5)(d) of the CGST Act, 2017 blocks ITC on goods and/or services received by a taxable person for construction of an immovable property (other than plant and machinery) **on his own account** even though such goods and/or services are used in the course or furtherance of business. Thus, ITC on goods and/or services used in the construction of an immovable property is blocked only in those cases where the taxable person constructs the immovable property for his own use even if the immovable property being constructed is used in the course or furtherance of his business.

In the given case, Shah & Constructions has used the goods and services for construction of immovable property for some other person and not on its own account. Hence, ITC in this case will be allowed.

- (iii) As per section 17(5) of the CGST Act, 2017, ITC is allowed on repair and maintenance services relating to motor vehicles, which are eligible for input tax credit. Further, as per section 17(5)(a) ITC is allowed on motor vehicles which are used for transportation of goods.

Thus, ITC on maintenance & repair services availed from “Jaggi Motors” for a truck used for transporting its finished goods is allowed to ABC Ltd.

Question 16

XYZ Pvt. Ltd. is a manufacturing company registered under GST in the State of Uttar Pradesh. It manufactures two taxable products ‘Alpha’ and ‘Beta’ and one exempt product ‘Gama’. On 1st October 20XX, while product ‘Beta’ got exempted through an exemption notification, exemption available on ‘Gama’ got withdrawn on the same date. The turnover (exclusive of taxes) of ‘Alpha’, ‘Beta’ and ‘Gama’ in the month of October, 20XX was ₹ 9,00,000, ₹ 10,00,000 and ₹ 6,00,000.

XYZ Pvt. Ltd. has furnished the following details:

S. No.	Particulars	Price (₹)	GST (₹)
(a)	Machinery ‘U’ purchased on 01.10.20XX for being used in manufacturing all the three products	2,00,000	36,000
(b)	Machinery ‘V’ purchased on 01.10.20XX for being used in manufacturing product ‘Alpha’ and ‘Gama’	1,00,000	18,000
(c)	Machinery ‘W’ purchased on 01.10.20XX for being exclusively used in manufacturing product ‘Beta’	3,00,000	54,000
(d)	Machinery ‘Y’ purchased on October 1, four years before 01.10.20XX for being exclusively used in manufacturing product ‘Beta’. From 01.10.20XX, such machinery will also be used for manufacturing product ‘Gama’.	4,00,000	72,000
(e)	Machinery ‘Z’ purchased on October 1, two years before 01.10.20XX for being used in manufacturing all the three products	3,00,000	54,000

(f)	Raw Material used for manufacturing 'Alpha' purchased on 05.10.20XX	1,50,000	27,000
(g)	Raw Material used for manufacturing 'Beta' purchased on 10.10.20XX	2,00,000	36,000
(h)	Raw Material used for manufacturing 'Gama' purchased on 15.10.20XX	1,00,000	18,000

Compute the following:

- Amount of input tax credit (ITC) credited to Electronic Credit Ledger, for the month of October 20XX
- Amount of aggregate value of common credit (Tc)
- Common credit attributable to exempt supplies, for the month of October 20XX
- GST liability of the company payable through Electronic Cash Ledger, for the month of October 20XX

Note: Assume that all the procurements made by the company are from States other than Uttar Pradesh. Similarly, the company sells all its products in States other than Uttar Pradesh. Rate of IGST is 18%. All the conditions necessary for availing the ITC have been complied with. Ignore interest, if any and make suitable assumptions wherever required.

Answer:

S. No.	Particulars	ITC (Rs.)
(i)	Computation of amount of ITC credited to Electronic Credit Ledger, for the month of October, 20XX	
	Machinery 'U' - 'A' [Note 1]	36,000
	Machinery 'V' [Note 2]	18,000
	Machinery 'W' [Note 3]	-
	Machinery 'Y' [Note 4]	-
	Machinery 'Z' [Note 5]	-
	Raw Material used for manufacturing 'Alpha' [Note 6]	27,000
	Raw Material used for manufacturing 'Beta' [Note 6]	-
	Raw Material used for manufacturing 'Gama' [Note 6]	18,000
	ITC credited to Electronic Credit Ledger, for the month of October, 20XX	99,000
(ii)	Computation of common credit for the month of October, 20XX	
	Value of 'A' for Machinery 'U' purchased on 01.10.20XX	36,000
	Value of 'A' for Machinery 'Z' purchased 2 years before 01.10.20XX for effecting both taxable and exempt supplies	54,000
	Input tax claimed on Machinery 'Y' purchased 4 years before 01.10.20XX for effecting taxable supplies but used for effecting both taxable and exempt supplies from 01.10.20XX [Note 8]	72,000

S. No.	Particulars	ITC (Rs.)
	Total common credit for the month of October, 20XX - Tc [Note 7]	1,62,000
(iii)	Common credit attributable to exempt supplies, for the month of October, 20XX	
	Common credit for the month of October, 20XX (Tm) [Note 9]	2,700
(iv)	Common credit attributable to exempt supplies, for the month of October 20XX (Te) - Note 10	1,080
	Computation of GST liability of the company for October 20XX payable through Electronic Cash Ledger	
	IGST payable on 'Alpha' [Rs. 9,00,000 × 18%]	1,62,000
	IGST payable on 'Beta' [Exempt]	Nil
	IGST payable on 'Gama' [Rs. 6,00,000 × 18%]	1,08,000
	Total IGST payable on outward supply	2,70,000
	Common credit attributable to exempt supplies for the month of October, 20XX [Note 11]	<u>1,080</u>
	Total output tax liability of October, 20XX	2,71,080
	Less: ITC available in the Electronic Credit Ledger	<u>99,000</u>
	IGST payable from Electronic Cash Ledger	1,72,080

Notes:

- (1) ITC in respect of capital goods used commonly for effecting taxable supplies and exempt supplies denoted as 'A' shall be credited to the electronic credit ledger [Rule 43(1)(c) of the CGST Rules, 2017].
- (2) ITC in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero rated supplies shall be credited to the electronic credit ledger [Rule 43(1)(b) of the CGST Rules, 2017].
- (3) ITC in respect of capital goods used or intended to be used exclusively for effecting exempt supplies shall not be credited to electronic credit ledger [Rule 43(1)(a) of the CGST Rules, 2017].
- (4) Machinery 'Y' is being used for effecting both taxable and exempt supplies from 01.10.20XX. Prior to that it was exclusively used for effecting taxable supplies. Therefore, ITC in respect of such machinery would have already been credited to the electronic credit ledger.
- (5) Machinery 'Z' is being used for effecting both taxable and exempt supplies from October 1, two years prior to 01.10.20XX. Therefore, ITC in respect of such machinery would have already been credited to the electronic credit ledger.
- (6) ITC in respect of inputs used for effecting taxable supplies will be credited in Electronic Credit Ledger. ITC in respect of inputs used for effecting exempt supplies will not be credited in the electronic credit ledger [Rule 42 of CGST Rules, 2017].

(7) The aggregate of the amounts of 'A' credited to the electronic credit ledger in respect of common capital goods whose useful life remains during the tax period, to be denoted as 'Tc', shall be the common credit in respect of such capital goods [Rule 43(1)(d) of the CGST Rules, 2017].

(8) Where any capital goods which were used exclusively for effecting taxable supplies are subsequently also used for effecting exempt supplies, the input tax credit claimed in respect of such capital goods shall be added to arrive at the aggregate value of common credit 'Tc' [Proviso to rule 43(1)(d) of the CGST Rules, 2017].

(9) ITC attributable to a month on common capital goods during their useful life (Tm) shall be computed in accordance with rule 43(1)(e) of CGST Rules, 2017 as under:

$$= Tc \div 60$$

$$= ₹ 1,62,000 \div 60$$

$$= ₹ 2,700$$

The useful life of any capital goods shall be considered as five years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods

(10) The amount of common credit attributable towards exempted supplies, be denoted as 'Te', and shall be calculated as:

$$Te = (E \div F) \times Tr^* \text{ where,}$$

'E' is the aggregate value of exempt supplies, made, during the tax period, and

'F' is the total turnover in the State of the registered person during the tax period [Rule 43(1)(g) of the CGST Rules, 2017].

$$= Tr \times [\text{Turnover of exempt supplies during October 20XX} / \text{Total turnover of XYZ Pvt. Ltd. during October 20XX}]$$

$$= ₹ 2,700 \times 10,00,000 / 25,00,000$$

$$= ₹ 1,080$$

(11) Common credit attributable to the exempt supplies (Te) along with the applicable interest (which is to be ignored in this case) shall, during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit [Rule 43(1)(h) of the CGST Rules, 2017].

*Prior to the amendment vide Notification No. 16/2020 CT dated 23.03.2020 clause (f) of rule 43(1) provided that the amount of ITC, at the beginning of a tax period, on all common capital goods whose useful life remains during the tax period, be denoted as 'Tr' and shall be the aggregate of 'Tm' for all such capital goods. However, clause (f) has been omitted vide the said notification. Consequently, the term "Tr" becomes redundant in the formula provided in rule 43(1)(g). However, for the sake of computation of common credit attributable to exempt supply, value of 'Tm' has been used here. It may be noted that as per the erstwhile clause (f) of rule 43(1) value of 'Tr' was the aggregate of 'Tm.'

Question 17

B & D Company, a partnership firm, in Nagpur, Maharashtra is a wholesaler of a taxable product 'P' and an exempt product 'Q'. The firm supplies these products only in the eastern part of Maharashtra. All the procurements (both goods and services) of the firm are from the suppliers

registered under regular scheme in the State of Maharashtra. The firm pays tax under composition scheme.

B & D Company has furnished the following details with respect to its turnover (exclusive of taxes) and stock (exclusive of taxes):

Particulars	Turnover for the quarter ended 30.06.20XX (Rs.)	Turnover for the quarter ended 30.09.20XX (Rs.)
'P'	60,00,000	50,00,000
'Q'	17,65,000	17,00,000

Particulars	Stock as on 30.06.20XX (Rs.)	Stock as on 30.09.20XX (Rs.)	Stock as on 31.10.20XX (Rs.)
'P'	25,00,000	10,00,000	3,60,000
'Q'	10,00,000	2,00,000	1,20,000

The entire stock of the products 'P' and 'Q' available with the firm as on 30.09.20XX is purchased during the said half year except a consignment of product 'P' valuing Rs. 3,00,000, which was purchased in the April month of the preceding financial year. In the current financial year, in the month of October, no purchases were made, and the products were sold with a profit margin of 20% on sales [exclusive of taxes].

The extract of the only bill book maintained by the firm showed the following details-

Bill No.	Date	Value of products (exclusive of taxes)		
		'P' (₹)	'Q' (₹)	Total (₹)
2306	01.10.20XX	2,00,000	3,000	2,03,000
2307	01.10.20XX	1,33,000	5,250	1,38,250
2308	02.10.20XX	67,000	39,250	1,06,250
2309	03.10.20XX	58,750	33,750	92,500
2310	05.10.20XX	1,00,000	-	1,00,000
2311	06.10.20XX	94,000	6,000	1,00,000
2312	06.10.20XX	-	17,000	17,000
2313	08.10.20XX	50,000	6,000	56,000
2314	09.10.20XX	60,000	9,000	69,000
2315
.....

All the above amounts are exclusive of taxes, wherever applicable.

Compute the ITC credited to the Electronic Credit Ledger of the B & D Company, when it exits composition scheme and becomes liable to pay tax under regular scheme, in accordance with the provisions of section 18(1)(c) of the CGST Act, 2017.

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Note: Make suitable assumptions wherever required. Stock is valued at cost price.

Answer:

As per section 18(1)(c) of the CGST Act, 2017 read with rule 40 of CGST Rules, 2017, where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9.

Further, ITC on supplies of inputs and capital goods shall not be available after the expiry of one year from the date of issue of tax invoice [Section 18(2) of the CGST Act, 2017].

In the light of the above-mentioned provisions, the ITC credited to the Electronic Credit Ledger of the B & D Company on inputs held in on 02.10.20XX will be computed as under:

Particulars	Amount (Rs.)
A. ITC on inputs	
Stock of taxable inputs as on 30.09.20XX	
[Since no tax is paid on exempt purchases, there does not arise any question of availing ITC on the same. Hence, stock of only taxable inputs are considered]	10,00,000
Add: Purchases [No purchases are made in October, 20XX]	Nil
Less: Cost of taxable goods sold from 01.10.20XX to 02.10.20XX [(2,00,000 + 1,33,000 + 67,000) x 80%]	3,20,000
Stock of taxable inputs as on 02.10.20XX	
[Since the bill numbers are in continuation, it can be concluded that no sales are missing from the extract]	6,80,000
Less: More than one year old stock	<u>3,00,000</u>
Stock of inputs on which ITC can be claimed	3,80,000
ITC of CGST @ 9%	34,200
ITC of SGST @ 9% [Since all purchases are intra-State and from the suppliers registered under regular scheme]	34,200

Question 18

'All-in-One Store' is a chain of departmental store having presence in almost all metro cities across India. Both exempted as well as taxable goods are sold in such Stores. The Stores operate in rented properties. All-in-One Stores pay GST under regular scheme.

In Mumbai, the Store operates in a rented complex, a part of which is used by the owner of the Store for personal residential purpose.

All-in-One Store, Mumbai furnishes following details for the month of October, 20XX:

- i. Aggregate value of various items sold in the Store: Taxable items - Rs. 42,00,000
Items exempted vide a notification - Rs. 12,00,000
Items not leviable to GST - Rs. 3,00,000

- ii. Mumbai Store transfers to another All-in-One Store located in Goa certain taxable items for the purpose of distributing the same as free samples. The value declared in the invoice for such items is Rs. 5,00,000. Such items are sold in the Mumbai Store at Rs. 8,00,000.
- iii. Aggregate value of various items procured for being sold in the Store:
 - Taxable items - Rs. 55,00,000
 - Items exempted vide a notification - Rs. 15,00,000
 - Items not leviable to GST - Rs. 5,00,000
- iv. Freight paid to goods transport agency (GTA) for inward transportation of taxable items - Rs. 1,00,000
- v. Freight paid to GTA for inward transportation of exempted items - Rs. 80,000
- vi. Freight paid to GTA for inward transportation of non-taxable items - Rs. 20,000
- vii. Monthly rent payable for the complex - Rs. 5,50,000 (one third of total space available is used for personal residential purpose).
- viii. Activity of packing the items and putting the label of the Store along with the sale price has been outsourced. Amount paid for packing of all the items - Rs. 2,50,000
- ix. Salary paid to the regular staff at the Store - Rs. 2,00,000
- x. GST paid on inputs used for personal purpose - Rs. 5,000
- xi. GST paid on rent a cab services availed for business purpose - Rs.4,000.
- xii. GST paid on items given as free samples - Rs. 4,000

Given the above available facts, you are required to compute the following:

- A. Input tax credit (ITC) credited to the Electronic Credit Ledger
- B. Common Credit
- C. ITC attributable towards exempt supplies out of common credit
- D. Eligible ITC out of common credit
- E. Net GST liability for the month of October, 20XX

Note:

1. Wherever applicable, GST under reverse charge is payable @ 5% by All-in-One Stores. Rate of GST in all other cases is 18%.
2. All the sales and purchases made by the Store are within Maharashtra. All the purchases are made from registered suppliers. All the other expenses incurred are also within the State.
3. Wherever applicable, the amounts given are exclusive of taxes.
4. All the necessary conditions for availing the ITC have been complied with.

Answer:

A. Computation of ITC credited to Electronic Credit Ledger

As per rule 42 of the CGST Rules, 2017, the ITC in respect of inputs or input services being partly used for the purposes of business and partly for other purposes, or partly used for effecting

taxable supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies.

ITC credited to the electronic credit ledger of registered person ['C₁'] is calculated as under- $C_1 = T - (T_1 + T_2 + T_3)$

Where,

T = Total input tax involved on inputs and input services in a tax period.

T₁ = Input tax attributable to inputs and input services intended to be used exclusively for non-business purposes

T₂ = Input tax attributable to inputs and input services intended to be used exclusively for effecting exempt supplies

T₃ = Input tax in respect of inputs and input services on which credit is blocked under section 17(5) of the CGST Act, 2017

Computation of total input tax involved [T]

Particulars	(Rs.)
GST paid on taxable items [Rs. 55,00,000 × 18%]	9,90,000
Items exempted vide a notification [Since exempted, no GST is paid]	Nil
Items not leviable to tax [Since non-taxable, no GST is paid]	Nil
GST paid under reverse charge on freight paid to GTA for inward transportation of taxable items - [Rs. 1,00,000 × 5%]	5,000
GST paid under reverse charge on freight paid to GTA for inward transportation of exempted items - [Rs. 80,000 × 5%]	4,000
GST paid under reverse charge on freight paid to GTA for inward transportation of non-taxable items - [Rs. 20,000 × 5%]	1,000
GST paid on monthly rent - [Rs. 5,50,000 × 18%]	99,000
GST paid on packing charges [Rs. 2,50,000 × 18%]	45,000
Salary paid to staff at the Store	
[Services by an employee to the employer in the course of or in relation to his employment is not a supply in terms of para 1 of the Schedule III to CGST Act, 2017 and hence, no GST is payable thereon].	Nil
GST paid on inputs used for personal purpose	5,000
GST paid on rent a cab services availed for business purpose	4,000
GST paid on items given as free samples	4,000
Total input tax involved in a tax period (October, 20XX) [T]	11,57,000

Computation of T₁, T₂, T₃

Particulars	(Rs.)
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GST paid on monthly rent attributable to personal purposes [1/3 of Rs. 99,000]	33,000
GST paid on inputs used for personal purpose	5,000
Input tax exclusively attributable to non-business purposes [T1]	38,000
GST paid under reverse charge on freight paid to GTA for inward transportation of exempted items [As per section 2(47) of the CGST Act, 2017, exempt supply means, inter alia, supply which may be wholly exempt from tax by way of a notification issued under section 11. Hence, input service of inward transportation of exempt items is exclusively used for effecting exempt supplies.]	4,000
GST paid under reverse charge on freight paid to GTA for inward transportation of non-taxable items [Exempt supply includes non-taxable supply in terms of section 2(47) of the CGST Act, 2017. Hence, input service of inward transportation of non-taxable items is exclusively used for effecting exempt supplies.]	1,000
Input tax exclusively attributable to exempt supplies [T2]	5,000
GST paid on rent a cab services availed for business purpose [ITC on rent a cab service is blocked under section 17(5)(b)(i) of the CGST Act, 2017 as the same is not used by All-in-One Store for providing the rent a cab service or as part of a taxable composite or mixed supply. It has been assumed that it is not obligatory for an employer to provide the same to its employees under any law for the time being in force.	4,000
GST paid on items given as free samples [ITC on goods inter alia, disposed of by way of free samples is blocked under section 17(5)(h) of the CGST Act, 2017].	4,000
Input tax for which credit is blocked under section 17(5) of the CGST Act, 2017 [T3] **	8,000

**Since GST paid on inputs used for personal purposes has been considered while computing T1, the same has not been considered again in computing T3.

ITC credited to the electronic credit ledger

$$C_1 = T - (T_1 + T_2 + T_3)$$

$$= \text{Rs. } 11,57,000 - (\text{Rs. } 38,000 + \text{Rs. } 5,000 + \text{Rs. } 8,000)$$

$$= \text{Rs. } 11,06,000$$

B. Computation of Common Credit

$$C_2 = C_1 - T_4$$

where C_2 = Common Credit

T_4 = Input tax credit attributable to inputs and input services intended to be used exclusively for effecting taxable supplies

Computation of T_4 ,

Particulars	(Rs.)
GST paid on taxable items	9,90,000
GST paid under reverse charge on freight paid to GTA for inward transportation of taxable items	5,000
Input tax exclusively attributable to taxable supplies [T4]	9,95,000

Common Credit $C_2 = C_1 - T_4$

= Rs. 11,06,000 - Rs. 9,95,000

= **Rs. 1,11,000**

C. Computation of ITC attributable towards exempt supplies out of common credit

ITC attributable towards exempt supplies is denoted as 'D1' and calculated as -

$$D1 = (E \div F) \times C2$$

where,

'E' is the aggregate value of exempt supplies during the tax period, and

'F' is the total turnover in the State of the registered person during the tax period

Aggregate value of exempt supplies during October, 20XX = Rs. 15,00,000 (Rs. 12,00,000 + Rs.3,00,000)

Total turnover in the State during the tax period = Rs. 65,00,000 (Rs. 42,00,000 + Rs. 12,00,000 + Rs.3,00,000 + Rs. 8,00,000)

Note: Transfer of items to Store located in Goa is inter-State supply in terms of section 7 of the IGST Act, 2017 and hence includible in the total turnover. Such supply is to be valued as per rule 28 of the CGST Rules, 2017. However, the value declared in the invoice cannot be adopted as the value since the recipient Store at Goa is not entitled for full credit. Therefore, open market value of such goods, which is the value of such goods sold in Mumbai Store, is taken as the value of items transferred to Goa Store.

$$D1 = (15,00,000 \div 65,00,000) \times 1,11,000$$

= **Rs. 25,615 (rounded off)**

D. Computation of Eligible ITC out of common credit

Eligible ITC attributed for effecting taxable supplies is denoted as 'C3', where, -

$$C3 = C2 - D1$$

= Rs. 1,11,000 - Rs. 25,615

= **Rs. 85,385**

E. Computation of Net GST liability for the month of October,20XX

Particulars	GST (Rs.)
GST liability under forward charge	

Particulars	GST (Rs.)
Taxable items sold in the store [Rs. 42,00,000 x 18%]	7,56,000
Taxable items transferred to Goa Store [Rs. 8,00,000 x 18%]	1,44,000
Ineligible ITC [ITC out of common credit, attributable to exempt supplies]	25,615
Total output tax liability under forward charge	9,25,615
Less: ITC credited to the electronic ledger	<u>11,06,000</u>
ITC carried forward to the next month	(1,80,385)
Net GST payable [A]	Nil
GST liability under reverse charge	
Freight paid to GTA for inward transportation of taxable items [Rs. 1,00,000 x 5%]	5,000
Freight paid to GTA for inward transportation of exempted items [Rs. 80,000 x 5%]	4,000
Freight paid to GTA for inward transportation of non- taxable items [Rs. 20,000 x 5%]	<u>1,000</u>
Total output tax liability under reverse charge [B]	10,000
Net GST liability to be paid in cash [A] + [B]	
As per section 49(4) of the CGST Act, 2017 amount available in the electronic credit ledger may be used for making payment towards output tax. However, tax payable under reverse charge is not an output tax in terms of section 2(82) of the CGST Act, 2017. Therefore, tax payable under reverse charge cannot be set off against the input tax credit and thus, will have to be paid in cash.	10,000

Note: While computing net GST liability, ITC credited to the electronic ledger can alternatively be computed as follows:

Particulars	(Rs.)
GST paid on taxable items [Rs. 55,00,000 x 18%]	9,90,000
Items exempted vide a notification [Since exempted, no GST is paid]	Nil
Items not leviable to tax [Since non-taxable, no GST is paid]	Nil
GST paid under reverse charge on freight paid to GTA for inward transportation of taxable items [Rs. 1,00,000 x 5%]	5,000
GST paid under reverse charge on freight paid to GTA for inward transportation of exempted items [Rs. 80,000 x 5%]	
[As per section 2(47) of the CGST Act, 2017, exempt supply means, inter alia, supply which may be wholly exempt from tax by way of a notification issued under section 11. Hence, input service of inward transportation of exempt items is exclusively used for effecting exempt supplies. Input tax exclusively	Nil

Particulars	(Rs.)
attributable to exempt supplies is to be excluded]	
GST paid under reverse charge on freight paid to GTA for inward transportation of non-taxable items [Rs. 20,000 x 5%] [Exempt supply includes non-taxable supply in terms of section 2(47) of the CGST Act, 2017. Hence, input service of inward transportation of non-taxable items is exclusively used for effecting exempt supplies. Input tax exclusively attributable to exempt supplies is to be excluded]	Nil
GST paid on monthly rent - for business purposes [(Rs. 5,50,000 x 18%) - 1/3 of [(Rs. 5,50,000 x 18%)]	66,000
GST paid on packing charges [Rs. 2,50,000 x 18%]	45,000
Salary paid to staff at the Store [Services by an employee to the employer in the course of or in relation to his employment is not a supply in terms of para 1 of the Schedule III to CGST Act, 2017 and hence, no GST is payable thereon]	Nil
GST paid on inputs used for personal purpose [ITC on goods or services or both used for personal consumption is blocked under section 17(5)(g) of the CGST Act, 2017]	Nil
GST paid on rent a cab services availed for business purpose [ITC on rent a cab service is blocked under section 17(5)(b)(i) of the CGST Act, 2017 as the same is not used by All-in-One Store for providing the rent a cab service or as part of a taxable composite or mixed supply. It has been assumed that it is not obligatory for an employer to provide the same to its employees under any law for the time being in force]	Nil
GST paid on items given as free samples [ITC on goods inter alia, disposed of by way of free samples is blocked under section 17(5)(h) of the CGST Act, 2017]	Nil
Total ITC credited to the electronic ledger	11,06,000
Less: ITC reversal [ITC of common credit, attributable to exempt supplies]	(25,615)
Net ITC available for credit	10,80,385

Question 19

Krishna Motors is a car dealer selling cars of an international car company. It also provides maintenance and repair services of the cars sold by it as also of other cars. It seeks your advice on availability of input tax credit in respect of the following expenses incurred by it during the course of its business operations:

- Cars purchased from the manufacturer for making further supply of such cars. Two of such cars are destroyed in accidents while being used for test drive by potential customers.

- ii. Works contract services availed for constructing a car shed in its premises

Answer:

As per section 16(1) of the CGST Act, 2017, every registered person can take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business. However, section 17(5) of CGST Act, 2017 specifies certain goods and services on which the input tax credit is not available.

In the light of the foregoing provisions, the availability of input tax credit (ITC) in respect of the various expenses incurred by Krishna Motors is discussed below:

- i. Section 17(5)(a) specifically blocks ITC on motor vehicles for transportation of passengers having approved seating capacity of not more than thirteen persons. However, the same is allowed when the motor vehicles are used, inter alia, for further supply of such vehicles. Thus, ITC on cars purchased from the manufacturer for making further supply of such cars will be allowed.

However, ITC on the cars destroyed in accident will not be allowed as the ITC on goods destroyed for whichever reason is specifically blocked under section 17(5)(h) of CGST Act.

- ii. Section 17(5)(c) specifically blocks ITC on works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service. Since, in this case the car shed is not a plant and machinery and the works contract service is not used for further supply of works contract service, ITC thereon will not be allowed.

Question 20

Mr. Rajesh Surana has a proprietorship firm in the name of Surana & Sons in Jaipur. The firm, registered under GST in the State of Rajasthan, manufactures three taxable products 'M', 'N' and 'O'. Tax on 'N' is payable under reverse charge. The firm also provides taxable consultancy services.

The firm has provided the following details for the period April 20XX to September 20XX:

Particulars	(Rs.)
Turnover of 'M'	14,00,000
Turnover of 'N'	6,00,000
Turnover of 'O'	10,00,000
Export of 'M' with payment of IGST	2,50,000
Export of 'O' under letter of undertaking	10,00,000
Consultancy services provided to independent clients located in foreign countries. In all cases, the consideration has been received in convertible foreign exchange	20,00,000
Sale of building (excluding stamp duty of Rs. 2.50 lakh, being 2% of value)	1,20,00,000
Interest received on investment in fixed deposits with a bank	4,00,000
Sale of shares (Purchase price Rs. 2,40,00,000/-)	2,50,00,000
Legal services received from an advocate in relation to product 'M'	3,50,000
Common inputs and input services used for supply of goods and services	50,00,000

Particulars	(Rs.)
mentioned above [Inputs - Rs. 35,00,000; Input services - Rs.15,00,000]	

With the help of the above-mentioned information, compute the net GST liability of Surana & Sons, payable from Electronic Credit Ledger and/or Electronic Cash Ledger, as the case may be, for the period April 20XX to September 20XX

Note: Assume that all the domestic transactions of Surana & Sons are intra-State and that rate of GST on goods and services are 12% and 18% respectively. All the conditions necessary for availing the ITC have been complied with. Turnover of Surana & Sons was Rs. 85,00,000 in the previous financial year.

Answer:

Computation of net GST liability of Surana & Sons for the period April 20XX to September 20XX

Particulars	(Rs.)
GST payable on outward supply [Refer Working Note 1]	3,18,000
GST payable on legal services under reverse charge [Rs. 3,50,000 X 18%] [Tax on legal services provided by an advocate to a business entity, is payable under reverse charge by the business entity in terms of Notification No. 13/2017 CT (R) dated 28.06.2017. Further, such services are not eligible for exemption provided under Notification No. 12/2017 CT (R) dated 28.06.2017 as the turnover of the business entity [Surana & Sons] in the preceding financial year exceeds Rs. 20 lakh.]	63,000
Total GST liability	3,81,000
Less: Input tax credit (ITC) [Refer Working Note 3]	2,78,180
Less: Tax paid in cash (Rs. 63,000 + Rs. 39,820)	1,02,820
[As per section 49(4) of the CGST Act, 2017 amount available in the electronic credit ledger may be used for making payment towards output tax. However, tax payable under reverse charge is not an output tax in terms of section 2(82) of the CGST Act, 2017. Therefore, tax payable under reverse charge cannot be set off against the input tax credit and thus, will have to be paid in cash.]	

Working Note 1

Computation of GST payable on outward supply

Particulars	Value (Rs.)	GST (Rs.)
Turnover of 'M' [liable to GST @ 12%]	14,00,000	1,68,000
Turnover of 'N' [Tax on 'N' is payable under reverse charge by the recipient of such goods]	6,00,000	Nil
Turnover of 'O' [liable to GST @ 12%]	10,00,000	1,20,000
Export of 'M' with payment of IGST @ 12%	2,50,000	30,000
Export of 'O' under letter of undertaking (LUT) [Export of goods is a zero rated supply in terms of	10,00,000	Nil

Particulars	Value (Rs.)	GST (Rs.)
<p>section 16(1)(a) of the IGST Act, 2017. A zero rated supply can be supplied without payment of tax under a LUT in terms of section 16(3)(a) of that Act.]</p> <p>Consultancy services provided to independent clients located in foreign countries.</p> <p>[The activity is an export of service in terms of section 2(6) of the IGST Act, 2017 as-</p> <ul style="list-style-type: none"> • the supplier of service is located in India; • the recipient of service is located outside India; • place of supply of service is located outside India (in terms of section 13(2) of the IGST Act, 2017); • payment for the service has been received in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and • supplier of service and recipient of service are not merely establishments of distinct person. <p>[Export of services is a zero rated supply in terms of section 16(1)(a) of the IGST Act, 2017. A zero rated supply can be supplied without payment of tax under a LUT in terms of section 16(3)(a) of that Act.]</p> <p>It is assumed that export has been made under LUT</p> <p>Sale of building</p> <p>[Sale of building is neither a supply of goods nor a supply of services in terms of para 5 of Schedule III to the CGST Act, 2017 and hence, is not liable to any tax]</p> <p>Interest received on investment in fixed deposits with a bank</p> <p>[Exempt vide Notification No. 12/2017 CT (R) dated 28.06.2017]</p> <p>Sale of shares</p> <p>[Shares are neither goods nor services in terms of section 2(52) and 2(102) of the CGST Act, 2017. Hence, sale of shares is neither a supply of goods nor a supply of services and hence, is not liable to any tax.]</p>	<p>20,00,000</p> <p>1,20,00,000</p> <p>4,00,000</p> <p>2,50,00,000</p>	<p>Nil</p> <p>Nil</p> <p>Nil</p> <p>Nil</p>
Total GST payable on outward supply		3,18,000

Working Note 2

Computation of common credit attributable to exempt supplies during the period April 20XX to September 20XX

Particulars	(Rs.)
Common credit on inputs and input services -[Refer Working Note 3 below]	6,90,000
Common credit attributable to exempt supplies (rounded off)	
= Common credit on inputs and input services × (Exempt turnover during the period / Total turnover during the period) = Rs. 6,90,000 × Rs. 1,33,50,000 / Rs. 1,94,00,000	4,74,820
Exempt turnover = Rs. 1,33,50,000 and total turnover = Rs. 1,94,00,000 [Refer note below]	

Note:

As per section 17(3) of the CGST Act, 2017, value of exempt supply includes supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building. As per explanation to Chapter V of the CGST Rules, 2017, the value of exempt supply in respect of land and building is the value adopted for paying stamp duty and for security is 1% of the sale value of such security.

Further, as per explanation to rule 42 of the CGST Rules, 2017, the aggregate value of exempt supplies inter alia excludes the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances.

Therefore, value of exempt supply in the given case will be the sum of value of output supply on which tax is payable under reverse charge (Rs. 6,00,000), value of sale of building (Rs. 2,50,000 / 2 × 100 = Rs. 1,25,00,000) and value of sale of shares (1% of Rs. 2,50,00,000 = Rs. 2,50,000), which comes out to be Rs. 1,33,50,000.

Total turnover = Rs. 1,94,00,000 (Rs. 14,00,000 + Rs. 6,00,000 + Rs. 10,00,000 + Rs. 2,50,000 + Rs. 10,00,000 + Rs. 20,00,000 + Rs. 1,25,00,000 + Rs. 4,00,000 + Rs. 2,50,000)

Working Note 3

Computation of ITC available in the Electronic Credit Ledger of the Surana & Sons for the period April 20XX- September 20XX

Particulars	(Rs.)
Common credit on inputs and input services	6,90,000
[Tax on inputs - Rs. 4,20,000 (Rs. 35,00,000 × 12%) + Tax on input services - Rs. 2,70,000 (Rs. 15,00,000 × 18%)]	
Legal services used in the manufacture of taxable product 'M'	<u>63,000</u>
ITC available in the Electronic Credit Ledger	7,53,000
Less: Common credit attributable to exempt supplies during the period April 20XX to September 20XX [Refer Working Note 2]	4,74,820
Net ITC available	2,78,180

Question 21

PQR Company Ltd., a registered supplier of Bengaluru (Karnataka), is a manufacturer of goods. The company provides the following information pertaining to GST paid on input supplies during the month of April, 20XX:

Sl. No.	Items	GST paid in (Rs.)
(i)	Life Insurance premium paid by the company on the life of factory employees as per the policy of the company	1,50,000
(ii)	Raw materials purchased for which invoice is missing but delivery challan is available.	38,000
(iii)	Raw materials purchased which are used for zero rated outward supply.	50,000
(iv)	Works contractor's service used for repair of factory building which is debited in the profit and loss account of company.	30,000
(v)	Company purchased the capital goods for Rs. 4,00,000 and claimed depreciation of Rs. 44,800 (@ 10%) on the full amount of Rs. 4,48,000 under Income Tax Act, 1961.	48,000

Other Information: -

- In the month of September, 20XX, of previous financial year, PQR Company Ltd. availed input tax credit of Rs. 2,40,000 on purchase of raw material which was directly sent to job worker's premises under a challan on 25-09-20XX of the same financial year. The said raw material has not been received back from the Job worker up to 30-04-20XX of the current financial year.
- All the above input supplies except (ii) above have been used in the manufacture of taxable goods.

Compute the amount of net input tax credit available for the month of April, 20XX with necessary explanations for your conclusion for each item. You may assume that all the other conditions necessary for availing the eligible input tax credits have been fulfilled.

Answer:

Computation of Input Tax Credit (ITC) available with PQR Ltd. for the month of April, 20XX

Particulars	Rs.
Life Insurance premium paid by the company on the life of factory employees [Note 1]	Nil
Raw materials purchased [Note 2]	Nil
Raw materials used for zero rated outward supply [Note 3]	50,000
Work contractor's service [Note 4]	30,000

Capital goods purchased wherein the depreciation is claimed on the tax component [Note 5]	<u>Nil</u>
Total ITC available	<u>80,000</u>

Notes:

- 1) ITC on life insurance service is available only when it is obligatory for an employer to provide said services to its employees under any law for the time being in force. In the absence of any information, it is assumed that such services are not obligatory for the employer in the instant case and thus, the ITC thereon is blocked [Proviso to section 17(5)(b) of the CGST Act, 2017].
- 2) ITC cannot be taken since invoice is missing and delivery challan is not a valid document to avail ITC [Section 16 of the CGST Act, 2017]
- 3) ITC can be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply - [Section 16 of the IGST Act, 2017]
- 4) ITC is blocked on works contract services when supplied for construction of an immovable property. However, "construction" includes only that repairs which are capitalized along with the said immovable property. In this case, since repairs of building is debited to P & L Account, the same does not amount to 'construction' and hence ITC thereon is available - [Section 17(5)(c) of the CGST Act, 2017].
- 5) ITC is not available when depreciation has been claimed on the tax component of the cost of capital goods under the Income-tax Act - [Section 16(3) of the CGST Act, 2017]
- 6) The principal is entitled to take ITC of inputs sent for job work even if the said inputs are directly sent to job worker. However, where said inputs are not received back by the principal within a period of 1 year of the date of receipt of inputs by the job worker, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were received by the job worker - [Section 19 of the CGST Act, 2017].

Hence, the ITC taken by PQR Company Ltd. in September, 20XX is valid and since 1 year period has yet not lapsed in April, 20XX, there will be no tax liability on such inputs.

Question 22

On 25th August, 20XX, of previous financial year, M/s Agarwal & Agarwal Ltd., a registered supplier of textile products located in Bengaluru (Karnataka) purchased one machine for Rs. 12,39,000 including IGST, from one supplier of Maharashtra who issued invoice on the same date. M/s Agarwal & Agarwal Ltd. put the machinery to use on the same day and availed input tax credit for the eligible amount.

M/s Agarwal & Agarwal Ltd. sold this machine after using the machine in the process of manufacture of taxable goods for Rs. 7,50,000 excluding IGST, to Mr. Suresh Kumar of Andhra Pradesh on 20th August 20XX of current financial year.

During purchase as well as sale of the machinery, the IGST rate applicable was 18%.

Is M/s Agarwal & Agarwal Ltd., required to pay GST? If yes, calculate the amount of tax payable under GST Laws at the time of sale of the machine. Also, briefly state the relevant statutory provisions.

Answer:

As per section 18 of the CGST Act, 2017, if capital goods/ plant and machinery on which input tax credit (ITC) has been taken are supplied outward by a registered person, he must pay an amount that is higher of the following:

- a) ITC taken on such goods reduced by 5% per quarter of a year or part thereof from the date of issue of invoice for such goods or
- b) tax on transaction value.

Accordingly, the amount payable on supply of machinery by M/s Agarwal & Agarwal Ltd. shall be computed as follows:

Particulars	Rs.
ITC taken on the machinery (Rs. 12,39,000 × 18/118)	1,89,000
Less: Input tax credit to be reversed @ 5% per quarter for the period of use of machine	
(i) For the previous year = (Rs. 1,89,000 × 5%) × 3 quarters	28,350
(ii) For the current year = (Rs. 1,89,000 × 5%) × 2 quarters	<u>18,900</u>
Amount required to be paid (A) **	1,41,750
Duty leviable on transaction value (Rs. 7,50,000 × 18%) (B)	1,35,000
Amount payable towards disposal of machine is higher of (A) and (B)	1,41,750
Thus, M/s Agarwal & Agarwal Ltd. is required to pay GST amounting to Rs. 1,41,750 at the time of sale of machinery.	

** In the above solution, amount payable towards disposal of machine has been computed on the basis of provisions of section 18(6) of the CGST Act, 2017 read with rule 40(2) of the CGST Rules, 2017 [wherein ITC to be reversed for the period of use of capital goods/machine has been computed @ 5% for every quarter or part thereof from the date of the issue of invoice].

However, the said amount can also be computed in accordance with the provisions of section 18(6) of the CGST Act, 2017 read with rule 44(6) of the CGST Rules, 2017 [wherein ITC involved in the remaining useful life (in months) of the capital goods/ machine will be reversed on pro-rata basis, taking the useful life as 5 years].

Question 23

Vansh Shoppe is a registered supplier of both taxable and exempted goods, registered under GST in the State of Rajasthan. Vansh Shoppe has furnished the following details for the month of April, 20XX;

	Rs.
(1) Details of sales:	
Supply of taxable goods	50,00,000
Supply of goods not leviable to GST	10,00,000

	Rs.
(2) Details of goods purchased for being sold in the shop:	
Taxable goods	45,00,000
Goods not leviable to GST	4,00,000
(3) Details of expenses:	
Monthly rent payable for the shop	3,50,000
Telephone expenses paid	50,000
(Rs. 30,000 for land line phone installed at the shop and Rs. 20,000 for mobile phone given to employees for official use)	
Audit fees paid to a Chartered Accountant	60,000
(Rs. 35,000 for filing of income tax return & the statutory audit of preceding financial year and Rs. 25,000 for filing of GST return)	
Premium paid on health insurance policies taken for specified employees of the shop as per company policy.	10,000
Freight paid to goods transport agency (GTA) for inward transportation of non-taxable goods	50,000
Freight paid to goods transport agency (GTA) for inward transportation of taxable goods	1,50,000
GST paid on goods given as free samples	5,000

All the above amounts are exclusive of all kind of taxes, wherever applicable.

All the purchases and sales made by Vansh Shoppe are within Rajasthan. All the purchases are made from registered suppliers. All the other expenses incurred are also within Rajasthan.

Assume, wherever applicable, for purpose of reverse charge payable by Vansh Shoppe, the CGST, SGST and IGST rates as 2.5%, 2.5% and 5% respectively. CGST, SGST and IGST rates to be 6%, 6% and 12% respectively in all other cases.

There is no opening balance in the electronic cash ledger or electronic credit ledger.

Assume that all the necessary conditions for availing the ITC have been complied with. Ignore interest, if any.

You are required to compute the following:

- 1) Input Tax Credit (ITC) credited to Electronic Credit Ledger
- 2) Common credit
- 3) ITC attributable towards exempt supplies out of common credit
- 4) Net GST liability for the month of April, 20XX

Answer:

1. Computation of ITC credited to Electronic Credit Ledger

ITC of input tax attributable to inputs and input services intended to be used for business purposes is credited to the electronic credit ledger. Input tax attributable to inputs and input

services intended to be used exclusively for non-business purposes, for effecting exclusively exempt supplies and on which credit is blocked under section 17(5) of the CGST Act, 2017 is not credited to electronic credit ledger [Sections 16 and 17 of the CGST Act, 2017].

In the light of the aforementioned provisions, the ITC credited to electronic credit ledger of Vansh Shoppe is calculated as under:

Particulars	Amount (Rs.)	CGST @ 6% (Rs.)	SGST @ 6% (Rs.)
GST paid on taxable goods	45,00,000	2,70,000	2,70,000
Goods not leviable to GST [Since non-taxable, no GST is paid]	4,00,000	Nil	Nil
GST paid on monthly rent for shop	3,50,000	21,000	21,000
GST paid on telephone expenses	50,000	3,000	3,000
GST paid on audit fees	60,000	3,600	3,600
GST paid on premium of health insurance policies as per company policy	10,000	Nil	Nil
[ITC on life insurance service is allowed only if it is obligatory for employers to provide such services to its employees under any law for the time being in force- Proviso to section 17(5)(b)(i)].			
Goods given as free samples	5,000	Nil	Nil
[ITC on goods disposed of by way of free samples is blocked under section 17(5)(h) of the CGST Act, 2017]			
Particulars	Amount (Rs.)	CGST @ 2.5% (Rs.)	SGST @ 2.5% (Rs.)
Freight paid to GTA for inward transportation of non-taxable goods under reverse charge	50,000	Nil	Nil
[Since definition of exempt supply under section 2(47) of the CGST Act, 2017 specifically includes non-taxable supply, the input service of inward transportation of non-taxable goods is being exclusively used for effecting exempt supplies.]			
Freight paid to GTA for inward transportation of taxable goods under reverse charge	1,50,000	3,750	3,750
ITC credited to the electronic ledger		3,01,350	3,01,350
Less: ITC reversal [ITC out of		(4,600)	(4,600)

Particulars	Amount (Rs.)	CGST @ 6% (Rs.)	SGST @ 6% (Rs.)
common credit, attributable to exempt supplies]			
Net ITC available		2,96,750	2,96,750

2. Computation of common credit

Common Credit = ITC credited to Electronic Credit Ledger – ITC attributable to inputs and input services intended to be used exclusively for effecting taxable supplies [Section 17 of the CGST Act, 2017 read with rule 42 of the CGST Rules, 2017].

Particulars	CGST (Rs.)	SGST (Rs.)
ITC credited to Electronic Credit Ledger	3,01,350	3,01,350
Less : ITC on taxable goods	2,70,000	2,70,000
Less: ITC on freight paid to GTA for inward transportation of taxable goods	3,750	3,750
Common credit	27,600	27,600

3. Computation of ITC attributable towards exempt supplies out of common credit

ITC attributable towards exempt supplies = Common credit x (Aggregate value of exempt supplies during the tax period/ Total turnover during the tax period)[Section 17 of the CGST Act, 2017 read with rule 42 of the CGST Rules, 2017].

Particulars	CGST (Rs.)	SGST (Rs.)
ITC attributable towards exempt supplies [Rs. 27,600 x (Rs. 10,00,000/Rs. 60,00,000)]	4,600	4,600

4. Computation of net GST liability for the month of April, 20XX

Particulars	CGST (Rs.)	SGST (Rs.)
GST liability under forward charge		
Supply of taxable goods [Rs. 50,00,000 x 6%]	<u>3,00,000</u>	<u>3,00,000</u>
Total output tax liability under forward charge	3,00,000	3,00,000
Less: ITC credited to the electronic credit ledger	2,96,750	2,96,750
Net GST payable [A]	3,250	3,250
GST liability under reverse charge		
Freight paid to GTA for inward transportation of taxable goods [Rs. 1,50,000 x 2.5%]	3,750	3,750
Freight paid to GTA for inward transportation of non-taxable goods [Rs. 50,000 x 2.5%]	1,250	1,250
Total output tax liability under reverse charge [B]	5,000	5,000
Net GST liability [A] + [B]	8,250	8,250

Note: Amount available in the electronic credit ledger may be used for making payment

towards output tax [Section 49 of the CGST Act, 2017]. However, tax payable under reverse charge is not an output tax in terms of definition of output tax provided under section 2(82) of the CGST Act, 2017. Therefore, tax payable under reverse charge cannot be set off against the input tax credit and thus, will have to be paid in cash.

Question 24

Siddhi Ltd. is a registered manufacturer engaged in taxable supply of goods. Siddhi Ltd. purchased the following goods during the month of January, 20XX. The following particulars are provided:

S. No.	Particulars	Input tax (Rs.)
1.	Capital goods purchased on which depreciation has been taken on full value including input tax thereon	15,000
2.	Goods purchased from Ravi Traders (Invoice of Ravi Traders is received in month of January, 20XX, but goods were received in month of March, 20XX)	20,000
3.	Car purchased for making further supply of such car. Such car is destroyed in accident while being used for test drive by potential customers	30,000
4.	Goods used for setting up telecommunication towers being immovable property	50,000
5.	Goods purchased from Pooja Ltd. (Full payment is made by Siddhi Ltd. to Pooja Ltd. against such supply, but tax has not been deposited by PoojaLtd.	10,000
6.	Truck purchased for delivery of output goods	80,000

Determine the amount of input tax credit (ITC) available by giving necessary explanations for treatment of various items as per the provisions of the CGST Act, 2017. You may assume that all the necessary conditions for availing the ITC have been complied with by Siddhi Ltd.

Answer:

Computation of ITC available with Siddhi Ltd.

S. No.	Particulars	Input tax (Rs.)
1.	Capital goods [Since depreciation has been claimed on the tax component of the value of the capital goods, ITC of such tax cannot be availed in terms of section 16 of the CGST Act, 2017.]	Nil
2.	Goods purchased from Ravi Traders [ITC in respect of goods not received cannot be availed (Section 16 of the CGST Act, 2017). Since the goods have been received in the month of March 20XX, ITC thereon can be availed in March 20XX and not January 20XX even though the invoice for the same has been received in January 20XX]	Nil
3.	Cars purchased for making further supply	Nil

S. No.	Particulars	Input tax (Rs.)
4.	[Though ITC on motor vehicles used for further supply of such vehicles is not blocked, ITC on goods destroyed for whichever reason is blocked (Section 17(5) of the CGST Act, 2017.) Goods used for setting telecommunication towers [ITC on goods used by a taxable person for construction of immovable property on his own account is blocked even when such goods are used in the course or furtherance of business (Section 17 of the CGST Act, 2017).]	Nil
5.	Goods purchased from Pooja Ltd. [ITC can be claimed provisionally in January 20XX since all the conditions necessary for availing the same have been complied with (Section 16 of the CGST Act, 2017).]	10,000
6.	However, the claim will get confirmed only when the tax charged in respect of such supply has been actually paid to the Government.] Trucks purchased for delivery of output goods [ITC on motor vehicles used for transportation of goods is not blocked (Section 17(5) of the CGST Act, 2017).]	80,000
	Total ITC available with Siddhi Ltd.	90,000

Note: The above answer is based on the assumption that the ITC available is to be computed for the month of January, 20XX. However, since the question does not specify the period for which ITC available is to be computed, the question may also be answered without referring to any particular period.

Question 25

X, a manufacturer of roofing sheets, has total input tax credit of Rs.1,60,000 as on 30-06-20XX. He provides the following other information pertaining to June 20XX:

- 1) Input tax on raw materials in June is Rs. 40,000.
- 2) Input tax on account of Harvest caterers in connection with his Housewarming is Rs. 10,000.
- 3) Input tax on inputs contained in exempt supplies of Rs. 2 lakh in June is Rs. 20,000.
- 4) GST paid on cosmetic and plastic surgery of CEO of the company is Rs. 30,000.
- 5) Total turnover (inter-State, taxable @18%) for the month of June is Rs. 60 lakh.

Compute the ITC available and his output tax liability for the month of June 20XX.

Answer:

Computation of ITC available and output tax liability of X for June 20XX

Particulars	Amount (Rs.)
Output tax liability for June 20XX	
GST on taxable turnover for June 20XX	10,80,000

Particulars	Amount (Rs.)
[Being inter-State supply, the same is leviable to IGST @ 18% =Rs.60,00,000 × 18%]	
ITC available as on 30.06.20XX in terms of rule 42 of the CGST Rules, 2017	
ITC available in the Electronic Credit Ledger on 01.06.20XX	₹ 1,60,000
Add: Total ITC credited to the Electronic Credit Ledger in the month of June 20XX	₹ 40,000
Less: ITC out of common credit attributable to exempt supply [Refer working note below]	(₹ 1,290)
	<u>1,98,710</u>
GST Liability	8,81,290

Working Note:**Computation of ineligible ITC to be added to output tax liability**

Particulars	Amount (Rs.)
Input tax on raw materials	
[Being used in the course or furtherance of business, input tax on raw materials is available as ITC and is credited to the Electronic Credit Ledger - Section 16(1) of the CGST Act, 2017]	40,000
Input tax on catering for housewarming	
[ITC on outdoor catering is blocked in terms of section 17(5) of the CGST Act, 2017 if the same is not used for making an outward supply of outdoor catering or as an element of a taxable composite/mixed supply. Hence, the same is not credited to the Electronic Credit Ledger - Rule 42 of the CGST Rules, 2017]	Nil
Input tax on inputs contained in exempt supplies	
[Not available as ITC and thus, not credited to the Electronic Credit Ledger in terms of rule 42 of the CGST Rules, 2017]	Nil
Input tax on cosmetic and plastic surgery of CEO of company	
[ITC on cosmetic and plastic surgery is blocked in terms of section 17(5) of the CGST Act, 2017 if the same are not used for making the same category of outward supply or as an element of a taxable composite/mixed supply. Hence, the same is not credited to the Electronic Credit Ledger - Rule 42 of the CGST Rules, 2017]	Nil
Total ITC credited to the Electronic Credit Ledger in terms of rule 42	40,000
Common credit	
[ITC credited to Electronic Credit Ledger (Rs.40,000) - ITC attributable to inputs and input services intended to be used exclusively for effecting taxable supplies (Nil)] Rule 42 of the CGST Rues, 2017.	40,000

Particulars	Amount (Rs.)
It has been assumed that input tax on raw materials is attributable to both taxable and exempt activity]	
ITC attributable towards exempt supplies	
[Common Credit x (Aggregate value of exempt supplies during the tax period / Total turnover during the tax period) - Rule 42 of the CGST Rules, 2017	1,290
= Rs.40,000 × Rs. 2,00,000/ Rs. 62,00,000 - (rounded off)]	

Question 26

Sarani Weavers at Pune, Maharashtra is an input service distributor and intends to distribute input tax credit u/s 20 of the CGST Act, 2017, for the month of March 20XX. The following are the details available for such distribution:

Branch	Turnover of the last quarter (Amt. in Rs.)	ITC specifically applicable to the branch (Amt in Rs.)
Ganganagar Branch (Rajasthan)	10,00,000	IGST - Rs. 12,000 CGST - Rs. 3,000 SGST -Rs. 3,000
Madhugiri Branch (Karnataka)	5,00,000	Nil
Kosala Branch (UP)	15,00,000	Nil
Mumbai Branch (Maharashtra)	20,00,000	IGST - Rs. 1,50,000 CGST- Rs. 15,000 SGST- Rs. 15,000

Input services used commonly by all branches against which ITC available is:

CGST - Rs. 60,000 SGST - Rs. 60,000 IGST - Rs. 1,20,000

ITC (IGST) of March 20XX (last year), Rs. 10,000 which was inadvertently left out, whether same can be considered for distribution in March, 20XX (last year)

Madhugiri, Karnataka branch uses inputs to manufacture exempted products. Turnover excludes duties & taxes payable to Central and State Government.

Determine the input tax distribution.

Answer:**As per section 20 of the CGST Act read with rule 39 of CGST Rules, 2017:**

- (1) Total GST credit (CGST+ SGST + IGST) of Rs. 18,000 specifically attributable to Ganganagar Branch, Rajasthan will be distributed as IGST credit of Rs. 18,000 only to Ganganagar Branch, Rajasthan. [since recipient and ISD are located in different states.]
- (2) IGST credit of Rs. 1,50,000, CGST credit of Rs. 15,000 and SGST credit of Rs. 15,000 specifically attributable to Mumbai Branch, Maharashtra will be distributed as IGST credit of Rs. 1,50,000, CGST credit of Rs. 15,000 and SGST credit of Rs. 15,000 respectively, only to Mumbai Branch, Maharashtra. [since recipient is located in the same State in which ISD is located.]

- (3) CGST credit of Rs. 60,000, SGST credit of Rs. 60,000 and IGST credit of Rs.1,20,000 have to be distributed among the three branches and Mumbai Branch, Maharashtra in proportion of their turnover of the last quarter.

Ganganagar Branch, Rajasthan will get - Rs. 48,000 [$\text{Rs.}2,40,000 \times (10,00,000 / 50,00,000)$] as IGST credit.

Madhugiri Branch, Karnataka will get - Rs. 24,000 [$\text{Rs.}2,40,000 \times (5,00,000 / 50,00,000)$] as IGST credit.

The credit attributable to a recipient is distributed even if such recipient is making exempt supplies.

Kosala Branch, UP will get - Rs. 72,000 [$\text{Rs.}2,40,000 \times (15,00,000 / 50,00,000)$] as IGST credit

Mumbai Branch, Maharashtra will get - Rs. 24,000 [$60,000 \times (20,00,000 / 50,00,000)$] as CGST credit, Rs.24,000 [$60,000 \times (20,00,000 / 50,00,000)$] as SGST credit and Rs. 48,000 [$1,20,000 \times (20,00,000 / 50,00,000)$] as IGST credit.

- (4) ITC of Rs. 10,000 of March, 20XX (last year) cannot be distributed in March 20XX as ITC available for distribution in a month is to be distributed in the same month.

Question 27

With the help of information given below in respect of a manufacturer for the month of September, 20XX, calculate eligible input tax credit for the month and also calculate the amount of ITC to be reversed in September, 20XX and October, 20XX. There is no carry forward credit or reversal requirement. Only the current month's information is to be considered for calculation purposes.

S. No.	Particulars	Amount in Rs.
1.	Outward supply of taxable goods	70,000
2.	Outward supply of exempted goods	40,000
	Total Turnover	1,10,000
3.	Inward supplies	GST paid (Rs.)
	Capital goods purchased which are exclusively used for taxable outward supply	2,000
	Capital goods purchased which are exclusively used for exempted outward supply	1,800
	Capital goods purchased which are used for both taxable and exempted outward supply	4,200

Answer:

Computation of eligible ITC and ITC to be reversed:

Particulars	Rs.	ITC (Rs.)
Capital goods exclusively used for taxable outward supply [Since exclusively used for taxable supply, full ITC is available under rule 43(1)(b) of the CGST Rules, 2017] - [A]		2,000
Capital goods exclusively used for exempted outward supply		Nil

Input Tax Credit

[Since exclusively used for non-business purposes, ITC is not		
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Particulars	Rs.	ITC (Rs.)
available under rule 43(1)(a) of the CGST Rules, 2017]		
Capital goods used for both taxable and exempted outward supply -Common credit [B]		4,200
[Commonly used for taxable and exempt supplies - Rule 43(1)(c) of the CGST Rules, 2017]		
Common credit for the tax period (month here)	70	
= $4,200 \div 60$ [Rule 43(1)(e) of the CGST Rules, 2017]		
Common credit attributable to exempt supplies in a month [C] (rounded off)	<u>25.45</u>	
= $(40,000/1,10,000) \times \text{Rs. } 70$ [Rule 43(1)(g) of the CGST Rules, 2017]		
Total eligible credit for September, 20XX		6,200
Amount of ITC to be reversed in September, 20XX [However, a sum of ₹ 25.45 would be added in the output tax liability on account of common credit on capital goods attributable to exempt supplies as computed in [B] above]		0
Similarly, there will not be any reversal of ITC in October, 20XX [However, a sum as computed applying the formula as in [B] above would be added in the output tax liability on account of common credit on capital goods attributable to exempt supplies		0

Question 28

A registered supplier of taxable goods supplied goods valued at ₹ 2,24,000 (inclusive of CGST ₹ 12,000 and SGST ₹ 12,000) to Mohan Ltd. under the forward charge on 15-08-20XX for which tax invoice was also issued on the same date. The inputs were received by Mohan Ltd. on 15-08-20XX. Mohan Ltd. availed credit of ₹ 24,000 on 18-08-20XX. But Mohan Ltd. did not make any payment towards such supply along with tax thereon to the supplier. Is Mohan Ltd. eligible to avail input tax credit on such supply?

Discuss input tax credit provisions if Mohan Ltd. makes the payment of ₹ 2,24,000 to the supplier on 18th March of next calendar year..

Answer:

As per section 16 of the CGST Act, 2017, Mohan Ltd. is eligible to avail input tax credit (ITC) of the tax paid on inputs received by it on the basis of the invoice issued by the supplier provided other conditions for availing ITC are fulfilled.

Payment of value of the goods along with the tax to the supplier is not a pre-requisite at the time of availing credit, but Mohan Ltd. has to pay the said amount within 180 days from the date of issue of invoice. If Mohan Ltd, fails to do so the ITC of ₹24,000 will be added to its output tax liability with interest. Such interest will be paid @ 18% p.a. from the date of availing credit till the date when the amount added to the output tax liability is paid [Second proviso to section 16(2) of the CGST Act, 2017 read with rule 37 of the CGST Rules, 2017].

If Mohan Ltd. makes the payment of ₹ 2,24,000 (Value + tax) to the supplier on 18th March of next calendar year i.e., after the expiry of 180 days from date of issue of invoice, Mohan Ltd. can avail the credit of ₹ 24,000.

Question 29

What are the conditions applicable to Input Service Distributor to distribute the credit?

Answer:

The following conditions are applicable to Input Service Distributor to distribute the input tax credit (ITC):-

- (i) The credit can be distributed to the recipients of credit against an ISD invoice containing prescribed details.
- (ii) The amount of the credit distributed shall not exceed the amount of credit available for distribution.
- (iii) The credit connected to an input service must be distributed only to the particular recipient to whom that input service is attributable.
- (iv) If the input service is attributable to more than one recipient, the relevant ITC is distributed pro rata to such recipients in the ratio of turnover of the recipient in a State/ Union Territory to the aggregate turnover of all the recipients to whom the input service is attributable and which are operational during the current year.
- (v) ITC pertaining to input services which are common for all units, is distributed to all the recipients in the ratio of turnover in the prescribed manner.
- (vi) ITC available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in the prescribed form.
- (vii) Both ineligible and eligible ITC are to be distributed separately.
- (viii) ITC of CGST, SGST/UTGST and IGST are to be distributed separately.
- (ix) ITC of CGST, SGST/UTGST in respect of recipient located in the same State/Union Territory is distributed as CGST and SGST/UTGST respectively.
- (x) ITC of CGST and SGST/UTGST, in respect of a recipient located in a different State/Union territory, is distributed as IGST (total of ITC of CGST and SGST/UTGST which were to be distributed to such recipient).
- (xi) ITC on account of IGST is distributed as IGST.

Question 30

Arise India Pvt. Ltd., a company engaged in manufacturing of various goods, has its corporate office at Mumbai and manufacturing units in Pune and Chennai and service centres in Kolkata and Bengaluru. The manufacturing units at Pune and Chennai and service centres at Kolkata and Bengaluru are registered in Maharashtra, Tamil Nadu, West Bengal and Karnataka respectively. The corporate office is registered as an input service distributor. All the units and centres of Arise India Pvt. Ltd. are operational in the current year. The corporate office intends to distribute input tax credit (ITC) for the month of October 20XX. The following details are available for such distribution:

Table 1

Unit/centre	Turnover for the quarter ending September 20XX* (Rs.)	Eligible ITC on input services attributable to a specific unit/centre, for the month of October 20XX (Rs.)
Pune	20,00,000	IGST - Rs. 3,00,000; CGST - Rs. 30,000; SGST - Rs. 30,000
Chennai	30,00,000	IGST - Rs. 24,000; CGST - Rs. 6,000; SGST - Rs. 6,000
Kolkata	10,00,000	Nil
Bengaluru	40,00,000	Nil

*Note: Turnover excludes all taxes and duties

Table - 2

S. No.	Particulars	CGST	SGST	IGST
(i)	Input services used by all units and centres			
	(a) Eligible ITC under the provisions of the GST law	1,20,000	1,20,000	2,40,000
	(b) Ineligible ITC in terms of section 17(5) of the CGST Act, 2017	40,000	40,000	80,000
(ii)	Inputs used by Pune unit and Kolkata centre	60,000	60,000	
(iii)	Input services used by Chennai unit and Bengaluru centre (ITC pertaining to such invoices is eligible ITC under the provisions of the GST law)	30,000	30,000	10,000

Chennai unit manufactures exempted products.

Compute the amount of ITC to be distributed to each of the units and centres.

Answer:

Computation of ITC to be distributed by ISD

S. No.	Particulars	Pune unit (Rs.)	Chennai Unit (Rs.)	Kolkata centre (Rs.)	Bengaluru Centre (Rs.)
(i)	IGST credit of Rs. 3,00,000, CGST credit of Rs. 30,000 and SGST credit of Rs. 30,000 specifically attributable to Pune unit [Note 1]	3,00,000 (IGST) 30,000 (CGST) 30,000 (SGST)			

S. No.	Particulars	Pune unit (Rs.)	Chennai Unit (Rs.)	Kolkata centre (Rs.)	Bengaluru Centre (Rs.)
(ii)	IGST credit of Rs. 24,000, CGST credit of Rs. 6,000 and SGST credit of Rs. 6,000 specifically attributable to Chennai unit [Note 2]		36,000 (IGST)		
(iii)	Eligible ITC pertaining to input services used by all units and centres [Note 3]	24,000 (CGST) 24,000 (SGST) 48,000 (IGST)	1,44,000 (IGST)	48,000 (IGST)	1,92,000 (IGST)
(iv)	Ineligible ITC pertaining to input services used by all units and centres [Note 4]	8,000 (CGST) 8,000 (SGST) 16,000 (IGST)	48,000 (IGST)	16,000 (IGST)	64,000 (IGST)
(v)	Inputs used by Pune unit and Kolkata centre [Note 5]	Nil	Nil	Nil	Nil
(vi)	Input services used by Chennai unit and Bengaluru centre [Note 6]		30,000 (IGST)		40,000 (IGST)

Notes:

- (1) IGST credit of Rs. 3,00,000, CGST credit of Rs. 30,000 and SGST credit of Rs. 30,000 specifically attributable to Pune unit will be distributed as IGST credit of Rs. 3,00,000, CGST credit of Rs. 30,000 and SGST credit of Rs. 30,000 respectively, only to Pune unit, since recipient is located in the same State in which ISD is located [Section 20(2)(c) of the CGST Act, 2017 read with clauses (e) & (f)(i) of sub-rule (1) of rule 39 of the CGST Rules, 2017].
- (2) Total GST credit (CGST+ SGST + IGST) of Rs. 36,000 specifically attributable to Chennai unit will be distributed as IGST credit of Rs. 36,000, only to Chennai unit, since recipient and ISD are located in different States [Section 20(2)(c) of the CGST Act, 2017 read with clauses (e) & (f)(ii) of sub-rule (1) of rule 39 of the CGST Rules, 2017].
- (3) Eligible ITC of CGST [Rs. 1,20,000], SGST [Rs. 1,20,000] and IGST [Rs. 2,40,000] will be distributed among the units and centres in the ratio of their turnover of the last quarter [Section 20(2)(e) of the CGST Act, 2017 read with clause (a)(ii) of the explanation to the said section and rule 39(1)(b) of the CGST Rules, 2017].

Ratio of the turnover of the units and centres in last quarter, previous to the month during which ITC is to be distributed:

= 20 lakh : 30 lakh : 10 lakh : 40 lakh

= 2: 3: 1: 4

Therefore,

Pune unit will get - Rs. 24,000 [$1,20,000 \times (2/10)$] as CGST credit, Rs. 24,000 [$1,20,000 \times (2/10)$] as SGST credit and Rs. 48,000 [$2,40,000 \times (2/10)$] as eligible IGST credit [Clauses (e) & (f)(i) of sub-rule (1) of rule 39 of the CGST Rules, 2017].

Chennai unit will get - Rs. 1,44,000 [$Rs. 4,80,000^1 \times (3/10)$] as IGST credit [Clauses (e) &

(f)(ii) of sub-rule (1) of rule 39 of the CGST Rules, 2017]. The credit attributable to a recipient is distributed even if such recipient is making exempt supplies [Clause (d) of sub-rule (1) of rule 39 of the CGST Rules, 2017].

Kolkata centre will get - Rs. 48,000 [Rs. 4,80,000 × (1/10)] as IGST credit [Clauses (e) & (f)(ii) of sub-rule (1) of rule 39 of the CGST Rules, 2017].

Bengaluru will get - Rs. 1,92,000 [Rs. 4,80,000 × (4/10)] as IGST credit [Clauses (e) & (f)(ii) of sub-rule (1) of rule 39 of the CGST Rules, 2017].

- (4) Ineligible ITC of CGST [Rs. 40,000], SGST [Rs. 40,000] and IGST [Rs. 80,000] will also be distributed among the units and centres in the ratio of their turnover of the last quarter [Section 20(2)(e) of the CGST Act, 2017 read with clause (a)(ii) of the explanation to the said section and rule 39(1)(b) of the CGST Rules, 2017].

Ratio of the turnover of the units and centres in last quarter, previous to the month during which ITC is to be distributed:

= 20 lakh : 30 lakh : 10 lakh : 40 lakh

= 2: 3: 1: 4

Therefore,

Pune unit will get - Rs. 8,000 [40,000 × (2/10)] as CGST credit, Rs. 8,000 [40,000 × (2/10)] as SGST credit and Rs. 16,000 [80,000 × (2/10)] as eligible IGST credit.

Chennai unit will get - Rs. 48,000 [Rs. 1,60,000 × (3/10)] as IGST credit. Kolkata centre will get - Rs. 16,000 [Rs. 1,60,000 × (1/10)] as IGST credit. Bengaluru will get - Rs. 64,000 [Rs. 1,60,000 × (4/10)] as IGST credit.

- (5) ISD mechanism is meant only for distributing the credit on common invoices pertaining to input services only and not goods (inputs or capital goods).
- (6) Eligible ITC of CGST [Rs. 30,000], SGST [Rs. 30,000] and IGST [Rs. 10,000] will be distributed among the Chennai unit and Bengaluru centre in the ratio of their turnover of the last quarter [Section 20(2)(d) of the CGST Act, 2017 read with clause (a)(ii) of the explanation to the said section and rule 39(1)(b) of the CGST Rules, 2017].

Ratio of the turnover of the Chennai unit and Bengaluru centre in last quarter, previous to the month during which ITC is to be distributed:

= 30 lakh : 40 lakh

= 3 : 4

Therefore,

Chennai unit will get - Rs. 30,000 [Rs. 70,000 × (3/7)] as IGST credit. Bengaluru unit will get - Rs. 40,000 [Rs. 70,000 × (4/7)] as IGST credit.

Question 31

KPI Ltd., registered in the State of Himachal Pradesh (HP), has a manufacturing unit at Baddi (HP). The company manufactures two products: 'Xt' and 'St'. While 'Xt' is taxable, 'St' is exempt from GST.

KPI Ltd. has furnished the following details:

S. No.	Particulars	IGST (₹)
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(a)	Machinery 1 purchased on 1 st July for being used in manufacturing Xt and St	72,000
(b)	Machinery 2 purchased on 1 st July for being exclusively used in manufacturing product Xt	36,000
(c)	Machinery 3 purchased on 1 st July for being exclusively used in manufacturing product St	1,08,000
(d)	Machinery 4 purchased on 1 st October last year for being exclusively used in manufacturing product St. From 1 st July, such machinery will also be used for manufacturing product Xt.	1,44,000
(e)	Machinery 5 purchased on 1 st January for being exclusively used in manufacturing product Xt. From 1 st July, such machinery will also be used for manufacturing product St.	18,000
(f)	Machinery 6 purchased on 1 st July two years ago for being used in manufacturing Xt and St	1,08,000

Compute the following:

- (i) Amount of input tax credit (ITC) credited to Electronic Credit Ledger for the month of July
- (ii) Amount of ineligible credit (Tie) for the month of July
- (iii) Amount of aggregate value of common credit (T_c)
- (iv) Common credit for the month of July (T_m)

Note: All the conditions necessary for availing the ITC have been complied with. Make suitable assumptions wherever required.

Answer:

S. No.	Particulars	ITC (₹)
(i)	Amount of ITC credited to Electronic Credit Ledger, for the month of July	
	Machinery 1 - 'A' [Note 1]	72,000
	Machinery 2 [Note 2]	36,000
	Machinery 3 [Note 3]	-
	Machinery 4 - 'A' [Note 4]	1,44,000
	Machinery 5 [Note 5]	-
	Machinery 6 - 'A' [Note 6]
	ITC credited to Electronic Credit Ledger, for the month of July	2,52,000
(ii)	Amount of ineligible credit (Tie) for the month of July [Note 7]	21,600
(iii)	Aggregate value of common credit (T_c) [Note 8]	
	Value of 'A' for Machinery 1 purchased on 1 st July and used for effecting both taxable and exempt supplies	72,000
	Value of 'A' for Machinery 4 purchased on 1 st October last year for	1,44,000

	being used for effecting exclusively exempt supplies and used for effecting both taxable and exempt supplies from 1 st July	
	Value of 'A' for Machinery 6 purchased on 1 st July two years ago and used for effecting both taxable and exempt supplies	1,08,000
	Input tax claimed on Machinery 5 purchased on 1 st January for being used for effecting exclusively taxable supplies and used for effecting both taxable and exempt supplies from 1 st July [Note 9]	<u>18,000</u>
	Aggregate value of common credit (T _c) for the month of July - T _c [Note 9]	3,42,000
(iv)	Common credit for the month of July (T_m) [Note 10]	5,700

Notes:

- (1) ITC in respect of capital goods used commonly for effecting taxable supplies and exempt supplies denoted as 'A' shall be credited to the electronic credit ledger [Rule 43(1)(c) of the CGST Rules, 2017].
- (2) ITC in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero rated supplies shall be credited to the electronic credit ledger [Rule 43(1)(b) of the CGST Rules, 2017].
- (3) ITC in respect of capital goods used or intended to be used exclusively for effecting exempt supplies shall not be credited to electronic credit ledger [Rule 43(1)(a) of the CGST Rules, 2017].
- (4) When capital goods which were initially used exclusively for exempt supplies are subsequently used commonly for exempt supplies as well as taxable supplies, input tax in respect of the same denoted as 'A' shall be credited to the electronic credit ledger [Rule 43(1)(c) of the CGST Rules, 2017].
- (5) Machinery 5 is used for effecting both taxable and exempt supplies since 1st July. Prior to that, it was exclusively used for effecting taxable supplies. Therefore, ITC in respect of such machinery would have already been credited to the electronic credit ledger.
- (6) Machinery 6 is being used for effecting both taxable and exempt supplies from 1st July two years ago. Therefore, ITC in respect of such machinery would have already been credited to the electronic credit ledger.
- (7) When capital goods which were used exclusively for exempt supplies are subsequently used commonly for exempt supplies as well as taxable supplies, input tax in respect of the same is credited in the electronic credit ledger. The ineligible credit 'T_{ie}' attributable to the period during which such capital goods were used for making exempt supplies is computed @ 5% per quarter or part thereof and added to the output tax liability of the tax period in which such credit is claimed [Rule 43(1)(c) of the CGST Rules, 2017].
Thus, 'T_{ie}' shall be computed as under-
= ₹ 1,44,000 × 5% × 3 quarters
= ₹ 21,600
- (8) The aggregate of the amounts of 'A' credited to the electronic credit ledger in respect of common capital goods whose useful life remains during the tax period, to be denoted as 'T_c', shall be the common credit in respect of such capital goods [Rule 43(1)(d) of the CGST Rules, 2017].

- (9) Where any capital goods which were used exclusively for effecting taxable supplies are subsequently also used for effecting exempt supplies, the input tax credit claimed in respect of such capital goods shall be added to arrive at the aggregate value of common credit 'T_c' [Proviso to rule 43(1)(d) of the CGST Rules, 2017].
- (10) ITC attributable to a month on common capital goods during their useful life (T_m) shall be computed in accordance with rule 43(1)(e) of CGST Rules, 2017 as under:

$$= T_c \div 60$$

$$= ₹ 3,42,000 \div 60$$

$$= ₹ 5,700$$

The useful life of any capital goods shall be considered as five years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods.

Question 32

Bedi Manufacturers, a registered person, instructs its supplier to send the capital goods directly to Rajesh Enterprises, who is a job worker, outside its factory premises for carrying out certain operations on the goods. The goods were sent by the supplier on 10-04-2019 and were received by the job worker on 15-04-2019. Rajesh Enterprises carried out the job work, but did not return the capital goods to their principal - Bedi Manufacturers. Discuss whether Bedi Manufacturers are eligible to retain the input tax credit availed by them on the capital goods. What action under the GST is required to be taken by Bedi Manufacturers.

What would be your answer if in place of capital goods, jigs and fixtures are supplied to the job worker and the same has not been returned to the principal?

Answer :

As per section 19(5) of the CGST Act, 2017, the principal is entitled to take input tax credit of capital goods sent for job work even if the said goods are directly sent to job worker.

Further, section 19(6) of the CGST Act, 2017 stipulates that where the capital goods sent directly to a job worker are not received back by the principal within a period of 3 years of the date of receipt of capital goods by the job worker, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were received by the job worker.

In view of aforementioned provisions, Bedi Manufacturers are eligible to retain the input tax credit availed by them on the capital goods.

However, if the capital goods are not returned by Rajesh Enterprises within 3 years from 15.04.2019 (date of receipt of capital goods by job worker), it shall be deemed that such capital goods had been supplied by Bedi Manufacturers to Rajesh Enterprises on 15.04.2019 and Bedi Manufacturers shall be liable to pay the tax along with applicable interest.

However, there is no time limit for return of moulds and dies, jigs and fixtures or tools sent out to a job worker for job work [Section 19(7) of the CGST Act, 2017].

However, if Rajesh Enterprises does not return the jigs and fixtures to Bedi Manufacturers, it shall not be considered as a supply of jigs and fixtures to Rajesh Enterprises by Bedi Manufacturers. In this case also, Bedi Manufacturers will be eligible to retain the input tax credit availed by them.

Question 33

Xenon Pvt. Ltd., Agra, is a registered supplier engaged in the manufacture of taxable goods. Goods valued at ₹ 10,50,000 were supplied by the company to Freshbite Pvt. Ltd., a registered supplier located at Ferozabad, without the cover of an invoice with a fraudulent intent. Since the company evaded tax by not issuing the invoice for the supply, a show cause notice was issued by the proper officer under section 74 requiring the company to pay tax @ 12% [₹ 1,26,000] and applicable interest and penalty. The company paid the tax, interest and penalty after the order was passed by the proper officer.

Examine the ITC entitlement of Freshbite Pvt. Ltd. in respect of tax of ₹ 1,26,000 paid by Xenon Pvt. Ltd

Answer

As per section 17(5), tax paid under sections 74, 129 and 130 is not available as ITC. Further, rule 36(3) also lays down that tax paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts cannot be availed as ITC by a registered person.

In the given case, Xenon Pvt. Ltd. has paid tax in pursuance of an order issued under section 74. Therefore, Freshbite Pvt. Ltd. cannot avail ITC of such tax.

Question 34

Flamingo Ltd. is an airlines providing passenger transportation services by air

The company offers meals of premium quality to passengers on board the aircraft. The value of such meals is compulsorily included in the price of the air ticket. The company avails outdoor catering services of Dhaniaram Pvt. Ltd. for providing such meals to its customers.

Examine whether Flamingo Ltd. can avail ITC on such outdoor catering service availed by it.

Answer

As per section 17(5)(i)(b), ITC on supply of *inter alia* food and beverages and outdoor catering is blocked. However, ITC in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply.

In the given case, Flamingo Ltd. is availing outdoor catering service to provide outdoor catering (meals) to the passengers on board the aircraft. Since ITC in respect of outdoor catering is available if the same is used for making an outward taxable supply as an element of a taxable composite or mixed supply, Flamingo Ltd. can avail ITC on outdoor catering service procured by it.

Question 35

Jumbo Sales Pvt. Ltd., a supplier of readymade garments, announced 'Buy One get Two free' offer on Men's T-Shirts on Diwali to boost its sales.

You are required to advise the company on the availability of ITC in respect

of inward supplies used in relation to such supply.

Answer

It may appear at first glance that in case of offers like “Buy One, Get One Free”, one item is being “supplied free of cost” without any consideration.

As per clause (a) of section 7(1) read with clause (c) thereof, goods or services which are supplied free of cost (without any consideration) shall not be treated as supply except in case of activities mentioned in Schedule I.

Circular No. 92/11/2019 GST dated 28.03.2019 has clarified the entitlement of ITC in the hands of supplier in respect of sales promotional scheme like ‘buy one get one free’. Such promotional offers are not individual supplies of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.

Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8.

ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

Therefore, the given case is not the case of individual supplies of free goods, but a case of three individual supplies where a single price is being charged for the entire supply. Thus, Jumbo Sales Pvt. Ltd. will be entitled to avail ITC on inputs, input services and capital goods used in relation to supply of T- Shirts as part of such offer.

Question 36

With the help of information given below in respect of a manufacturer for the month of September, compute the ITC credited to the Electronic Credit Ledger, for the month. Also, compute the amount of ITC to be added to the output tax liability for the month of September. Ignore interest, if any

Particulars	Amount (₹)
Outward supply of taxable goods (exclusive of taxes)	70,000
Outward supply of exempt goods	40,000
Total turnover	1,10,000
Inward supplies	GST paid (₹)
Capital goods used exclusively for taxable outward supply	2,000
Capital goods used exclusively for exempt outward supply	1,800
Capital goods used for both taxable and exempt outward supply	4,200

Subject to the information given above, assume that all the other conditions necessary for

availing ITC have been fulfilled.

Answer

Computation of ITC credited to Electronic Credit Ledger and amount of ITC to be added to the output tax liability for the month of September

Particulars	₹	ITC (₹)
Capital goods used exclusively for taxable supply [Since used exclusively for taxable supply, full ITC is available under rule 43(1)(b)]		2,000
Capital goods used exclusively for exempt supply [Since used exclusively for exempt supply, ITC is not available under rule 43(1)(a)]		Nil
Capital goods used for both taxable and exempt supply -Common credit (T_c) [Commonly used for taxable and exempt supplies - Rule 43(1)(c)]		4200
Total ITC credited to Electronic Credit Ledger for the month of September		6200
Common credit for the month of September (T_m) $= T_c \div 60 = 4,200 \div 60$ [Rule 43(1)(e)]		70
Common credit attributable to exempt supplies in a month (T_e) $= (E \div F) \times T_r^*$ where, 'E' is the aggregate value of exempt supplies, made, during the tax period, and 'F' is the total turnover in the State of the registered person during the tax period [Rule 43(1)(g)] $= (40,000/1,10,000) \times ₹ 70$ (rounded off)		25.45
Amount to be added to the output tax liability for the month of September [Rule 43(1)(h)]		25.45



Question 1

Determine the effective date of registration in following cases:

- a. The aggregate turnover of Dhampur Footwear Industries of Delhi has exceeded the applicable threshold limit of ₹ 40 lakh on 1st September. It submits the application for registration on 20th September. Registration certificate is granted to it on 25th September.
- b. Mehta Teleservices is an architect in Lucknow. Its aggregate turnover exceeds ₹ 20 lakh on 25th October. It submits the application for registration on 27th November. Registration certificate is granted to it on 5th December.

Answer:

- a. Every supplier becomes liable to registration if his turnover exceeds the applicable threshold limit [₹ 40 lakh in this case] in a financial year [Section 22 read with Notification No. 10/2019 CT dated 07.03.2019]. Since in the given case, the turnover of Dhampur Industries exceeded ₹ 40 lakh on 1st September, it becomes liable to registration on said date

Further, since the application for registration has been submitted within 30 days from such date, the registration shall be effective from the date on which the person becomes liable to registration [Section 25 read with rule 10 of the CGST Rules, 2017]. Therefore, the effective date of registration is 1st September.

- b. Since in the given case, the turnover of Mehta Teleservices exceeds the applicable threshold limit [₹ 20 lakh] on 25th October, it becomes liable to registration on said date.

Further, since the application for registration has been submitted after 30 days from the date such person becomes liable to registration, the registration shall be effective from the date of grant of registration. Therefore, the effective date of registration is 5th December.

Question 2

In order to be eligible for grant of registration, a person must have a Permanent Account Number issued under the Income- tax Act, 1961. State one exception to it.

Answer:

A Permanent Account Number is mandatory to be eligible for grant of registration. One exception to this is a non-resident taxable person. A non- resident taxable person may be granted registration on the basis of other prescribed documents instead of PAN. He has to submit a self-attested copy of his valid passport along with the application signed by his authorized signatory who is an Indian Resident having valid PAN and application will be submitted in a different prescribed form [Section 25(6) & (7)].

Question 3

State which of the following suppliers are liable to be registered:

- a. Agent supplying goods on behalf of some other taxable person and its aggregate turnover does not exceed the applicable threshold limit during the financial year.
- b. An agriculturist who is only engaged in supply of produce out of cultivation of land and its aggregate turnover does not exceed the applicable threshold limit during the financial year.

Answer:

- a. Section 22 stipulates that every supplier becomes liable to registration if his turnover exceeds the applicable threshold limit in a financial year. However, as per section 24, a person supplying goods/services or both on behalf of other taxable persons whether as an agent or not is liable to be compulsorily registered even if its aggregate turnover does not exceed the applicable threshold limit during the financial year.
- b. As per section 23, an agriculturist who is only engaged in supply of produce out of cultivation of land is not required to obtain registration.

Question 4

What are the advantage of taking registration in GST?

Answer:

Registration will confer following advantages to the business:

- Legally recognized as supplier of goods or services.
- Proper accounting of taxes paid on the input goods or services which can be utilized for payment of GST due on supply of goods or services or both by the business.
- Legally authorized to collect tax from his purchasers and pass on the credit of the taxes paid on the goods or services supplied to purchasers or recipients.
- Become eligible to avail various other benefits and privileges rendered under the GST laws.

Question 5

Can a person without GST registration collect GST and claim ITC?

Answer:

No, a person without GST registration can neither collect GST from his customers nor can claim any input tax credit of GST paid by him.

Question 6

If a person is making taxable supplies from different States, with the same PAN number, can he operate with a single registration?

Answer:

No. Every person who is liable to take a registration will have to get registered separately for each of the States where he has a business operation (and making taxable supplies) provided his aggregate turnover exceeds applicable threshold limit.

Question 7

Can a person having places of business in a State obtain separate registrations for each place of business?

Answer:

Yes. In terms of the proviso to sub-section (2) of section 25, a person having multiple places of business in a State may obtain a separate registration for each place of business, subject to such conditions as may be prescribed.

Question 8

Is there a provision for a person to get himself voluntarily registered though he may not be liable to pay GST?

Answer:

Yes. In terms of sub-section (3) of section 25, a person, though not liable to be registered under sections 22 or 24 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered taxable person, shall apply to such person.

Question 9

Can the Department, through the proper officer, suo-moto proceed to register a person under GST?

Answer:

Yes. In terms of sub-section (8) of section 25, where a person who is liable to be registered under GST law fails to obtain registration, the proper officer may, without prejudice to any action which may be taken under CGST Act, or under any other law for the time being in force, proceed to register such person in the manner as is prescribed in the CGST Rules, 2017.

Question 10

Whether the registration granted to any person is permanent?

Answer:

Yes, the registration certificate once granted is permanent unless surrendered, cancelled, suspended or revoked.

Question 11

Is it necessary for the UN bodies to get registration under GST?

Answer:

Yes. In terms of section 25(9) of the CGST Act, all notified UN bodies, Consulate or Embassy of foreign countries and any other class of persons so notified would be required to obtain a unique identification number (UIN) from the GST portal.

The structure of the said ID would be uniform across the States in conformity with GSTIN structure and the same will be common for the Centre and the States. This UIN will be needed for claiming refund of taxes paid on notified supplies of goods and services received by them, and for any other purpose as may be notified.

Question 12

What is the responsibility of the taxable person making supplies to UN bodies?

Answer:

The taxable supplier making supplies to UN bodies is expected to mention the UIN on the invoices and treat such supplies as supplies to another registered person (B2B).

Question 13

What is the validity period of the registration certificate issued to a casual taxable person and non-resident taxable person?

Answer:

In terms of section 27(1) read with proviso thereto, the certificate of registration issued to a "casual taxable person" or a "non-resident taxable person" shall be valid for a period specified in the application for registration or 90 days from the effective date of registration, whichever is earlier. However, the proper officer, at the request of the said taxable person, may extend the validity of the aforesaid period of 90 days by a further period not exceeding 90 days.

Question 14

What happens when the registration is obtained by means of willful mis-statement, fraud or suppression of facts?

Answer:

In such cases, the registration may be cancelled with retrospective effect by the proper officer [Section 29(2)(e)].

Question 15

Is there an option to take centralized registration for services under GST Law?

Answer:

No, the tax payer has to take separate registration in every State from where he makes taxable supply of services.

Question 16

What could be the liabilities (in so far as registration is concerned) on transfer of a business?

Answer:

The transferee or the successor shall be liable to be registered with effect from such transfer or succession and he will have to obtain a fresh registration with effect from the date of such transfer or succession [Section 22(3)].

Question 17

At the time of registration, will the assesses have to declare all his places of business?

Answer:

Yes. The principal place of business and place of business have been separately defined under section 2(89) & 2(85) of the CGST Act respectively. The taxpayer will have to declare the principal place of business as well as the details of additional places of business in the registration form.

Question 18

Does cancellation of registration impose any tax obligations on the person whose registration is so cancelled?

Answer:

Yes, as per section 29(5) of the CGST Act, every registered taxable person whose registration is cancelled shall pay an amount, by way of debit in the electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher.

Question 19

Mahadev Enterprises, a sole proprietorship firm, opened a shopping complex dealing in supply of goods at multiple locations, i.e. in Himachal Pradesh, Uttarakhand and Tripura in the month of June.

It has furnished the following details relating to the supply made at such multiple locations for the month of June:-

Particulars	Himachal Pradesh (₹)*	Uttarakhand (₹)*	Tripura (₹)*
Intra-State supply of taxable goods	22,50,000	-	7,00,000
Intra-State supply of exempted goods	-	-	6,00,000
Interest received from banks on the fixed deposits	-	-	60,000
Intra-State supply of non- taxable goods	-	21,00,000	40,000

* excluding GST

With the help of the above mentioned information, answer the following questions giving reasons:-

- 1) Determine whether Mahadev Enterprises is liable to be registered under GST law and what is the threshold limit of taking registration in this case.
- 2) Explain with reasons whether your answer in (1) will change in the following independent cases:
 - a. If Mahadev Enterprises is dealing in taxable supply of goods only from Himachal Pradesh;
 - b. If Mahadev Enterprises is dealing in taxable supply of goods and services only from Himachal Pradesh;

- c. If Mahadev Enterprises is dealing in taxable supply of goods only from Himachal Pradesh and has also effected inter-State supplies of taxable goods amounting to ₹ 4,00,000.

Answer:

As per section 22 of the CGST Act, 2017 read with Notification No. 10/2019 CT dated 07.03.2019, a supplier is liable to be registered in the State/ Union territory from where he makes a taxable supply of goods and/or services, if his aggregate turnover in a financial year exceeds the threshold limit. The threshold limit for a person making exclusive intra-State taxable supplies of goods is as under:-

- 1) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.
- 2) ₹ 20 lakh for the States of States of Arunachal Pradesh, Meghalaya, Puducherry, Sikkim, Telangana and Uttarakhand.
- 3) ₹ 40 lakh for rest of India.

The threshold limit for a person making exclusive taxable supply of services or supply of both goods and services is as under:-

- (i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.
- (ii) ₹ 20 lakh for the rest of India.

As per section 2(6) of the CGST Act, 2017, aggregate turnover includes the aggregate value of:

- (i) all taxable supplies,
- (ii) all exempt supplies,
- (iii) exports of goods and/or services and
- (iv) all inter-State supplies of persons having the same PAN. The above is computed on all India basis.

In the light of the afore-mentioned provisions, the aggregate turnover of Mahadev Enterprises is computed as under:

Computation of State-wise aggregate turnover of Mahadev Enterprises

Particulars	Himachal Pradesh (₹)*	Uttarakhand (₹)*	Tripura (₹)*
Intra-State supply of taxable goods	22,50,000	-	7,00,000
Intra-State supply of exempted goods	-	-	6,00,000
Interest received from banks on the fixed deposits [Note-1]	-	-	60,000
Intra-State supply of non-taxable goods [Note-2]	-	21,00,000	40,000
Aggregate Turnover	22,50,000	21,00,000	14,00,000

Notes:

1. Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) is exempt vide Notification No. 12/2017 CT (R) dated 28.06.2017. Since aggregate turnover includes exempt supply, interest received from banks on the fixed deposits, being exempt supply, is included in the aggregate turnover.
2. As per section 2(47) of the CGST Act, 2017, exempt supply includes non-taxable supply. Thus, intra-State supply of non-taxable goods in Uttarakhand, being a non-taxable supply, is an exempt supply and is, therefore, included in the aggregate turnover.

In the given case, Mahadev Enterprises is engaged in exclusive intra-State supply of goods from Himachal Pradesh and Uttarakhand and in supply of both goods and exempted services from Tripura, the threshold limit for registration will be ₹ 40 lakh, ₹ 20 lakh and ₹ 10 lakh respectively.

Further, since Mahadev Enterprises also makes taxable supply of goods from one of the specified Special Category States (i.e. Tripura), the threshold limit for registration will be reduced to ₹ 10 lakh.

- 1) Thus, in view of the above-mentioned provisions, Mahadev Enterprises is liable to be registered under GST law with the aggregate turnover amounting to ₹ 7,50,000 (computed on all India basis). The applicable threshold limit of registration in this case is ₹ 10 lakh. Further, he is not liable to be registered in Uttarakhand since he is not making any taxable supply from Uttarakhand.
- 2) (a) If Mahadev Enterprises is dealing in supply of goods only from Himachal Pradesh, the applicable threshold limit of registration would be ₹ 40 lakh. Thus, Mahadev Enterprises will not be liable for registration as its aggregate turnover would be ₹ 22,50,000.
 - (b) If Mahadev Enterprises is dealing in taxable supply of goods and services only from Himachal Pradesh then higher threshold limit of ₹ 40 lakh will not be applicable as the same applies only in case of exclusive supply of goods. Therefore, in this case, the applicable threshold limit will be ₹ 20 lakh and hence, Mahadev Enterprises will be liable to registration.
 - (c) In case of inter-State supplies of taxable goods, section 24 of the CGST Act, 2017 requires compulsory registration irrespective of the quantum of aggregate turnover. Thus, Mahadev Enterprises will be liable to registration.

Question 20

LMN Pvt. Ltd., Coimbatore exclusively manufactures and sells product 'X' which is exempt from GST vide notifications issued under relevant GST legislations. The company sells 'X' only within Tamil Nadu and is not registered under GST. The turnover of the company in the previous year was ₹ 45 lakh. The company expects the sales to grow by 30% in the current year. The company purchased additional machinery for manufacturing 'X' on 01.07.20XX. The purchase price of the capital goods was ₹ 30 lakh exclusive of GST @ 18%.

However, effective from 01.11.20XX, exemption available on 'X' was withdrawn by the Central Government and GST @ 12% was imposed thereon. The turnover of the company for the half year ended on 30.09.20XX was ₹ 45 lakh.

- a. Examine the above scenario and advise LMN Pvt Ltd. whether it needs to get registered under GST.
- b. If the answer to the above question is in affirmative, advise LMN Pvt. Ltd. whether it can avail input tax credit on the additional machinery purchased exclusively for manufacturing "X"?

Answer:

- a) Section 22(1) of the CGST Act, 2017 read with Notification No. 10/2019 CT dated 07.03.2019 inter alia provides that every supplier who is exclusively **engaged in intra-State supply of goods** is liable to be registered under GST in the State/ Union territory from where he makes the taxable supply of goods only when aggregate turnover in a financial year exceeds ₹ 40,00,000.

However, the above provisions are not applicable to few specified States, i.e. States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand.

Further, a person exclusively engaged in the business of supplying goods and/or services that are not liable to tax or are wholly exempt from tax is not liable to registration in terms of section 23(1)(a) of CGST Act, 2017.

In the given case, the turnover of the company for the half year ended on 30.09.20XX is ₹ 45 lakh which is more than the applicable threshold limit of ₹ 40 lakh. Therefore, as per above mentioned provisions, the company should be liable to registration. However, since LMN Pvt. Ltd. supplied exempted goods till 31.10.20XX, it was not required to be registered till that day; though voluntary registration was allowed under section 25(3) of the CGST Act, 2017.

However, the position will change from 01.11.20XX as the supply of goods become taxable from that day and the turnover of company is above ₹ 40 lakh. It is important to note here that in terms of section 2(6) of the CGST Act, 2017, the aggregate turnover limit of ₹ 40 lakh includes exempt turnover also.

Therefore, turnover of 'X' will be considered for determining the limit of ₹ 40 lakh even though the same was exempt from GST. Therefore, the company needs to register within 30 days from 01.11.20XX (the date on which it becomes liable to registration) in terms of section 25(1) of the CGST Act, 2017.

- b) Section 18(1)(a) of the CGST Act, 2017 provides that a person who has applied for registration within 30 days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act.

Thus, LMN Pvt. Ltd. cannot avail credit for additional machinery purchased exclusively for manufacturing X as input tax credit of only inputs is allowed when a person gets registered for the first time.

Question 21

SNP Pvt. Ltd., Coimbatore exclusively manufactures and sells product 'Z' which is exempt from GST vide notifications issued under relevant GST legislations. The company sells 'Z' only within Tamil Nadu. The turnover of the company in the previous year was ₹ 55 lakh. The company expects the sales to grow by 20% in the current year. Owing to the growing demand for the product, the company decided to increase its production capacity and purchased additional machinery for manufacturing 'Z' on 01.07.20XX. The purchase price of the capital goods was ₹ 20 lakh exclusive of GST @ 18%.

However, effective from 01.11.20XX, exemption available on 'Z' was withdrawn by the Central Government and GST @ 12% was imposed thereon. The turnover of the company for the half year ended on 30.09.20XX was ₹ 50 lakh.

- a) The Board of Directors of SNP Pvt. Ltd. wants to know whether they have to register under GST?
- b) In case in the above question, SNP Pvt. Ltd. is already registered with respect to certain taxable supplies being made by it along with manufacture of exempt product 'Z', other facts remaining the same, can it take input tax credit on additional machinery purchased exclusively for manufacturing 'Z'? If yes, then how much credit can be availed?

Advice SNP Pvt. Ltd. on the above issues with reference to the provisions of GST law.

Answer:

- a) Section 22(1) of the CGST Act, 2017 read with Notification No. 10/2019 CT dated 07.03.2019 inter alia provides that every supplier who is exclusively **engaged in intra-State supply of goods** is liable to be registered under GST in the State/ Union territory from where he makes the taxable supply of goods only when aggregate turnover in a financial year exceeds ₹ 40,00,000.

However, the above provisions are not applicable to few specified States, i.e. States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand.

However, a person exclusively engaged in the business of supplying goods and/or services that are not liable to tax or are wholly exempt from tax is not liable to registration in terms of section 23(1)(a) of CGST Act, 2017.

In the given case, the turnover of the company for the half year ended on 30.09.20XX is ₹ 50 lakh which is more than the applicable threshold limit of ₹ 40 lakh. Therefore, as per section 22 of CGST Act 2017, the company will be liable to registration. However, since SNP Pvt. Ltd. supplied exempted goods till 31.10.20XX, it was not required to be registered till that day; though voluntary registration was allowed under section 25(3) of the CGST Act, 2017.

However, the position will change from 01.11.20XX as the supply of goods become taxable from that day and the turnover of company is above ₹ 40 lakh. It is important to note here that in terms of section 2(6) of the CGST Act, 2017, the aggregate turnover limit of ₹ 40lakh includes exempt turnover also.

Therefore, turnover of 'Z' will be considered for determining the threshold limit even though the same was exempt from GST. Therefore, the company needs to register within 30 days from 01.11.20XX (the date on which it becomes liable to registration) in terms of section 25(1) of the CGST Act, 2017.

Further, the company cannot avail exemption of ₹ 40 lakh from 01.11.20XX as the GST law does not provide any threshold exemption from payment of tax but threshold exemption from obtaining registration (which in this case had been crossed).

- b) Rule 43(1)(a) of the CGST Rules, 2017 disallows input tax credit on capital goods used or intended to be used exclusively for effecting exempt supplies.

However, as per section 18(1)(d) of the CGST Act, 2017, where an exempt supply of goods and/or services by a registered person becomes a taxable supply, such person gets entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable.

Rule 40(1)(a) of the CGST Rules, 2017 lays down that the credit on capital goods can be claimed after reducing the tax paid on such capital goods by 5% per quarter of a year or part thereof from the date of the invoice.

Therefore, in the given case, SNP Pvt. Ltd. could not claim credit on machinery till the time the supply of product 'Z' for which said machinery was being used was exempt. However, it can claim credit from 31.10.20XX - the day immediately preceding the date from which the supply of product 'Z' became taxable (01.11.20XX).

The credit will be available for the remaining useful life of the machinery and will be computed as follows:

Date of purchase of machinery	01.07.20XX
Date on which credit becomes eligible	31.10.20XX
Number of quarters for which credit is to be reduced	2 (including part of quarter)
GST paid on machinery [$\text{₹ } 20,00,000 \times 18\%$]	₹ 3,60,000
Credit to be reduced $\text{₹ } 3,60,000 \times 5\% \times 2$	₹ 36,000
Amount of credit that can be taken [$\text{₹ } 3,60,000 - \text{₹ } 36,000$]	₹ 3,18,000

Question 22

Rishabh Enterprises - a sole proprietorship firm - started an air- conditioned restaurant in Virar, Maharashtra in the month of February wherein the customers are served cooked food as well as cold drinks/non-alcoholic beverages. In March, the firm opened a liquor shop in Raipur, Uttarakhand for trading of alcoholic liquor for human consumption.

Determine whether Rishabh Enterprises is liable to be registered under GST law with the help of the following information:

Particulars	February (₹)*	March (₹)*
Serving of cooked food and cold drinks/non- alcoholic beverages in restaurant in Maharashtra	5,50,000	6,50,000
Sale of alcoholic liquor for human consumption in Uttarakhand		5,00,000
Interest received from banks on the fixed deposits	1,00,000	1,00,000
Supply of packed food items from restaurant in Maharashtra	1,50,000	2,00,000

* excluding GST

You are required to provide reasons for treatment of various items given above.

Answer:

As per section 22 of the CGST Act, 2017 read with Notification No. 10/2019 CT dated 07.03.2019, a supplier is liable to be registered in the State/ Union territory from where he makes a taxable supply of goods and/or services, if his aggregate turnover in a financial year exceeds the threshold limit. The threshold limit for a person making exclusive intra-State taxable supplies of goods is as under:-

- (i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.
- (ii) ₹ 20 lakh for the States of States of Arunachal Pradesh, Meghalaya, Puducherry, Sikkim, Telangana and Uttarakhand.
- (iii) ₹ 40 lakh for rest of India.

The threshold limit for a person making exclusive taxable supply of services or supply of both goods and services is as under:-

- (i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.
- (ii) ₹ 20 lakh for the rest of India.

As per section 2(6) of the CGST Act, 2017, aggregate turnover includes the aggregate value of:

- (i) all taxable supplies,
- (ii) all exempt supplies,
- (iii) exports of goods and/or services and
- (iv) all inter-State supplies of persons having the same PAN.

The above is computed on all India basis. Further, the aggregate turnover excludes central tax, State tax, Union territory tax, integrated tax and cess. Moreover, the value of inward supplies on which tax is payable under reverse charge is not taken into account for calculation of 'aggregate turnover'.

In the given question, since Rishabh Enterprises is engaged in making taxable supplies of goods and services from Maharashtra and Uttarakhand, the threshold limit for obtaining registration is ₹ 20 lakh.

In the light of the afore-mentioned provisions, the aggregate turnover of Rishabh Enterprises is computed as under:

Computation of aggregate turnover of Rishabh Enterprises

Particulars	Turnover of February (₹)	Cumulative turnover of February & March (₹)
Serving of cooked food and cold drinks/non-Alcoholic beverages in restaurant in Maharashtra	5,50,000	12,00,000 [₹ 5,50,000 + ₹ 6,50,000]
Add: Sale of alcoholic liquor for human consumption in Uttarakhand [Note-1]		5,00,000

Particulars	Turnover of February (₹)	Cumulative turnover of February & March (₹)
Add: Interest received from banks on the Fixed Deposits [Note-2]	1,00,000	2,00,000 [₹ 1,00,000 + ₹ 1,00,000]
Add: Supply of packed food items from restaurant in Maharashtra	1,50,000	3,50,000 [₹ 1,50,000 + ₹ 2,00,000]
Aggregate Turnover	8,00,000	22,50,000

Notes:

- As per section 2(47) of the CGST Act, 2017, exempt supply includes non-taxable supply. Thus, supply of alcoholic liquor for human consumption in Uttarakhand, being a non-taxable supply, is an exempt supply and is, therefore, includible while computing the aggregate turnover.
- Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) is exempt vide Notification No. 12/2017 CT (R) dated 28.06.2017. Thus, interest received from banks on the fixed deposits is an exempt supply and is, therefore, includible while computing the aggregate turnover.

Rishabh Enterprises was not liable to be registered in the month of February since its aggregate turnover did not exceed ₹ 20 lakh in that month. However, since its aggregate turnover exceeds ₹ 20 lakh in the month of March, it should apply for registration within 30 days from the date on which it becomes liable to registration. Further, he is not liable to be registered in Uttarakhand since he is not making any taxable supply from Uttarakhand.

Question 23

AB Pvt. Ltd., Pune provides house-keeping services. The company supplies its services exclusively through an e-commerce website owned and managed by Hi-Tech Indya Pvt. Ltd., Pune. The turnover of AB Pvt. Ltd. in the current financial year is ₹ 18 lakh.

Advise AB Pvt. Ltd. as to whether they are required to obtain GST registration. Will your advice be any different if AB Pvt. Ltd. sells readymade garments exclusively through the e-commerce website owned and managed by Hi-Tech Indya Pvt. Ltd.?

Answer:

As per section 22 of the CGST Act every supplier of goods or services or both is required to obtain registration in the State/ Union territory from where he makes the taxable supply if his aggregate turnover exceeds threshold limit in a financial year.

However, section 24 of the said Act enlists certain categories of persons who are mandatorily required to obtain registration, irrespective of their turnover. Persons who supply goods or services or both through such electronic commerce operator (ECO), who is required to collect tax at source under section 52, is one such person specified under clause (ix) of section 24. However, where the ECO is liable to pay tax on behalf of the suppliers of services under a

notification issued under section 9(5), the suppliers of such services are entitled for threshold exemption.¹

Section 2(45) of the CGST Act defines ECO as any person who owns, operates or manages digital or electronic facility or platform for electronic commerce. Electronic commerce is defined under section 2(44) to mean the supply of goods or services or both, including digital products over digital or electronic network. Since Hi-Tech Indya Pvt. Ltd. owns and manages a website for e-commerce where both goods and services are supplied, it will be classified as an ECO under section 2(45).

Notification No. 17/2017 CT (R) dated 28.06.2017 issued under section 9(5) specifies services by way of house-keeping, except where the person supplying such service through ECO is liable for registration under section 22(1), as one such service where the ECO is liable to pay tax on behalf of the supplier²

In the given case, AB Pvt. Ltd. provides house-keeping services through an ECO. It is presumed that Hi-Tech Indya is an ECO which is required to collect tax at source under section 52. However, house-keeping services provided by AB Pvt. Ltd., which is not liable for registration under section 22(1) as its turnover is less than ₹20 lakh, is a service notified under section 9(5). Thus, AB Pvt. Ltd. will be entitled for threshold exemption for registration and will not be required to obtain registration even though it supplies services through ECO.

In the second case, AB Pvt. Ltd. sells readymade garments through ECO. Such supply cannot be notified under section 9(5) as only supplies of services are notified under that section. Therefore, in the second case, AB Pvt. Ltd. will not be entitled for threshold exemption and will have to compulsorily obtain registration in terms of section 24(ix).

Question 24

Discuss the procedure for amendment of registration under CGST Act and rules thereto?

Answer:

The procedure for amendment of registration are contained in section 28 read with rule 19 of CGST Rules. The significant aspects of the same are discussed hereunder:

1. Where there is any change in the particulars furnished in registration application/UIN application at the time of obtaining the registration or thereafter, registered person shall submit an application in prescribed manner, within 15 days of such change, along with documents relating to such change at the Common Portal.
2. In case of amendment of core fields of information, the proper officer may, on the basis of information furnished or as ascertained by him, approve or reject amendments in the registration particulars in the prescribed manner. Such amendment shall take effect from the date of occurrence of event warranting such amendment.
3. However, where change relates to non-core fields of information, registration certificate shall stand amended upon submission of the application for amendment on the Common Portal.

¹ Persons making supplies of **services**, other than supplies specified under section 9(5) through an ECO who is required to collect tax at source under section 52, and having an aggregate turnover, to be computed on all India basis, not exceeding an amount of ₹ 20 lakh/ ₹ 10 lakh as the case may be, in a financial year, have been exempted from obtaining registration vide Notification No. 65/2017 CT dated 15.11.2017.

4. Where a change in the constitution of any business results in change of PAN of a registered person, the said person shall apply for fresh registration. The reason for the same is that GSTIN is PAN based. Any change in PAN would warrant a new registration.

Question 25

Pari & Sons is an unregistered dealer. On 10th August, 20XX aggregate turnover of Pari & Sons exceeded ₹ 20,00,000. The firm applied for registration on 27th August, 20XX and was granted the registration certificate on 1st September, 20XX.

Under CGST Rules, 2017, you are required to advise Pari & Sons as to what is the effective date of registration in its case. It has also sought your advice regarding period for issuance of revised tax invoices.

Answer:

Section 22(1) of the CGST Act, 2017 provides that every supplier is liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds the threshold limit.

Section 25(1) of the CGST Act, 2017 provides that a supplier whose aggregate turnover in a financial year exceeds the threshold limit in a State/UT is liable to apply for registration within 30 days from the date of becoming liable to registration (i.e., the date of crossing the threshold limit).

Where the application is submitted within the said period, the effective date of registration is the date on which the person becomes liable to registration vide rule 10(2) of the CGST Rules, 2017; otherwise it is the date of grant of registration in terms of rule 10(3) of the CGST Rules, 2017.

In the given case, since Pari & Sons have applied for registration on 27.08.20XX which is within 30 days from the date of becoming liable to registration (10.08.20XX), its effective date of registration is 10.08.20 XX.

Further, every registered person who has been granted registration with effect from a date earlier than the date of issuance of registration certificate to him, may issue revised tax invoices in respect of taxable supplies effected during this period within one month from the date of issuance of registration certificate [Section 31(3)(a) of the CGST Act, 2017 read with rule 53(2) of CGST Rules, 2017].

In view of the same, Pari & Sons may issue revised tax invoices against the invoices already issued during the period between effective date of registration (10.08.20XX) and the date of issuance of registration certificate (01.09.20XX), on or before 01.10.20XX.

Question 26

With the help of the following information in the case of M/s Jayant Enterprises, Jaipur (Rajasthan) for the financial year, determine the aggregate turnover for the purpose of registration under the CGST Act, 2017.

Sl. No.	Particulars	Amount (₹)
(i)	Sale of diesel on which Sale Tax (VAT) is levied by Rajasthan Government.	1,00,000

Sl. No.	Particulars	Amount (₹)
(ii)	Supply of goods, after completion of job work, from the place of Jayant Enterprises directly by principal.	3,00,000
(iii)	Export supply to England (U.K.)	5,00,000
(iv)	Supply to its own additional place of business in Rajasthan.	5,00,000
(v)	Outward supply of services on which GST is to be paid by recipient under reverse charge.	1,00,000

All the above amounts are excluding GST.

You are required to provide reasons for treatment of various items given above.

Answer:

Computation of aggregate turnover of M/s Jayant Enterprises for the FY

Particulars	₹
Supply of diesel on which Sales Tax (VAT) is levied by Rajasthan Government [Note-1]	1,00,000
Supply of goods, after the completion of job work, from the place of Jayant Enterprises, directly by the principal [Note-2]	Nil
Export supply to England [Note-3]	5,00,000
Supply to its own additional place of business in Rajasthan ² [Note-4]	Nil
Outward supply of services on which GST is to be paid by recipient under reverse charge [Note-5]	1,00,000
Aggregate turnover	7,00,000

Notes:-

- As per section 2(47) of the CGST Act, 2017, exempt supply includes non-taxable supply. Thus, supply of diesel, being a non-taxable supply, is an exempt supply and exempt supply is specifically includible in aggregate turnover in terms of section 2(6) of the CGST Act, 2017.
- Supply of goods after completion of job work by a registered job worker shall be treated as the supply of goods by the principal in terms of explanation (ii) to section 22 of the CGST Act, 2017.
- Export supplies are specifically includible in the aggregate turnover in terms of section 2(6) of the CGST Act, 2017.
- Supply made without consideration to units within the same State (under same registration) is not a supply and hence not includible in aggregate turnover.

² The above solution has been worked out on the assumption that supply to another place of business is without consideration (as per general business practices).

5. Outward supplies taxable under reverse charge would be part of the “aggregate turnover” of the supplier of such supplies. Such turnover is not included as turnover in the hands of recipient.

As per section 22 of the CGST Act, 2017 read with Notification No. 10/2019 CT dated 07.03.2019, a supplier is liable to be registered in the State/ Union territory from where he makes a taxable supply of goods and/or services, if his aggregate turnover in a financial year exceeds the threshold limit. The threshold limit for a person making exclusive intra-State taxable supplies of goods is as under:-

- (i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.
- (ii) ₹ 20 lakh for the States of States of Arunachal Pradesh, Meghalaya, Puducherry, Sikkim, Telangana and Uttarakhand.
- (iii) ₹ 40 lakh for rest of India.

The threshold limit for a person making exclusive taxable supply of services or supply of both goods and services is as under:-

- (i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.
- (ii) ₹ 20 lakh for the rest of India.

The applicable turnover limit for registration, in the given case, will be ₹ 20 lakh as Rajasthan is not a Special Category State and M/s. Jayant Enterprises is engaged in supply of goods and services. Although, the aggregate turnover of M/s Jayant Enterprises does not exceed ₹ 20 lakh, it is compulsorily required to register in terms of section 24(i) of the CGST Act, 2017 irrespective of the turnover limit as it is engaged in making inter-State supplies in the form of exports to England.

Question 27

Rajesh Dynamics, having its head office in Chennai, Tamil Nadu carries on the following activities with respective turnovers in a financial year:

	₹
Supply of petrol at Chennai, Tamil Nadu	18,00,000
Value of inward supplies on which tax is payable on reverse charge basis	9,00,000
Supply of transformer oil at Chennai, Tamil Nadu	2,00,000
Value of branch transfer from Chennai, Tamil Nadu to Bengaluru, Karnataka without payment of consideration	1,50,000
Value of taxable supplies at Manipur branch	11,50,000

It argues that it does not have taxable turnover crossing threshold limit of ₹40,00,000 either at Chennai, Tamil Nadu or Bengaluru, Karnataka and including turnover at Manipur branch. It believes that the determination of aggregate turnover is not required for the purpose of obtaining registration, but is required for determining composition levy.

Decide based on the above facts:

- (i) The aggregate turnover of Rajesh Dynamics.

(ii) All conditions that fulfil the requirements for registration under CGST Act, 2017 in the given circumstances.

Answer:

Computation of aggregate turnover of Rajesh Dynamics:

Particulars	₹
Supply of petrol at Chennai, Tamil Nadu [Being a non-taxable supply, it is an exempt supply and thus, includible in aggregate turnover vide section 2(6) of CGST Act, 2017]	18,00,000
Value of inward supplies on which tax is payable on reverse charge basis	Nil
Supply of transformer oil at Chennai, Tamil Nadu	2,00,000
Value of branch transfer from Chennai, Tamil Nadu to Bengaluru, Karnataka without payment of consideration [Being a taxable supply, it is includible in aggregate turnover]	1,50,000
Value of taxable supplies of Manipur Branch	11,50,000
Aggregate turnover	33,00,000

Rajesh Dynamics is not liable to be registered in Chennai, Tamil Nadu, if his aggregate turnover in a financial year does not exceeds ₹ 40 lakh. However, since Rajesh Dynamics also makes supplies from Manipur, a specified Special Category State, the threshold exemption gets reduced to ₹ 10 lakh in terms of section 22(1) of CGST Act, 2017 [Notification No.10/2019-CT dated. 07.03.2019].

Rajesh Dynamics' argument that it is not liable to registration since the threshold exemption of ₹ 40 lakh is not being crossed either at Chennai, Tamil Nadu, Bengaluru, Karnataka or Manipur is not correct as firstly, the aggregate turnover to be considered in its case is ₹ 10 lakh and not ₹ 40 lakh and secondly, the same is computed on all India basis and not State- wise.

Further, Rajesh Dynamics is also wrong in believing that aggregate turnover is computed only for the purpose of determining the eligibility limit for composition levy since the aggregate turnover is required for determining the eligibility for both registration and composition levy.

Further, Rajesh Dynamics is compulsorily required to register under section 24 of the CGST Act, 2017 irrespective of the turnover limit as it is liable to pay tax on inward supplies under reverse charge and it also makes inter-State taxable supply.



Question 1

Jain & Sons is a trader dealing in stationery items. It is registered under GST and has undertaken following sales during the day:

Sr. No.	Recipient of supply	Amount (₹)
1.	Raghav Traders - a registered retail dealer	190
2.	Dhruv Enterprises - an unregistered trader	358
3.	Gaurav - a Painter [unregistered]	500
4.	Oberoi Orphanage - an unregistered entity	188
5.	Aaradhya - a Student [unregistered]	158

None of the recipients require a tax invoice [Raghav Traders being a composition dealer].

Determine in respect of which of the above supplies, Jain & Sons may issue a Consolidated Tax Invoice instead of Tax Invoice at the end of the day?

Answer:

In the given illustration, Jain & Sons can issue a Consolidated Tax Invoice only with respect to supplies made to Oberoi Orphanage [worth ₹ 188] and Aaradhya [worth ₹ 158] as the value of goods supplied to these recipients is less than ₹ 200 as also these recipients are unregistered and don't require a tax invoice.

As regards the supply made to Raghav Traders, although the value of goods supplied to it is less than ₹ 200, Raghav Traders is registered under GST. So, Consolidated Tax Invoice cannot be issued.

Consolidated Tax Invoice can also not be issued for supplies of goods made to Dhruv Enterprises and Gaurav although both of them are unregistered. The reason for the same is that the value of goods supplied is not less than ₹ 200.

Question 2

Sultan Industries Ltd., Delhi, entered into a contract with Prakash Entrepreneurs, Delhi, for supply of spare parts of a machine on 7th September. The spare parts were to be delivered on 30th September. Sultan Industries Ltd. removed the finished spare parts from its factory on 29th September. Determine the date by which invoice must be issued by Sultan Industries Ltd. under GST law.

Answer:

As per the provisions of section 31, invoice shall be issued before or at the time of removal of goods for supply to the recipient, where the supply involves movement of goods. Accordingly, in the given case, the invoice must be issued on or before 29th September.

Question 3

MBM Caretakers, a registered person, provides the services of repair and maintenance of electrical appliances. On April 1, it has entered into an annual maintenance contract with P for its Air Conditioner and Washing Machine. As per the terms of contract, maintenance services will be

provided on the first day of each quarter of the relevant financial year and payment for the same will also be due on the date on which service is rendered. During the year, it provided the services on April 1, July 1, October 1, and January 1 in accordance with the terms of contract. When should MBM Caretakers issue the invoice for the services rendered?

Answer:

Continuous supply of service means, inter alia, supply of any service which is provided, or agreed to be provided continuously or on recurrent basis, under a contract, for a period exceeding 3 months with the periodic payment obligations.

Therefore, the given situation is a case of continuous supply of service as repair and maintenance services have been provided by MBM Caretakers on a quarterly basis, under a contract, for a period of one year with the obligation for quarterly payment.

In terms of section 31, in case of continuous supply of service, where due date of payment is ascertainable from the contract (as in the given case), invoice shall be issued on or before the due date of payment.

Therefore, in the given case, MBM Caretakers should issue quarterly invoices on or before April 1, July 1, October 1, and January 1.

Question 4

The aggregate turnover of Sangri Services Ltd., Delhi exceeded ₹ 20 lakh on 12th August. He applied for registration on 3rd September and was granted the registration certificate on 6th September. You are required to advise Sangri Services Ltd. as to what is the effective date of registration in its case. It has also sought your advice regarding period for issuance of Revised Tax Invoices.

Answer:

As per section 25 read with CGST Rules, 2017, where an applicant submits application for registration within 30 days from the date he becomes liable to registration, effective date of registration is the date on which he becomes liable to registration. Since, Sangri Services Ltd.'s turnover exceeded ₹ 20 lakh on 12th August, it became liable to registration on same day. Further, it applied for registration within 30 days of so becoming liable to registration, the effective date of registration is the date on which he becomes liable to registration, i.e. 12th August.

As per section 31 read with CGST Rules, 2017, every registered person who has been granted registration with effect from a date earlier than the date of issuance of certificate of registration to him, may issue Revised Tax Invoices. Revised Tax Invoices shall be issued within 1 month from the date of issuance of certificate of registration. Revised Tax Invoices shall be issued within 1 month from the date of issuance of registration in respect of taxable supplies effected during the period starting from the effective date of registration till the date of issuance of certificate of registration.

Therefore, in the given case, Sangri Services Ltd. has to issue the Revised Tax Invoices in respect of taxable supplies effected during the period starting from the effective date of registration (12th August) till the date of issuance of certificate of registration (6th September) within 1 month from the date of issuance of certificate of registration, i.e. on or before 6th October.

Question 5

Shyam Fabrics has opted for composition levy scheme in the current financial year. It has approached you for advice whether it is mandatory for it to issue a tax invoice. You are required to advise him regarding same.

Answer:

A registered person paying tax under the provisions of section 10 [composition levy] shall issue, instead of a tax invoice, a bill of supply containing such particulars and in such manner as may be prescribed [Section 31(3)(c) read with CGST Rules, 2017].

Therefore, in the given case, Shyam Fabrics cannot issue tax invoice. Instead, it shall issue a Bill of Supply.

Question 6

Discuss the provisions relating to issuance of refund voucher under CGST Act and rules there under.

Answer:

Refund Voucher [Section 31(3)(e) read with rule 51]

Where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a **Receipt Voucher**, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a **Refund Voucher** against such payment.

Question 7

Is a registered person liable to pay tax under reverse charge under section 9(3) of the CGST Act required to issue an invoice? Discuss the relevant provisions under CGST Act and rules there under.

Answer:

A registered person who is liable to pay tax under reverse charge [under section 9(3)/9(4) of the CGST Act] shall issue an **Invoice** in respect of goods or services or both **received by him from the supplier who is not registered on the date of receipt of goods or services or both**. Thus, a recipient liable to pay tax by virtue of section 9(3) has to issue invoice only when supplies have been received from an unregistered supplier.

Question 8

Discuss the provisions relating to issuance of credit and debit notes under CGST Act and rules there under.

Answer:

(i) **Issuance of Debit Note:** There can be situations when after the invoice has been issued:

The supplier has erroneously declared a value which is less than the actual value of the goods or services or both provided.

- The supplier has erroneously declared a lower tax rate than what is applicable for the kind of the goods or services or both supplied.

- The quantity received by the recipient is more than what has been declared in the tax invoice.
- Any other similar reasons.

In order to regularize these kinds of situations, the supplier is allowed to issue a document called as **debit note** to the recipient.

(ii) **Issuance of Credit Note:** During the course of trade or commerce, after the invoice has been issued, there can be situations like:

- The supplier has erroneously declared a value which is more than the actual value of the goods or services provided.
- The supplier has erroneously declared a higher tax rate than what is applicable for the kind of the goods or services or both supplied.
- The quantity received by the recipient is less than what has been declared in the tax invoice.
- The quality of the goods or services or both supplied is not to the satisfaction of the recipient thereby necessitating a partial or total reimbursement on the invoice value
- Any other similar reasons.

Question 9

What is the time period within which invoice has to be issued for supply of services?

Answer:

In case of taxable supply of services

Forward Charge Mechanism

Under Forward Charge Mechanism, there are two scenarios that are considered to determine the place of supply of services:

1. Where Invoices Are Issued On Time

In cases where the invoice has been issued on time, the time of supply would be taken as the earlier of:

- Date of invoice and
- The date of receipt of payment

Now, the date of receipt of payment would be taken as the earlier of:

- Date of credit in the bank account or
- The date of entry in the books of account

2. Where Invoices Are Not Issued On Time

In cases where the invoice has not been issued on time, the time of supply of services shall be taken as the earlier of:

- Date of provision of service and
- The date of receipt of payment

Now, the date of receipt of payment shall be taken as the earlier of:

- Date of credit in the bank account or
- The date of entry in the books of account

Furthermore, while determining the time of supply of services, one needs to remember that:

- The invoice must be issued either before the provision of service or
- Within 30 days from the date of supply of service. This would be 45 days for BFSI companies and NBFCs).

Additionally, there are cases where the supply involves continuous supply of services. Now, in such scenarios the invoice must be issued:

- On or before the due date of payment. Provided the contract specifies the date or
- On or before the date of actual receipt of payment. Provided the due date is not ascertainable from the Contract or
- On or before the date of completion of milestone event. Provided the payment is linked to completion of a milestone event.

Additionally, in case there is any excess payment received upto Rs 1,000, then time of supply of services in such a case would be date of the invoice issued with respect to such excess amount.

Reverse Charge Mechanism

Under reverse charge mechanism, the time of supply of services shall be the earliest of:

- 60 days from the date of issue of invoice
- Date of payment

Now, the date of payment shall be taken as the earlier of:

- Date of debit in the bank account as shown in the bank statement
- The date of recording the payment in the books of accounts by the recipient

Vouchers

In case a supplier gets vouchers in lieu of supply of services, the time of supply is determined as under:

1. The first case is the one where the supply is identifiable at the time of the issue of the voucher. The time of supply in such a scenario is taken as the date of issue of the voucher.
2. The second case relates to the one where supply is not identifiable at the time of issue of the voucher and all the other cases. In such scenarios, date of redemption of the voucher would be taken as the time of supply.

All Other Instances

In case of instances other than the ones mentioned above, the time of supply in case of services is taken as:

- Due-date for filing periodic [returns](#) or
- In other cases, the date of payment of GST

Question 10

What is the time period within which invoice has to be issued in a case involving continuous supply of goods?

Answer:

Time of issuing invoice for continuous supply of goods

There are successive statements of accounts/successive payments and the invoices are issued before or at the time of issue of each statement or at the time each payment is received.

For example, the brick supplier issues an invoice along with each batch of bricks he sends.

Question 11

What is the time period within which invoice has to be issued in a case involving continuous supply of services?

Answer:

Time of issuing of tax invoice for continuous supply of services

- **When the due date of payment can be identified from the contract**

The invoice will be issued before or after the payment is to be made by the recipient but within specified time**. Invoice will be issued, whether or not any payment has been received by the supplier.

For example, telecom service provider sends telephone bill every month. This is mentioned in the contract with the telecom company.

- **When the due date of payment is cannot be identified from the contract**

The invoice shall be issued before or after each time when the supplier of service receives the payment but within specified time**.

- **When the payment is linked to the completion of an event**

The invoice shall be issued before or after the time of completion of that event but within specified time**.

- **When the supply of services ceases under a contract before the completion of the supply**

The invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the service provided before stopping.

For example, a works contract starting on 1st August 2017 was due for completion in March 2018. But it was stopped on 11th Nov 2017. The contractor will issue an invoice on 11th November 2017 to the extent of work performed.

Specified Time**

The invoice must be issued within 30 days from the date when each event, specified in the contract and requiring the recipient to make any payment, is completed.

If the supplier of service is a bank/financial institution/NBFC

The invoice must be issued within 45 days from the date of supply of service.

Question 12

What is the time period within which invoice has to be issued where the goods being sent or taken on approval for sale?

Answer:

Notwithstanding anything contained in sub-section (1), where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.

Question 13

Jai, a registered supplier, runs a general store in Ludhiana, Punjab. Some of the goods sold by him are exempt whereas some are taxable. You are required to advise him on the following issues:

- (i) Whether Jai is required to issue a tax invoices in all cases, even if he is selling the goods to the end consumers?
- (ii) Jai sells some exempted as well as taxable goods valuing ₹ 5,000 to a school student. Is he mandatorily required to issue two separate GST documents?
- (iii) Jai wishes to know whether it's necessary to show tax amount separately in the tax invoices issued to the customer? You are required to advise him.

Answer:

- (i) No, he is not required to issue tax invoice in all cases. As per section 31(1) of the CGST Act, 2017, every registered person supplying taxable goods is required to issue a 'tax invoice'. Section 31(3)(c) of the CGST Act, 2017 stipulates that every registered person supplying exempted goods is required to issue a bill of supply instead of tax invoice.

Further, rule 46A of the CGST Rules, 2017 provides that a registered person supplying taxable as well as exempted goods or services or both to an un-registered person may issue a single 'invoice-cum-bill of supply' for all such supplies.

However, as per section 31(3)(b) of the CGST Act, 2017 read with rule 46 of the CGST Rules, 2017, a registered person may not issue a tax invoice if:

- i. value of the goods supplied < ₹ 200,
- ii. the recipient is unregistered; and
- iii. the recipient does not require such invoice.

Instead, such registered person shall issue a Consolidated Tax Invoice for such supplies at the close of each day in respect of all such supplies.

- (ii) As per rule 46A of the CGST Rules, 2017, where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single "invoice-cum-

bill of supply” may be issued for all such supplies. Thus, there is no need to issue a tax invoice and a bill of supply separately to the school student in respect of supply of the taxable and exempted goods respectively.

- (iii) As per section 33 of the CGST Act, 2017 read with rule 46(m) of the CGST Rules, 2017, where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made. Hence, Jai has to show the tax amount separately in the tax invoices issued to customer.

Question 14

Avtaar Enterprises, Kanpur started trading exclusively in ayurvedic medicines from July 1, 20XX. Its turnover exceeded ₹ 40 lakh on October 3, 20XX. The firm applied for registration on October 31, 20XX and was issued registration certificate on November 5, 20XX.

Examine whether any revised invoice can be issued in the given scenario. If the answer to the first question is in affirmative, determine the period for which the revised invoices can be issued as also the last date up to which the same can be issued.

Answer:

As per section 31(3)(a) of the CGST Act, a registered person may, within one month from the date of issuance of certificate of registration, issue a revised invoice against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him.

Further, rule 10(2) of CGST Rules lays down that the registration shall be effective from the date on which the person becomes liable to registration where the application for registration has been submitted within a period of 30 days from such date.

In the given case, Avtaar Enterprises has applied for registration within 30 days of becoming liable for registration and the registration has been granted. Thus, the effective date of registration is the date on which Avtaar Enterprises became liable for registration i.e., October 3, 20XX. Therefore, since in the given case there is a time lag between the effective date of registration (October 3, 20XX) and the date of grant of certificate of registration (November 5, 20XX), revised invoices can be issued. The same can be issued for supplies made during this intervening period i.e., for the period beginning with October 3, 20XX till November 5, 20XX. Further, the revised invoices can be issued for the said period till December 5, 20XX.

Question 15

Discuss the provisions relating to issue of an invoice/document in the following circumstances:

- (i) Advance payment is received against a supply, but subsequently no supplies are made.
- (ii) Goods are sent on approval for sale or return and are removed before the supply takes place.
- (iii) Mr. Mohan provides continuous supply of services to his client, where the due date of payment for such services is not ascertainable. No advance has been received in this behalf.

Answer:

- (i) As per section 31(3)(e) of CGST Act, 2017, where advance payment is received against a supply for which receipt voucher has been issued, but subsequently no supplies are made and

no tax invoice is issued in pursuance thereof, a refund voucher has to be issued to the person who had made the advance payment.

- (ii) As per section 31(7) of CGST Act, 2017, where the goods are sent on approval for sale or return and are removed before the supply takes place, the invoice shall be issued before or at the time of supply or 6 months from the date of removal, whichever is earlier.
- (iii) As per section 31(5)(b) of CGST Act, 2017, in case of continuous supply of services, where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment.

Question 16

Answer the following questions:

- (i) ashini Ltd. agreed to provide consultancy services to Madhu Enterprises in the month of May for which it received an advance of ₹1,00,000 on 20th April from Madhu Enterprises. Subsequently, in the month of May, before supply of service, the said service contract has to be cancelled owing to some inadvertent circumstances. However, Subhashini Ltd. has issued the invoice for the advance received in April itself and has paid the GST thereon.

You are the tax consultant of Subhashini Ltd. Please advise whether it can claim refund of tax paid or is it required to adjust its tax liability in its returns?

- (ii) Narmada Enterprises, a registered person, pays CGST and SGST on a transaction considered by it to be an intra-State supply. However, subsequently said transaction is held to be an inter-State supply. Examine the recourse available with Narmada Enterprises.

Answer :

(i) In case GST is paid by the supplier on advances received for a future event which got cancelled subsequently and for which invoice is issued before supply of service, the supplier is required to issue a "credit note" in terms of section 34 of the CGST Act, 2017. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34. There is no need to file a separate refund claim.

However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a refund claim [Circular No. 137/07/2020 GST dated 13.04.2020].

Therefore, in the given case, Subhashini Ltd. is required to issue a credit note, declare its details in the return for the month during which such credit note has been issued and adjust the tax liability. However, if there is no output liability of Subhashini Ltd. against which the said credit note can be adjusted, it may proceed to file a refund claim.

- (ii) Section 77(1) of the CGST Act, 2017 stipulates that a registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid.

Further, section 19(2) of the IGST Act, 2017 provides that a registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.

Thus, in the given case, Narmada Enterprises shall be refunded the amount of taxes so paid and it shall not be required to pay any interest on the amount of IGST payable by it on the transaction wrongly considered by it earlier as intra-State transaction.



Question 1

Sindhu Enterprises is a supplier of goods. Its turnover has exceeded ₹ 2 crore in current financial year. Discuss whether Sindhu Enterprises is required to get its accounts audited by the Chartered Accountant or Cost Accountant under GST law.

Answer:

Section 35(5) of the CGST Act read with rule 80 of the CGST Rules, 2017 provides that every registered person must get his accounts audited by a Chartered Accountant or a Cost Accountant if his aggregate turnover during exceeded ₹ 2 crore in current financial year, it has to get its accounts audited by a Chartered Accountant/ Cost Accountant.

Question 2

Mala Services Ltd. is a supplier of management consultancy services. It has approached you to ascertain the period for which the books of accounts or other records need to be maintained?

Answer:

Section 36 of the CGST Act stipulates that every registered person required to keep and maintain books of account or other records in accordance with the provisions of sub-section (1) of section 35 shall retain them until the expiry of 72 months from the due date of furnishing of annual return for the year pertaining to such accounts and records.

However, a registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later.

Question 3

Essel Groups has started making taxable supplies. You are required to advice it about the accounts and records required to be maintained by it as required under section 35(1) of the CGST Act, 2017.

Answer:

Section 35(1) of the CGST Act, 2017 stipulates that a true and correct account of following is to be maintained:

- a) production or manufacture of goods;
- b) inward and outward supply of goods or services or both;
- c) stock of goods;
- d) input tax credit availed;
- e) output tax payable and paid

f) such other particulars as may be prescribed.

Question 4

Swad Restaurant has opted for composition scheme in the current financial year. Discuss the records which are not to be maintained by a supplier opting for composition levy as enumerated in rule 56 of the CGST Rules, 2017.

Answer:

Following records are not required to be maintained by a supplier who has opted for composition scheme as per rule 56(2) and (4) of the CGST Rules, 2017:

- I. **Stock of goods:** Accounts of stock in respect of goods received and supplied by him, and such accounts shall contain particulars of the opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and the balance of stock including raw materials, finished goods, scrap and wastagethereof.
- II. **Details of tax:** Account, containing the details of tax payable (including tax payable under reverse charge), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.

Question 5

ABC Manufacturers Ltd. engages Raghav & Sons as an agent to sell goods on its behalf. For the purpose, ABC Manufacturers Ltd. has supplied the goods to Raghav & Sons located in Haryana. Enumerate the accounts required to maintained by Raghav & Sons as per rule 56(11) of the CGST Rules, 2017.

Answer:

Rule 56(11) of the CGST Rules, 2017 provides that every agent shall maintain accounts depicting the-

- a) particulars of authorization received by him from each principal to receive or supply goods or services on behalf of such principalseparately;
- b) particulars including description, value and quantity (wherever applicable) of goods or services received on behalf of every principal;
- c) particulars including description, value and quantity (wherever applicable) of goods or services supplied on behalf of every principal;
- d) details of accounts furnished to every principal; and
- e) tax paid on receipts or on supply of goods or services effected on behalf of every principal.

Question 6

With reference to the provisions relating to the electronic way bill (E- way bill) as prescribed under the GST laws, answer the following questions:

- (i) Sindhi Toys Manufacturers, registered in Punjab, sold electronic toys to a retail seller in Gujarat, at a value of ₹ 48,000 (excluding GST leviable @ 18%). Now, it wants to send the consignment of such toys to the retail seller in Gujarat.

You are required to advise Sindhi Toys Manufacturers on the following issues:

- Whether e-way bill is mandatorily required to be generated in respect of such movement of goods?
- If yes, who is required to generate the e-way bill?
- What will be the consequences for non-issuance of e-way bill?

- (ii) Power Electricals Ltd., a registered supplier of air-conditioners, is required to send from Mumbai (Maharashtra), a consignment of parts of air-conditioner to be replaced under warranty at various client locations in Gujarat. The value of consignment declared in delivery challan accompanying the goods is ₹ 70,000. Power Electricals Ltd. claims that since movement of goods to Gujarat is caused due to reasons other than supply, e-way bill is not mandatorily required to be generated in this case.

You are required to examine the technical veracity of the claim made by Power Electricals Ltd.

- (iii) Beauty Cosmetics Ltd. has multiple wholesale outlets of cosmetic products in Mumbai, Maharashtra. It receives an order for cosmetics worth ₹ 1,20,000 (inclusive of GST leviable @ 18%) from Prasanna, owner of a retail cosmetic store in Delhi. While checking the stock, it is found that order worth ₹ 55,000 can be fulfilled from the company's Dadar (Mumbai) store and remaining goods worth ₹ 65,000 can be sent from its Malad (Mumbai) store. Both the stores are instructed to issue separate invoices for the goods sent to Prasanna. The goods are transported to Prasanna in Delhi, in a single conveyance owned by Radhey Transporte[₹]

You are required to advise Beauty Cosmetics Ltd. with regard to issuance of e-way bill(s).

Answer:

- (i) **(a)** Rule 138(1) of the CGST Rules, 2017 provides that e-way Bill is mandatorily required to be generated if the goods are moved, inter alia, in relation to supply and the consignment value exceeds ₹ 50,000. Further, explanation 2 to rule 138(1) stipulates that the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes CGST, SGST/UTGST, IGST and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

Accordingly, in the given case, the consignment value will be as follows:

$$= ₹ 48,000 \times 118\%$$

$$= ₹ 56,640.$$

Since the movement of goods is in relation to supply of goods and the consignment value exceeds ₹ 50,000, e-way bill is mandatorily required to be issued in the given case.

- (b) An e-way bill contains two parts namely, Part A to be furnished by the registered person who is causing movement of goods of consignment value exceeding ₹ 50,000/- and part B (transport details) is to be furnished by the person who is transporting the goods.

Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or a public conveyance, by road, the said person shall generate the e-way bill on the common portal after furnishing information in Part B [Rule 138(2)].

Where the goods are transported by railways or by air or vessel, the e-way bill shall be generated by the registered person, being the supplier or the recipient, who shall, either before or after the commencement of movement, furnish, on the common portal, the information in Part B [Rule 138(2A)].

Where the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in Part A [Rule 138(3)].

Where the consignor or the consignee has not generated the e-way bill and the aggregate of the consignment value of goods carried in the conveyance is more than ₹ 50,000/-, the transporter, except in case of transportation of goods by railways, air and vessel, shall, in respect of inter-State supply, generate the e-way bill on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated e-way bill on the common portal prior to the movement of goods [Rule 138(7)].

(c) It is mandatory to generate e-way bill in all cases where the value of consignment of goods being transported is more than ₹ 50,000/- and it is not otherwise exempted in terms of rule 138(14) of CGST Rules, 2017. If e-way bills, wherever required, are not issued in accordance with the provisions contained in rule 138, the same will be considered as contravention of rules. As per section 122(1)(xiv) of CGST Act, 2017, a taxable person who transports any taxable goods without the cover of specified documents (e-way bill is one of the specified documents) shall be liable to a penalty of ₹ 10,000/- or tax sought to be evaded (wherever applicable) whichever is greater. Moreover, as per section 129(1) of CGST Act, 2017, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the Rules made there under, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure.

(ii) The goods to be moved to another State for replacement under warranty is not a 'supply'. However, rule 138(1) of the CGST Act, 2017, inter alia, stipulates that every registered person who causes movement of goods of consignment value exceeding ₹ 50,000:

- a. in relation to a supply; or
- b. for reasons other than supply; or
- c. due to inward supply from an unregistered person,

shall, generate an electronic way bill (E-way Bill) before commencement of such movement.

CBIC vide Q 9. of FAQs on E-way Bill has also clarified that even if the movement of goods is caused due to reasons others than supply [including replacement of goods under warranty], e-way bill is required to be issued.

Thus, in the given case, since the consignment value exceeds ₹ 50,000, e-way bill is required to be mandatorily generated. Therefore, the claim of Power Electricals Ltd. that e-way bill is not mandatorily required to be generated as the movement of goods is caused due to reasons other than supply, is not correct.

(iii) Beauty Cosmetics Ltd. would be required to prepare two separate e-way bills since each invoice value exceeds ₹ 50,000 and each invoice is considered as one consignment for the purpose of generating e-way bills.

The FAQs on E-way Bill issued by CBIC clarify that if multiple invoices are issued by the supplier to one recipient, that is, for movement of goods of more than one invoice of same consignor and consignee, multiple e-way bills have to be generated. In other words, for each invoice, one e-way bill has to be generated, irrespective of the fact whether same or different consignors or consignees are involved. Multiple invoices cannot be clubbed to generate one e-way bill. However, after generating all these e-way bills, one consolidated e-way bill can be prepared for transportation purpose, if goods are going in one vehicle.

Question 7

Happy Company is a registered supplier of electric goods. It has three stores for electric goods in Jodhpur (Rajasthan) namely Ram Store, Shyam Store, Mohan Store. It receives an order for supply of electric goods worth ₹ 1,40,000 (exclusive of GST @ 18%) from Kishan Sons of Bhopal (Madhya Pradesh). Happy Company found that order worth ₹ 43,000 can be fulfilled from the company's Ram Store, order worth ₹ 45,000 can be fulfilled from its Shyam Store and remaining goods worth ₹ 52,000 can be sent from its Mohan Store. All three stores are instructed to issue separate invoices for the goods sent to Kishan Sons. The goods are transported to Kishan Sons in Bhopal in a single conveyance owned by Shiv Transporte

You are required to advise Happy Company with regard to issuance of e-way bills as per the provisions of the CGST Act, 2017.

Answer:

Rule 138 of the CGST Rules, 2018 stipulates that e-way Bill is mandatorily required to be generated if the goods are moved, inter alia, in relation to a supply and the consignment value [including CGST, SGST/ UTGST, IGST and cess charged] exceeds ₹ 50,000.

Further, the FAQs on E-way Bill issued by CBIC clarify that if multiple invoices are issued by the supplier to one recipient, multiple e-way bills have to be generated - one e-way bill for each invoice. Each invoice is considered as separate consignment for the purpose of generating e-way bills.

In the given case, consignment value of goods supplied against separate invoices from Ram Store, Shyam Store and Mohan Store is ₹50,740 [₹43,000 × 118%], ₹ 53,100 [₹ 45,000 × 118%] and ₹ 61,360 [₹ 52,000 × 118%] respectively.

Thus, Happy Company is required to prepare 3 separate e-way bills since value of each invoice exceeds ₹ 50,000.

Question 8

When is an e-way bill required to be generated?

Answer:

As per rule 138 of the CGST Rules, 2017, whenever there is a movement of goods of consignment value exceeding ₹ 50,000:

- (i) in relation to a supply; or
- (ii) for reasons other than supply; or

(iii) due to inward supply from an unregistered person,

e-way bill needs to be generated prior to the commencement of transport of goods.

Further, in the following situations, e-way bill needs to be issued even if the value of the consignment is less than ₹ 50,000:

- (i) Where goods are sent by a principal located in one State/ Union territory to a job worker located in any other State/Union territory, the e-way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment.
- (ii) Where specified handicraft goods are transported from one State/ Union territory to another State/ Union territory by a person who has been exempted from the requirement of obtaining registration under section 24 of the CGST Act, 2017, the e-way bill shall be generated by the said person irrespective of the value of the consignment.

Question 9

The supplier opting for composition levy need not maintain certain records as per rule 56(2) and 56(4) of the CGST Rules, 2017. Explain.

Answer:

As per rule 56(2) and 56(4) of the CGST Rules, 2017, the supplier opting for composition levy need not maintain the following records:

- (i) Accounts of stock in respect of goods received and supplied by him, and such accounts shall contain particulars of the opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and the balance of stock including raw materials, finished goods, scrap and wastage thereof.
- (ii) Account, containing the details of tax payable (including tax payable under reverse charge), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.

Question 10

Mr. Bala, a registered person at Chennai wants to maintain proper accounts and records relating to GST. Advise him about the accounts and other records to be maintained under section 35(1) of the CGST Act, 2017.

Answer:

Mr. Bala, is required to maintain a true and correct account of following under section 35(1) of the CGST Act, 2017:-

- a) production or manufacture of goods;
- b) inward and outward supply of goods or services or both;
- c) stock of goods;
- d) input tax credit availed;
- e) output tax payable and paid; and
- f) other prescribed particulars

The records may be maintained electronically. Where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business should be kept at such places of business.



Question 1

How many types of electronic ledger are there?

Answer:

- a) Electronic cash ledger
- b) Electronic credit ledger
- c) Electronic liability register

Question 2

What are the main features of GST payment process?

Answer:

Refer para-Electronic Liability Register

Question 3

Explain the following terms in brief:

- a) E-FPB
- b) CPIN
- c) CIN

Answer:

CPIN stands for Common portal Identification Number. It is created for every Challan successfully generated by the taxpayer. It is a 14-digit unique number to identify the challan. CPIN remains valid for a period of 15 days.

CIN or Challan Identification Number is generated by the banks, once payment in lieu of a generated Challan is successful. It is a 18-digit number that is 14-digit CPIN plus 4-digit Bank Code.

CIN is generated by the authorized banks/Reserve Bank of India (RBI) when payment is actually received by such authorized banks or RBI and credited in the relevant government account held with them. It is an indication that the payment has been realized and credited to the appropriate government account. CIN is communicated by the authorized bank to taxpayer as well as to GSTN.

E-FPB stands for Electronic Focal Point Branch. These are branches of authorized banks which are authorized to collect payment of GST. Each authorized bank will nominate only one branch as its E-FPB for pan India transaction.

The E-FPB will have to open accounts under each major head for all governments. Any amount received by such E-FPB towards GST will be credited to the appropriate account held by such E-FPB. For NEFT/RTGS Transactions, RBI will act as E-FPB.

Question 4

Are principles of unjust enrichment applicable for payment made under GST?

Answer:

Yes, as per Section 49 (9) of the CGST Act, 2017 every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.

Question 5

State the name of output tax under GST, where any of the input tax credit under GST can be availed?

Answer:

IGST. IGST, CGST, SGST, UTGST i.e. all input tax credit can be availed against output tax liability known as IGST.

Question 6

Can one use input tax credit for payment of interest, penalty, and payment under reverse charge?

Answer:

No, as per Section 49 (4) of the CGST Act, 2017 the amount available in the electronic credit ledger may be used for making any payment towards 'output tax'.

As per Section 2 (82) of the CGST Act, 2017, output tax means, the CGST/SGST chargeable under this Act on taxable supply of goods and/or services made by him or by his agent and excludes tax payable by him on reverse charge basis. Therefore, input tax credit cannot be used for payment of interest, penalty, and payment under reverse charge.

Question 7

ABC limited filed the return for GST under section 39(1) for the month of November on 20th, December showing self assessed tax of ₹ 2,50,000 which was not paid.

Explain what are the implications for ABC limited as per relevant provisions?

Answer:

As per section 2(117) of CGST Act, "valid return" means a return furnished under sub-section (1) of section 39 on which self-assessed tax has been paid in full.

Hence, in such a case, the return is not considered as a valid return and also input tax credit will not be allowed to the recipient of supplies.

Question 8

Who is liable to pay GST? Explain in the context of general and special circumstances.

Answer:

General rule - Supplier of goods or services is liable to pay GST. Specific circumstances -

- Import supplies - Recipient of goods or services has to pay tax under reverse charge
- The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies, of which shall be paid by the electronic commerce operator, if such services are supplied through it
- TDS - If total value of supply under contract > ₹ 2.5 lakhs, then Central and State Government, Local authority, Government agencies is liable to deduct TDS and pay the same to the government
- TCS - E-commerce operators are required to collect tax (TCS) on the aggregate value of supply reduced by returns in a month

Question 9

What will happen if the deductor fails to issue TDS Certificate within the time prescribed?

Answer:

As per section 51(4) of the CGST Act, 2017, if any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within five days of crediting the amount so deducted to the Government, the deductor shall pay, by way of a late fee, a sum of one hundred rupees per day from the day after the expiry of such five days period until the failure is rectified, subject to a maximum amount of five thousand rupees.

Question 10

Whether the rate of tax of 1% notified under section 52 is CGST or SGST or a combination of both CGST and SGST?

Answer:

The rate of TCS as notified under CGST Act, 2017 is payable under CGST and the equal rate of TCS is expected under the SGST Act also, in effect aggregating to 1%.

Question 11

Is every e-commerce operator required to collect tax on behalf of actual supplier?

Answer:

Yes, every e-commerce operator is required to collect tax where consideration with respect to the supply is being collected by the e-commerce operator.

Question 12

State whether the provisions pertaining to tax collected at source under section 52 of CGST Act, will be applicable in below mentioned scenarios -

- a) Titane sells watch on his own through its own website?
- b) ABC limited who is dealer of Titane brand sells watches through flipkarte, an electronic commerce operator?

Answer:

Answers for both the scenarios is as follows:

As per Section 52 of CGST Act, every electronic commerce operator not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of

- a) the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

Hence, if the person sells on his own, provisions pertaining to tax collected at source (TCS) won't be applicable.

- b) If ABC limited who is dealer of Titane brand sells watches through Flipkarte, then the provision of TCS will be applicable to flipkarte.

Question 13

Manihar Enterprises, registered in Delhi, is engaged in supply of various goods and services exclusively to Government departments, agencies etc. and persons notified under section 51 of the CGST Act, 2017. It has provided the information relating to the supplies made, their contract values and the payment due against each of them in the month of October, 20XX as under:

S. No.	Particulars	Total contract value (inclusive of GST) (₹)	Payment due in October, 20XX (₹)
(i)	Supply of stationery to Fisheries Department, Kolkata	2,60,000	15,000
(ii)	Supply of car rental services to Municipal Corporation of Delhi	2,95,000	20,000
(iii)	Supply of a heavy machinery to Public Sector Undertaking located in Uttarakhand	5,90,000	25,000
(iv)	Supply of taxable goods to Delhi office of National Housing Bank, a society established by Government of India under the Societies Registration Act, 1860	6,49,000	50,000
(v)	Interior decoration of Andhra Bhawan located in Delhi. Service contract is entered into with the Government of Andhra Pradesh (registered only in Andhra Pradesh)	12,39,000	12,39,000
(vi)	Supply of printed books and printed post cards to a West Delhi Post Office [Out of total contract value of ₹ 9,72,000, contract value for supply of books (exempt from GST) is ₹ 7,00,000 and for supply of printed post cards (taxable under GST) is ₹ 2,72,000.]	9,72,000	50,000 for books & 20,000 for printed post cards
(vii)	Maintenance of street lights in Municipal area of East Delhi* [The maintenance contract entered into with the Municipal Corporation of Delhi also involves replacement of defunct lights and other spares. However, the value of supply of goods is not more than 25% of the value of composite supply.] *an activity in relation to any function entrusted to a Municipality under article 243W of the Constitution	3,50,000	3,50,000

You are required to determine amount of tax, if any, to be deducted from each of the receivable given above assuming the rate of CGST, SGST and IGST as 9%, 9% and 18% respectively.

Will your answer be different, if Manihar Enterprises is registered under composition scheme?

Answer:

As per section 51 of the CGST Act, 2017 read with section 20 of the IGST Act, 2017 and Notification No. 50/2018 CT 13.09.2018, with effect from 01.10.2018, following persons are required to deduct CGST @ 1% [Effective tax 2% (1% CGST + 1% SGST/UTGST)] or IGST @ 2% from the payment made/credited to the supplier (deductee) of taxable goods or services or both, where the total value of such supply, under a contract, exceeds ₹ 2,50,000:

- a department or establishment of the Central Government or State Government; or
- local authority; or

- c) Governmental agencies; or
- d) an authority or a board or any other body, -
- i. set up by an Act of Parliament or a State Legislature; or
 - ii. established by any Government, with 51% or more participation by way of equity or control, to carry out any function; or
 - iii. Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860, or
 - iv. Public sector undertakings.

Further, for the purpose of deduction of tax, the value of supply shall be taken as the amount excluding CGST, SGST/UTGST, IGST and GST Compensation Cess indicated in the invoice.

Since in the given case, Manihaar Enterprises is supplying goods and services exclusively to Government departments, agencies etc. and persons notified under section 51 of the CGST Act, 2017, applicability of TDS provisions on its various receivables is examined in accordance with the above-mentioned provisions as under:

S. No.	Particulars	Total contract value (₹)	Payment due (₹)	Tax to be deducted		
				CGST (₹)	SGST (₹)	IGST (₹)
(i)	Supply of stationery to Fisheries Department, Kolkata (Note-1)	2,60,000	15,000	--	(i)	
(ii)	Supply of car rental services to Municipal Corporation of Delhi (Note-2)	2,95,000	20,000	--	(ii)	
(iii)	Supply of a heavy machinery to Public Sector Undertaking located in Uttarakhand (Note-3)	5,90,000	25,000			
(iv)	Supply of taxable goods to Delhi office of National Housing Bank, a society established by Government of India under the Societies Registration Act, 1860 (Note-4)	6,49,000	50,000	500	500	
(v)	Interior decoration of Andhra Bhawan located in Delhi (Note-5)	12,39,000	12,39,000	--		
(vi)	Supply of printed books and printed post cards to a West Delhi Post Office (Note-6)	9,72,000		--		
(vii)	Maintenance of street lights in Municipal area of East Delhi (Note-7)	3,50,000	3,50,000	--		

S. No.	Particulars	Total contract value (₹)	Payment due (₹)	Tax to be deducted		
				CGST (₹)	SGST (₹)	IGST (₹)
(iii)	Supply of a heavy machinery to Public Sector Undertaking located Uttarakhand (Note-3)	5,90,000	25,000			500
(iv)	Supply of taxable goods to Delhi office of National Housing Bank, a society established by Government of India under the Societies Registration Act, 1860 (Note-4)	6,49,000	50,000	500	500	
(v)	Interior decoration of Andhra Bhawan located in Delhi (Note-5)	12,39,000	12,39,000	--		

Notes:

- Being an inter-State supply of goods, supply of stationery to Fisheries Department, Kolkata is subject to IGST @ 18%. Therefore, total value of taxable supply [excluding IGST] under the contract is as follows:

$$= ₹ 2,60,000 \times 100 / 118$$

$$= ₹ 2,20,339 \text{ (rounded off)}$$
 Since the total value of supply under the contract does not exceed ₹ 2,50,000, tax is not required to be deducted.
- Being an intra-State supply of services, supply of car rental services to Municipal Corporation of Delhi is subject to CGST and SGST @ 9% each. Therefore, total value of taxable supply [excluding CGST and SGST] under the contract is as follows:

$$= ₹ 2,95,000 \times 100 / 118$$

$$= ₹ 2,50,000$$
 Since the total value of supply under the contract does not exceed ₹ 2,50,000, tax is not required to be deducted.
- Being an inter-State supply of goods, supply of heavy machinery to PSU in Uttarakhand is subject to IGST @ 18%. Therefore, total value of taxable supply [excluding IGST] under the contract is as follows:

$$= ₹ 5,90,000 \times 100 / 118$$

$$= ₹ 5,00,000$$
 Since the total value of supply under the contract exceeds ₹ 2,50,000, PSU in Uttarakhand is required to deduct tax @ 2% of ₹ 25,000, i.e. ₹ 500.
- Being an intra-State supply of goods, supply of taxable goods to National Housing Bank, Delhi is subject to CGST and SGST @ 9% each. Therefore, total value of taxable supply [excluding CGST and SGST] under the contract is as follows:

$$= ₹ 6,49,000 \times 100 / 118$$

= ₹ 5,50,000

Since the total value of supply under the contract exceeds ₹ 2,50,000, National Housing Bank, Delhi is required to deduct tax @ 2% (1% CGST + 1% SGST) of ₹ 50,000, i.e. ₹ 1,000.

5. Proviso to section 51(1) of the CGST Act, 2017 stipulates that no tax shall be deducted if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.

Section 12(3) of the IGST Act, 2017, inter alia, stipulates that the place of supply of services, directly in relation to an immovable property, including services provided by interior decorators, shall be the location at which the immovable property is located or intended to be located. Accordingly, the place of supply of the interior decoration of Andhra Bhawan shall be Delhi.

Since the location of the supplier (Manihar Enterprises) and the place of supply is Delhi and the State of registration of the recipient i.e. Government of Andhra Pradesh is Andhra Pradesh, no tax is liable to be deducted in the given case.

6. If the contract is made for both taxable supply and exempted supply, tax shall be deducted if the total value of taxable supply in the contract exceeds ₹ 2,50,000. Being an intra-State supply of goods, supply of printed post cards to a West Delhi Post Office is subject to CGST and SGST @ 9% each. Therefore, total value of taxable supply [excluding CGST and SGST] under the contract is as follows:

= ₹ 2,72,000 × 100 / 118

= ₹ 2,30,509 (rounded off)

Since the total value of taxable supply under the contract does not exceed ₹ 2,50,000, tax is not required to be deducted.

7. Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply provided to, inter alia, local authority by way of any activity in relation to any function entrusted to a Municipality under article 243W of the Constitution is exempt from GST. Thus, maintenance of street lights (an activity in relation to a function entrusted to a Municipality) in Municipal area of East Delhi involving replacement of defunct lights and other spares where the value of supply of goods is not more than 25% of the value of composite supply is a service exempt from GST. Since tax is liable to be deducted from the payment made or credited to the supplier of taxable goods or services or both, no tax is required to be deducted in the given case as the supply is exempt.

The answer will remain unchanged even if Manihar Enterprises is registered under composition scheme. Tax will be deducted in all cases where it is required to be deducted under section 51 of the CGST Act, 2017 including the scenarios when the supplier is registered under composition scheme.

Question 14

Miss Nitya has following balances in her Electronic Cash Ledger as on 28/02/20XX as per GST portal.

Major Heads	Minor Heads	Amount (₹)
CGST	Tax	40,000
	Interest	1,000
	Penalty	800
	Tax	80,000
SGST	Interest	400

Major Heads	Minor Heads	Amount (₹)
	Penalty	1,200
	Fee	2,000
IGST	Tax	45,000
	Interest	200
	Penalty	Nil

Her tax liability for the month of February, 20XX for CGST and SGST was ₹ 75,000 each. She failed to pay the tax and contacted you as legal advisor on 12/04/20XX to advise her as to how much amount of tax or interest she is required to pay, if any, by utilizing the available balance to the maximum extent possible as per GST Laws. She wants to pay the tax on 20-04-20XX.

Other Information:-

- Date of collection of GST was 18th February, 20XX.
- No other transaction after this up to 20th April 20XX.
- Ignore penalty and late fee for this transaction.
- No other balance is available.

You are required to advise her with reference to legal provisions with brief notes on the legal provisions applicable.

Answer:

Due date for payment of tax collected on 18.02.20XX is 20.03.20XX. Interest @ 18% p.a. is payable for the period for which the tax remains unpaid in terms of section 50 of CGST Act, 2017. In the given case, since Miss Nitya wants to pay the tax on 20.04.20XX, interest payable on the amount of CGST and SGST each is as follows:

Rs 75,000 × 18% × 31/365 = ₹ 1,147 (rounded off)

Amount entered under any Minor head (Tax, Interest, Penalty, etc.) and Major Head (CGST, IGST, SGST/UTGST) of the Electronic Cash Ledger can be utilized only for that liability. Cross-utilization among Major and Minor heads are not possible.

Thus, Miss Nitya is liable to pay the following amount of tax and interest as under:

	CGST		SGST	
	Tax	Interest	Tax	Interest
Tax Liability	75,000	1,147	75,000	1,147
Balances in Electronic cash ledger	40,000	1,000	80,000	400
Amount payable in cash	35,000	147	Nil	747

Question 15

Yash Shoppe, a registered supplier of Jaipur, is engaged in supply of various goods and services exclusively to Government departments, agencies, local authority and persons notified under section 51 of the CGST Act, 2017.

You are required to briefly explain the provisions relating to tax deduction at source under section 51 of the CGST Act, 2017 and also determine the amount of tax, if any, to be deducted from each of the receivables given below (independent cases) assuming that the payments as per the contract values are made on 31.10.20XX. The rates of CGST, SGST and IGST may be assumed to be 6%, 6% and 12% respectively.

- 1) Supply of computer stationery to Public Sector Undertaking (PSU) located in Mumbai. Total contract value is ₹ 2,72,000 (inclusive of GST)
- 2) Supply of air conditioner to GST department located in Delhi. Total contract value is ₹2,55,000 (exclusive of GST)
- 3) Supply of generator renting service to Municipal Corporation of Jaipur. Total contract value is ₹ 3,50,000 (inclusive of GST)

Answer:

As per section 51 of the CGST Act, 2017, Government departments, agencies, local authority and notified persons are required to deduct tax @ 2% (1% CGST + 1% SGST/UTGST) or IGST @ 2% from payment made to the supplier of taxable goods and/ or services where the total value of such supply [excluding tax and compensation cess indicated in the invoice], under a contract, exceeds ₹ 2,50,000.

Since in the given case, Yash Shoppe is supplying goods and services exclusively to Government departments, agencies, local authority and persons notified under section 51 of the CGST Act, 2017, applicability of TDS provisions on its various receivables is examined in accordance with the above-mentioned provisions as under:

S. No.	Particulars	Total contract value due to be received [excluding GST] (₹)	Tax to be deducted		
			CGST @ 1% (₹)	SGST @ 1% (₹)	IGST @ 2% (₹)
(1)	Supply of computer stationery to PSU in Mumbai [Since the total value of supply under the contract [excluding IGST (being inter-State supply)] does not exceed ₹ 2,50,000, tax is not required to be deducted.]	2,42,857 [2,72,000 × 100 / 112]	--	--	
(2)	Supply of air conditioner to GST Department in Delhi [Since the total value of supply under the contract [excluding IGST (being inter-State supply)] exceeds ₹2,50,000, tax is required to be deducted.]	2,55,000	--		5,100
(3)	Supply of a generator renting service to Municipal Corporation of Jaipur [Since the total value of supply under the contract [excluding CGST and SGST (being intra-State supply)] exceeds ₹ 2,50,000, tax is required to be deducted.]	3,12,500 [3,50,000 × 100 / 112]	3,125	3,125	
	Total		3,125	3,125	51,00

Question 16

A makes intra-State supply of goods valued at ₹ 50,000 to B within State of Karnataka. B makes inter-State supply to X Ltd. (located in Telangana) after adding 10% as its margin. Thereafter, X Ltd. sells it to Y in Telangana (Intra-State sale) after adding 10% as his margin.

Assume that the rate of GST chargeable is 18% (CGST 9% plus SGST 9%) and IGST chargeable is 18%. Calculate tax payable at each stage of the transactions detailed above. Wherever input tax credit is available and can be utilized, calculate the net tax payable in cash. At each stage of the transaction, indicate which Government will receive the tax paid and to what extent.

Answer:

I. Intra-State supply of goods by A to B

	₹
Value charged for supply of goods	50,000
Add: CGST @ 9%	4,500
Add: SGST @ 9%	4,500
Total price charged by A from B	59,000

A is the first stage supplier of goods and hence, does not have credit of CGST, SGST or IGST (Assumed). Thus, the entire CGST (₹ 4,500) & SGST (₹ 4,500) charged will be paid in cash by A to the Central Government and Karnataka Government respectively.

II. Inter-State supply of goods by B to X Ltd. - Margin @ 10%¹

	₹
Value charged for supply of goods (₹ 50,000 x 110%)	55,000
Add: IGST @ 18%	9,900
Total price charged by B from X Ltd.	64,900

Computation of IGST payable by B to Central Government in cash

	₹
IGST payable	9,900
Less: Credit of CGST	4,500
Less: Credit of SGST	4,500
IGST payable to Central Government in cash	900

Credit of CGST and SGST can be used to pay IGST [Section 49(5) of the CGST Act, 2017]. Karnataka Government will transfer SGST credit of ₹ 4,500 utilized in the payment of IGST to the Central Government.

III. Intra-State supply of goods by X Ltd. to Y

	₹
Value charged for supply of goods (₹ 55,000 x 110%)	60,500
Add: CGST @ 9%	5,445
Add: SGST @ 9%	5,445
Total price charged by X Ltd. from Y	71,390

¹ It has been logically presumed that 10% margin is on the value of goods (exclusive of taxes).

Computation of CGST and SGST payable by X Ltd in cash

	₹
CGST payable	5,445
Less: Credit of IGST	5,445
CGST payable to Central Government in cash	Nil
SGST payable	5,445
Less: Credit of IGST [₹ 9,900 - ₹ 5,445]	4,455
SGST payable to Telangana Government in cash	990

Credit of IGST can be used to pay IGST, CGST and SGST in that order [Section 49(5) of the CGST Act, 2017]. Central Government will transfer IGST of Rs 4,455 utilized in the payment of SGST to Telangana Government.

Question 17

Ms PPC & Co. have availed input tax credit of ₹ 42,500/- during September under IGST head, instead of availing ₹ 21,250 under CGST & SGST heads. Mr. X, accountant of the above entity would like to use Form GST PMT-09 for making a transfer from IGST head to respective CGST & SGST heads.

Examine the scenario and offer your comments.

Answer

As per provisions of section 49(10) read with rule 87(13) of CGST Rules, 2017, "A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount **available in the electronic cash ledger** under the Act to the electronic cash ledger for integrated tax, central tax, State tax or Union territory tax or cess in FORM GST PMT-09".

It is important to note that only amounts available under Electronic Cash Ledger can be transferred to the respective heads using Form GST PMT-09 and not otherwise.

Accordingly, contention of the Accountant Mr. X of M/s PPC & Co., is not valid for transfer of ₹ 42,500 from head IGST to respective CGST & SGST in Electronic Credit Ledger.

Question 18

M/s ABC Ltd. have belatedly filed GST return (under section 39) for the month of January after 60 days from the due date for filing such return. Total tax paid in such return is as below:

Particulars	IGST (₹)	CGST (₹)	SGST (₹)
Output tax payable	4,50,000	2,85,000	2,85,000
Tax payable under reverse charge	18,000	32,000	32,000
Input tax available for utilisation	2,50,000	55,000	55,000
Tax paid through Electronic Cash Ledger	2,18,000	2,62,000	2,62,000

Examine the interest payable as per the provisions of GST law.

What would be your answer, if entire tax for the month of January has to be paid through Electronic Credit Ledger except taxes to be paid on reverse charge basis?

Answer

Proviso to section 50 lays down that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period **furnished after the due date in accordance with the provisions of section 39**, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.

In the given scenario, M/s ABC Ltd. have filed their return belatedly and as per the above provisions, interest is payable on the tax component paid through Electronic Cash Ledger only. A point relevant to note here is that tax payable on reverse charge basis also carries interest for the period of delay in remittance of tax and input tax credit cannot be used to pay the same (i.e. tax payable under reverse charge has to be paid in cash).

Accordingly, interest under section 50 payable for the tax paid through Electronic Cash Ledger is computed as below:

$$\text{IGST: } 218,000 * 18\% * 60/365 = 6,450$$

$$\text{CGST: } 262,000 * 18\% * 60/365 = 7,752$$

$$\text{SGST: } 262,000 * 18\% * 60/365 = 7,752$$

Further, if entire tax payable for January is paid through Electronic Credit ledger, except for the taxes to be paid under reverse charge basis, then interest under section 50 is applicable only on the remittance of tax under reverse charge basis and not for tax payable on forward charge basis. Interest payable is given as below:

$$\text{IGST: } 18,000 * 18\% * 60/365 = 532$$

$$\text{CGST: } 32,000 * 18\% * 60/365 = 946$$

$$\text{SGST: } 32,000 * 18\% * 60/365 = 946$$

Question 19

Examine the taxes to be paid for the month of July on the basis of below information furnished by M/s Zinc & Co.:

Particulars	IGST (₹)	CGST (₹)	SGST (₹)
Output tax payable	14,75,000	28,34,000	28,34,000
Tax payable under reverse charge	36,000	1,44,000	1,44,000
Balance in Electronic Credit Ledger	26,52,000	18,32,000	18,32,000

Output tax reported under IGST column pertains to the month of February, which was not paid for the said period. Also, note that input tax credit available in Electronic Credit Ledger pertains to input tax on purchases made during the month of July and no opening balance exists from previous tax period.

Answer

Payment of taxes is governed as per the provisions laid in section 49 read with section 49A and 49B of CGST Act, 2017 along with rule 88A of CGST Rules, 2017

Also, section 49(8) of CGST Act, stipulates that every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely: self-assessed tax, and other dues related to returns of previous tax periods

Payment of taxes under forward charge

Particulars	IGST	CGST	SGST
Balance in electronic credit ledger for utilization	26,52,000	18,32,000	18,32,000
Output tax payable for July	14,75,000	28,34,000	28,34,000
Less: Utilization of input tax credit:			
a. IGST [Refer Note1]	14,75,000	5,88,500	5,88,500
b. CGST	0	18,32,000	0
c. SGST	0	0	18,32,000
Amount payable through electronic cash ledger	Nil	4,13,500	4,13,500

Total amount payable through electronic cash ledger

Particulars	IGST	CGST	SGST
Amount payable through Electronic cash ledger under forward charge	Nil	4,13,500	4,13,500
Amount payable through electronic cash ledger under reverse charge [Refer Note-2]	36,000	1,44,000	1,44,000
Total amount payable through electronic cash ledger	36,000	5,57,500	5,57,500

Notes:-

- 1 After utilization of IGST credit towards output IGST liability, balance has been utilized equally amongst CGST & SGST
- 2 Input tax credit cannot be utilized for discharging tax liability under reverse charge basis, thus payable vide electronic cash ledger.

Since, M/s Zinc & Co., have defaulted in payment of taxes for the month of February and the same has been paid during July, interest is payable as per the provisions of section 50 of the CGST Act, 2017

Question 20

M/s Neptune & Co. is registered under GST in the state of Maharashtra. They have made zero-rated supply of goods worth ₹ 84,50,000/- on payment of IGST for ₹ 10,14,000/- during the month of May. The refund application under section 54 for the above supply has been rejected by the proper officer.

Mr. A, taxation manager of the firm, has sought for recrediting the Electronic Credit Ledger as per the provisions of rule 86 for the above rejection. Examine the scenario and offer your comments.

Answer :

Rule 86 of CGST Rules provides that where a registered person has claimed refund of any

unutilized amount (i.e. ITC) from the electronic credit ledger in accordance with the provisions of section 54, the amount to the extent of the claim shall be debited in the said ledger.

If the refund so filed is rejected, either fully or partly, the amount so debited to the extent of rejection, shall be re-credited to the electronic credit ledger by the proper officer.

In the present case, M/s Neptune & Co., have made zero-rated supply with payment of IGST for ₹ 10,14,000/- and the refund for the same has been rejected by the proper officer. Therefore, contention of Mr. A is not sustainable as debit entry in the Electronic Credit Ledger has not been made as per sub-rule (3) of Rule 86 towards "refund of any unutilized amount".

Supply made during May by M/s Neptune & Co. is on payment of IGST and therefore provisions laid out in sub-rule (4) of Rule 86 shall not be applicable



Question 1

Mr. X, a regular tax payer, did not make any taxable supply during the month of July. Is he required to file any goods and service tax return?

Answer:

A regular tax payer is required to furnish a return u/s 39 for every month even if no supplies have been effected during such period. In other words, filing of Nil return is also mandatory.

Therefore, Mr. X is required to file monthly return even if he did not make any taxable supply during the month of July.

Question 2

If a return has been filed, how can it be revised if some changes are required to be made?

Answer:

In GST since the returns are built from details of individual transactions, there is no requirement for having a revised return. Any need to revise a return may arise due to the need to change a set of invoices or debit/ credit notes. Instead of revising the return already submitted, the system allows changing the details of those transactions (invoices or debit/credit notes) that are required to be amended. They can be amended in any of the future GSTR- 1 in the tables specifically provided for the purposes of amending previously declared details.

As per section 39(9), omission or incorrect particulars discovered in the returns filed u/s 39 can be rectified in the return to be filed for the month during which such omission or incorrect particulars are noticed. Any tax payable as a result of such error or omission will be required to be paid along with interest. The rectification of errors/omissions is carried out by entering appropriate particulars in "Amendment Tables" contained in GSTR-1.

Question 3

Which type of taxpayers need to file annual return under section 44?

Answer:

Every registered person, other than ISD's, casual/non-resident taxpayers, tax deductors at source, tax collector at source are required to file an annual return in Form GSTR-9. Taxpayer under composition scheme are required to file annual return in Form GSTR-9A. Casual tax payers, non-resident taxpayers, ISDs and persons authorized to deduct/collect tax at source are not required to file annual return.

Question 4

Is an annual return under section 44 and a final return one and the same?

Answer:

No. Annual return has to be filed by every registered person paying tax as a normal taxpayer, with certain exceptions. Final return has to be filed only by those registered persons who have applied for cancellation of registration. The final return has to be filed within three months of the date of cancellation or the date of cancellation order, whichever is later.

Question 5

Do input service distributors (ISDs) need to file separate statement of outward supplies with their return?

Answer:

No, the ISDs need to file only a return in Form GSTR-6 and the return has the details of credit received by them from the service provider and the credit distributed by them to the recipient units. Since their return itself covers these aspects, there is no requirement to file separate statement of outward supplies.

Question 6

Is it compulsory for a taxpayer to file return by himself?

Answer:

No. A registered taxpayer can also get his return filed through a Goods and Services Tax Practitioner.

Question 7

Mr. Anand Kumar, a regular taxpayer, filed his return of outward supply (GSTR-1) for the month of August, 20XX before the due date. Later on, in February, 20XX he discovered error in the GSTR-1 return of August 20XX already filed and wants to revise it.

You are required to advise him as to the future course of action to be taken by him according to statutory provisions.

Answer:

The mechanism of filing revised return for any correction of errors/omission is not available under GST. The rectification of errors/omission is allowed in the subsequent returns.

Therefore, Mr. Anand Kumar who discovered an error in GSTR-1 for August, 20XX, cannot revise it. However, he should rectify said error in the GSTR-1 filed for February, 20XX and should pay the tax and interest, if any, in case there is short payment, in the return to be furnished for February, 20XX. The error can be rectified by furnishing appropriate particulars in the "Amendment Tables" contained in GSTR-1.

However, as per section 37(3) of the CGST Act, 2017, no rectification of details furnished in GSTR-1 shall be allowed after:

- (i) filing of monthly return/ GSTR-3 for the month of September following the end of the financial year to which such details pertain, or
- (ii) filing of the relevant annual return, whichever is earlier.

Question 8

B Ltd. has filed the return for the month of October belatedly. At the time of computing the late fee to be paid for delay in filing return, B Ltd. has taken a view that if the late fee has been paid as per the provisions under the CGST Act, there is no requirement of paying the late fee under the SGST Act for the same default.

Whether B Ltd. has taken a correct view? Examine.

Answer

The understanding of B Ltd. is incorrect. For arriving at the late fee payable on account of delayed filing of GST return, the computation of late fee is made separately for CGST and SGST/UTGST. This is because the provisions of late fee on delayed filing of return are prescribed in both CGST Act and SGST/UTGST Act although a common return is filed for both the laws

Question 9

Tax authorities have been scrutinizing the returns furnished by A Ltd. During the scrutiny process, A Ltd. has been made aware by the authorities about an incorrect disclosure in a return under section 39 filed by it for a particular tax period.

A Ltd. seeks your opinion to rectify the incorrect disclosure made in the return.

Answer

In terms of section 39(9), any rectification in the return (under section 39) furnished by the registered person is allowed only when the error or omission is discovered on account of reasons other than scrutiny, audit, inspection, or enforcement activity by the tax authorities.

In the present case, since the incorrect disclosure has been highlighted to A Ltd. by the tax authorities during the process of scrutiny, the rectification of the incorrect disclosure cannot be made by A Ltd. on its own.

Question 10

ABC Ltd. has applied for cancellation of GST registration in the month of March. The consultant of ABC Ltd. has suggested to furnish the final return in the month of September. He has advised the company that a final return needs to be furnished before the due date of furnishing the return for the month of September of subsequent financial year or before furnishing of annual return (for the financial year in which cancellation has been sought for), whichever is earlier. However, the jurisdictional authorities have yet not passed the order of cancellation due to reasons not known to ABC Ltd.

Whether the advice given by the consultant of ABC Ltd. is correct? Examine.

Answer

No, the advice of the consultant is not correct.

In terms of section 45 read with rule 81, every registered person who is required to furnish GSTR-3B and whose registration has been cancelled is required to file a final return within three months of the date of cancellation or date of order of cancellation, whichever is later.

In the given case, the registration of the company has not been cancelled. Therefore, requirement of filing final return will arise only when the registration of the company gets cancelled.

Question 11

XYZ Ltd. has deducted TDS from the consideration payable to A Ltd. for supplies made by it. The deductee, i.e. A Ltd., seeks your advice on taking credit for the TDS deducted by XYZ Ltd. Also, whether the tax deducted by XYZ Ltd. will be shown in the electronic credit ledger or electronic cash ledger of A Ltd.?

Answer

In terms of section 51(5) read with rule 66(2), the deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in GSTR-7 of the deductor, after validation. Similarly, rule 87(9), inter alia, provides that any amount deducted under section 51 shall be credited to the electronic cash ledger of the deductee.

Therefore, in the present case, A Ltd., can take credit of TDS amount deducted by XYZ Ltd. in its electronic cash ledger and use the same for payment of tax, interest, penalty, late fee or any other amount.

Question 12

Whether GSTPs are required to furnish any return for disclosure of activities carried out by them for any of the registered person during a tax period? Elucidate.

Answer

In terms of section 48(2), a registered person may authorise an approved GSTP to furnish the details of outward supplies under section 37, the details of inward supplies under section 38 and the return under section 39 or annual return under section 44 or final return under section 45 and to perform other prescribed functions. Thus, the GSTP can furnish the specified documents or information on behalf of the registered person with prior authority of the registered person.

However, there is no specific return furnishing mechanism for GSTP to disclose the activities carried out by it for any of the registered person during a tax period.



Question 1

Whether services of short-term accommodation, conferencing, banqueting etc. provided to a SEZ unit/developer by a supplier located in the same State as that of the SEZ unit/developer should be treated as an inter-State supply under section 7(5)(b) or an intra-State supply in terms of section 8(2) read with section 12(3)(c)? Explain.

Answer:

Circular No. 48/22/2018 GST has clarified on this issue as under:

As per section 7(5)(b), the supply of goods and/or services to a SEZ unit/developer shall be treated to be a supply of goods and/or services in the course of inter-State trade or commerce. Whereas, as per section 12(3)(c), the place of supply of services by way of accommodation in any immovable property for organizing any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply are in the same State/ Union territory, it would be treated as an intra-State supply.

It is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision. In the instant case, section 7(5)(b) is a specific provision relating to supplies of goods and/or services made to a SEZ unit/developer, which states that such supplies shall be treated as inter-State supplies.

Further, proviso to section 8(2) also lays down that intra-State supply of services do not include supply of services to a SEZ unit/developer. It is, therefore, clarified that services of short term accommodation, conferencing, banqueting etc., provided to a SEZ unit/developer shall be treated as an inter- State supply.

Question 2

How are exports treated under the GST Law?

Answer:

Under the GST Law, export of goods or services has been treated as:

- Inter-State supply and covered under the IGST Act.
- 'Zero rated supply', i.e. the goods or services exported shall be relieved of GST levied upon them either at the input stage or at the final product stage.

Question 3

How are imports taxed under GST?

Answer:

All imports are deemed as inter-State supplies for the purposes of levy of GST (IGST). The incidence of tax follows the destination principle and the tax revenue in case of SGST accrues to the State where the imported goods and services are consumed. IGST paid on import of goods and services is available as ITC for set off against the output tax liability. IGST on import of goods is levied under the IGST Act but the machinery of the customs law is used to levy and collect the same.

Question 4

How are exports taxed under GST?

Answer:

Exports of goods and services are zero rated. The exporter has the option either to export under bond/LUT without payment of IGST and claim refund of ITC or pay IGST at the time of export and claim refund thereof.

Question 5

Is it necessary to execute a bond for affecting zero rated supplies?

Answer:

No. The facility to export under LUT has been extended to all zero-rated suppliers (barring a few exceptions such as those who have been prosecuted for an offence involving tax of ₹ 2.5 crore) vide Notification No. 37/2017 CT dated 4.10.2017. The other conditions for executing LUT have been specified in Circular No. 8/8/2017 GST dated 4.10.2017 as amended.

Question 6

Discuss supplies which have been notified as deemed exports under section 147 of CGST Act, 2017.

Answer:

The following supplies have been notified as deemed exports under section 147 of the CGST Act, 2017:

1. Supply of goods by a registered person against Advance Authorization.
2. Supply of capital goods by a registered person against Export Promotion Capital Goods Authorization.
3. Supply of goods by a registered person to Export Oriented Unit.
4. Supply of gold by a notified bank/Public Sector Undertaking against Advance Authorization.

Question 7

A Ltd. enters into an agreement for sale of goods with B Ltd., a company based in UAE. B Ltd. requires the goods to be delivered by A Ltd. to C Ltd., a company based in Karnataka.

Whether the transaction will qualify as export of goods under GST? Analyze the scenario and offer your comments

Answer:

As per the definition of export of goods provided under section 2(5), export of goods means taking goods out of India to a place outside India

Since in the given case, the goods remain in India, i.e. with C Ltd. located in Karnataka, the transaction between A Ltd. and B Ltd. cannot be treated as export of goods under GST.

Question 8

A Ltd. is making zero rated supplies which are also specifically exempt from GST. The company has paid input tax of ₹ 2,00,000 on inputs and input services which have been used exclusively in effecting such zero rated supplies.

Examine if A Ltd. can avail ITC of input tax of ₹ 2,00,000 paid on inputs and input services used exclusively in effecting such zero rated supplies.

Answer:

As per section 16(2), ITC may be availed for making zero rated supplies, notwithstanding that such supplies are exempt supplies. However, the same is subject to provisions u/s 17(5) of the CGST Act, i.e. blocked credit.

Hence, A Ltd. can take credit of ₹ 2,00,000 even if the outward zero rated supply is exempt from GST. However, the credit would not be available in respect of the inputs and input services, the credit on which is blocked under section 17(5) of the CGST Act.

Question 9

Whether services of short-term accommodation, conferencing, banqueting etc. provided to a SEZ unit/developer by a supplier located in the same State as that of the SEZ unit/developer should be treated as an inter-State supply under section 7(5)(b) or an intra-State supply in terms of section 8(2) read with section 12(3)(c)? Examine.

Answer:

Circular No. 48/22/2018 GST has clarified on this issue as under:

As per section 7(5)(b), the supply of goods and/or services to a SEZ unit/developer is treated as a supply of goods and/or services in the course of inter-State trade or commerce. Whereas, as per section 12(3)(c), the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply are in the same State/ Union territory, it would be treated as an intra- State supply.

It is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision. In the instant case, section 7(5)(b) is a specific provision relating to supplies of goods and/or services made to a SEZ unit/developer, which states that such supplies shall be treated as inter-State supplies.

Further, proviso to section 8(2) also lays down that intra-State supply of services do not include supply of services to a SEZ unit/developer. It is, therefore, clarified that services of short-term accommodation, conferencing, banqueting etc., provided to a SEZ unit/developer shall be treated as an inter-State supply.

Question 10

Mr. Amar Kant, a Chartered Accountant, being a partner in GST registered firm orders a gaming software for his son from a company located in USA. He makes the payment for the same from his personal bank account.

Examine whether the transaction will be liable to GST. If yes, in whose hands the tax liability will arise?

Answer:

The supply of gaming software is in the nature of OIDAR service in terms of section 2(17).

The transaction is for personal consumption of Mr. Amar Kant and the payment has also been made from the personal bank account of Mr. Amar Kant and not from the bank account of his GST registered firm. Therefore, being an individual

Question 11

‘Separate LUT is to be furnished for every export supply.’

With reference to the provisions of the GST law, examine the veracity or otherwise of the statement.

Answer:

No, the statement is not correct.

The LUT remains valid for the whole financial year and there is no need to furnish separate LUT

for each export supply.

However, in case goods are not exported within the time limit specified in rule 96A(1) of the CGST Rules and the registered person fails to pay the amount mentioned in the said sub rule, the facility of export under LUT will be deemed to have been withdrawn. However, if the amount mentioned in the said sub- rule is paid subsequently, the facility of export under LUT shall be restored. As a result, exports, during the period from when the facility to export under LUT is withdrawn till the time the same is restored, shall be either on payment of the applicable IGST or under bond with bank guarantee.

Rule 96A(1) provides inter alia that an exporter of goods has to execute the bond or LUT prior to export, binding himself to pay the tax due along with interest @ 18% within 15 days after the expiry of 3 months, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India.

Tax on service supplied by any person located in a non-taxable territory to any person other than non-taxable online recipient is payable by the recipient of such service under reverse charge. Therefore, tax on OIDAR services provided by the company located in USA to Mr. Amar Kant, a non-taxable online recipient, will be payable by such company under forward charge.

Question 12

AXT Ltd. entered into a high sea sale transaction with BYU Ltd. for certain goods. AXT Ltd. is of the view that GST on such sale transaction is payable at the time of such sale and basic customs duty is payable at the time of filing the bill of entry for import of goods. Examine whether the view taken by AXT Ltd. is correct.

Answer:

AXT Ltd.'s view is partially correct.

Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption (high sea sale) is neither treated as supply of goods nor supply of services in terms of paragraph 8(b) of Schedule III to the CGST Act.

Thus, GST is not leviable on high sea sales. Therefore, AXT Ltd.'s view that GST is payable on a high sea sale transaction at the time of sale, is not correct.

As per section 14 of the Customs Act, 1962, the value for the purpose of charging customs duty on imported goods is the value at the time of importation, i.e. at the time of filing of the bill of entry. Further, IGST on imported goods is also levied at the time of filing of bill of entry. Therefore, in case of high sea sales, the assessable value of imported goods for levying customs duty and IGST is determined on the basis of the price paid by the last high sea sales buyer who files the bill of entry for home consumption.

Therefore, AXT Ltd.'s view that basic customs duty is payable at the time of filing the bill of entry for import of goods is correct



Question 1

Is there any time limit for sanctioning of refund under section 54 of the CGST Act, 2017?

Answer:

Yes, refund has to be sanctioned within 60 days from the date of receipt of application complete in all respects. If refund is not sanctioned within the said period of 60 days, interest @ 6% p.a. will have to be paid in accordance with section 56 of the CGST/SGST Act.

However, in case where provisional refund to the extent of 90% of the amount claimed is refundable in respect of zero-rated supplies made by certain categories of registered persons in terms of sub-section (6) of section 54 of the CGST/SGST Act, the provisional refund has to be given within 7 days from the date of acknowledgement of the claim of refund.

Question 2

Discuss the provisions relating to refund of the amount of advance tax deposited by a casual taxable person under section 27(2) of the CGST Act, 2017.

Answer:

The amount of advance tax deposited by a casual taxable under section 27(2), shall be refunded only when such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39 [Section 54(13)]. Further, refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him [Fourth proviso to rule 89(1)].

Question 3

In case of refund under exports of goods, whether BRC/FIRC is necessary for granting refund?

Answer:

In case of refund on account of export of goods, the refund rules do not prescribe BRC/FIRC as a necessary document for filing of refund claim. However, for export of services details of BRC/FIRC is required to be submitted along with the application for refund.

Question 4

When is a deficiency memo issued in respect of a refund claim made under section 54?

Answer:

Rule 90(3) of the CGST Rules provides for communication in prescribed form (deficiency memo) where deficiencies are noticed. The said sub-rule also provides that once the

deficiency memo has been issued, the claimant is required to file a fresh refund application after the rectification of the deficiencies.

Question 5

State the exceptions to the principle of unjust enrichment as applicable to refund claims.

Answer:

The principle of unjust enrichment is applicable in all cases of refund except in the following cases:-

- i. Refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports.
- ii. Unutilized input tax credit in respect of (i) zero rated supplies made without payment of tax or, (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies.
- iii. refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued.
- iv. refund of tax in pursuance of section 77 of CGST/SGST Act i.e. tax wrongfully collected and paid to Central Government or State Government.
- v. if the incidence of tax or interest paid has not been passed on to any other person.
- vi. such other class of persons who has borne the incidence of tax as the Government may notify.

Question 6

Kailash Global (P) Ltd. supplies various goods in domestic and international markets. It is engaged in both manufacturing and trading of goods. The company is registered under GST in the State of Karnataka. The company exports goods without payment of tax under letter of undertaking in accordance with the provisions of section 16(3)(a) of the IGST Act, 2017.

The company has made the following supplies during a tax period:

S. No.	Particulars	(₹)
(i)	Export of product 'A' to UK for \$ 10,000. Assessable value under customs in Indian rupees. [Export duty is levied on product 'A' at the time of exports]	7,00,000
(ii)	Domestic supplies of taxable product 'B'* during the period [excluding tax @ 5%] [Inputs used in manufacturing of such goods are taxable @18%]	10,00,000

	*not notified as a product, in respect of which refund of unutilized ITC shall not be allowed under section 54(3)(ii) of the CGST Act, 2017	
(iii)	Supply of goods to Export Oriented Unit [excluding tax @ 18%] [ITC has been claimed by the recipient]	5,00,000
(iv)	Export of exempt supplies of goods	6,00,000

The ITC available for the above tax period is as follows:

S. No.	Particulars	(₹)
(i)	On inputs (including ₹ 50,000 on export of exempt supplies)	3,50,000
(ii)	On capital goods	1,20,000
(iii)	On input services (including ₹ 18,000 on outdoor catering)	2,00,000

Determine the maximum amount of refund admissible to Kailash Global (P) Ltd. for the given tax period.

Answer:

Computation of maximum amount of refund admissible to Kailash Global (P) Ltd.

Particulars	(₹)
Exports of product 'A' to UK [Note 1]	Nil
Domestic supplies of taxable product 'B' during the period [Note 2]	75,000
Supply of goods to Export Oriented Unit [Note 3]	Nil
Export of exempt supplies [Note 4]	1,14,000
Total refund claim admissible	1,89,000

Notes:

- Export of goods is a zero-rated supply in terms of section 16(1)(a) of the IGST Act, 2017. Further, Kailash Global (P) Ltd. exports goods without payment of tax under letter of undertaking in accordance with the provisions of section 16(3)(a) of the IGST Act, 2017. Therefore, as per clause (i) of first proviso to section 54(3) of the CGST Act, 2017, a registered person may claim refund, of any unutilized ITC in the case of zero rated supply made without payment of tax at the end of any tax period. However, second proviso to section 54(3) lays down that refund of unutilized ITC is not allowed if the goods exported out of India are subjected to export duty.
- Refund of unutilized ITC is allowed in case of inverted duty structure, i.e. where the

credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies) except supplies of goods or services or both as may be notified by the Government on the recommendations of the GST Council [Clause (ii) of the first proviso to section 54(3) of the CGST Act, 2017].

Rule 89(5) of the CGST Rules, 2017 stipulates that in the case of refund on account of inverted duty structure, refund of ITC is granted as per the following formula -

$$\text{Maximum Refund Amount} = \frac{\text{Turnover of inverted rated supply of goods and services} \times \text{Net ITC}}{\text{Adjusted Total Turnover}} - \text{Tax payable on such inverted rated supply of goods and services}$$

where-

“Net ITC” means ITC availed on inputs during the relevant period other than the ITC availed for which refund is claimed under sub- rules (4A) or (4B) or both.

“Adjusted total turnover” means the sum total of the value of:

- a) the turnover in a State/ Union territory, as defined under section 2(112), excluding turnover of services; &
- b) the turnover of zero-rated supply of services determined in terms of specified manner and non-zero-rated supply of services,

excluding:

- i. the value of exempt supplies other than zero-rated supplies; and
- ii. the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any,

during the relevant period.

“Relevant period” means the period for which the claim has been filed.

Tax payable on inverted rated supply of goods = ₹ 10,00,000 × 5% = ₹ 50,000

Here, Net ITC = ₹ 3,50,000, Adjusted Total Turnover = ₹ 28,00,000 [₹ 7,00,000 + ₹ 10,00,000 + ₹ 5,00,000 + ₹ 6,00,000] and Turnover of inverted rated supply of goods = ₹ 10,00,000

Thus, maximum refund amount under rule 89(5) = ₹ 3,50,000) × 10,00,000/ ₹ 28,00,000 - ₹ 50,000 = ₹ 75,000

3. As per section 2(39) of the CGST Act, 2017, deemed exports means such supplies of goods as may be notified under section 147 of the CGST Act, 2017. Supplies to EOU is notified as deemed export under section 147 vide Notification No. 48/2017 CT dated 18.10.2017. In respect of supplies regarded as deemed exports, the application of refund can be filed by the supplier of deemed export supplies only in cases where the recipient does not avail of ITC on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund [Third proviso to rule 89(1) of the CGST Rules, 2017]. Therefore, since in the given case, the recipient is claiming ITC, Kailash Global (P) Ltd. (supplier of deemed exports) cannot claim refund of ITC.

4. Section 16(2) of the IGST Act, 2017 stipulates that subject to the provisions of section



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17(5) of the CGST Act, ITC may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply. Section 54(3) of the CGST Act, 2017 allows refund of ITC in the case of zero rated supply made without payment of tax.

Rule 89(4) of the CGST Rules, 2017 stipulates that in the case of zero- rated supply of goods or services or both without payment of tax under bond/LUT in accordance with the provisions of section 16(3) of the IGST Act, 2017, refund of ITC shall be granted as per the following formula:

$$\text{Refund Amount} = \frac{\text{Turnover of zero rated supply of goods \& Services}}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$$

ITC

where-

“Net ITC” means ITC availed on inputs and input services during the relevant period other than the ITC availed for which refund is claimed under sub-rules (4A) or (4B) or both.

“Turnover of zero-rated supply of goods” means the value of zero- rated supply of goods made during the relevant period without payment of tax under bond/LUT **or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less**, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both.

“Adjusted total turnover” means the same as explained in point 2 above.

Here, Turnover of zero rated supply of goods = ₹ 6,00,000, Net ITC = ₹ 5,32,000 (ITC on outdoor catering disallowed under section 17(5) of CGST Act, 2017) and Adjusted Total Turnover = ₹ 28,00,000 (as computed in point 2 above)

Thus, maximum refund amount under rule 89(4) = ₹ 5,32,000 x 6,00,000/ ₹ 28,00,000 = ₹ 1,14,000.

Question 7

Super Engineering Works, a registered supplier in Haryana, is engaged in supply of taxable goods within the State. Given below are the details of the turnover and applicable GST rates of the final products manufactured by Super Engineering Works as also the input tax credit (ITC) availed on inputs used in manufacture of each of the final products and GST rates applicable on the same, during a tax period:

Products	Turnover* (₹)	Output GST Rates	ITC availed (₹)	Input GST Rates
A	500,000	5%	54,000	18%
B	350,000	5%	54,000	18%
C	100,000	18%	10,000	18%

*excluding GST



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Determine the maximum amount of refund of the unutilized input tax credit that Super Engineering Works is eligible to claim under section 54(3)(ii) of the CGST Act, 2017 provided that Product B is notified as a product, in respect of which no refund of unutilized input tax credit shall be allowed under said section.

Answer:

Section 54(3)(ii) of the CGST Act, 2017 allows refund of unutilized input tax credit (ITC) at the end of any tax period to a registered person where the credit has accumulated on account of inverted duty structure i.e. rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

In the given case, the rates of tax on inputs used in Products A and B (18% each) are higher than rates of tax on output supplies of Products A and B (5% each). However, Product B is notified as a product, in respect of which no refund of unutilized ITC shall be allowed under section 54(3)(ii) of the CGST Act, 2017. Therefore, only Product A is eligible for refund under section 54(3)(ii).

Further, rule 89(5) of the CGST Rules, 2017 stipulates that in the case of refund on account of inverted duty structure, refund of ITC shall be granted as per the following formula -

Maximum Refund Amount		Turnover of inverted rated supply of goods and services × Net ITC	-	Tax payable on such inverted rated supply of goods and services
	=	Adjusted Total Turnover		

where,-

- A. "Net ITC" means input tax credit availed on inputs during the relevant period;
- B. Adjusted Total Turnover means the sum total of the value of-
 - a. the turnover in a State or a Union territory, as defined under section 2(112), excluding the turnover of services; and
 - b. the turnover of zero-rated supply of services determined in specified manner and non-zero-rated supply of services, excluding-
 - i. the value of exempt supplies other than zero-rated supplies; and
 - ii. the turnover of supplies in respect of which refund is claimed under rule 89(4A) or rule 89(4B) or both, if any, during the relevant period.

Turnover of zero-rated supply of goods means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is

1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A)

or (4B) or both.

C. Relevant period means the period for which the claim has been filed.

In accordance with the aforesaid provisions, the maximum refund amount which Super Engineering Works is eligible to claim shall be computed as follows:

Tax payable on inverted rated supply of Product A = ₹ 5,00,000 × 5% = ₹ 25,000

Net ITC = ₹ 1,18,000 (₹ 54,000 + ₹ 54,000 + ₹ 10,000) [Net ITC availed during the relevant period needs to be considered irrespective of whether the ITC pertains to inputs eligible for refund of inverted rated supply of goods or not as clarified vide Circular No. 79/53/2018-GST, dated 31.12.2018]

Adjusted Total Turnover = ₹ 9,50,000 (₹ 5,00,000 + ₹ 3,50,000 + ₹ 1,00,000) Turnover of inverted rated supply of Product A = ₹ 5,00,000

Maximum refund amount for Super Engineering Works is as follows:

= [(₹ 5,00,000 × ₹ 1,18,000) / ₹ 9,50,000] - ₹ 25,000

= ₹ 37,105 (rounded off)

Question 8

With reference to section 54(3) of the CGST Act, 2017, mention the cases where refund of unutilized input tax credit is allowed.

Answer:

As per section 54(3) of the CGST Act, 2017, a registered person may claim refund of unutilized input tax credit at the end of any tax period in the following cases:

- i. **Zero rated supplies made without payment of tax:** Supply of goods or services or both to an SEZ developer/unit or export of goods or services or both qualifies as zero rated supplies. However, refund of unutilized input tax credit shall not be allowed if:
 - a. the goods exported out of India are subjected to export duty;
 - b. the supplier of goods or services or both avails of drawback in respect of CGST or claims refund of the IGST paid on such supplies.
- ii. **Accumulated ITC on account of inverted duty structure:** Where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

Question 9

State the cases where refundable amount shall be paid to the applicant, instead of being credited to Consumer Welfare Fund under CGST Act, 2017.

Answer: Section 54(8) of the CGST Act, 2017 provides that the refundable amount shall be



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paid to the applicant, instead of being credited to the Consumer Welfare Fund, if such amount is relatable to –

- refund of tax paid on export of goods and/or services or on inputs or input services used in making such exports;
- refund of unutilized ITC in case of zero rated supplies made without payment of tax or accumulated ITC on account of inverted duty structure;
- refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;
- refund of tax paid on a transaction treating it to be an intra-State supply, but which is subsequently held to be an inter-State supply or vice-versa;
- the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or
- the tax or interest borne by notified class of applicants.

Question 10

Wye Ltd. provides the following details of September 20XX for computation of refund claim under rule 89(4) of the CGST Rules, 2017. Compute the eligible claim under the said rule assuming that other conditions are fulfilled.

Particulars	Amount (₹)
Opening balance of ITC	5,00,000
ITC availed during the period, which includes the claim for refund made of ₹5,00,000 eligible under rule 89(4A)/89(4B) of the CGST Rules, 2007	25,00,000
Zero rated supply of goods made during the period without payment of tax under bond/ LUT, which include the supply of ₹ 1,00,00,000 for which refund claim is made under rule 89(4A)/89(4B) of the CGST Rules, 2017	6,00,00,000
Supply of goods other than zero rated supply	3,00,00,000

Answer:

As per rule 89(4) of the CGST Rules, 2017, in case of zero-rated supply of goods without payment of tax under bond/LUT, refund of ITC is granted as per the following formula:

Refund Amount	=	(Turnover of zero-rated supply of goods + <u>Turnover of zero-rated supply of services</u>)	×	Net ITC
		Adjusted Total Turnover		

Net ITC excludes ITC availed for which refund is claimed under rule 89(4A)/ (4B) of the CGST Rules, 2017. Further, turnover of zero-rated supply of goods and adjusted total turnover exclude turnover of supplies in respect of which refund is claimed under 89



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(4A)/(4B).

Turnover of zero-rated supply of goods means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both.

Accordingly, turnover of zero rated supply of goods = ₹ 5,00,00,000 [₹ 6,00,00,000 - ₹ 1,00,00,000];

Net ITC = ₹ 20,00,000 [₹ 25,00,000 - ₹ 5,00,000] and

Adjusted Total Turnover = ₹ 8,00,00,000 [₹ 6,00,00,000 + ₹ 3,00,00,000 - ₹ 1,00,00,000]

Thus, maximum refund amount under rule 89(4)

= ₹ 20,00,000 × ₹ 5,00,00,000 / ₹ 8,00,00,000 = ₹ 12,50,000.

Question 11

Y Ltd. exported service valued at US \$ 1,00,000. Supply of service was completed on 15th November 2019. Payment for this service was received on 30th December 2019. Refund claim was filed by Y Ltd. in respect of tax paid on inputs and inputs services for ₹ 6,00,000 on 31st January, 2020. The refund claim was sanctioned on 30th April, 2020. What is the amount of refund Y Ltd. will get in accordance with law? What is the relevant date and rate of interest as per GST law?

Answer:

As per clause (i) of first proviso to section 54(3) of the CGST Act, 2017, refund claim admissible to Y Ltd. on account of export of services being a zero-rated supply, is the unutilized ITC of ₹ 6,00,000.

Where the supply of services had been completed prior to the receipt of payment, relevant date is the date of receipt of payment in convertible foreign exchange, i.e. 30th December, 2019 [Explanation to section 54 of the CGST Act, 2017.

As per section 56 of the CGST Act, 2017, where any tax ordered to be refunded to any applicant is not refunded within 60 days from the date of receipt of application, interest shall be payable @ 6% p.a. from the date immediately after the expiry of 60 days from the date of receipt of application till the date of refund of such tax.

Since in the given case, tax ordered to be refunded is not refunded within 60 days from the date of receipt of application, viz., 31st January, 2020, interest @ 6% p.a. is payable.

Question 12

An international trade exhibition is going to be held in United States of America in January. Aayaat Niryat Export House (ANEH) has participated in it. It intends to send 100 units of taxable goods manufactured by it to USA for display in the said exhibition.



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ANEH is of the view that the activity of sending the goods out of India for exhibition is a zero-rated supply. However, its tax advisor does not concur with its view. Examine whether the view of ANEH is correct.

Assuming that ANEH could not sell any goods at the exhibition and brings back entire 100 units to India (i) in February, (ii) in August,

Discuss the requirement to issue invoice, if any, in each of the above independent cases.

Would your answer be different if ANEH sells an aggregate of 65 units of the taxable goods in USA exhibition on different dates in January and remaining 35 units are brought back on 31st January. The tax advisor of ANEH advises ANEH that the export of 65 units qualify as zero-rated supply and it should apply for refund of the unutilized ITC in respect of the same. Examine the technical veracity of the tax advisor's advice

Answer:

No, the view of ANEH that the activity of sending the goods out of India for exhibition is a zero-rated supply, is not correct. As per section 7 of the CGST Act, for any activity or transaction to be considered a supply, it must satisfy twin tests namely-

it should be for a consideration by a person; and

it should be in the course or furtherance of business.

The exceptions to the above are the activities enumerated in Schedule I of the CGST Act which are treated as supply even if made without consideration. Further, section 2(21) of the IGST Act defines "supply", wherein it is clearly stated that it shall have the same meaning as assigned to it in section 7 of the CGST Act.

Section 16 of the IGST Act defines "zero rated supply" as any of the following supplies of goods or services or both, namely:-

export of goods or services or both; or

supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

Thus, only such "supplies" which are either "export" or are "supply to SEZ unit/ developer" would qualify as zero-rated supply.

In view of the above provisions, Circular No. 108/27/2019 GST dated 18.07.2019 clarified that the activity of sending/ taking the goods out of India for exhibition or on consignment basis for export promotion, except when such activity satisfy the tests laid down in Schedule I of the CGST Act, do not constitute supply as the said activity does not fall within the scope of section 7 of the CGST Act as there is no consideration at that point in time. Since such activity is not a supply, the same cannot be considered as "zero rated supply" as per the provisions contained in section 16 of the IGST Act.

The said circular further clarified that the activity of sending/taking goods out of India for exhibition is in the nature of "sale on approval basis" wherein the goods are sent/ taken outside India for the approval of the person located abroad and it is only when the said

goods are approved that the actual supply from the exporter located in India to the importer located abroad takes place.

The activity of sending/ taking specified goods is covered under the provisions of section 31(7) of the CGST Act, 2017 read with rule 55 of CGST Rules, 2017. As per said provisions, in case of the goods being sent or taken on approval for sale, the invoice shall be issued before/at the time of supply or 6 months from the date of removal, whichever is earlier. The goods which are taken for supply on approval basis can be moved from the place of business of the registered supplier to another place within the same State or to a place outside the State on a delivery challan.

In view of the said provisions, ANEH is not required to issue invoice at the time of taking the goods out of India since the activity of merely sending/ taking the taxable goods out of India is not a supply. However, the goods shall be accompanied with a delivery challan. Further,

In case the entire quantity of goods (100 units) sent to USA is not sold but brought back by ANEH in February, i.e. within the stipulated period of 6 months from the date of removal, no tax invoice is required to be issued as no supply has taken place in such a case

In case, the entire quantity of goods (100 units) sent to USA is not sold and brought back by ANEH in August, i.e. after 6 months from the date of removal, a tax invoice is required to be issued for entire 100 units of taxable goods in accordance with the provisions contained in section 12 [determining time of supply of goods] and section 31 [tax invoice] of the CGST Act, 2017 read with rule 46 [tax invoice] of the CGST Rules, 2017 within the time period stipulated under section 31(7) of the CGST Act, 2017.

However, if an aggregate of 65 units of the goods are sold in USA exhibition by ANEH on different dates in January (i.e. within the stipulated period of 6 months), a tax invoice would be required to be issued for these units, at the time of each of these sales, in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules. When the goods are sold in exhibition, actual supply from the exporter in India to the importer located abroad takes place and this supply qualifies as export. Export of goods is a zero-rated supply in terms of section 16(1)(a) of the IGST Act, 2017.

If the remaining 35 units are brought back on 31st January, i.e. within the stipulated period of 6 months from the date of removal, no tax invoice is required to be issued as no supply has taken place in such a case.

Further, tax advisor's advice is technically correct. Since the activity of sending / taking specified goods out of India is not a zero-rated supply, execution of a bond/Letter of Undertaking (LUT), as required under section 16 of the IGST Act, is not required.

However, the sender can prefer refund claim even when the specified goods were sent / taken out of India without execution of a bond/LUT, if he is otherwise eligible for refund as per the provisions contained in section 54(3) of the CGST Act, 2017 read with rule 89(4) of the CGST Rules, 2017 in respect of zero-rated supply of 65 units.

Question 13

Synotex Pvt. Ltd. manufactures taxable goods, 'Q' and exempt goods 'S'. Product 'S' is sold in international markets without payment of tax under letter of undertaking. The company is registered under GST in the State of Maharashtra.

The company provides the following information in relation to various supplies made by it during a tax period:

- (a) Product 'S' has been exported to UK for £ 12,000
- (b) Product 'Q' has been supplied to Betty Enterprises within India for 20,00,000

Note: The above amounts are exclusive of taxes, wherever applicable.

The company provides the following information in relation to tax paid on inward supplies received during the said tax period:

- (a) GST of ₹ 5,00,000 has been paid on inputs
- (b) GST of ₹ 2,40,000 has been paid on capital goods
- (c) GST of ₹ 2,00,000 has paid on input services
- (d) All the above inputs, input services and capital goods are used in the manufacturing process

Following additional information is also provided:

- (i) Value of product 'S' exported to UK in Indian rupees is ₹ 12,00,000. However, value of such product when supplied domestically by the company in similar quantities is ₹10,00,000.
- (ii) Betty Enterprises is a 100% export-oriented undertaking. It has claimed the ITC on goods supplied to it by Synotex Pvt. Ltd.
- (iii) The balance in the electronic credit ledger of Synotex Pvt. Ltd. at the end of the tax period for which the refund claim is being filed after GSTR-3B for the said period has been filed is ₹5,80,000.
- (iv) The balance in the electronic credit ledger of Synotex Pvt. Ltd. at the time of filing the refund application is ₹ 3,00,000.

Compute the amount refundable to Synotex Pvt. Ltd. for the tax period.

Answer Export of product 'S'

Export of goods is a zero rated supply in terms of section 16(1)(a) of the IGST Act, 2017. Section 16(2) of the IGST Act, 2017 stipulates that subject to the provisions of section 17(5) of the CGST Act, 2017, ITC may be availed for making zero-rated supplies even if such supply may be an exempt supply. As per section 54(3)(i) of the CGST Act, 2017, a registered person may claim refund, of any unutilised ITC at the end of any tax period in the case of zero rated supply made without payment of tax.

Therefore, in the given case, Synotex Pvt. Ltd. will be eligible to claim ITC for

Here, Amount = _export of exempt product 'S' in terms of section 16(2) of the IGST Act, 2017 and will thus, be able to claim refund of unutilised ITC in terms of section 54(3)(i) of the CGST Act, 2017.

As per rule 89(4) of the CGST Rules, 2017, refund of unutilized ITC in case of zero rated supply without payment of tax under letter of undertaking is granted in accordance with the following formula:

$$\text{Refund} = \frac{(\text{Turnover of zero rated supply of goods} + \text{Turnover of zero rated supply of services}) \times \text{Net ITC}}{\text{Adjusted Total Turnover}}$$

Net ITC = ₹ 7,00,000 [Net ITC includes ITC on inputs and input services but not ITC on capital goods].

Turnover of zero-rated supply of goods (Product 'S') = ₹ 12,00,000 [Lower of the value of zero rated supply of goods (₹ 12,00,000) or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier (₹ 15,00,000)].

Adjusted total turnover = ₹ 32,00,000 [₹ 20,00,000 + ₹12,00,000]

Thus, refund amount under rule 89(4)

= ₹7,00,000 × ₹12,00,000 / ₹ 32,00,000 = ₹2,62,500.



Question 1

Under what circumstances can the principal directly supply goods from the premises of job worker without declaring the premises of job worker as his additional place of business?

Answer:

The goods can be supplied directly from the place of business of job worker without declaring it as additional place of business in two circumstances namely where the job worker is a registered taxable person or where the principal is engaged in supply of such goods as may be notified by the Commissioner.

Question 2

What happens when the inputs or capital goods are not received back or supplied from the place of business of job worker within prescribed time period?

Answer:

If the inputs or capital goods are not received back by the principal or are not supplied from the place of business of job worker within the prescribed time limit, it would be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out by the principal (or on the date of receipt by the job worker where the inputs or capital goods were sent directly to the place of business of job worker). Thus the principal would be liable to pay tax accordingly.

Question 3

Who is responsible for the maintenance of proper accounts related to job work?

Answer:

It is completely the responsibility of the principal to maintain proper accounts of job work related inputs and capital goods.

Question 4

Genie Engineers had a mould delivered directly to a job worker from the supplier for making certain precision parts for use in the factory of Genie Engineer. As per agreement, the mould was to remain with the job worker as long as work was being sent to him.

After four years a departmental audit team that visited the job worker noticed the mould and traced it to Genie Engineer. GST was demanded from Genie Engineers for taking ITC without receiving the mould and furthermore for not bringing the mould back after three years of delivery to the job worker. How should they respond to this?

Answer:

Genie Engineers should reply on the following lines:

Under section 19(6) of CGST Act, the principal may take ITC on capital goods sent to a job worker for job work without being first brought to his place of business.

The capital goods sent for job work should either be returned to the principal or must be supplied from the job worker's premises within 3 years [extendible by another 2 years] from

sending them to the job worker or direct receipt by the job worker from the supplier. If the above time-lines are not met, it is deemed that the capital goods were supplied by the principal to the job worker (in other words, tax will be payable on them) on the day they were sent out to the job worker [Section 19(6)].

However, sub-section (7) of section 19 provides that the time-limit of three years in sub-section (6) for bringing back the capital goods from the job worker does not apply to moulds.

Hence, Genie Engineers have correctly taken the ITC on moulds.

Question 5

Sudama Industries Ltd., registered in the State of Jammu & Kashmir, manufactures plastic pipes for other suppliers on job-work basis.

On 10.01.20XX, Plasto Manufacturers (registered in the State of Himachal Pradesh) sent plastic worth ₹ 4 lakh and moulds worth ₹ 50,000, free of cost, to Sudama Industries Ltd. to make plastic pipes. Sudama Industries Ltd. also used its own material - a special type of lamination material for coating the pipes - worth ₹ 1 lakh in the manufacture of pipes. It raised an invoice of ₹ 2 lakh as job charges for making pipes and returned the manufactured pipes through challan to Plasto Manufacturers on 20.10.20XX in the same financial year.

The same quality and quantity of plastic pipes, as was made for Plasto Manufacturers, were made by Sudama Industries Ltd. from its own raw material and sold to Solid Pipes (registered in Jammu and Kashmir) for ₹ 7.5 lakh on 20.10.20XX.

Examine the scenario and offer your views on the following issues with reference to the provisions relating to job work under the GST laws:

- i. Is there any difference between the manufacture of plastic pipes by Sudama Industries Ltd. for Plasto Manufacturers and for Solid Pipes?
- ii. Whether Sudama Industries can use its own material even when it is manufacturing the plastic pipes on job-work basis?
- iii. Whether sending the plastic and moulds to Sudama Industries Ltd. by Plasto Manufacturers is a supply and a taxable invoice needs to be issued for the same?
- iv. Whether Sudama Industries should include the value of free of cost plastic and moulds supplied by Plasto Manufacturers in its job charges?

Answer:

- (i) As per section 2(68) of the CGST Act, 2017, job work means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly. The registered person on whose goods (inputs or capital goods) job work is performed is called the principal. Thus, the job worker is expected to work on the goods sent by the principal.

Therefore, when the goods are manufactured by Sudama Industries Ltd. for Plasto Manufacturers, it is job work as the manufacturing process is undertaken on inputs (plastic and moulds) supplied by the principal (Plasto Manufacturers) and when goods are manufactured for Solid Pipes, it is manufacture on own account as the pipes are manufactured from company's own raw material. Further, manufacture on job work basis is a supply of service in terms of para 3 of Schedule II to the CGST Act, 2017 and manufacture of pipes on own account is a supply of goods.

(ii) It has been clarified vide Circular No. 38/12/2018 GST dated 26.03.2018 that the job worker, in addition to the goods received from the principal, can use his own goods for providing the services of job work.

(iii) Section 143 of the CGST Act, 2017 provides that the registered principal may, without payment of tax, send inputs or capital goods to a job worker for job work. Subsequently, on completion of the job work, the principal shall either bring back the goods to his place of business or supply (including export) the same directly from the place of business/ premises of the job worker within one year in case of inputs or within three years in case of capital goods (except moulds and dies, jigs and fixtures or tools). Thus, the provision relating to return of goods is not applicable in case of moulds, dies, jigs, fixtures and tools.

If the time frame of one year/ three years for bringing back or further supplying the inputs/ capital goods is not adhered to, the activity of sending the goods for job work shall be deemed to be a supply by the principal on the day when the said inputs/ capital goods were sent out by him. Thus, essentially, sending goods for job work is not a supply as such, but it acquires the character of supply only when the inputs/ capital goods sent for job work are neither received back by the principal nor supplied further by the principal from the place of business/ premises of the job worker within one/ three years of being sent out.

Therefore, sending of plastic and moulds by Plasto Manufacturers to Sudama Industries Ltd. (job worker) is not supply as the manufactured pipes are received back within the stipulated time and the provisions relating to return of goods are not applicable in case of moulds.

Rule 45 of the CGST Rules provides that the inputs, semi-finished goods or capital goods being sent for job work shall be sent under the cover of a challan issued by the principal.

Therefore, Plasto Manufacturers need not issue a taxable invoice for sending the inputs to Sudama Industries Ltd. but should send the inputs under the cover of a challan.

(iv) As per section 15(2)(b) of the CGST Act, any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both, is includible in the value of supply. However, Sudama Industries Ltd. should not include the value of free of cost plastic and moulds supplied by Plasto Manufacturers in its job charges as Sudama Industries Ltd. is manufacturing the plastic pipes on job work basis. The scope of supply of the Sudama Industries Ltd. is to manufacture plastic pipes from the raw material supplied by the Plasto Manufacture ₹ Thus, at no point of time was Sudama Industries Ltd. (supplier of job work service) liable to pay for the raw material and therefore, the value thereof should not be included in its job charges even though the same has been incurred by Plasto Manufacturers (recipient of job work service).

Question 6

Alok Pvt. Ltd., a registered manufacturer, sent steel cabinets worth ₹ 50 lakh under a delivery challan to M/s Prem Tools, a registered job worker, for job work on 28.01.20XX. The scope of job work included mounting the steel cabinets on a metal frame and sending the mounted panels back to Alok Pvt. Ltd. The metal frame is to be supplied by M/s Prem Tools. M/s Prem Tools has agreed to a consideration of ₹ 5 lakh for the entire mounting activity including the supply of metal frame. During the course of mounting activity, metal waste is generated which is sold by M/s Prem Tools for ₹ 45,000. M/s Prem Tools sent the steel cabinets mounted on the metal frame to Alok Pvt. Ltd. on 03.12.20XX in the same financial year.

Assuming GST rate for metal frame as 28%, for metal waste as 12% and standard rate for services as 18%, you are required to compute the GST liability of M/s Prem Tools. Also, give reason(s) for

inclusion or exclusion of the value of cabinets in the job charges for the purpose of payment of GST by M/s Prem Tools.

Answer:

As per para 3 of Schedule II to the CGST Act, any treatment or process which is applied to another person's goods is a supply of services and accordingly is subject to GST rate applicable for services.

In the given case, M/s Prem Tools (job worker) undertakes the process of mounting the steel cabinets of Alok Pvt. Ltd. (principal) on metal frames. In view of para 3 of Schedule II to the CGST Act cited above, the mounting activity classifies as service even though metal frames are also supplied as a part of the mounting activity. Accordingly, the job charges will be chargeable to rate of 18%, which is the applicable rate for services.

Further, the value of steel cabinets will not be included in the value of taxable supply made by M/s Prem Tools as the supply of cabinets does not fall within the scope of supply to be made by M/s Prem Tools. M/s Prem Tools is only required to mount the steel cabinets, which are to be supplied by Alok Pvt. Ltd., on metal frames, which are to be supplied by it.

As regards sale of waste generated during the job work, since M/s Prem Tools is registered, the tax leviable on the supply will have to be paid by it in terms of section 143(5) of the CGST Act. Such supply will be treated as supply of goods and subject to GST rate applicable for metal waste.

Accordingly, the GST liability of M/s Prem Tools will be computed as under:

Particulars	Amount (₹)
Job charges	5,00,000
GST @ 18% (A)	90,000
Sale of metal waste	45,000
GST @ 12% (B)	5,400
Total GST payable (A) + (B)	95,400

Question 7

Bedi Manufacturers, a registered person, instructs its supplier to send the capital goods directly to Rajesh Enterprises, who is a job worker, outside its factory premises for carrying out certain operations on the goods. The goods were sent by the supplier on 10-04-20XX and were received by the job worker on 15-04-20XX. Rajesh Enterprises carried out the job work, but did not return the capital goods to their principal - Bedi Manufacture. Discuss whether Bedi Manufacturers are eligible to retain the input tax credit availed by them on the capital goods. What action under the GST Act is required to be taken by Bedi Manufacture?

What would be your answer if in place of capital goods, jigs and fixtures are supplied to the job worker and the same has not been returned to the principal?

Answer:

As per section 19(5) of the CGST Act, 2017, the principal is entitled to take input tax credit of capital goods sent for job work even if the said goods are directly sent to job worker.

Further, section 19(6) of the CGST Act, 2017 stipulates that where the capital goods sent directly to a job worker are not received back by the principal within a period of 3 years of the date of receipt of capital goods by the job worker, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were received by the job worker.

In view of aforementioned provisions, Bedi Manufacturers are eligible to retain the input tax credit availed by them on the capital goods.

However, if the capital goods are not returned by Rajesh Enterprises within 3 years from 15.04.20XX (date of receipt of capital goods by job worker), it shall be deemed that such capital goods had been supplied by Bedi Manufacturers to Rajesh Enterprises on 15.04.20XX and Bedi Manufacturers shall be liable to pay the tax along with applicable interest.

However, there is no time limit for return of moulds and dies, jigs and fixtures or tools sent out to a job worker for job work [Section 19(7) of the CGST Act, 2017.

However, if Rajesh Enterprises does not return the jigs and fixtures to Bedi Manufacturers, it shall not be considered as a supply of jigs and fixtures to Rajesh Enterprises by Bedi Manufacture[₹] In this case also, Bedi Manufacturers will be eligible to retain the input tax credit availed by them.



Question 1

Is summary assessment order to be necessarily passed against the taxable person?

Answer:

No. In certain cases, like when goods are under transportation or are stored in a warehouse, and the taxable person in respect of such goods cannot be ascertained, the person in charge of such goods shall be deemed to be the taxable person and will be assessed to tax.

Question 2

Whether principal of natural justice is must to be followed before passing assessment order against the taxable person?

Answer:

Yes, principal of natural justice is must to be followed before passing assessment order against the taxable person seeking to impose any financial burden on him.

Question 3

In what cases, assessment order passed by proper officer may be withdrawn?

Answer:

Assessment Order passed by proper officer may be withdrawn in the following cases:-

- i. **Assessment of Non-filers of return** – The best judgment order passed by the Proper Officer under section 62 of CGST Act shall automatically stand withdrawn if the taxable person furnishes a valid return for the default period (i.e. files the return and pays the tax as assessed by him), within thirty days of the receipt of the best judgment assessment order
- ii. **Summary Assessment** – A taxable person against whom a summary assessment order has been passed can apply for its withdrawal to the jurisdictional Additional/Joint Commissioner within thirty days of the date of receipt of the order. If the said officer finds the order erroneous, he can withdraw it and direct the proper officer to carry out determination of tax liability in terms of section 73 or 74 of CGST Act. The Additional/Joint Commissioner can follow a similar course of action on his own motion if he finds the summary assessment order to be erroneous.

Question 4

What recourse may be taken by the officer in case proper explanation is not furnished for the discrepancy detected in the return filed, while conducting scrutiny under section 61 of CGST ACT?

Answer:

If the taxable person does not provide a satisfactory explanation within 30 days of being informed (extendable by the officer concerned) or after accepting discrepancies, fails to take corrective action in the return for the month in which the discrepancy is accepted, the Proper Officer may take recourse to any of the following provisions:

- a) Proceed to conduct audit under section 65 of the Act;

- b) Direct the conduct of a special audit under section 66 which is to be conducted by a Chartered Accountant or a Cost Accountant nominated for this purpose by the Commissioner; or
- c) Undertake procedures of inspection, search and seizure under section 67 of the Act; or
- d) Initiate proceeding for determination of tax and other dues under Section 73 or 74 of the Act.

Question 5

Who can conduct audit of taxpayers?

Answer:

There are three types of audit prescribed in the GST Act(s) as explained below:

- a) **Audit by Chartered Accountant or a Cost Accountant:** Every registered person whose turnover exceeds the prescribed limit, shall get his accounts audited by a Chartered Accountant or a Cost Accountant. (Section 35(5) of the CGST Act)
- b) **Audit by Department:** The Commissioner or any officer of CGST or SGST or UTGST authorized by him by a general or specific order, may conduct audit of any registered person. The frequency and manner of audit will be prescribed in due course. (Section 65 of the CGST Act)
- c) **Special Audit:** If at any stage of scrutiny, inquiry, investigations or any other proceedings, if department is of the opinion that the value has not been correctly declared or credit availed is not within the normal limits, department may order special audit by Chartered Accountant or Cost Accountant, nominated by department. (Section 66 of the CGST Act)

Question 6

Kulbhushan & Sons has entered into a contract to supply two consignments of certain taxable goods. However, since it is unable to determine the value of the goods to be supplied by it, it applies for payment of tax on such goods on a provisional basis along with the required documents in support of its request.

On 12.01.20XX, the Assistant Commissioner of Central Tax issues an order allowing payment of tax on provisional basis indicating the value on the basis of which the assessment is allowed on provisional basis and the amount for which the bond is to be executed and security is to be furnished.

Kulbhushan & Sons complies with the same and supplies both the consignments of goods on 25.01.20XX thereafter paying the tax on provisional basis in respect of both the consignments on 19.02.20XX.

Consequent to the final assessment order passed by the Assistant Commissioner of Central Tax on 21.03.20XX, a tax of ₹ 1,80,000 becomes due on 1st consignment whereas a tax of ₹ 4,20,000 becomes refundable on 2nd consignment.

Kulbhushan & Sons pays the tax due on 1st consignment on 09.04.20XX and applies for the refund of the tax on 2nd consignment same day. Tax was actually refunded to it on 05.06.20XX.

Determine the interest payable and receivable, if any, by Kulbhushan & Sons in the above case.

Answer:

Section 60(4) of the CGST Act, 2017 stipulates that where the tax liability as per the final assessment is higher than under provisional assessment i.e. tax becomes due consequent to order

of final assessment, the registered person shall be liable to pay interest on tax payable on supply of goods but not paid on the due date, at the rate specified under section 50(1) [18% p.a.], from the first day after the due date of payment of tax in respect of the goods supplied under provisional assessment till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

In the given case, due date for payment of tax on goods cleared on 25.01.20XX under provisional assessment is 20.02.20XX.

In view of the provisions of section 60(4), in the given case, Kulbhushan & Sons is liable to pay following interest in respect of 1st consignment:

$$= ₹ 1,80,000 \times 18\% \times 48/365$$

$$= ₹ 4,261 \text{ (rounded off)}$$

Further, section 60(5) of the CGST Act, 2017 stipulates that where the tax liability as per the final assessment is less than in provisional assessment i.e. tax becomes refundable consequent to the order of final assessment, the registered person shall be paid interest at the rate specified under section 56 [6% p.a.] from the date immediately after the expiry of 60 days from the date of receipt of application under section 54(1) till the date of refund of such tax.

However, since in the given case, refund has been made (05.06.20XX) within 60 days from the date of receipt of application of refund (09.04.20XX), interest is not payable to Kulbhushan & Sonson tax refunded in respect of 2nd consignment.

Question 7

Explain in what cases, assessment order passed by proper officer may be withdrawn under CGST Act, 2017?

Answer:

Assessment order passed by the proper officer may be withdrawn in following cases:-

- i. **Assessment of non-filers of returns**-The best judgement order passed by the proper officer under section 62 of the CGST Act shall automatically stand withdrawn where a registered person files a valid return within 30 days of the service of the best judgment assessment order. However, the liability for payment of interest under section 50(1) of the CGST Act, 2017 or for payment of late fee under section 47 of the CGST Act, 2017 shall continue.
- ii. **Summary assessment**-As per section 64(2) of the CGST Act, 2017, a taxable person against whom a summary assessment order has been passed can apply for its withdrawal to the jurisdictional Additional/ Joint Commissioner within 30 days of the date of receipt of the order.

If the said officer finds the order erroneous, he can withdraw it and direct the proper officer to carry out determination of tax liability in terms of section 73 or 74 of the CGST Act. The Additional/ Joint Commissioner can follow a similar course of action on his own motion if he finds the summary assessment order to be erroneous.

Question 8

Divy Trader obtained permission for provisional assessment and supplied three consignments of furniture on 28th April, 20XX. The tax payment on provisional basis was made in respect of all the three consignments on 20th May, 20XX.

Consequent to the final assessment order passed by the Assistant Commissioner on 21st June, 20XX, a tax of ₹ 1,20,000 and ₹ 1,50,000 became refundable on 1st and 3rd consignments, whereas a tax of ₹ 1,20,000 became due on 2nd consignment. Divy Trader applies for the refund of the tax on 1st and 3rd consignments on 12th July, 20XX and pays the tax due on 2nd consignment on the same day. Tax was actually refunded to it of 1st consignment on 8th September, 20XX, whereas of 3rd consignment on 18th September, 20XX. Customers of Divy Trader who purchased the consignments have not taken Input Tax Credit (ITC).

Determine the interest payable and receivable, if any, under CGST Act, 2017 by Divy Trader.

Answer:

Where tax becomes due consequent to order of final assessment, interest is payable @ 18% p.a., from the first day after the due date of payment of tax in respect of the goods supplied under provisional assessment till the date of actual payment, whether such amount is paid before/after the issuance of order for final assessment.

In the given case, due date for payment of tax on goods cleared on 28.04.20XX under provisional assessment is 20.05.20XX.

Thus, interest payable in respect of 2nd consignment
 $= ₹ 1,20,000 \times 18\% \times 53 [21.05.20XX - 12.07.20XX]/365$
 $= ₹ 3,136$ (rounded off)

Further, section 56 of CGST Act, 2017 provides that where tax becomes refundable consequent to the order of final assessment, interest is receivable @ 6% p.a. from the date immediately after the expiry of 60 days from the date of receipt of refund application till the date of refund of such tax.

In the given case, since refund of tax of 1st consignment has been paid on 08.09.20XX which is within 60 days from the date of receipt of application of refund (12.07.20XX), interest is not receivable on tax refunded in respect of 1st consignment.

However, interest receivable in respect of 3rd consignment is as follows:

60 days from the date of receiving the refund application expire on 10.09.20XX.
 $= ₹ 1,50,000 \times 6\% \times 8 [11.09.20XX-18.09.20XX]/365$
 $= ₹ 197$ (rounded off).

Question 9

Explain the difference between Audit by Tax Authorities under section 65 and Special Audit under section 66 of the CGST Act, 2017.

Answer:

Audit by Tax authorities under section 65 of the CGST Act, 2017:-

1. The Commissioner or any officer authorized by him can undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.
2. The audit shall be completed within a period of 3 months from the date of commencement of audit. However, the Commissioner can extend this period by a further period upto maximum 6 months.

Special Audit under section 66 of the CGST Act, 2017:-

1. The registered person can be directed to get his records including books of account examined and audited by a chartered accountant or a cost accountant during any stage of scrutiny, inquiry, investigation or any other proceedings; depending upon the complexity of the case. Any officer not below the rank of Assistant Commissioner may order special audit, with the prior approval of the Commissioner, if he is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits.
2. Audit is to be completed within 90 days. However, the Assistant Commissioner can extend this period by a further period of 90 days.

Question 10

Explain the recourse that may be taken by the officer in case proper explanation is not furnished for the discrepancy detected in the return filed, while conducting scrutiny under section 61 of the CGST Act, 2017.

Answer:

If proper explanation is not furnished for the discrepancy detected in return filed, while conducting scrutiny under section 61 of the CGST Act, 2017, the proper officer may:

- (i) conduct audit of the registered person under scrutiny,
- (ii) direct the registered person under scrutiny to get his records including books of account examined and audited by the Chartered Accountant or a Cost Accountant,
- (iii) the Chartered Accountant or a Cost Accountant shall be a person/firm as nominated by the Commissioner,
- (iv) exercise the powers of inspection, search and seizure with respect to registered person under scrutiny, or
- (v) proceed to determine the tax and other dues of the registered person under scrutiny.

Question 11

Write a brief note on Summary Assessment in certain special cases as per section 64 of the CGST Act, 2017.

Answer:

As per section 64 of the CGST Act, 2017, summary assessments can be initiated to protect the interest of revenue with the previous permission of Additional/Joint Commissioner when the proper officer has evidence that a taxable person has incurred a liability to pay tax under the Act, and any delay by him in passing an assessment order may adversely affect the interest of revenue.

Additional/Joint Commissioner may withdraw summary assessment order on an application filed by taxable person within 30 days from the date of receipt of order or on his own motion, if he finds such order to be erroneous and may instead follow the procedures laid down in section 73 or section 74 to determine the tax liability of such taxable person.

Where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

Question 12

How many types of audit are prescribed under GST Act. Briefly explain each one of them.

Answer:

(i) There are three types of audit prescribed under GST Act(s) as explained below:

Audit by Chartered Accountant or a Cost Accountant: Every registered person whose turnover exceeds the prescribed limit, shall get his accounts audited by a Chartered Accountant or a Cost Accountant [Section 35(5) of the CGST Act, 2017].

(ii) **Audit by Department:** The Commissioner or any officer of CGST/SGST/UTGST authorized by him by a general or specific order may conduct audit of any registered person in the prescribed manner and frequency [Section 65 of the CGST Act, 2017].

(iii) **Special Audit:** If at any stage of scrutiny, inquiry, investigations or any other proceedings, Department is of the opinion that the value has not been correctly declared or credit availed is not within the normal limits, it may order special audit by Chartered Accountant or Cost Accountant as nominated by it [Section 66 of the CGST Act, 2017].



Question 1

Who can order for carrying out "Inspection" and under what circumstances? Can any premises be inspected by CGST officers?

Answer:

As per Section 67 of CGST Act, inspection can be carried out by proper officer only upon a written authorization given by an officer of the rank of Joint Commissioner or above.

A Joint Commissioner or an officer higher in rank can give such authorization only if he has reasons to believe that

- (a) taxable person has done one of the following:-
 - i. suppressed any transaction of supply of goods or services;
 - ii. suppressed stock of goods in hand;
 - iii. claimed excess input tax credit;
 - iv. contravened any provision of the Act to evade tax;
- (b) any person engaged in transporting of goods has kept goods which have escaped payment of tax or has kept his accounts or goods in a manner that is likely to cause evasion of tax, whether or not he is a taxable person.
- (c) an owner or an operator of a warehouse or a godown has kept goods which have escaped payment of tax or has kept his accounts or goods in a manner that is likely to cause evasion of tax.

Question 2

Who can order for search and seizure under the provisions of CGST Act?

Answer:

An officer of the rank of Joint Commissioner or above **can** authorize an officer **in** writing to carry out **search and seize** goods, documents, books or things.

Question 3

What powers can be exercised by an officer during valid search?

Answer:

An officer carrying out a search has the power to search for and seize goods (which are liable to confiscation) and documents/books/things (relevant for any proceedings under the Act) from the premises searched. However, if it is not practicable to seize any such goods then the same may be detained. The person from whom these are seized shall be entitled to take copies/extracts of seized records. During search, the officer has the power to break open the door of the premises authorized to be searched if access to the same is denied.

Similarly, while carrying out search within the premises, he can break open any almirah or box if access to such almirah or box is denied and in which any goods, account, registers or documents are suspected to be concealed. He can also seal the premises if access to it denied.

The seized documents/books/things shall be retained only till the time the same are required for examination/enquiry/proceedings and if these are not relied on for the case then the same shall be returned within 30 days from the issuance of show cause notice

Question 4

What are the duties of the person to whom summons has been issued?

Answer:

During the course of any enquiry under this Act, the proper officer may summon any person, to appear before him and give evidence or produce documents. The person to whom such summon has been issued is duty bound to appear before the officer and bound to tender evidence. He is also bound to produce all documents which were required to be furnished.

A person who is issued summon is legally bound to attend either in person or by an authorized representative and he is bound to state the truth before the officer who has issued the summon upon any subject which is the subject matter of examination and to produce such documents and other things as may be required.

Question 5

What is meant by the term “arrest”? When can the proper officer authorize ‘arrest’ of any person under CGST Act?

Answer:

The term ‘arrest’ has not been defined in the GST Act. However, as per judicial pronouncements, it denotes ‘the taking into custody of a person under some lawful command or authority’. In other words, a person is said to be arrested when he is taken and restrained of his liberty by power or colour of lawful warrant.

Arrests can be carried out only where the person is accused of offences specified for this purpose and the tax amount involved is more than specified limit. Further, the arrests under GST Act can be made only under authorisation from the Commissioner

Question 6

Explain the situation in which access to business premises is allowed under section 71 of the CGST Act, 2017? Also, list the records which are to be produced during access to business premises?

Answer:

During the course of any enquiry under this Act, the duly empowered officer can have access to any business premises, which may be required for the purpose of such enquiry. During such access, the officers can inspect the books of accounts, documents, computers, computer programs, computer software and such other things as may be required.

It is the duty of the persons in charge of such premises to furnish the required documents. Similarly, the persons in charge of business premises are also duty bound to furnish such documents to the audit party deputed by the proper officer or the Chartered Accountant or Cost Accountant, who has been deputed by the Commissioner to carry out special audit. The following records are covered by this provision and are to be produced, if called for.

- i. the records prepared and maintained by the registered person and declared to the proper officer in the prescribed manner.

- ii. trial balance or its equivalent.
- iii. statements of annual financial accounts, duly audited.
- iv. cost audit report, if any.
- v. the income - tax audit report, if any.

Question 7

Explain the safeguards provided under section 69 of CGST Act, 2017, to a person who is placed under arrest?

Answer:

Section 69 of CGST Act, 2017 provides following safeguards to a person who is placed under arrest:

- a) If a person is arrested for a cognizable offence, he must be informed of the grounds of arrest and be produced before a magistrate within 24 hours
- b) If a person is arrested for a non-cognizable offence, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate.
- c) All arrest must be in accordance with the provisions of the Code of Criminal Procedure relating to arrest in terms of section 69(3) of CGST Act, 2017.



Question 1

Mohan Enterprises is entitled for exemption from tax under GST law. However, it collected tax from its buyers worth ₹ 50,000 in the month of August. It has not deposited the said amount collected as GST with the Government. You are required to brief to Mohan Enterprises the consequences of collecting tax, but not depositing the same with Government as provided under section 76 of the CGST Act, 2017.

Answer:

It is mandatory to pay amount, collected from other person representing tax under GST law, to the Government. Every person who has collected from any other person any amount as representing the tax under GST law, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

For any such amount not so paid, proper officer may issue SCN for recovery of such amount and penalty equivalent to amount specified in notice.

The proper officer shall, after considering the representation, if any, made by the person on whom SCN is served, determine the amount due from such person and thereupon such person shall pay the amount so determined alongwith interest at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.

Question 2

Discuss briefly the time limit for issue of show cause notice as contained under sections 73 and 74 of the CGST Act, 2017.

Answer:

The provisions relating to 'relevant date' as contained in CGST Act, 2017 are as under:

- (i) In case of section 73 (cases other than fraud/suppression of facts/willful misstatement), the time-limit for issuance of SCN is 2 years and 9 months from the due date of filing Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund.
- (ii) In case of section 74 (cases involving fraud/suppression of facts/willful misstatement), the time-limit for issuance of SCN is 4 years and 6 months from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund.

Question 3

Is there any time limit prescribed for adjudication of the cases under CGST Act, 2017? If yes, discuss the same.

Answer:

The provisions relating to time-limit for adjudication of cases as contained in section 73 and 74 of the CGST Act, 2017 are as under:

- (i) In case of section 73 (cases other than fraud/suppression of facts/willful misstatement), the time limit for adjudication of cases is 3 years from the due date for filing of annual return for the financial year to which demand relates to [Section 73(10)].

- (ii) In case of section 74 (cases of fraud/suppression of facts/willful misstatement), the time limit for adjudication is 5 years from the due date for filing of annual return for the financial year to which demand relates to [Section 74(10)].

Question 4

A person is chargeable with tax in case of fraud. He decides to pay the amount of demand alongwith interest before issue of notice. Is there any immunity available to such person?

Answer:

Yes. Person chargeable with tax, shall have an option to pay the amount of tax along with interest and penalty equal to 15% per cent of the tax involved, as ascertained either on his own or ascertained by the proper officer, and on such payment, no notice shall be issued with respect to the tax so paid [Section 74(6)].

Question 5

Briefly discuss the modes of recovery of tax available to the proper officer.

Answer:

The proper officer may recover the dues in following manner:

- a) Deduction of dues from the amount owned by the tax authorities payable to such person.
- b) Recovery by way of detaining and selling any goods belonging to such person;
- c) Recovery from other person, from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central or a State Government;
- d) Distrain any movable or immovable property belonging to such person, until the amount payable is paid. If the dues not paid within 30 days, the said property is to be sold and with the proceeds of such sale the amount payable and cost of sale shall be recovered.
- e) Through the Collector of the district in which such person owns any property or resides or carries on his business, as if it was an arrear of land revenue.
- f) By way of an application to the appropriate Magistrate who in turn shall proceed to recover the amount as if it were a fine imposed by him.
- g) By enforcing the bond/instrument executed under this Act or any rules or regulations made thereunder.
- h) CGST arrears can be recovered as an arrear of SGST and vice versa [Section 79].

Question 6

Enlist the circumstances for which a show cause notice can be issued by the proper officer under section 73 of the CGST Act, 2017. Specify the time limit for issuance of such show cause notice as also the time period for issuance of order by the proper officer under section 73.

Answer:

As per section 73 of the CGST Act, 2017, a show cause notice can be issued by the proper officer if it appears to him that:

- tax has not been paid; or
- tax has been short paid; or
- tax has been erroneously refunded; or
- input tax credit has been wrongly availed or utilized,

for any reason other than the reason of fraud or any willful misstatement or suppression of facts to evade tax.

The notice should be issued at least 3 months prior to the time limit specified for passing the order determining the amount of tax, interest and any penalty payable by defaulter [Sub-section (2) of section 73].

The order referred herein has to be passed within three years from the due date for furnishing the annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates to or within three years from the date of erroneous refund [Sub-section (10) of section 73].

Thus, the time-limit for issuance of show cause notice is 2 years and 9 months from the due date of filing annual return for the financial year to which the demand pertains or from the date of erroneous refund. As per section 44(1) of the CGST Act, 2017, the due date of filing annual return for a financial year is 31st day of December following the end of such financial year.

Question 7

Subharti Enterprises collected GST on the goods supplied by it from its customers on the belief that said supply is taxable. However, later it discovered that goods supplied by it are exempt from GST.

The accountant of Subharti Enterprises advised it that the amount mistakenly collected by Subharti Enterprises representing as tax was not required to be deposited with Government. Subharti Enterprises has approached you for seeking the advice on the same. You are required to advise it elaborating the relevant provisions.

Answer:

The provisions of section 76 of the CGST Act, 2017 make it mandatory on Subharti Enterprises to pay amount collected from other person representing tax under this Act, to the Government.

Section 76 of the CGST Act, 2017 stipulates that notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or Court or in any other provisions of the CGST Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

Where any amount is required to be paid to the Government as mentioned above, and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.

The proper officer shall, after considering the representation, if any, made by the person on whom show cause notice (SCN) is served, determine the amount due from such person and thereupon such person shall pay the amount so determined.

The person who has collected any amount as representing the tax, but not deposited the same with the Government shall in addition to paying the said amount determined by the proper officer shall also be liable to pay interest thereon. Interest is payable at the rate specified under section 50. Interest is payable from the date such amount was collected by him to the date such amount is paid by him to the Government.

The proper officer shall issue an order within 1 year [excluding the period of stay order] from the date of issue of the notice. The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

Question 8

Rajul has been issued a show cause notice (SCN) on 31.12.2021 under section 73(1) of the CGST Act, 2017 on account of short payment of tax during the period between 01.07.2017 and 31.12.2017. He has been given an opportunity of personal hearing on 15.01.2022.

Advice Rajul as to what should be the written submissions in the reply to the show cause notice issued to him.

Answer:

The written submissions in reply to SCN issued to Rajul are as follows:

- (i) The show cause notice (SCN) issued for normal period of limitation under section 73(1) of the CGST Act, 2017 is not sustainable.
- (ii) The SCN under section 73(1) of the CGST Act, 2017 can be issued at least 3 months prior to the time limit specified for issuance of order under section 73(10) of the CGST Act, 2017. The adjudication order under section 73(10) of the CGST Act, 2017 has to be issued within 3 years from the due date for furnishing of annual return for the financial year to which the short-paid tax relates to.

The due date for furnishing annual return for a financial year is on or before the 31st day of December following the end of such financial year [Section 44 of the CGST Act, 2017]. Thus, SCN under section 73(1) of the CGST Act, 2017 can be issued within 2 years and 9 months from the due date for furnishing of annual return for the financial year to which the short-paid tax relates to.

- (iii) The SCN has been issued for the period between 01.07.2017 to 31.12.2017 which falls in the financial year (FY) 2017-18. Due date for furnishing annual return for the FY 2017-18 is 31.12.2018 and 3 years' period from due date of filing annual return lapses on 31.12.2021. Thus, SCN under section 73(1) ought to have been issued latest by 30.09.2021.

- (iv) Since the notice has been issued after 30.09.2021, the entire proceeding is barred by limitation and deemed to be concluded under section 75(10) of the CGST Act, 2017.

Question 9

Everest Technologies Private Limited has been issued a show cause notice (SCN) on 31.01.2021 under section 73(1) of the CGST Act, 2017 on account of short payment of tax during the period between 01.07.2017 and 31.12.2017. Everest Technologies Private Limited contends that the show cause notice issued to it is time-barred in law.

You are required to examine the technical veracity of the contention of Everest Technologies Private Limited.

Answer:

The contention of Everest Technologies Private Limited is not valid in law. The SCN under section 73(1) of the CGST Act can be issued at least 3 months prior to the time limit specified for issuance of order under section 73(10) of the CGST Act [Section 73(2) of the CGST Act]. The adjudication order under section 73(10) of the CGST Act has to be issued within 3 years from the due date for furnishing of annual return for the financial year to which the short-paid/not paid tax relates to.

The due date for furnishing annual return for a financial year is 31st day of December following the end of such financial year [Section 44 of the CGST Act]. Thus, SCN under section 73(1) of the CGST Act can be issued within 2 years and 9 months from the due date for furnishing of annual return for the financial year to which the short-paid/not paid tax relates to.

The SCN has been issued for the period between 01.07.2017 to 31.12.2017 which falls in the financial year (FY) 2017-18. Due date for furnishing annual return for the FY 2017-18 is 31.12.2018 and 3 years' period from due date of filing annual return lapses on 31.12.2021. Thus, SCN under section 73(1) ought to have been issued latest by 30.09.2021. Since in the given case, the notice has been issued on 31.01.2021, notice is not time-barred.

Question 10

Mr. Anant Kumar Gupta self-assessed his tax liability as ₹ 90,000 for the month of April 20XX but failed to make the payment.

Subsequently the Department initiated penal proceedings against Mr. Anant Kumar Gupta for recovery of penalty under section 73 of CGST Act, 2017 for failure to pay GST and issued show cause notice on 10-08-20XX which was received by Mr. Anant Kumar Gupta on 14-08-20XX.

Mr. Anant Kumar Gupta deposited the tax along with interest on 25/08/20XX and informed the department on the same day.

Department is contending that he is liable to pay a penalty of ₹ 45,000 (i.e. 50% of 90000).

Examine the correctness of the stand taken by the Department with reference to the provisions of the CGST Act, 2017, explain the relevant provisions in brief.

Answer:

Due date for payment of tax for the month of April, 20XX is 20.05.20XX.

As per section 73 of the CGST Act, 2017, where self-assessed tax is not paid within 30 days from due date of payment of such tax, penalty equivalent to 10% of tax or ₹ 10,000, whichever is higher, is payable. Thus, option to pay tax within 30 days of issuance of SCN to avoid penalty, is not available in case of self-assessed tax.

Since in the given case, Mr. Anant Kumar Gupta has not paid the self-assessed tax within 30 days of due date [i.e. 20.05.20XX], penalty equivalent to:

- (i) 10% of tax, viz., ₹ 9,000 (10% of ₹ 90,000) or
- (ii) 10,000,

whichever is higher, is payable by him. Thus, penalty payable is ₹ 10,000.

Hence, the stand taken by the Department that penalty will be levied on Mr. Anant Kumar Gupta is correct, but the amount of penalty ₹ 45,000 is not correct.

Question 11



On 05.07.20XX, a show cause notice for ₹ 5,00,000 was issued to Mr. Vijay Kumar Sharma demanding short payment of GST of ₹ 4,50,000 for the month of January, 20XX and also interest of ₹ 50,000.

Mr. Sharma raised objections and after personal hearing on 30.08.20XX, adjudicating authority passed the final order for ₹ 3,50,000 for GST, without any reference with regard to payment of interest.

Mr. Sharma deposited the tax of ₹ 3,50,000 on 02.09.20XX and informed the department on the same day. Subsequently, on 15.09.20XX, department demanded payment of interest of ₹ 60,000 on GST of ₹ 3,50,000.

Mr. Vijay Kumar Sharma is not ready to pay any interest. His contention is that he is not liable for interest because he deposited all the amount specified in the final adjudication order.

Examine with a brief note the validity of the action taken by the Department with reference to provisions of the CGST Act, 2017.

Answer:

As per section 75 of the CGST Act, 2017, the interest on the tax short paid has to be paid whether or not the same is specified in the order determining the tax liability.

Thus, in view of the same, Mr. Vijay Kumar Sharma will have to pay the interest even though the same is not specified in the final adjudication order. His contention that he is not liable for interest because he deposited all the amount specified in the final adjudication order is not valid in law.

However, the amount of interest demanded in the order cannot be in excess of the amount specified in the notice.

Therefore, in the given case, Department cannot demand the interest in excess of the amount specified in the notice, which will be ₹ 50,000.

Question 12

Checker not has self-assessed tax liability under IGST Act, 2017, as ₹ 80,000. He fails to pay the tax within 30 days from the due date of payment of such tax.

Determine the interest and penalty payable by him explaining the provisions of law, with the following particulars available from his records:

Date of collection of tax 18th September, 20XX

Date of payment of tax 26th November, 20XX

No Show Cause Notice (SCN) has been issued to him so far, while he intends to discharge his liability, even before it is issued to him, on the assumption that no penalty is leviable on him as payment is made before issue of SCN.

Answer:

Due date for payment of tax collected on 18.09.20XX is 20.10.20XX. However, since tax is actually paid on 26.11.20XX, interest @ 18% p.a. is payable for the period for which the tax remains unpaid [37 days] in terms of section 50 of CGST Act, 2017 read with Notification No. 13/2017 CT dated 28.06.2017. Amount of interest is:

$$= ₹ 80,000 \times 18\% \times 37/365 = ₹ 1,460 \text{ (rounded off)}$$

As per section 73(11) of CGST Act, 2017, where self-assessed tax/any amount collected as tax is not paid within 30 days from due date of payment of tax, then, inter alia, option to pay such tax before issuance of SCN to avoid penalty, is not available.

Consequently, penalty equivalent to

(i) 10% of tax, viz., ₹ 8,000 or

(ii) ₹10,000,

whichever is higher,

is payable in terms of section 73(9) of CGST Act, 2017. Therefore, penalty of ₹ 10,000 will have to be paid by Checker not. However, such penalty is payable when the PO issues an order in this behalf.

w.e.f from 9.10.2019 the PO shall, before serving of such a notice, communicate the details of any tax, interest and penalty as ascertained by him, in the prescribed form, to the person chargeable with tax, interest and penalty under section 73 or 74. Further, where such person has made partial payment of amount communicated to him or desires to file any submission against the proposed liability, he may make such submission in the prescribed form. Taxpayer will be able to take advantage of nil or reduced penalty under sections 73(5) and 74(5) of the CGST Act.

Question 13

Discuss briefly the procedure for issue of adjudication order under section 74(9) &(11) and the time limit for passing adjudication order under section 74(10) of the CGST Act, 2017.

Answer:

The procedure for issue of adjudication order under section 74 of CGST Act, 2017 is as under:-

Where a show cause notice/statement is issued to a person chargeable with tax, he may furnish a representation to the proper officer in his defence, if he is of the view that he is not so liable to pay whole/part of the amount mentioned in the show cause notice.

The proper officer after considering the representation, if any, made by the person chargeable with tax, pass an order determining the amount of tax, interest and penalty due from such person [Section 74(9)].

Where any person served with an adjudication order pays the tax along with interest payable thereon under section 50 and a penalty equivalent to 50% of such tax within 30 days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded [Section 74(11)].

As per section 74(10) of CGST Act, 2017, the proper officer shall issue the adjudication order within 5 years from the due date for furnishing of Annual Return for the financial year to which the tax not paid/short paid/input tax credit wrongly availed/ utilized relates to or within 5 years from the date of erroneous refund.

Question 14

A show cause notice was issued demanding GST of ₹ 1,80,180 for the month of July, 20XX on 1st October, 20XX. However, adjudicating authority after the personal hearing found that there was a typographical error while mentioning the amount of GST and he confirmed the demand for ₹ 10,80,180. Assessee seeks your advice.

What would be your advice if: (a) assessee comes to you after issue of order or (b) a corrigendum revising the amount to ₹ 10,80,180 on 15th November, 20XX, is issued.

Answer:

1) Advice after issue of order¹:

As per section 75(7) of the CGST Act, 2017, inter alia, the amount of tax, interest and penalty demanded in the order cannot exceed the amount specified in the notice.

Since, in the given case, the amount of tax demanded in the order exceeds the amount of tax demanded in the show cause notice, the assessee can file an appeal against the adjudication order within the prescribed time limit.

2) Advice after issue of corrigendum²

Any authority, who has issued, inter alia, any notice, may rectify any error which is apparent on the face of record in such notice, inter alia, on its own motion within a period of 6 months from the date of issue of such notice except where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission [Section 161 of the CGST Act, 2017].

In the given case, since the corrigendum has been issued to rectify a typographical error in the show cause notice, which is an error apparent on the face of the record, the rectification is correct in law. Further, being rectification of a clerical error, the time limit of 6 months will not apply.

Therefore, the assessee should reply to the show cause notice considering the revised amount of demand.

Question 15

Mr. X, registered under GST Act, had made short payment of GST for the month of July 20XX.

He does not want a show cause notice to be served on him by proper officer. Advice Mr. X, if:

(i) Short payment of tax is on account of reasons other than fraud

(ii) Short payment of tax is on account of fraud.

Answer:

(i) Short payment of tax is on account of reasons other than fraud

As per section 73 of the CGST Act, 2017, the show cause notice will not be issued by the proper officer, if Mr. X pays the amount of tax short paid along with interest payable thereon on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer, before the service of notice and inform the proper officer in writing of such payment.

(ii) Short payment of tax is on account of fraud

As per section 74 of the CGST Act, 2017, the show cause notice will not be issued by the proper officer, if Mr. X pays the amount of tax short paid along with interest payable thereon and a penalty equal to 15% of such tax on the basis of his own ascertainment of such tax or the tax as ascertained

¹ It has been assumed that order demanding higher tax has been made, but the rectification of show cause notice has not been done.

by the proper officer, before the service of notice and inform the proper officer in writing of such payment.



Question 1

Avataar Industries, a registered person under GST, has sold whole of its business to Rolex Manufacture. Determine the person liable to pay GST, interest or any penalty under GST law [determined before sale, but still unpaid] due from Avataar Industries upto the time of such transfer.

Answer:

Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person upto the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.

Thus, in the given case, Avataar Industries and Rolex Manufacturers shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay GST, interest or any penalty [determined before sale, but still unpaid] due from Avataar Industries upto the time of such transfer.

Question 2

ABC Manufacturers Ltd. engages Raghav & Sons as an agent to sell goods on its behalf. Raghav & Sons sells goods to Swami Associates on behalf of ABC Manufacturers Ltd. Determine the liability to pay GST payable on such goods as per the provisions of section 86 of the CGST Act.

Answer:

Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall, jointly and severally, be liable to pay the tax payable on such goods under this Act.

Thus, in the given case, ABC Manufacturers Ltd. and Raghav & Sons shall, jointly and severally, be liable to pay GST payable on such goods.

Question 3

A person, liable to pay GST, interest and penalty under GST law, dies. Determine the person liable to pay the GST, interest and penalty due from such person under GST law determined after his death if the business carried on by such person is continued after his death by his legal representative.

Answer:

Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies, then if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

Question 4

In the question 3. above, would your answer be different if the business carried on by the person who has died, is discontinued after his death.

Answer:

Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies, then if a business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

Question 5

What happens to the GST liability when the estate of a taxable person is under the control of Court of Wards?

Answer:

Where the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable is under the control of the Court of Wards/Administrator General/Official Trustee/Receiver or Manager appointed under any order of a Court, the tax, interest or penalty shall be levied and recoverable from such Court of Wards/Administrator General/Official Trustee/Receiver or Manager to the same extent as it would be determined and recoverable from a taxable person.

Question 6

Discuss the liability to pay tax in case of an amalgamation/merger, under section 87 of the CGST Act, 2017.

Answer:

Section 87 of the CGST Act, 2017 stipulates that when two or more companies are amalgamated/ merged in pursuance of an order of court or Tribunal or otherwise and the order is to take effect from a date earlier to the date of the order and any two or more of such companies have supplied/ received any goods and/or services to or from each other during the period commencing on the date from which the order takes effect till the date of the order, then such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax accordingly.

For the purposes of the CGST Act, 2017, the said two or more companies shall be treated as distinct companies for the period up to the date of the said order. The registration certificates of the said companies shall be cancelled with effect from the date of the said order.

Question 7

Discuss the liability to pay tax, interest or penalty on death of a person liable to pay tax, interest or penalty as per the provisions of section 93(1) of the CGST Act, 2017.

Answer:

Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, **where a person, liable to pay tax, interest or penalty under CGST Act, dies**, then:

- **Business is continued after his death:** if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act.

- **Business is discontinued after his death:** if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act,

whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

Question 8

With reference to the provisions of CGST Act, 2017, explain the liability of partners of firm to pay tax?

Answer:

Section 90 of the CGST Act explains the liability of partners of firm to pay tax as under:-

Partners of the firm jointly and severally liable to pay any tax, interest or penalty of the firm:

Notwithstanding any contract to the contrary and any other law for the time being in force, where any firm is liable to pay any tax, interest or penalty under this Act, the firm and each of the partners of the firm shall, jointly and severally, be liable for such payment.

Retiring partner liable to pay any tax, interest or penalty of the firm due up to the date of his retirement:

Where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing and such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date.

However, if no such intimation is given within 1 month from the date of retirement, the liability of such partner shall continue until the date on which such intimation is received by the Commissioner.

Question 9

Explain the provisions relating to liability for GST in case of company in liquidation (section 88 of the CGST Act, 2017).

Answer:

The provisions relating to liability for GST in case of company in liquidation provided under section 88 of the CGST Act, 2017 are:-

- Where any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as a liquidator/receiver of assets of a company shall give the intimation of his appointment to the Commissioner within 30 days of his appointment.
- The Commissioner shall ascertain the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.
- He shall communicate the details of amount to the liquidator within 3 months of the receipt of intimation of appointment of liquidator.
- When any private company is wound up and any tax, interest or penalty determined under the CGST Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of such company at

any time during the period for which the tax was due shall, jointly and severally, be liable for the payment of such tax, interest or penalty.

- However, director shall not be liable if he proves to the satisfaction of the Commissioner that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Question 10

Discuss the liability of the retiring partner of a firm to pay any tax, interest or penalty, if any, leviable on the firm under CGST/ IGST/ SGST Act.

Answer:

Where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing. Such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date.

However, if no such intimation is given within 1 month from the date of retirement, the liability of such partner shall continue until the date on which such intimation is received by the Commissioner [Section 90 of the CGST Act, 2017].



Question 1

What is the various type of offences which may be committed by a taxable person liable to penalty?

Answer:

There are 21 offences which may be committed by a taxable person and may be classified into following categories based upon their nature:

Offences having nexus with invoice

- i. Issue of invoice or bill without making supply;
- ii. Issuing invoice or document using GSTIN of another person;
- iii. Making a supply without invoice or with false/ incorrect invoice;

Offences having nexus with payment of tax

- i. Not paying any amount collected as tax for a period exceeding three months;
- ii. Not paying tax collected in contravention of the CGST/SGST Act for a period exceeding 3 months;
- iii. Non deduction or lower deduction of tax deducted at source or not depositing tax deducted at source under section 51;
- iv. Non collection or lower collection of or non- payment of tax collectible at source under section 52;
- v. Availing/utilizing input tax credit without actual receipt of goods and/or services;
- vi. Availing/distributing ITC by an Input Service Distributor in violation of Section 20;
- vii. Fraudulently obtains any refund of tax;
- viii. Suppressing turnover;

Offences having nexus with Records and related information

- i. Falsification/substitution of financial records or furnishing of fake accounts/documents or Furnishing false information/return with intent to evade payment of tax;
- ii. Failure to maintain accounts/documents in the manner specified in the Act or failure to retain accounts/documents for the period specified in the Act;
- iii. Failure to furnish information/documents required by an officer in terms of the Act/Rules or furnishing false information/documents during the course of any proceeding;
- iv. Tampering/destroying any material evidence/documents;
- v. Obstructing or preventing any official in discharge of his duty;

Offences having nexus with Registration

- i. Failure to register despite being liable to pay tax;

- ii. Furnishing false information regarding registration particulars either at the time of applying for registration or subsequently

Offences having nexus with Supply/Transport of goods

- i. Transporting goods without prescribed documents;
- ii. Supplying/transporting/storing any goods liable to confiscation;
- iii. Disposing of /tampering with goods detained/ seized/attached under the Act.

Question 2

What is the quantum of penalty for an offence mentioned under section 122(1)?

Answer:

Section 122(1) provides that any taxable person who has committed any of the 21 offences mentioned thereunder, shall be liable to a penalty which shall be higher of the following amounts:

- (a) ₹ 10,000/-; or
- (b) An amount equivalent to, any of the following (Applicable as the case may be) -
 - i. Tax evaded; or
 - ii. Tax not deducted under section 51 or short deducted or deducted but not paid to the Government; or
 - iii. Tax not collected under section 52 or short collected or collected but not paid to the Government; or
 - iv. Input tax credit availed of or passed on or distributed irregularly; or
 - v. Refund claimed fraudulently

However, Section 122(2) provides that if a registered person supplying goods or services has not paid any tax or short paid it or tax has been erroneously refunded to him, or ITC has been wrongly availed or utilized, for any reason other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, penalty shall be leviable for an amount higher of following:

- (a) ₹ 10,000/-; or
- (b) 10% of the tax due from such person

and in case of fraud, or any willful misstatement or suppression of facts to evade tax, penalty shall be equal to ten thousand rupees or the tax due from such person, whichever is higher.

Question 3

Is there any penalty prescribed for a person other than the taxable person?

Answer:

Yes, Section 122(3) provides for levy of penalty extending to ₹ 25,000/- for any person who-

- aids or abets any of the 21 offences,

- deals in any way (whether receiving, supplying, storing or transporting) with goods that are liable to confiscation,
- receives or deals with supply of services in contravention of the Act,
- fails to appear before an authority who has issued a summon,
- fails to issue any invoice for a supply or account for any invoice in his books of accounts.

Question 4

Mr. X, an unregistered person under GST purchases the goods supplied by Mr. Y who is a registered person without receiving a tax invoice from Mr. Y and thus helps in tax evasion by Mr. Y. What disciplinary action may be taken by tax authorities to curb such type of cases and on whom?

Answer:

Both Mr. X and Mr. Y will be offender and will be liable to penalty as under:

Mr. X – Penalty under section 122(3) which may extend to ₹ 25,000/-;

Mr. Y – Penalty under section 122(1), which will be higher of following, namely

- ₹ 10,000/- or (ii) 100% of tax evaded.

Question 5

Suppose, in the above case, a disciplinary action is taken against Mr. X and an adhoc penalty of ₹ 20,000/- is imposed by issue of SCN without describing contravention for which penalty is going to be imposed and without mentioning the provisions under which penalty is going to be imposed. Should Mr. X proceed to pay for penalty or challenge SCN issued by department?

Answer:

The levy of penalty is subject to a certain disciplinary regime which is based on jurisprudence, principles of natural justice and principles governing international trade and agreements. Such general discipline is enshrined in section 126 of the Act. Accordingly –

- no penalty is to be imposed without issuance of a show cause notice and proper hearing in the matter, affording an opportunity to the person proceeded against to rebut the allegations levelled against him,
- the penalty is to depend on the totality of the facts and circumstances of the case, the penalty imposed is to be commensurate with the degree and severity of breach of the provisions of the law or the rules alleged,
- the nature of the breach is to be specified clearly in the order imposing the penalty,
- the provisions of the law under which the penalty has been imposed is to be specified.

Since SCN issued to Mr. X suffers from lack of clarity about nature of breach which has taken place and about provision of law under which penalty has been imposed, SCN issued by department may be challenged.

Question 6

Answer the following questions:

- a. Radhaswamy owns and supplies certain goods costing ₹ 30,00,000 in a conveyance hired from Manikaran Transporters. Market value of said goods is ₹ 40,00,000 and tax chargeable thereon is ₹ 4,80,000.

The goods supplied by Radhaswamy and the conveyance [owned by Manikaran Transporters] used for carriage of such goods are confiscated since Radhaswamy has supplied said goods in contravention of the provisions of the CGST Act, 2017 with an intent to evade payment of tax.

However, the proper officer intends to give an option to Radhaswamy and Manikaran Transporters to pay in lieu of confiscation, a fine leviable under section 130 of the CGST, Act, 2017.

Determine the maximum amount of the fine in lieu of confiscation on:

- i. the goods liable for confiscation.
 - ii. the conveyance used for carriage of such goods.
- b. Raghuraman is a registered supplier in Madhya Pradesh. He failed to pay the GST amounting to ₹ 7,400 for the month of January, 20XX. The proper officer imposed a penalty on Raghuraman for failure to pay tax. Raghuraman believes that it is a minor breach and in accordance with the provisions of section 126 of the CGST Act, 2017, no penalty is imposable for minor breaches of tax regulations. Examine the correctness of Raghuraman's claim.

Answer:

(a (i)) In case of goods liable for confiscation, the maximum amount of fine leviable in lieu of confiscation in terms of first proviso to section 130(2) of the CGST Act, 2017 is the market value of the goods confiscated, less the tax chargeable thereon. Therefore, in the given case, maximum fine leviable:

$$= ₹ 40,00,000 - ₹ 4,80,000 = ₹ 35,20,000$$

(ii) In case where conveyance used for carriage of such goods is liable for confiscation, the maximum amount of fine leviable in lieu of confiscation in terms of third proviso to section 130(2) of the CGST Act, 2017 is equal to tax payable on the goods being transported thereon.

Therefore, in the given case, maximum fine leviable = ₹ 4,80,000

(b) No, Raghuraman's claim is not tenable in law. Section 126(1) of the CGST Act, 2017 provides that no officer shall impose any penalty under CGST Act, 2017, inter alia, for minor breaches of tax regulations or procedural requirements. Further, explanation to section 126(1) of the CGST Act, 2017 stipulates that a breach shall be considered a 'minor breach' if the amount of tax involved is less than ₹ 5,000.

In the given case, breach made by Raghuraman is not a 'minor breach' since the amount involved is not less than ₹ 5,000. So, penalty is imposable under the CGST Act, 2017.

Question 7

Answer the following questions:

- i. Shagun started supply of services in Vasai, Maharashtra from 01.01.20XX. Her turnover exceeded ₹ 20 lakh on 25.01.20XX. However, she didn't apply for registration. Determine the amount of penalty, if any, that may be imposed on Shagun on 31.03.20XX, if the tax evaded by her, as on said date, on account of failure to obtain registration is ₹ 1,26,000.
- ii. Sagar, managing director of Telecom Solutions Ltd., is issued a summon to appear before the central tax officer to produce the books of accounts of Telecom Solutions Ltd. in an inquiry conducted on said company. Determine the amount of penalty, if any, that may be imposed on Sagar, if he fails to appear before the central tax officer.

Answer:

(i) Where the aggregate turnover of a supplier making supply of services from a State/UT exceeds ₹20 lakh in a financial year, he is liable to be registered in the said State/UT. The said supplier must apply for registration within 30 days from the date on which he becomes liable to registration. However, in the given case, although Shagun became liable to registration on 25.01.20XX, she didn't apply for registration within 30 days of becoming liable to registration.

Section 122(1)(xi) of the CGST Act, 2017 stipulates that a taxable person who is liable to be registered under the CGST Act, 2017 but fails to obtain registration shall be liable to pay a penalty of:

(a) ₹10,000

or

(b) an amount equivalent to the tax evaded [₹ 1,26,000 in the given case],

whichever is higher.

Thus, the amount of penalty that can be imposed on Shagun is ₹ 1,26,000.

(ii) Section 122(3)(d) of the CGST Act, 2017 stipulates that any person who fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry is liable to a penalty which may extend to ₹ 25,000. Therefore, penalty upto ₹ 25,000 can be imposed on Sagar, in the given case.

Question 8

Whether action can be taken for transportation of goods without valid documents or if goods are attempted to be removed without proper record in books? If yes, explain the related provisions under the CGST Act, 2017.

Answer:

Yes, action can be taken for transportation of goods without valid documents or if goods are attempted to be removed without proper record in books. If any person transports any goods or stores any such goods while in transit without the documents prescribed under the Act or supplies or stores any goods that have not been recorded in the books or accounts maintained by him, then such goods shall be liable for detention along with any vehicle on which they are being transported [Section 129 of CGST Act].

Where owner comes forward: - Such goods shall be released on payment of the applicable tax and penalty equal to 100% of the tax payable on such goods or upon furnishing of security equivalent to the said amount. In case of exempted goods, penalty is 2% of value of goods or ₹25,000/- whichever is less.

Where owner does not come forward: - Such goods shall be released on payment of the applicable tax and penalty equal to 50% of value of goods reduced by the tax amount paid thereon or upon furnishing of security equivalent to the said amount. In case of exempted goods, penalty is 5% of value of goods or ₹ 25,000/- whichever is lesser.

Question 9

Examine the implications as regards the availability and quantum of punishment on prosecution, in respect of the following cases pertaining to the period December, 20XX under CGST Act, 2017;

- i. 'X' collects ₹ 245 lakh as tax from its clients and deposits ₹ 241 lakh with the Central Government. It is found that he has falsified financial records and has not maintained proper records.
- ii. 'Y' collects ₹ 550 lakh as tax from its clients but deposits only ₹ 30 lakh with the Central Government.

What will be the implications with regard to punishment on prosecution of 'X' and 'Y' for the offences? What would be the position, if 'X' and 'Y' repeat the offences?

It may be assumed that offences are proved in the Court.

Answer:

(i) As per section 132(1)(d)(iii) of the CGST Act, 2017, failure to pay any amount collected as tax beyond 3 months from due date of payment is punishable with specified imprisonment and fine provided the amount of tax evaded exceeds at least ₹ 100 lakh. Therefore, failure to deposit ₹ 4 lakh collected as tax by 'X' will not be punishable with imprisonment.

Further, falsification of financial records by 'X' is punishable with imprisonment up to 6 months or with fine or both vide section 132(1)(f)(iv) of the CGST Act, 2017 and the said offence is bailable in terms of section 132(4) of the CGST Act, 2017 assuming that falsification of records is with an intention to evade payment of tax due under the CGST Act, 2017.

(ii) Failure to pay any amount collected as tax beyond 3 months from due date is punishable with imprisonment upto 5 years and with fine, if the amount of tax evaded exceeds ₹ 500 lakh in terms of section 132(1)(d)(i) of the CGST Act, 2017.

Since the amount of tax evaded by 'Y' exceeds ₹ 500 lakh (₹ 550 lakh - ₹ 30 lakh), 'Y' is liable to imprisonment upto 5 years and with fine. It has been assumed that amount of ₹ 520 lakh collected as tax is not paid to the Government beyond 3 months from the due date of payment of tax. Further, the imprisonment shall be minimum 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment vide section 132(3) of the CGST Act, 2017. Such offence is non-bailable in terms of section 132(5) of the CGST Act, 2017.

If 'X' and 'Y' repeat the offence, they shall be punishable for second and for every subsequent offence with imprisonment upto 5 years and with fine in terms of section 132(2) of the CGST Act, 2017. Such imprisonment shall also be minimum 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment.

Question 10

From the details given below determine the maximum amount of fine in lieu of confiscation leviable under section 130 of CGST, Act, 2017 on:

- i. The goods liable for confiscation.

ii. On the conveyance used for carriage of such goods.

Details are as follows:

Cost of the goods for owner before GST	15,00,000
Market Value of Goods	20,00,000
GST on such goods	3,60,000

You are also required to explain relevant legal provisions in brief.

Answer:

(i) As per section 130(2) of the CGST Act, 2017, in case of goods liable for confiscation, the maximum amount of fine leviable in lieu of confiscation is the market value of the goods confiscated, less the tax chargeable thereon.

Therefore, the fine leviable = ₹ 20,00,000 - ₹ 3,60,000 = ₹ 16,40,000

The aggregate of fine and penalty shall not be less than the amount of penalty leviable under section 129(1).

(ii) In case of conveyance used for carriage of such goods and liable for confiscation, the maximum amount of fine leviable in lieu of confiscation is equal to tax payable on the goods being transported thereon [Third proviso to section 130(2) of the CGST Act, 2017].

Therefore, the fine leviable = ₹ 3,60,000

Question 11

From the following details, calculate the amount to be paid, for release of goods detained or seized under section 129 of the CGST Act, 2017, if owner of the goods does not come forward for payment of applicable tax and penalty

Details are as follows:

Particulars	Amount (₹)
Value of goods	30,00,000
Applicable GST on such goods	5,40,000
GST already paid on such goods	3,60,000

Would your answer be different if goods were exempted from GST and value remains the same namely ₹ 30,00,000?

Answer:

If owner of the goods does not come forward for payment of applicable tax and penalty, the amount to be paid for release of goods detained or seized under section 129 of the CGST Act, 2017, is applicable GST and penalty equal to 50% of the value of the goods reduced by the tax amount paid thereon.

Therefore, in the given case, the amount payable = [₹ 5,40,000 + 50% of ₹30,00,000] - ₹ 3,60,000 = ₹ 16,80,000

However, in case of exempted goods, amount to be paid for release of goods detained is equal to 5% of the value of goods or ₹ 25,000, whichever is less.

= 5% of ₹ 30,00,000 or ₹ 25,000, whichever is less

= ₹ 1,50,000 or ₹ 25,000, whichever is less

= ₹ 25,000

Question 12

XYZ carries goods from Vadodara, Gujarat to Pune, Maharashtra. The value of the goods is ₹80,000 which are chargeable to tax @ 18% IGST and in transit, proper officer intercepted the same under section 68 of the CGST Act, and found contravention.

Calculate the penalty payable under section 129 of CGST Act, 2017:

- If XYZ comes forward for payment of tax and penalty,
- If XYZ does not come forward for payment of tax and penalty.

Answer:

The penalty payable under section 129 of the CGST Act, 2017 is

- a. 100% of the tax payable on goods detained or seized where the owner of the goods comes forward for payment of tax and penalty;
- b. 50% of the value of the goods reduced by the tax amount paid thereon where the owner of the goods does not come forward for payment of tax and penalty.

By virtue of section 20 of the IGST Act, 2017 provisions of penalty payable under section 129 of the CGST Act, 2017 apply in case of IGST as well. However, where the penalty is leviable under the CGST Act, 2017 and the SGST/ UTGST Act, 2017, the penalty leviable under the IGST Act, 2017 shall be the sum total of the said penalties. Therefore, penalty payable under IGST Act, 2017 is double the penalty payable under section 129 of the CGST Act, 2017.

Therefore, in the given case the penalty payable will be computed as under: If XYZ¹ comes forward for payment of tax and penalty -

= ₹ 80,000 × 18% (9% CGST and 9% SGST/ UTGST) × 100%

= ₹14,400

If XYZ does not come forward for payment of tax and penalty

= [₹ 80,000 × 100% (50% under CGST plus 50% under SGST/ UTGST)] - [₹ 80,000 × 18%]²

= ₹ 80,000 - ₹14,400

= ₹ 65,600

Note: In the above answer, the penalty payable has been computed in accordance with the provisions of the IGST Act, 2017 as tax chargeable on the goods is IGST. However, the question can also be answered on the basis of the provisions of section 129 of the CGST Act, 2017.

¹ It has been assumed that XYZ is the owner of the goods.

² It has been assumed that tax has been paid on the goods

Question 13

Mangeshwar, registered under the CGST Act, 2017 has made a breach in payment of tax amounting to ₹ 6,100. Assessing Authority has imposed a penalty as per law applicable to the breach. Invoking the provisions of section 126, Mangeshwar argues that it is a minor breach and therefore, no penalty is imposable.

In another instance, Mangeshwar has omitted certain details in documentation that is not easily rectifiable. This has occurred due to the gross negligence of his accountant and he makes a plea that he was unaware of it and therefore, no penalty should be levied.

Mangeshwar voluntarily writes accepting a major procedural lapse from his side and requests the officer to condone the lapse as the loss caused to the revenue was not significant.

Also a lapse on the part of Mangeshwar has no specific penalty provision under the CGST Act, 2017. He is very confident that no penalty should be levied without a specific provision under the Act.

Discuss what action may be taken by the Assessing Authority under law for each of the above breaches.

Answer:

As per section 126(1) of the CGST Act, 2017, no penalty shall be leviable under the Act for minor breaches of tax regulations. In terms of Explanation (a) to section 126(1), a breach shall be considered as "minor breach", if tax involved is less than ₹ 5,000. Therefore, breach made by Mangeshwar is not a 'minor breach' since the amount involved is not less than ₹ 5,000. So, penalty is imposable.

Any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent/gross negligence is not liable for penalty in terms of section 126(1) of the CGST Act, 2017. However, penalty is imposable in the present case, since the omission in the documentation is not easily rectifiable and has occurred due to gross negligence.

As per section 126(5) of the CGST Act, 2017, where there is a voluntary disclosure of breach, prior to its discovery by the officer, the proper officer may consider this fact as a mitigating factor when quantifying the penalty. Since Mangeshwar has voluntarily disclosed the breach of procedural requirement to the officer, the proper officer may consider this fact as a mitigating factor when quantifying the penalty. Therefore, the quantum of penalty will depend on the facts and circumstances of the case.

As per section 125 of the CGST Act, 2017, when no specific penalty has been specified for contravention of any of the provisions of the Act or any rules made there under, it shall be liable to a penalty which may extend to ₹ 25,000. Therefore, general penalty upto ₹ 25,000 may be imposed on Mangeshwar.

Question 14

What are cognizable and non-cognizable offences under section 132 of CGST Act, 2017?

Answer:

As per section 132(5) of CGST Act, 2017, following offences are cognizable offences, provided amount of tax evaded or input tax credit wrongly availed/ utilized or refund wrongly taken > ₹ 5 crores, namely:

- a. Supply without issuance of invoice with the intention to evade tax

- b. Issuance of any invoice/bill without supply leading to wrongful availment/ utilization of ITC or refund of tax
- c. Availment of ITC using invoice/bill against which no supplies have been made
- d. Failure to pay the amount collected as tax to the Government beyond a period of 3 months from the due date of payment.

Further, section 132(4) of CGST Act, 2017 provides that all offences specified under section 132 are non-cognizable offences except the cognizable offences.

Question 15

Where an offence under the GST law is committed by a taxable person being a trust, who are deemed to be guilty of the offence and under what circumstances? When do the relevant provisions become inapplicable in respect of individuals concerned with the trust?

Answer:

Section 137 of the CGST Act, 2017 stipulates that where an offence under the GST law is committed by a taxable person being a trust, the managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Further, where it is proved that the offence committed by the trust has been committed -

- with the consent or connivance of, or
- is attributable to any negligence on the part of any other individual concerned with the trust,

he shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

The relevant provisions will become inapplicable in respect of individuals concerned with the trust, if they prove that the offence was committed without their knowledge or that they had exercised all due diligence to prevent the commission of such offence.

Question 16

Department initiated prosecution proceedings against a taxable person who had evaded GST of ₹ 4.2 crores. He has approached the Commissioner with a request for compounding the offence. After considering the request, the Commissioner has directed him to pay an amount of ₹ 2.5 crores as compounding amount. Indicate the minimum and maximum limits for compounding amount. Is the amount fixed by the Commissioner in this case within the limits prescribed under the law? What is the consequence of the decision of the commissioner allowing the request for compounding the offence?

Answer:

As per section 138 of the CGST Act, 2017, the minimum limit for compounding amount is higher of the following amounts:-

1. 50% of tax involved, or
2. ₹ 10,000, and

the upper limit for compounding amount is higher of the following amounts: -

1. 150% of tax involved or

2. ₹30,000

In the present case, the minimum limit for compounding is ₹ 2.10 crores. [₹2.10 crores (50% x ₹ 4.2 crores) or ₹ 10,000, whichever is higher].

The maximum limit for compounding in this case is ₹ 6.3 crores [₹ 6.3 crore (150% x ₹ 4.2 crores) or ₹ 30,000, whichever is higher].

Thus, the amount fixed by the Commissioner at ₹ 2.5 crores is within the limits prescribed under the law.

If the taxable person pays the compounding amount decided by the Commissioner, no further proceedings shall be initiated under GST law against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

Question 17

Inoba Bhave is engaged in supply of taxable services. He supplies some services in the month of April and collects IGST of ₹ 15,50,000 on said supply on 18th April. However, he fails to pay the tax so collected within 30 days from the due date of payment of such tax.

No Show Cause Notice (SCN) has been issued to him so far. Inoba Bhave decides to discharge his tax liability, before the SCN is issued to him. He is of the view that no penalty is leviable if the payment of tax is made before issue of SCN.

Therefore, he self-assesses his tax liability at ₹ 15,50,000 and pays the same on 26th June. Determine the interest and penalty, if any, payable by Inoba Bhave.

Answer:-

Due date for payment of tax collected on 18th April is 20th May. However, since tax is actually paid on 26th June, interest @ 18% p.a. is payable for the period for which the tax remains unpaid [37 days] in terms of section 50 of CGST Act, 2017 read with Notification No. 13/2017 CT dated 28.06.2017. Amount of interest is:

$$= ₹ 15,50,000 \times 18\% \times 37/365 = ₹ 28,282 \text{ (rounded off)}$$

As per section 73(11) of the CGST Act, 2017, where self-assessed tax/any amount collected as tax is not paid within 30 days from due date of payment of tax, then, inter alia, option to pay such tax before issuance of SCN to avoid penalty, is not available.

Consequently, penalty equivalent to (i) 10% of tax, viz., ₹ 1,55,500 or (ii) ₹ 10,000,

whichever is higher,

is payable in terms of section 73(9) of the CGST Act, 2017. Therefore, penalty of ₹ 1,55,500 will have to be paid by Inoba Bhave.

Question 18

Examine whether the offences committed in each of the following independent cases are bailable. Further, determine the quantum of punishment on prosecution under the CGST Act, 2017, in each of these cases:

'Homi Gabha' collects ₹ 240 lakh as tax from its clients and deposits ₹ 150 lakh with the Central Government. Balance amount of tax is not paid to the Central Government. It is found that he has falsified financial records and has not maintained proper records, to evade the tax.

(i) 'Datukeshwar Dutt' collects ₹ 630 lakh as tax from its clients, but deposits only ₹ 120 lakh with the Central Government. Balance amount of tax is not paid to the Central Government.

What would be the implications in above cases if 'Homi Gabha' and 'Datukeshwar Dutt' repeat the offences?

Note - It may be assumed that offences are proved in the court.

Answer

(i) As per section 132(1)(d)(iii) of the CGST Act, 2017, failure to pay any amount collected as tax beyond 3 months from due date of payment is punishable with specified imprisonment and fine provided the amount of tax evaded exceeds at least ₹ 100 lakh. Therefore, failure to deposit ₹ 90 lakh (₹ 240 lakh - ₹ 150 lakh) collected as tax by 'Homi Gabha' will not be punishable with imprisonment.

However, falsification of financial records by 'Homi Gabha' is punishable with imprisonment up to 6 months or with fine or both vide section 132(1)(f)(iv) of the CGST Act, 2017 and the said offence is bailable in terms of section 132(4) of the CGST Act, 2017.

(ii) Failure to pay any amount collected as tax beyond 3 months from due date is punishable with imprisonment upto 5 years and with fine, if the amount of tax evaded exceeds ₹ 500 lakh in terms of section 132(1)(d)(i) of the CGST Act, 2017.

Since the amount of tax evaded by 'Datukeshwar Dutt' exceeds ₹ 500 lakh (₹ 630 lakh - ₹ 120 lakh = ₹ 510 lakh), 'Datukeshwar Dutt' is liable to imprisonment upto 5 years and with fine. Further, the imprisonment shall be minimum 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment [Section 132(3) of the CGST Act, 2017]. Such offence is non-bailable in terms of section 132(5) of the CGST Act, 2017.

If 'Homi Gabha' and 'Datukeshwar Dutt' repeat the offence, they shall be punishable for second and for every subsequent offence with imprisonment upto 5 years and with fine in terms of section 132(2) of the CGST Act, 2017. Such imprisonment shall also be for minimum 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment



Question 1

Does CGST law provide for any appeal to a person aggrieved by any order or decision passed against him by an adjudicating authority under the CGST Act? Explain the related provisions under the CGST Act.

Answer:

Yes. Any person aggrieved by any order or decision passed by an adjudicating authority under the CGST Act has the right to appeal to the Appellate Authority under section 107. The appeal should be filed within 3 months from the date of communication of such order or decision. However, the Appellate Authority has the power to condone the delay of up to 1 month in filing the appeal if there is sufficient cause for the delay. The appeal can be filed only when the admitted liability and 10% of the disputed tax amount is paid as pre-deposit by the appellant.

However, no appeal can be filed against the following orders in terms of section 121:-

- a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer;
- b) an order pertaining to the seizure or retention of books of account, register and other documents; or
- c) an order sanctioning prosecution under the Act; or
- d) an order passed under section 80 (payment of tax in installments).

Question 2

Describe the provisions relating to Departmental appeal to Appellate Authority under section 107 of the CGST Act.

Answer:

Section 107(2) provides that Department can file a "review application/appeal" with the Appellate Authority.

The Commissioner may, on his own motion, or upon request from the SGST/UTGST Commissioner, examine the record of any proceedings in which an adjudicating authority has passed any decision/order to satisfy himself as to the legality or propriety of the said decision/order. The Commissioner may, by order, direct any officer subordinate to him to apply to the Appellate Authority within 6 months from the date of communication of the said decision/order for the determination of such points arising out of the said decision/order as may be specified him.

The AA can condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay [Section 107(4)].

Such application shall be dealt with by the AA as if it were an appeal made against the decision/order of the adjudicating authority [Section 107(3)]. There is no requirement of making a pre-deposit in case of departmental appeal.

Question 3

With reference to sections 107(6) and 112(8) of the CGST Act, specify the amount of mandatory pre-deposit which should be made along with every appeal before the Appellate Authority and the Appellate Tribunal. Does making the pre-deposit have any impact on recovery proceedings?

Answer:

Section 107(6) provides that no appeal shall be filed before the Appellate Authority, unless the appellant has paid –

- a) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
- b) a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order, subject to a maximum of 25 crore rupees.

Section 112(8) lays down that no appeal can be filed before the Tribunal, unless the appellant deposits

- a) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
- b) 20% of the remaining amount of tax in dispute, in addition to the amount deposited before the AA, arising from the said order, subject to a maximum of 50 crore rupees, in relation to which appeal has been filed.

Where the appellant has made the pre-deposit, the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

Question 4

With reference to section 108, elaborate whether a CGST/SGST authority can revise an order passed by his subordinates.

Answer:

Section 2(99) defines “Revisional Authority” as an authority appointed or authorized under the CGST Act for revision of decision or orders referred to in section 108.

The following officers have been authorised as the Revisional Authority under section 108 of the CGST Act:

- (a) Principal Commissioner or Commissioner for decisions or orders passed by the Additional or Joint Commissioner; and
- (b) Additional or Joint Commissioner for decisions or orders passed by the Deputy Commissioner or Assistant Commissioner or Superintendent.

Section 108 of the Act authorizes such “revisional authority” to call for and examine any order passed by his subordinates and in case he considers the order of the lower authority to be erroneous in so far as it is prejudicial to revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, can revise the order after giving opportunity of being heard to the person concerned. The “revisional authority” can also stay the operation of any order passed by his subordinates pending such revision.

The “revisional authority” shall not revise any order if-

- a) the order has been subject to an appeal under section 107 or under section 112 or under section 117 or under section 118; or
- b) the period specified under section 107(2) has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised.
- c) the order has already been taken up for revision under this section at any earlier stage.
- d) the order is a revisional order

Question 5

The Appellate Tribunal has the discretion to refuse to admit any appeal. Examine the correctness of the above statement.

Answer:

The statement is partially correct.

Though the Appellate Tribunal does have the power to refuse to admit an appeal, it cannot refuse to admit ANY appeal. It can refuse to admit an appeal where –

- the tax or input tax credit involved or
- the difference in tax or the difference in input tax credit involved or
- the amount of fine, fees or penalty determined by such order, does not exceed ₹ 50,000.

Question 6

In an order dated 20.08.20XX issued to GH (P) Ltd., the Joint Commissioner of CGST has confirmed a CGST demand of ₹ 280 crore. The company is disputing the entire demand of CGST and wants to know how much pre-deposit it has to make under the CGST Act, 2017 for filing an appeal before the Appellate Authority against the order of the Joint Commissioner.

Assuming that the Appellate Authority also confirms the order of the Joint Commissioner and the company wants to file an appeal before the Appellate Tribunal against the order of the Appellate Authority, how much pre-deposit it has to make under the CGST Act, 2017 for filing the said appeal?

Answer:

Section 107(6) of the CGST Act, 2017 provides that no appeal shall be filed with the Appellate Authority unless the applicant has paid in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him and a sum equal to 10% of the remaining amount of tax in dispute arising from the said order subject to a maximum of ₹ 25 crore. Thus, the amount of pre-deposit for filing an appeal with Appellate Authority cannot exceed ₹ 25 crore.

In the given case, the amount of pre-deposit for filing an appeal with the Appellate Authority against the order of Joint Commissioner, where entire amount of tax is in dispute, is:

- i. ₹ 28 crore [10% of the amount of tax in dispute, viz. ₹ 280 crore] or
- ii. ₹ 25 crore, whichever is less.

= ₹ 25 crores.

Further, section 112(8) of the CGST Act, 2017 provides that no appeal shall be filed with the Appellate Tribunal unless the applicant has paid in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him and a sum equal to 20% of the remaining amount of tax in dispute, in addition to the amount paid as pre-deposit while filing appeal to the Appellate Authority, arising from the said order subject to a maximum of ₹ 50 crores.

Thus, in the given case, the amount of pre-deposit for filing an appeal with the Appellate Tribunal against the order of the Appellate Authority, where entire amount of tax is in dispute, is:

- i. ₹ 56 crores [20% of the amount of tax in dispute, viz. 280 crores] or
- ii. ₹ 50 crores, whichever is less.

= ₹ 50 crores.

Question 7

With reference to the provisions of section 121 of the CGST Act, 2017, specify the orders against which no appeals can be filed.

Answer:

As per section 121 of the CGST Act, 2017, no appeal shall lie against any decision taken or order passed by a CGST officer if such decision taken or order passed relates to any one or more of the following matters, namely:—

- a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or
- b) an order pertaining to the seizure or retention of books of account, register and other documents; or
- c) an order sanctioning prosecution under the CGST Act, 2017; or
- d) an order passed under section 80 of the CGST Act, 2017 (payment of tax in installments).

Question 8

With reference to section 108 of the CGST Act, 2017, elaborate whether a CGST/SGST authority can revise an order passed by his subordinates.

Answer:

Section 2(99) of the CGST Act, 2017 defines “Revisional Authority” as an authority appointed or authorized under the CGST Act for revision of decision or orders as referred to in section 108 of the CGST Act, 2017.

The following officers have been authorised as the Revisional Authority under section 108 of the CGST Act:

- (a) Principal Commissioner or Commissioner for decisions or orders passed by the Additional or Joint Commissioner; and
- (b) Additional or Joint Commissioner for decisions or orders passed by the Deputy Commissioner or Assistant Commissioner or Superintendent.

Section 108 of the CGST Act, 2017 authorizes such “Revisional Authority” to call for and examine any order passed by his subordinates and in case he considers the order of the lower authority to be erroneous in so far as it is prejudicial to revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, can revise the order after giving opportunity of being heard to the notice. The “revisional authority” can also stay the operation of any order passed by his subordinates pending such revision.

The “revisional authority” shall not revise any order if-

- a) the order has been subject to an appeal under section 107 or under section 112 or under section 117 or under section 118; or
- b) the period specified under section 107(2) has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised.
- c) the order has already been taken up for revision under this section at any earlier stage.
- d) the order is a revisional order.

Question 9

Mr. A had filed an appeal before the Appellate Tribunal against an order of the Appellate Authority where the issue involved relates to place of supply. The order of Appellate Tribunal is also in favour of the Department. Mr. A now wants to file an appeal against the decision of the Appellate Authority as he feels the stand taken by him is correct.

You are required to advise him suitably with regard to filing of an appeal before the appellate forum higher than the Appellate Tribunal.

Answer:

As per section 117(1) of the CGST Act, 2017, an appeal against orders passed by the State Bench or Area Benches of the Tribunal lies to the High Court if the High Court is satisfied that such an appeal involves a substantial question of law.

However, appeal against orders passed by the National Bench or Regional Benches of the Tribunal lies to the Supreme Court and not High Court. As per section 109(5) of the Act, only the National Bench or Regional Benches of the Tribunal can decide appeals where one of the issues involved relates to the place of supply.

Since the issue involved in Mr. A’s case relates to place of supply, the appeal in his case would have been decided by the National Bench or Regional Bench of the Tribunal. Thus, Mr. A will have to file an appeal with the Supreme Court and not with the High Court.

Question 10

Pursuant to audit conducted by the tax authorities under section 65 of the CGST Act, 2017, a show cause notice was issued to Home Furnishers, Surat, a registered supplier, alleging that it had wrongly availed the input tax credit without actual receipt of goods for the month of July, 20XX. In the absence of a satisfactory reply from Home Furnishers, Joint Commissioner of Central Tax passed an adjudication order dated 20.08.20XX (received by Home Furnishers on 22.08.20XX)

confirming a tax demand of ₹ 50,00,000 and imposing a penalty of equal amount under section 122 of the CGST Act, 2017.

Home Furnishers does not agree with the order passed by the Joint Commissioner. It decides to file an appeal with the Appellate Authority against the said adjudication order. It has approached you for seeking advice on the following issues in this regard:

- 1) Can Home Furnishers file an appeal to Appellate Authority against the adjudication order passed by the Joint Commissioner of Central Tax? If yes, till what date can the appeal be filed?
- 2) Does Home Furnishers need to approach both the Central and State Appellate Authorities for exercising its right of appeal?
- 3) Home Furnishers is of the view that there is no requirement of paying pre-deposit of any kind before filing an appeal with the Appellate Authority. Give your opinion on the issue.

Answer:

- 1) An appeal against a decision/order passed by any adjudicating authority under the CGST Act or SGST Act/ UTGST Act is appealable before the Appellate Authority [Section 107(1) of the CGST Act]. Thus, Home Furnishers can file an appeal to Appellate Authority against the adjudication order passed by the Joint Commissioner of Central Tax.

Further, such appeal can be filed within 3 months from the date of communication of such decision/order [Section 107(1) of the CGST Act]. Thus, Home Furnishers can file the appeal to Appellate Authority on or before 22.11.20XX. Further, the Appellate Authority can also condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay [Section 107(4)].

- 2) GST law makes provisions for cross empowerment between CGST and SGST/ UTGST officers so as to ensure that if a proper officer of one Act (say CGST) passes an order with respect to a transaction, he will also act as the proper officer of SGST for the same transaction and issue the order with respect to the CGST as well as the SGST/ UTGST component of the same transaction.

The law further provides that where a proper officer under one Act (say CGST) has passed an order, any appeal/ review/ revision/ rectification against the said order will lie only with the proper officers of that Act only (CGST Act). Similarly, if any order is passed by the proper officer of SGST, any appeal/ review/ revision/ rectification will lie with the proper officer of SGST only. Thus, Home Furnishers is required to file an appeal only with the Central Tax Appellate Authority [Section 6 of CGST Act].

- 3) Home Furnishers' view is not correct in law. Section 107(6) of the CGST Act provides that no appeal shall be filed before the Appellate Authority, unless the appellant has paid –
 - a. full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
 - b. a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order subject to a maximum of twenty-five crore rupees.

Since in the given case, Home Furnishers disagrees with the entire tax demanded, it has to make a pre-deposit of 10% of the amount of tax in dispute arising from the impugned order, i.e., 10% of ₹50,00,000 which is ₹5,00,000.

Question 11



With reference to the provisions of section 120 of the CGST Act, 2017, list the cases in which appeal is not to be filed.

Answer:

- 1) The Board may, on the recommendations of the GST Council, issue orders or instructions or directions fixing monetary limits for regulating filing of appeal or application by the CGST officer.
- 2) Non-filing of appeal/application by a CGST officer on account of such monetary limits fixed by the Board shall not preclude such officer from filing appeal or application in any other case involving the same or similar issues or questions of law.
- 3) No person, who is a party in application or appeal can contend that the CGST Officer has acquiesced in the decision on the disputed issue by not filing an appeal or application (on account of monetary limits).
- 4) The Appellate Tribunal or Court hearing such appeal or application shall have regard to circumstances for non-filing of appeal or application by the CGST officer on account of monetary limits fixed by the Board.

Question 12

XY Company received an adjudication order passed by the Assistant Commissioner of Central Tax on 01-11-20XX under section 73 of the CGST Act, 2017 wherein it was decided as follows:

Particulars

CGST and SGST due (Total) ₹ 6,00,000

Interest @ 18% p.a. for number of delayed days

Penalty ₹60,000

The assessee filed an appeal before the Appellate Authority on 26-11-20XX.

Case I

How much the company has to pay as pre-deposit of duty under section 107(6) of the CGST Act, 2017?

Case II

Whether your answer would be different if the assessee appeals only against part of the demanded amount say ₹ 4,00,000 and admits the balance liability of tax amounting to ₹ 2,00,000 arising from the said order.

Answer:

Section 107(6) of the CGST Act, 2017 provides that no appeal shall be filed before Appellate Authority, unless the appellant pays:-

- a) in full, tax, interest, fine, fee and penalty arising from impugned order, as is admitted by him; and
- b) 10% of remaining tax in dispute arising from the impugned order subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed.

Thus, in Case-I, XY Company has to make a pre-deposit of 10% of ₹ 6,00,000, which is ₹ 60,000 assuming that XY Company disagrees with the entire tax demanded.

However, in Case-II, since XY Company admits the tax liability of ₹ 2,00,000 and disputes the tax demanded of only ₹4,00,000, it has to make a pre- deposit of:

- (i) ₹2,00,000 + ₹20,000 [proportionate penalty on tax admitted] + interest @ 18% p.a. payable on the tax admitted for the period of delay, and
- (ii) 10% of ₹4,00,000 which is ₹40,000.

Question 13

Rule 112 of the CGST Rules lays down that the appellant shall not be allowed to produce before the Appellate authority (AA) or the Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the AA.

What are the exceptional circumstances specified in the rule where the production of additional evidence will be allowed? Can AA or the Tribunal direct production of any document or examination of any witness?

Answer:

Exceptional circumstances specified in rule 112 of the CGST Rules, 2017 where the production of additional evidence will be allowed are as follows:

- a) where the adjudicating authority/ appellate authority (AA) has refused to admit evidence which ought to have been admitted.
- b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority/ AA.
- c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority/ AA any evidence which is relevant to any ground of appeal; or
- d) where adjudicating authority/ AA has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

Yes, the AA or the Tribunal can direct the production of any document or examination of any witness to enable it to dispose of the appeal.

Question 14

Enumerate any four orders against which appeal cannot be filed under the CGST Act 2017.

Answer:

As per section 121 of the CGST Act, 2017, no appeal shall lie against any decision taken or order passed by a CGST officer if such decision taken or order passed relates to any one or more of the following matters, namely:

- (i) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or
- (ii) an order pertaining to the seizure or retention of books of account, register and other documents; or

(iii) an order sanctioning prosecution under CGST Act; or

(iv) an order passed under section 80 of the CGST Act (payment of tax in installments).

Question 15

Explain briefly the provisions regarding mandatory pre-deposit to be made before filing an appeal before Appellate Authority and Tribunal as per CGST Act, 2017.

Answer:

As per section 107(6) of the CGST Act, 2017, no appeal shall be filed before Appellate Authority, unless the appellant pays:-

- a) in full tax, interest, fine, fee and penalty arising from impugned order, as is admitted by him; and
- b) 10% of remaining tax in dispute arising from the impugned order subject to a maximum of twenty five crore rupees.

Section 112(8) of the CGST Act, 2017 provides that no appeal shall be filed before Tribunal, unless the appellant pays:-

- a) in full, tax, interest, fine, fee and penalty arising from impugned order, as is admitted by him, and
- b) 20% of the remaining tax in dispute [in addition to amount deposited before Appellate Authority] arising from the order appealed against subject to a maximum of fifty crore rupees.¹

On making the pre-deposit as above, the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.



¹ Amended as per CGST (Amendment) Act 2018, w.e.f. 1st day of Feb, 2019 vide NN-2/ 2019-CT, dated. 29th Jan, 2019.

Question 1

Which are the matters enumerated in Section 97 for which advance ruling can be sought?

Answer:

The definition of Advance ruling given under the Act is a broad one. Under GST, Advance ruling can be obtained on a proposed transaction as well as a transaction already undertaken by the appellant.

Advance Ruling can be sought for the following questions:-

- (a) classification of any goods or services or both
- (b) applicability of a notification issued under the provisions of CGST Act
- (c) determination of time and value of supply of goods or services or both
- (d) admissibility of input tax credit of tax paid or deemed to have been paid
- (e) determination of the liability to pay tax on any goods or services or both
- (f) whether applicant is required to be registered
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

Note: Matters which cannot be questioned before AAR are:-

- ❖ Question already pending in any proceedings in the case of applicant
- ❖ Question already decided in any proceedings in the case of an applicant

Question 2

What is the objective of having a mechanism of Advance Ruling?

Answer:

The broad objectives for setting up a mechanism of Advance Ruling are:

- provide certainty in tax liability in advance in relation to an activity proposed to be undertaken by the applicant;
- attract Foreign Direct Investment (FDI) by ensuring certainty in taxation aspects of transactions
- reduce litigation
- pronounce ruling expeditiously in a transparent and inexpensive manner

Question 3

To whom will the Advance Ruling be applicable?

Answer:

An advance ruling pronounced by AAR or AAAR shall be binding only on the applicant and on the concerned officer or the jurisdictional officer in respect of the applicant. This clearly means that an

advance ruling is not applicable to similarly placed other taxable persons in the State. It is only limited to the person who has applied for an advance ruling.

Question 4

What is the time period for applicability of Advance Ruling?

Answer:

The law does not provide for a fixed time period for which the ruling shall apply. Instead, it has been provided that advance ruling shall be binding till the period when the law, facts or circumstances supporting the original advance ruling have not changed.

Question 5

Can an advance ruling given be nullified?

Answer:

- Section 104 states the circumstances under which the ruling would be considered as void and hence would lose its binding value.
- If the Authorities (AAR and Appellate Authority) find that the advance ruling pronounced has been obtained by the applicant/appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio.

Question 6

Ranjan intends to start selling certain goods in Delhi. However, he is not able to determine (i) the classification of the goods proposed to be supplied by him [as the classification of said goods has been contentious] and (ii) the place of supply if he supplies said goods from Delhi to buyers in U.S.

Ranjan's tax advisor has advised him to apply for the advance ruling in respect of these issues. He told Ranjan that the advance ruling would bring him certainty and transparency in respect of the said issues and would avoid litigation later. Ranjan agreed with his view, but has some apprehensions.

In view of the information given above, you are required to advise Ranjan with respect to following:

1. The tax advisor asks Ranjan to get registered under GST law before applying for the advance ruling as only a registered person can apply for the same. Whether Ranjan needs to get registered?
2. Can Ranjan seek advance ruling to determine (a) the classification of the goods proposed to be supplied by him and (b) the place of supply, if he supplies said goods from Delhi to buyers in U.S?
3. Ranjan is apprehensive that if at all advance ruling is permitted to be sought, he has to seek it every year. Whether Ranjan's apprehension is correct?
4. Sambhav - Ranjan's friend - is a supplier registered in Delhi. He is engaged in supply of the goods, which Ranjan proposes to supply at the same commercial level that Ranjan proposes to adopt.

He intends to apply the classification of the goods as decided in the advance ruling order to be obtained by Ranjan, to the goods supplied by him in Delhi. Whether Sambhav can do so?

Answer:

- i. Advance ruling under GST can be sought by a registered person or a person desirous of obtaining registration under GST law [Section 95(c) of the CGST Act, 2017]. Therefore, it is not mandatory for a person seeking advance ruling to be registered.
- ii. Section 97(2) of the CGST Act, 2017 stipulates the questions/matters on which advance ruling can be sought. It provides that advance ruling can be sought for, inter alia, determining the classification of any goods or services or both. Therefore, Ranjan can seek the advance ruling for determining the classification of the goods proposed to be supplied by him.

Determination of place of supply is not one of the specified questions/matters on which advance ruling can be sought under section 97(2). Further, section 96 of the CGST Act, 2017 provides that AAR constituted under the provisions of an SGST Act/UTGST Act shall be deemed to be the AAR in respect of that State/Union territory under CGST Act also.

Thus, AAR is constituted under the respective State/Union Territory Act and not the central Act. This implies that ruling given by AAR will be applicable only within the jurisdiction of the concerned State/Union territory.

It is also for this reason that the questions on determination of place of supply cannot be raised with the AAR. Hence, Ranjan cannot seek the advance ruling for determining the place of supply of the goods proposed to be supplied by him.

Note: The above answer is based on the view taken by the CBIC in its e-flier issued on the subject of advance ruling. The e-flier is available on the CBIC's website. However, it can be also be argued that the question relating to determination of the liability to pay tax on goods and/or services as provided under section 96(2)(e) of the CGST Act, 2017 encompasses within its ambit the question relating to place of supply. This is so because place of supply is one of the factor to determine as to whether the supply is leviable to CGST & SGST or IGST.

- iii. Section 103(2) of the CGST Act, 2017 stipulates that the advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed. Therefore, once Ranjan has sought the advance ruling with respect to an eligible matter/question, it will be binding till the time the law, facts and circumstances supporting the original advance ruling remain same.
- iv. No, the tax advisor's view is not correct. As per section 100 of the CGST Act, 2017, if the applicant is aggrieved with the finding of the AAR, he can file an appeal with Appellate Authority for Advance Ruling (AAAR). Similarly, if the concerned/ jurisdictional officer of CGST/SGST does not agree with the findings of AAR, he can also file an appeal with AAAR.

Such appeal must be filed within 30 days from the date on which the ruling sought to be appealed against is communicated. The Appellate Authority may allow additional 30 days for filing the appeal, if it is satisfied that there was a sufficient cause for delay in presenting the appeal.

- v. Section 103 of the CGST Act provides that an advance ruling pronounced by AAR is binding only on the applicant who had sought it and on the concerned officer or the jurisdictional officer in respect of the applicant. This implies that an advance ruling is not applicable to similarly placed other taxable persons in the State. It is only limited to the person who has applied for an advance ruling.

Thus, Sambhav will not be able to apply the classification of the goods that will be decided in the advance ruling order to be obtained by Ranjan, to the goods supplied by him in Delhi.

Question 7

Briefly explain the procedure to be followed by the Authority for Advance Ruling on receipt of the application for Advance Ruling under section 98 of CGST Act, 2017.

Answer:

The procedure to be followed by the Authority for Advance Ruling (AAR) on receipt of the application for advance ruling under section 98 of the CGST Act, 2017 is as under:-

1. Upon receipt of an application, the AAR shall send a copy of application to the officer in whose jurisdiction the applicant falls and call for all relevant records.
2. The AAR may then examine the application along with the records and may also hear the applicant. Thereafter he will pass an order either admitting or rejecting the application.
3. Application for advance ruling will not be admitted in cases where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.
4. If the application is rejected, it should be by way of a speaking order giving the reasons for rejection and only after giving an opportunity of being heard to the applicant.
5. If the application is admitted, the AAR shall pronounce its ruling on the question specified in the application. Before giving its ruling, it shall examine the application and any further material furnished by the applicant or by the concerned departmental officer. Before giving the ruling, AAR must hear the applicant or his authorized representative as well as the jurisdictional officers of CGST/ SGST.
6. Before giving the ruling, AAR must hear the applicant or his authorized representative as well as the jurisdictional officers of CGST/ SGST.
7. If there is a difference of opinion between the two members of AAR, they shall refer the point or points on which they differ to the Appellate Authority for hearing the issue
8. The Authority shall pronounce its advance ruling in writing within 90 days from the date of receipt of application.
9. A copy of the advance ruling duly signed by members and certified in prescribed manner shall be sent to the applicant, the concerned officer and the jurisdictional officer.

Question 8

Briefly explain whether an appeal could be filed before the Appellate Authority against order of Authority for Advance Ruling (AAR), with reference to sections 100 and 101 of the CGST Act, 2017.

Answer:

Yes, the concerned officer, jurisdictional officer or applicant aggrieved by any advance ruling may appeal to the Appellate Authority for Advance Ruling (AAAR) within 30 days [extendible by another 30 days] from the date on which such ruling is communicated to him in the prescribed form and manner.

The AAAR must pass an order confirming or modifying the ruling appealed against within a period of 90 days of the filing of an appeal, after hearing the parties to the appeal.

If members of AAAR differ on any point referred to in appeal, it shall be deemed that no advance ruling can be issued in respect of the question under appeal. A copy of the advance ruling pronounced by the AAAR is sent to applicant, concerned officer, jurisdictional officer and to the Authority.

Question 9

Discuss briefly provisions of CGST Act, 2017 regarding questions for which advance ruling can be sought.

Answer:

As per section 97(2) of CGST Act, 2017, advance ruling can be sought for the following questions:-

- a. classification of any goods or services or both
- b. applicability of a notification issued under the CGST Act
- c. determination of time and value of supply of goods or services or both
- d. admissibility of input tax credit of tax paid or deemed to have been paid
- e. determination of the liability to pay tax on any goods or services or both
- f. whether applicant is required to be registered
- g. whether any particular activity with respect to any goods and/or services, amounts to/results in a supply of goods and/or services, within the meaning of that term.



Question 1

How shall the GST compliance rating score be determined?

Answer:

As per section 149(2), the GST compliance rating score shall be determined on a scale of ten on the basis of prescribed parameters.

Question 2

When shall the power to collect statistics be exercised under GST laws?

Answer:

As per section 151, if the Commissioner considers that collection of statistics is necessary for the purpose of better administration of the Act, he may direct that statistics be collected.

Question 3

When shall the particulars relating to any proceedings or prosecution be published under GST laws?

Answer:

When the Commissioner/authorized officer is of opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings or prosecution under the CGST Act in respect of such person, it may cause to be published such name and particulars [Section 159(1)] No publication under this section shall be made in relation to any penalty imposed under the CGST Act until the time for presenting an appeal to the Appellate Authority under section 107 has expired without an appeal having been presented or the appeal, if presented, has been disposed of [Section 159(2)].

Question 4

Explain the provisions relating to rectification of errors apparent on the face of record under section 161 of the CGST Act, 2017?

Answer:

Section 161 lays down that any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any GST officer or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be.

However, no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document. Further, the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission.

Principles of natural justice should be followed by the authority carrying out such rectification, if it adversely affects any person.

Question 5

What is Anti-profiteering measure?

Answer:

As per section 171 of the CGST Act, any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices. National Anti- profiteering Authority may examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

Question 6

Elaborate the duties of Anti-profiteering Authority.

Answer:

The duties of the Anti-profiteering Authority are:

(i) to determine whether the reduction in tax rate or the benefit of input tax credit has been passed on by the seller to the buyer (hereinafter collectively referred to as 'benefit') by reducing the prices

(ii) to identify the taxpayer who has not passed on the benefit

(iii) to order

a. reduction in prices

b. return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of 18% from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be.

If the eligible person does not claim return of the amount or is not identifiable, the amount must be deposited in the Consumer Welfare Fund;

c. imposition of penalty

d. cancellation of registration

(iv) to furnish a performance report to the GST Council by the 10th of the month succeeding each quarter [Rule 127 of the CGST Rules, 2017]

Question 7

Explain the provisions relating to rectification of errors apparent on the face of record under section 161 of the CGST Act, 2017?

Answer:

Section 161 lays down that any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any GST officer or by the affected person within a

period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be.

However, no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document. Further, the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission.

Principles of natural justice should be followed by the authority carrying out such rectification, if it adversely affects any person.

Question 8

State the various modes of service of a notice, decision, order, summons, or any other communication under the CGST Act, on the taxable person or any other person to whom it is intended.

Answer

Section 169(1) provides that any decision, order, summons, notice or other communication under the CGST Act and the rules made thereunder can be served by any one of the following methods:

- (a) Giving/tendering directly including by a courier to the addressee or authorised representative or to any adult member of family residing with the taxable person; or
- (b) By Registered post/speed post/courier with acknowledgement due at the last known place of business or residence; or
- (c) By Email to the e-mail address provided at the time of registration or as amended from time to time; or
- (d) By making the same available at common portal; or
- (e) Publication in newspaper circulating in the locality in which the addressee is last known to have resided, carried on business or personally worked for gain; or
- (f) If none of the above modes is practicable then by Affixing at last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority concerned.

Question 9

Section 158(1) lays down that the information obtained by a public servant from the record of any proceeding under the CGST Act is confidential and cannot be disclosed.

Is there any exception to this rule? Discuss in brief.

Answer

Yes, the confidential information can be disclosed by the public servant for certain specific purposes in terms of section 158(3). Such specific purposes are given in brief hereunder:

- (i) For prosecution
- (ii) For carrying out the objects of the CGST Act
- (iii) For service of notice or recovery of demand

- (iv) For furnishing information to Court in a proceeding where Government is a party
- (v) For audit of tax receipts or refunds
- (vi) For inquiry into the conduct of a GST officer
- (vii) For enabling levy, realisation of any tax or duty
- (viii) In lawful exercise of powers
- (ix) For enquiry into a charge of misconduct by any professional
- (x) For data entry on automated system
- (xi) For fulfilling the requirement under any other law and in public interest.

Question 10

Explain the scope of circulars and instructions issued by the Board

Answer

Section 168 empowers the Board (CBIC) to issue orders, instructions or directions to the CGST officers for the purpose of uniformity in the implementation of the CGST Act. All officers and all other persons employed in the implementation of the Act observe and follow such orders, instructions or directions.

The binding nature of such orders, instructions and directions has been a matter of debate and scrutiny. The general understanding that prevails now is that a circular is binding on the officers, but not on the assessee. However, in case such circular states something contrary to the law, the law shall prevail over the circular

Question 11

The time limits provided under the CGST Act cannot be extended.'

Do you agree with the statement? Give your views with reference to section 168A

Answer

The statement is not correct.

The Government has power to extend the time limits provided under the CGST Act. However, such powers are not unbridled powers. Section 168A empowers the Government to extend the time limits only when the actions cannot be completed or complied with due to *force majeure*. Here, force majeure means war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the implementations of provisions of the CGST Act. This power can also be exercised retrospectively



Question 1

Allfit Laboratories Ltd. is a registered supplier of bulk drugs in Delhi paying tax under regular scheme. It manufactures bulk drugs and supplies the same in the domestic and overseas market. The bulk drugs are supplied within Delhi and in the overseas market directly from the company's warehouse located in South Delhi. For supplies in other States of India, the company has appointed consignment agents in each such State. However, supplies in Gurgaon (Haryana) and Noida (U.P.) are affected directly from South Delhi warehouse. The drugs are supplied to the consignment agents from the South Delhi warehouse.

Allfit Laboratories Ltd. also provides drug development services to drug manufacturers located in India, including testing of their new drugs in its laboratory located in Delhi.

The company has furnished the following information for the month of January, 20XX:

Particulars	₹
Advance received towards drug development services to be provided to Orochem Ltd., a drug manufacturer, located in Delhi [Drug development services have been provided in February, 20XX and invoice is issued on 28.02.20XX]	5,00,000
Advance received for bulk drugs to be supplied to Novick Pharmaceuticals, a wholesale dealer of drugs in Gurgaon, Haryana [Invoice for the goods is issued at the time of delivery of the drugs in March, 20XX]	6,00,000
Supply of bulk drugs to wholesale dealers of drugs in Delhi	60,00,000
Bulk drugs supplied to Anchor Pharmaceuticals Inc., USA under LUT [Consideration received in convertible foreign exchange]	90,00,000
Drug development services provided to Unipharma Ltd., a drug manufacturer, located in Delhi	6,00,000

You are required to determine the GST liability [CGST & SGST or IGST, as the case may be] of Allfit Laboratories Ltd. for the month of January, 20XX with the help of the following additional information furnished by it for the said period:

1. Consignments of bulk drugs were sent to Cardinal Pharma Pvt. Ltd. and Rochester Medicos - agents of Allfit Laboratories Ltd. in Punjab and Haryana respectively. Cardinal Pharma Pvt. Ltd. and Rochester Medicos supplied these drugs under their invoices to the Medical Stores located in their respective States for ₹ 60,00,000 and ₹ 50,00,000 respectively.
2. Bulk drugs have been supplied to Ronn Medicos - a wholesale dealer of bulk drugs in Gurgaon, Haryana for consideration of ₹ 15,00,000. Allfit Laboratories Ltd. owns 72% shares of Ronn Medicos Pvt. Ltd. Open market value of the bulk drugs supplied to Ronn Medicos Pvt. Ltd. is ₹ 30,00,000. Further, Ronn Medicos Pvt. Ltd. is not eligible for full input tax credit.

Note:

- (i) All the given amounts are exclusive of GST, wherever applicable.
- (ii) Assume the rates of GST to be as under:

Goods/services supplied	CGST	SGST	IGST
Bulk drugs	2.5%	2.5%	5%
Drug development services	9%	9%	18%

You are required to make suitable assumptions, wherever necessary.

Answer:

Computation of GST Liability of Allfit Laboratories Ltd. for the month of January, 20XX

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
Advance received for drug development services supplied to Orochem Ltd., a drug manufacturer, located in Delhi [Note - 1]	45,000 [5,00,000 × 9%]	45,000 [5,00,000 × 9%]	
Advance received for bulk drugs to be supplied to Novick Pharmaceuticals, a wholesale dealer of drugs in Gurgaon, Haryana [Note - 2]			Nil
Supply of bulk drugs to wholesale dealers of drugs in Delhi [Note - 3]	1,50,000 [6,00,000 × 2.5%]	1,50,000 [6,00,000 × 2.5%]	
Bulk drugs supplied to Anchor Pharmaceuticals Inc., USA under LUT [Note - 4]			Nil
Supply of drug development services to Uni pharma Ltd., a drug manufacturer, located in Delhi [Note - 5]	54,000 [6,00,000 × 9%]	54,000 [6,00,000 × 9%]	
Supply of bulk drugs to consignment agents - Cardinal Pharma Pvt. Ltd. and Rochester Medicos of Punjab and Haryana [Note - 6]			4,95,000 [99,00,000 × 5%]
Supply of bulk drugs to Ronn Medicos of Gurgaon, Haryana [Note - 7]			1,50,000 [30,00,000 × 5%]
Total GST liability	2,49,000	2,49,000	6,45,000

Notes:

- (1) Being an intra-State supply of services, supply of drug development services to Orochem Ltd. of Delhi is subject to CGST and SGST @ 9% each. Further, in terms of section 13(2) of the CGST Act, the time of supply of services is the earlier of the date of invoice or date of receipt of payment, if the invoice is issued within 30 days of the supply of service. In the given case, invoice is issued within 30 days of the supply of service. Therefore, time of supply of services will be date of receipt of advance and hence, GST is payable on the advance received in January, 20XX.
- (2) Being an inter-State supply of goods, supply of bulk drugs to Novick Pharmaceuticals of Gurgaon, Haryana is subject to IGST @ 5%. Further, in terms of section 12(2) of the CGST Act, the time of supply of goods is the earlier of the date of issue of invoice/last date on which the invoice is required to be issued or date of receipt of payment.

However, Notification No. 66/2017 CT dated 15.11.2017 specifies that time of supply of goods for the purpose of payment of tax is the date of issue of invoice/last date of issue of invoice.

Thus, GST is not payable at the time of receipt of advance against supply of goods. The time of supply of the advance received for bulk drugs to be supplied to Novick Pharmaceuticals is the

time of issue of invoice, which is in March, 20XX. Thus, said advance will be taxed in March, 20XX and not in January, 20XX.

- (3) Being an intra-State supply of goods, supply of bulk drugs to wholesale dealers of drugs in Delhi is subject to CGST and SGST @ 2.5 % each.
- (4) Section 2(5) of the IGST Act defines export of goods as taking goods out of India to a place outside India. In view of the said definition, supply of the bulk drugs to Anchor Pharmaceuticals Inc. of USA under LUT is export of goods.

Export of goods is a zero-rated supply [Section 16(1) of the IGST Act]. A zero-rated supply under LUT is made without payment of integrated tax [Section 16(3)(a) of IGST Act].

- (5) Being an intra-State supply of services, supply of drug development services to Unipharma Ltd. of Delhi is subject to CGST and SGST @ 9% each.
- (6) Value of supply of goods made through an agent is determined as per rule 29 of the CGST Rules. Accordingly, the value of supply of goods between the principal and his agent is the open market value of the goods being supplied, or at the option of the supplier, is 90% of the price charged for the supply of goods of like kind and quality by the recipient to his unrelated customer, where the goods are intended for further supply by the said recipient.

In the given case, since open market value is not available, value of bulk drugs supplied to consignment agents - Cardinal Pharma Pvt. Ltd. and Rochester Medicos - will be 99,00,000 [90% of (60,00,000 + 50,00,000)]. Further, being an inter-State supply of goods, supply of bulk drugs to the consignment agents is subject to IGST @ 5%.

- (7) If any person directly or indirectly controls another person, such persons are deemed as related persons. [Clause (a)(v) of explanation to section 15 of the CGST Act]. In the given case, since Allfit Laboratories Ltd. owns 72% shares of Ronn Medicos, both are related persons.

Value of supply of goods between related persons (other than through an agent) is determined as per rule 28 of the CGST Rules. Accordingly, the value of supply of goods between related persons is the open market value of such goods and not the invoice value. Furthermore, since Ronn Medicos is not eligible for full input tax credit, value declared in the invoice cannot be deemed to be the open market value of the goods. Thus, open market value of the bulk drugs supplied to Ronn Medicos, i.e. 30,00,000 is the value of supply of such goods. Further, being an inter-State supply of goods, supply of bulk drugs to Ronn Medicos is subject to IGST @ 5%.

Question 2

Power Engineering Pvt. Ltd., a registered supplier, is engaged in providing expert maintenance and repair services for large power plants that are in the nature of immovable property, situated all over India. The company has its Head Office at Bangalore, Karnataka and branch offices in other States. The work is done in the following manner.

- The company has self-contained mobile workshops, which are container trucks fitted out for carrying out the repair. The trucks are equipped with items like repair equipments, consumables, tools, parts etc. to handle a wide variety of repair work.
- The truck is sent to the client location for carrying out the repair work. Depending upon the repairs to be done, the equipment, consumables, tools, parts etc. are used from the stock of such items carried in the truck.
- In some cases, a stand-alone machine is also sent to the client's premises in such truck for carrying out the repair work.
- The customer is billed after the completion of the repair work depending upon the nature of the work and the actual quantity of consumables, parts etc. used in the repair work.

- Sometimes the truck is sent to the company's own location in other State(s) from where it is further sent to client locations for repair

Work out the GST liability [CGST & SGST or IGST, as the case may be] of Power Engineering Pvt. Ltd., Bangalore on the basis of the facts as described, read with the following data for the month of November 20XX.

S. No.	Particulars	₹
A.	Truck sent to own location in Tamil Nadu (i) Value of items contained in the truck - ₹ 3,00,000 (ii) Value of truck - ₹ 25,00,000	
B.	Truck sent to a client location in Tamil Nadu for carrying out repair Stand- alone machine is also sent in the truck to client location for repairs (i) Value of items contained in the truck - ₹2,85,000 (ii) Value of stand-alone machine - ₹ 4,00,000 (iii) Value of truck - ₹ 20,00,000 (Billing for repairs to be done afterwards depending upon the actual items used)	
C.	Truck sent to a client location in Karnataka for carrying out repairs (i) Value of items contained in the truck - ₹ 1,06,000 (ii) Value of truck - ₹ 20,00,000 (Billing for repairs to be done afterwards depending upon the actual items used)	
D.	Invoices raised for repair work carried out in Tamil Nadu [including the invoice for repair work done in 'B'] -	70,00,000
E.	Invoices raised for repair work carried out in Karnataka [including the invoice for repair work done in 'C']	12,00,000

Also, specify the document(s), if any, which need to be issued by Power Engineering Pvt. Ltd., Bangalore for the above transactions.

All the given amounts are exclusive of GST, wherever applicable. Assume the rates of taxes to be as under:

Items used for repairs		
CGST - 6%	SGST - 6%	IGST - 12%
Container truck, Stand-alone machines		
CGST - 2.5%	SGST - 2.5%	IGST - 5%
Works contract for repairs and maintenance of immovable property		
CGST - 9%	SGST - 9%	IGST - 18%

You are required to make suitable assumptions, wherever necessary.

Answer:

Computation of GST Liability of Power Engineering Pvt. Ltd., Bangalore for the month of November 20XX

S. No.	Particulars	₹
A.	Items sent in container truck to own location in Tamil Nadu - IGST @ 12% [Note 1]	36,000
B.	Container truck sent to own location in Tamil Nadu [Note 2] Stand-alone machine sent in container truck to client location in Tamil Nadu, for carrying out repairs [Note 3] Container truck sent to client location in Tamil Nadu [Note 3]	-
C.	Items sent in container truck to client location in Tamil Nadu, for carrying out repairs [Note 4] Container truck sent to client location in Karnataka [Note 3] Items sent in container truck to client location in Karnataka, for carrying out repairs [Note 4]	- -
D.	Invoices raised for repair work carried out in Tamil Nadu: IGST @ 18% [Note 5 and Note 6]	12,60,000
E.	Invoices raised for repair work carried out in Karnataka: CGST 9% + SGST 9% [Note 5 and Note 7]	2,16,000
Total GST liability		15,12,000

Notes:

(1) Movement of goods without any consideration to a 'distinct person' as specified in section 25(4) of the CGST Act, 2017 is deemed to be a supply in terms of section 7 read with Schedule I of the said Act. The purchase value is taken as taxable value, being the open market value in terms of rule 28(a) of the CGST Rules 2017. (However, if the regional office is eligible to take full input tax credit, any value may be declared in the tax invoice and that will be taken to be the open market value in terms of the second proviso to the same rule.)

In the given case-

- the location of the supplier is in Bangalore (Karnataka); and
- the place of supply of items contained in the truck is the location of such goods at the time at which the movement of goods terminates for delivery to the recipient i.e., Tamil Nadu in terms of section 10(1)(a) of the IGST Act, 2017.

Therefore, the given supply of items is an inter-State supply as the location of the supplier and the place of supply are in two different States [Section 7(1)(a) of IGST Act, 2017]. Thus, the supply is leviable to IGST in terms of section 5(1) of the IGST Act, 2017.

Since the activity is a supply, a tax invoice is to be issued by Power Engineering Pvt. Ltd. in terms of section 31(1)(a) of the CGST Act, 2017 for sending the items to its own location in Tamil Nadu.

(2) As per section 25(4) of the CGST Act, 2017, a person who has obtained more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as 'distinct persons'.

Schedule I to the CGST Act, 2017 specifies situations where activities are to be treated as supply even if made without consideration. Supply of goods and/or services between 'distinct persons' as specified in section 25 of the CGST Act, 2017, when made in the course or furtherance of business is one such activity included in Schedule I under para 2.

However, in view of the GST Council's recommendation, it has been clarified that the inter-State movement of various modes of conveyance between 'distinct persons' as specified in section 25(4), not involving further supply of such conveyance, including trucks carrying goods or passengers or both; or for repairs and maintenance, may be treated 'neither as a supply of goods nor supply of service' and therefore, will not be leviable to IGST. Applicable CGST/SGST/IGST, however, shall be leviable on repairs and maintenance done for such conveyance [Circular No. 1/1/2017 IGST dated 07.07.2017].

Since the activity is not a supply, tax invoice is not required to be issued by Power Engineering Pvt. Ltd. However, a delivery challan is to be issued by the company in terms of rule 55(1)(c) of CGST Rules, 2017 for sending the truck to its own location in Tamil Nadu.

(3) Supply of goods without consideration is deemed to be a supply inter alia when the goods are supplied to a 'distinct person'. However, in this case, stand-alone machine and container truck are moved to client location and not between 'distinct persons'. Hence, the same will fall outside the scope of definition of supply and will not be leviable to GST.

Here again, a delivery challan is to be issued in terms of rule 55(1)(c) of CGST Rules, 2017 for sending the stand-alone machines and container truck to client location.

(4) As per section 2(119) of the CGST Act, 2017, 'works contract' means a contract for, inter alia, repair, maintenance of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

In this case, the supplier provides maintenance and repair services for power plants that are in the nature of immovable property and uses consumables and parts, wherever necessary, for the repair. Hence, the contract is that of a works contract.

Further, as per section 2(30) of the CGST Act, 2017, a works contract is a 'composite supply' as it consists of taxable supplies of both goods and services which are naturally bundled and supplied in conjunction with each other. The composite supply of works contract is treated as supply of service in terms of para 6(a) of Schedule II to the CGST Act, 2017.

The items used in relation to the repair and maintenance work could be consumables or could be identifiable items/parts. In either case, the transfer of property in goods is incidental to a composite supply of works contract service. Thus, the value of the items actually used in the repairs will be included in the invoice raised for the service and will be charged to tax at that point of time.

Here again, a delivery challan is to be issued in terms of rule 55(1)(c) of CGST Rules, 2017 for sending the items for carrying out the repair.

(5) The activity is a composite supply of works contract, which is treated as supply of service. As per section 8(a) of the CGST Act, 2017, a composite supply is treated as a supply of the principal supply involved therein and charged to tax accordingly.

Since the activity is a supply of service, a tax invoice is to be issued by Power Engineering Pvt. Ltd. in terms of section 31(2) of the CGST Act, 2017.

(6) In the given case-

- the location of the supplier is in Bangalore (Karnataka); and
- the place of supply of works contract services relating to the power plant (immovable property) is the location at which the immovable property is located i.e., Tamil Nadu in terms of section 12(3)(a) of the IGST Act, 2017.

Therefore, the given supply is an inter-State supply as the location of the supplier and the place of supply of services are in two different States [Section 7(3)(a) of IGST Act, 2017]. Thus, the supply will be leviable to IGST in terms of section 5(1) of the IGST Act, 2017.

(7) In the given case, the location of the supplier and the place of supply of works contract services are within the same State. Therefore, the given supply is an intra-State supply in terms of section 8(2) of IGST Act, 2017 and thus, chargeable to CGST and SGST.

Question 3

M/s XYZ, a registered supplier, supplies the following goods and services for construction of buildings and complexes -

- excavators for required period at a per hour rate
- manpower for operation of the excavators at a per day rate
- soil-testing and seismic evaluation at a per sample rate.

The excavators are invariably hired out along with operator. Similarly, excavator operators are supplied only when the excavator is hired out.

M/s XYZ receives the following services:

- Annual maintenance services for excavators;
- Health insurance for operators of the excavators;
- Scientific and technical consultancy for soil testing and seismic evaluation. For

a given month, the receipts (exclusive of GST) of M/s XYZ are as follows:

- Hire charges for excavators - ₹ 18,00,000
- Service charges for supply of manpower for operation of the excavator - ₹ 20,000
- Service charges for soil testing and seismic evaluation at three sites - ₹ 2,50,000

The GST paid during the said month on services received by M/s XYZ is as follows:

- Annual maintenance for excavators - ₹ 1,00,000
- Health insurance for excavator operators - ₹ 11,000
- Scientific and technical consultancy for soil testing and seismic evaluation - ₹ 1,00,000

Compute the net GST payable by M/s XYZ for the given month. Assume the rates of GST to be as under:

Hiring out of excavators - 12%

Hiring out of excavators - 12%

Supply of manpower services and soil-testing and seismic evaluation services - 18%

Note: - Opening balance of input tax credit of GST is nil.

Answer:

Computation of net GST payable by M/s XYZ

Particulars	GST payable (₹)
Gross GST liability [Refer Working Note 1 below]	2,63,400
Less: Input tax credit [Refer Working Note 2 below]	2,00,000
Net GST liability	63,400

Working Notes

(1) Computation of gross GST liability

Particulars	Value received (₹)	Rate of GST	GST payable (₹)
Hiring charges for excavators	18,00,000	12%	2,16,000

Particulars	Value received (₹)	Rate of GST	GST payable (₹)
Service charges for supply of manpower for operation of excavators [Refer Note 1]	20,000	12%	2,400
Service charges for soil testing and seismic evaluation [Refer Note 2]	2,50,000	18%	45,000
Gross GST liability			2,63,400

Notes:

- (i) Since the excavators are invariably hired out along with operators and excavator operators are supplied only when the excavator is hired out, it is a case of composite supply under section 2(30) of the CGST Act, 2017 wherein the principal supply is the hiring out of the excavator.

As per section 8(a) of the CGST Act, 2017, the composite supply is treated as the supply of the principal supply. Therefore, the supply of manpower for operation of the excavators will also be taxed at the rate applicable for hiring out of the excavator (principal supply), which is 12%.

- (ii) Soil testing and seismic evaluation services being independent of the hiring out of excavator will be taxed at the rate applicable to them, which is 18%.

(2) Computation of input tax credit available for set off

Particulars	GST paid (₹)	ITC available (₹)
Annual maintenance services for excavators [Refer Note 1]	1,00,000	1,00,000
Health insurance for excavator operators [Refer Note 2]	11,000	-
Scientific and technical consultancy [Refer Note 1]	1,00,000	1,00,000
Total input tax credit available		2,00,000

Notes:

- (i) Excavators are special purpose vehicles whose credit is not restricted under section 17(5)(a), therefore, ITC on annual maintenance service for excavators shall be allowed in terms of section 17(5)(ab). Further, section 17(5)(d) of the CGST Act, 2017 blocks credit on goods and/or services received by a taxable person for construction of an immovable property on his own account. Here, though the excavators are used for building projects, the same are not used by M/s XYZ on its own account for construction of immovable property; instead they are used for outward taxable supply of hiring out of machinery.

Therefore, the annual maintenance service for the excavators does not get covered by the bar under section 17 of the CGST Act, 2017 and the credit thereon will be available. The same applies for scientific & technical consultancy for construction projects because in this case also, the service is used for providing the outward taxable supply of soil testing and seismic evaluation service and not for construction of immovable property.

- (ii) Section 17(5)(b)(i) of the CGST Act, 2017 allows input tax credit on health insurance only where an inward supply of such services is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply or where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

In the given case, it is assumed that it is not obligatory for employer to provide health insurance to its employees under any law for the time being in force, therefore the credit thereon will not be allowed.

Question 4

V-Supply Pvt. Ltd. is a registered manufacturer of auto parts in Kolkata, West Bengal. The company has a manufacturing facility registered under Factories Act, 1948 in Kolkata. It procures its inputs indigenously from both registered and unregistered suppliers located within as well as outside West Bengal as also imports some raw material from China.

The company reports the following details for the month of November, 20XX:

Payments	₹ (in lakh)	Receipts	₹ (in lakh)
Raw material	3.5	Sales	15
Consumables	1.25		
Transportation charges for bringing the raw material to factory	0.70		
Salary paid to employees on rolls	5.0		
Premium paid on life insurance policies taken for specified employees	1.60		
Audit fee	0.50		
Telephone expenses	0.30		
Bank charges	0.10		

All the above amounts are exclusive of all kinds of taxes, wherever applicable. However, the applicable taxes have also been paid by the company.

Further, following additional details are furnished by the company in respect of the payments and receipts reported by it:

- (i) Raw material amounting to ₹ 0.80 lakh is procured from Bihar and ₹ 1.5 lakh is imported from China. Basic customs duty of ₹ 0.15 lakh, education cesses of ₹ 0.0045 lakh and integrated tax of ₹ 0.29781 lakh are paid on the imported raw material. Remaining raw material is procured from suppliers located in West Bengal. Out of such raw material, raw material worth ₹ 0.30 lakh is procured from unregistered suppliers; the remaining raw material is procured from registered suppliers. Further, raw material worth ₹ 0.05 lakh purchased from registered supplier located in West Bengal has been destroyed due to seepage problem in the factory and thus, could not be used in the manufacturing process.
- (ii) Consumables are procured from registered suppliers located in Kolkata and include diesel worth ₹ 0.25 lakh for running the generator in the factory.
- (iii) Transportation charges comprise of ₹ 0.60 lakh paid to Goods Transport Agency (GTA) in Kolkata and ₹ 0.10 lakh paid to horse pulled carts. GST applicable on the services of GTA is 5%.
- (iv) Life insurance policies for specified employees have been taken by the company to fulfill a statutory obligation in this regard.. The life insurance service provider is registered in West Bengal.
- (v) Audit fee is paid to M/s Goyal & Co., a firm of Chartered Accountants registered in West Bengal, for the statutory audit of the preceding financial year.
- (vi) Telephone expenses pertain to bills for landline phone installed at the factory and mobile phones given to employees for official use. The telecom service provider is registered in West Bengal.
- (vii) Bank charges are towards company's current account maintained with a Private Sector Bank registered in West Bengal.

(viii) The breakup of sales is as under: Sales in West Bengal – ₹ 7 lakh

Sales in States other than West Bengal – ₹ 3 lakh Export under LUT – ₹ 5 lakh

The balance of input tax credit with the company as on 1.11.20XX is:

CGST - ₹ 0.15 lakh SGST - ₹ 0.08 lakh IGST - ₹ 0.09 lakh

Compute eligible input tax credit and net GST payable [CGST, SGST or IGST, as the case may be] by V-Supply Pvt. Ltd. for the month of November 20XX.

Note-

(i) CGST, SGST & IGST rates to be 9%, 9% and 18% respectively, wherever applicable.

(ii) The necessary conditions for availing input tax credit have been complied with by V-Supply Pvt. Ltd., wherever applicable.

You are required to make suitable assumptions, wherever necessary.

Answer:

Computation of input tax credit available with V-Supply Pvt. Ltd. in the month of November 20XX

S. No.	Particulars	Eligible input tax credit			
		CGST* ₹	SGST* ₹	IGST* ₹	Total ₹
1.	Raw Material				
	Raw material purchased from Bihar [Refer Note 1(i)]			14,400	14,400
	Raw material imported from China [Refer Note 1(ii)]			29,781	29,781
	Raw material purchased from unregistered suppliers within West Bengal [Refer Note 1(iii)]	Nil	Nil		Nil
	Raw material destroyed due to seepage [Refer Note 1(iv)]	Nil	Nil		Nil
	Remaining raw material purchased from West Bengal [Refer Note 1(i)] [₹ 3.5 - ₹1.5 - ₹0.80 - ₹ 0.30 - ₹0.05] = ₹ 0.85]	7,650	7,650		15,300
	Total	7,650	7,650	44,181	59,481
2.	Consumables [Refer Note 2]	9,000	9,000		18,000
3.	Transportation charges for bringing the raw material to factory [Refer Note 3]	1,500	1,500		3,000
4.	Salary paid to employees on rolls [Refer Note 4]	Nil	Nil	Nil	Nil
5.	Premium paid on life insurance policies taken for specified employees [Refer Note 5]	14,400	14,400	-	28,800
6.	Audit fee [Refer Note 6]	4,500	4,500	-	9,000
7.	Telephone expenses [Refer Note 6]	2,700	2,700		5,400

S. No.	Particulars	Eligible input tax credit			
		CGST*	SGST*	IGST*	Total
		₹	₹	₹	₹
8.	Bank charges [Refer Note 6]	900	900	44,181	1,800
		40,650	40,650		1,25,481

Computation of net GST payable

Particulars	CGST*	SGST*	IGST*	Total
	₹	₹	₹	₹
On Intra-state sales in West Bengal	63,000	63,000		1,26,000
On Inter-state sales other than West Bengal			54,000	54,000
On exports under LUT [Note 7]	Nil	Nil	Nil	Nil
On inward supply of GTA services under reverse charge [Note 3]	1,500	1,500		3,000
Total output tax liability	64,500	64,500	54,000	1,83,000
Less: Cash paid towards tax payable under reverse charge [Note 10]	(1,500)	(1,500)		(3,000)
Less: Input tax credit [Note 8]				
Opening balance of input tax credit on 01.11.20XX	(15,000)	(8,000)	(9,000)	(33,000)
Input tax credit availed during the month	(40,650)	(40,650)	(44,181)	(1,25,481)
Net GST payable	7,350	14,350	819	22,519

Notes:

- (1) (i) Credit of input tax (CGST & SGST/ IGST) paid on raw materials used in the course or furtherance of business is available in terms of section 16(1) of the CGST Act.
 - (ii) IGST paid on imported goods qualifies as input tax in terms of section 2(62)(a) of the CGST Act. Therefore, credit of IGST paid on imported raw materials used in the course or furtherance of business is available in terms of section 16(1) of the CGST Act.
 - (iii) Tax on intra-State procurements made by a registered person from an unregistered supplier shall be leviable only on notified categories of goods and services. [Section 9(4) as amended vide CGST (Amendment) Act 2018].
 - (iv) Input tax credit is not available on destroyed inputs in terms of section 17(5)(h) of the CGST Act.
- (2) Consumables, being inputs used in the course or furtherance of business, input tax credit is available on the same in terms of section 16(1) of the CGST Act. However, levy of CGST on diesel has been deferred till such date as may be notified by the Government on recommendations of the GST Council [Section 9(2) of the CGST Act]. Hence, there being no levy of GST on diesel, there cannot be any input tax credit of the same.
- (3) In respect of intra-State road transportation of goods undertaken by a GTA, who has not paid CGST @ 6%, for any person registered under the GST law, CGST is payable under reverse charge by the recipient of service. The person who pays or is liable to pay freight for the transportation of goods is treated as the person who receives the service [Notification No. 13/2017 CT (R) dated 28.06.2017]. Thus, V- Supply Pvt. Ltd. will pay GST under reverse charge on transportation service received from GTA.

Further, tax payable under section 9(3) of the CGST/SGST Act qualifies as input tax in terms of clauses (b) and (d) of section 2(62) of the CGST Act. Thus, input tax paid under reverse charge on GTA service will be available as input tax credit in terms of section 16(1) of the CGST Act as the said service is used in course or furtherance of business.

Furthermore, intra-State services by way of transportation of goods by road except the services of a GTA and a courier agency are exempt from CGST vide Notification No. 12/2017 CT (R) dated 28.06.2017. Therefore, since no GST is paid on such services, there cannot be any input tax credit on such services.

- (4) Services by employees to employer in the course of or in relation to his employment is not a supply in terms of section 7 read with para 1 of Schedule III to the CGST Act. Therefore, since no GST is paid on such services, there cannot be any input tax credit on such services
- (5) Input tax credit on supply of life insurance service is not blocked if it is obligatory for an employer to provide such service to its employees under any law for the time being in force. [Proviso to section 17(5)(b) of the CGST Act]. Therefore, GST paid on premium for life insurance policies will be available as input tax credit in terms of section 16(1) of the CGST Act as the said service is used in the course or furtherance of business.
- (6) Audit fee, telephone expenses and bank charges are all services used in the course or furtherance of business and thus, credit of input tax paid on such service will be available in terms of section 16(1) of the CGST Act.
- (7) Export of goods is a zero rated supply in terms of section 16(1)(a) of the IGST Act. A zero rated supply under LUT is made without payment of integrated tax [Section 16(3)(a) of the IGST Act].
- (8) Since export of goods is a zero rated supply, there will be no apportionment of input tax credit and full credit will be available [Section 16 of the IGST Act read with section 17(2) of the CGST Act].
- (9) As per section 49(5) of the CGST Act read with rule 88A, input tax credit of-
 - (i) IGST is utilised towards payment of IGST first and then CGST and SGST in any order.
 - (ii) CGST is utilised towards payment of CGST and IGST in that order.
 - (iii) SGST is utilised towards payment of SGST and IGST in that order
- (10) Section 49(4) of the CGST Act lays down that the amount available in the electronic credit ledger may be used for making payment towards output tax. However, tax payable under reverse charge is not an output tax in terms of section 2(82) of the CGST Act. Therefore, tax payable under reverse charge cannot be set off against the input tax credit and thus, will have to be paid in cash.
- (11) CGST and SGST are chargeable on intra-State inward and outward supplies and IGST is chargeable on inter-State inward and outward supplies.

Question 5

Mr. Nagarjun, a registered supplier of Chennai, has received the following amounts in respect of the activities undertaken by him during the month ended on 30th September, 20XX:

S. No.	Particulars	Amount (₹)
(i)	Amount charged for service provided to recognized sports body as selector of national team.	50,000
(ii)	Commission received as an insurance agent from insurance company.	65,000

S. No.	Particulars	Amount (₹)
(iii)	Amount charged as business correspondent for the services provided to the urban branch of a nationalized bank with respect to savings bank accounts.	15,000
(iv)	Service to foreign diplomatic mission located in India.	28,000
(v)	Funeral services.	30,000

He received the services from unregistered goods transport agency for his business activities and paid freight of ₹ 45,000 (his aggregate turnover of previous year was ₹ 9,90,000).

Note: All the transactions stated above are intra-State transactions and also are exclusive of GST.

You are required to calculate gross value of taxable supply on which GST is to be paid by Mr. Nagarjun for the month of September, 20XX. Working notes should form part of your answer.

Answer:

Computation of gross value of taxable supply on which GST is to be paid by Mr. Nagarjun

Particulars	Amount (₹)
Supplies on which Mr. Nagarjun is liable to pay GST under forward charge	
Amount charged for service provided to recognized sports body as selector of national team [Note 1]	50,000
Commission received as an insurance agent from insurance company [Note 2]	Nil
Amount charged as business correspondent for the services provided to the urban branch of a nationalized bank with respect to savings bank accounts [Note 3]	15,000
Services provided to foreign diplomatic mission located in India [Note 4]	28,000
Funeral services [Note 5]	Nil
Supplies on which Mr. Nagarjun is liable to pay GST under reverse charge	
Services received from GTA [Note 6]	45,000
Value of taxable supply on which GST is to be paid	1,38,000

Notes:

- Services provided to a recognized sports body by an individual only as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body are exempt from GST vide Exemption Notification No. 12/2017 CT(R) dated 28.06.2017. Thus, service provided as selector of team is liable to GST.
- Though commission for providing insurance agent's services is liable to GST, the tax payable thereon is to be paid by the recipient of service i.e., insurance company, under reverse charge in terms of Notification No. 13/2017 CT(R) dated 28.06.2017. Thus, Mr. Nagarjun will not be liable to pay GST on such commission.
- Services provided by business correspondent to a banking company with respect to accounts in its rural area branch are exempt from GST vide Exemption Notification No. 12/2017 CT(R) dated 28.06.2017. Thus, such services provided in respect of urban area branch will be taxable.
- While services provided by a foreign diplomatic mission located in India are exempt from GST vide Exemption Notification No. 12/2017 CT(R) dated 28.06.2017, services provided to such mission are taxable.

5. Funeral services being covered in entry 4 of Schedule III to CGST Act, 2017 are not a supply and thus, are outside the ambit of GST.
6. GST on services provided by a GTA (not paying tax @ 12%) to inter alia a registered person is payable by the recipient of service i.e., the registered person, under reverse charge in terms of Notification No. 13/2017 CT(R) dated 28.06.2017. The turnover of previous year is irrelevant in this case.

Question 6

ABC Company Ltd. of Bengaluru is a manufacturer and registered supplier of machine. It has provided the following details for the month of November, 20XX.

Details of GST paid on inward supplies during the month:

Items	GST paid (₹)
Health insurance of factory employees as required by Factory Act	20,000
Raw materials for which invoice has been received and GST has also been paid for full amount but only 50% of material has been received, remaining 50% will be received in next month.	18,000
Work contractor's service used for installation of plant and machinery.	12,000
Purchase of manufacturing machine directly sent to job worker's premises under challan.	50,000
Purchase of car used by director for the business meetings only.	25,000
Outdoor catering service availed for business meetings.	8,000

ABC Company Ltd. also provides service of hiring of machines along with man power for operation. As per trade practice machines are always hired out along with operators and also operators are supplied only when machines are hired out.

Receipts on outward supply (exclusive of GST) for the month of November, 2019 are as follows:

Items	Outward Supply (₹)
Hiring receipts for machine	5,25,000
Service charges for supply of man power operators	2,35,000

Assume all the transactions are inter State and the rates of IGST to be as under:

- i. Sale of machine 5%
- ii. Service of hiring of machine 12%
- iii. Supply of man power operator service 18%

Compute the amount of input tax credit available and also the net GST payable for the month of November 20XX by giving necessary explanations for treatment of various items.

Note: Opening balance of input tax credit is Nil.

Answer:

Computation of net GST payable by ABC Company Ltd.

Particulars	GST payable (₹)
Gross GST liability [Refer working note (2) below]	91,200
Less: Input tax credit [Refer working note (1) below]	82,000
Net GST liability	9,200

Working Notes:

- 1) Computation of Input Tax Credit (ITC) available with ABC Company Ltd. in the month of November 2017

Particulars	GST (₹)
Health insurance of factory employees [Note - 1]	20,000
Raw material received in factory [Note - 2]	Nil
Work's contractor's service used for installation of plant and machinery [Note -3]	12,000
Manufacturing machinery directly sent to job worker's premises under challan [Note -4]	50,000
Purchase of car used by director for business meetings only [Note -5]	Nil
Outdoor catering service availed for business meetings [Note -6]	Nil
Total ITC available	82,000

Notes:

- ITC of health insurance is available in the given case in terms of proviso to section 17(5)(b) of the CGST Act, 2017 since it is obligatory for employer to provide health insurance to its employees under Factory Act -.
- Where the goods against an invoice are received in lots/ installments, ITC is allowed upon receipt of the last lot/ installment vide first proviso to section 16(2) of the CGST Act, 2017. Therefore, ABC Company Ltd. will be entitled to ITC of raw materials on receipt of second installment in December, 20XX.
- Section 17(5)(c) of CGST Act, 2017 provides that ITC on works contract services is blocked when supplied for construction of immovable property (other than plant and machinery) except when the same is used for further supply of works contract service.
Though in this case, the works contract service is not used for supply of works contract service, ITC thereon will be allowed since such services are being used for installation of plant and machinery.
- ITC on capital goods directly sent to job worker's premises under challan is allowed in terms of section 19(5) of CGST Act, 2017 read with rule 45(1) of CGST Rules, 2017.
- Section 17(5)(a) of CGST Act, 2017 provides that motor vehicle for transportation of persons having approved seating capacity of not more than 13 persons (including the driver), except when they are used for making taxable supply of-
 - further supply of such vehicles,
 - transportation of passengers,
 - imparting training on driving, flying, navigating such vehicles and

Since ABC Company Ltd is a supplier of machine and it does not use the car for transportation of goods or any other use as specified, ITC thereon will not be available.

6. Section 17(5)(b)(i) of CGST Act, 2017 provides that ITC on outdoor catering is blocked except where the same is used for making further supply of outdoor catering or as an element of a taxable composite or mixed supply.

Since ABC Company Ltd is a supplier of machine, ITC thereon will not be available.

2) Computation of gross GST liability

Particular	Value received (₹)	Rate of GST	GST payable (₹)
Hiring receipts for machine	5,25,000	12%	63,000
Service charges for supply of manpower operators	2,35,000	12%	28,200
Gross GST liability			91,200

Note:

Since machine is always hired out along with operators and operators are supplied only when the machines are hired out, it is a case of composite supply, wherein the principal supply is the hiring out of machines [Section 2(30) of the CGST Act, 2017 read with section 2(90) of that Act]. Therefore, service of supply of manpower operators will also be taxed at the rate applicable for hiring out of machines (principal supply), which is 12%, in terms of section 8(a) of the CGST Act, 2017.

Question 7

Pari Ltd. of Jodhpur (Rajasthan) is a registered manufacturer of cosmetic products. Pari Ltd. has furnished following details for the month of April, 20XX:

Particulars		₹
Receipts Details of Supplies		
(i)	Supplies in Rajasthan	8,75,000
(ii)	Supplies in States other than Rajasthan	3,75,000
(iii)	Export under LUT	6,25,000
Payments		
Raw materials		
(i)	Purchased from registered suppliers located in Rajasthan	1,06,250
(ii)	Purchased from unregistered suppliers located in Rajasthan	37,500
(iii)	Purchased from Punjab from registered supplier	1,00,000
(iv)	Integrated tax paid on import from USA	22,732
	Consumables purchased from registered suppliers located in Rajasthan including high speed diesel (Excise and Vat paid) worth ₹ 31,250 for running the machinery in the factory	1,56,250
	Monthly rent for the factory building to the owner in Rajasthan	1,00,000
	Salary paid to employees on rolls	6,25,000
	Premium paid on life insurance policies taken for specified employees. Life insurance policies for specified employees have been taken by Pari Ltd. to fulfill a statutory obligation in this regard.. The life insurance	2,00,000

Particulars	₹
service provider is registered in Rajasthan.	
All the above amounts are exclusive of all kinds of taxes, wherever applicable. However, the applicable taxes have also been paid by Pari Ltd.	
The balance of Input Tax Credit (ITC) with Pari Ltd. as on 1 st April, 20XX is	
CGST ₹ 20,000	
SGST ₹ 15,000	
IGST ₹ 15,000	

Assume CGST, SGST and IGST rates to be 9%, 9% and 18% respectively, wherever applicable.

Assume that all the other necessary conditions to avail the eligible input tax credit have been complied with by Pari Ltd., wherever applicable.

Compute eligible input tax credit and net GST payable (CGST and SGST or IGST as the case may be) by Pari Ltd. for the month of April, 20XX.

Answer:

Computation of eligible input tax credit available with Pari Ltd. in the month of April, 20XX

S. No.	Particulars	Eligible input tax credit		
		CGST ₹	SGST ₹	IGST ₹
1.	Raw Material:			
	Purchased from local registered suppliers [Note 1(i)] (₹ 1,06,250 x 9%)	9,562.50	9,562.50	
	Purchased from local unregistered suppliers [Note 1(ii)]	Nil	Nil	
	Purchased from Punjab from registered supplier [Note 1(i)] (₹ 1,00,000 x 18%)			18,000
	Raw material imported from USA [Note 1(iii)]			22,732
2.	Consumables [Note 2] [(1,56,250-31,250) x 9%]	11,250	11,250	
3.	Monthly rent for the factory building to the owner in Rajasthan [Note 3]	9,000	9,000	
4.	Salary paid to employees on rolls [Note 4]	Nil	Nil	Nil
5.	Premium paid on life insurance policies taken for specified employees [Note 5] (₹ 2,00,000 x 9%)	18,000	18,000	-
	Total	47,812.50	47,812.50	40,732
	Add: Opening balance of ITC on 01.04.20XX	20,000	15,000	15,000
	Eligible ITC [Note 7]	67,812.50	62,812.50	55,732

Particulars	CGST ₹	SGST ₹	IGST ₹
Intra-State supply	78,750	78,750	
Inter-State supply			67,500

Exports under LUT [Note 6]	Nil	Nil	Nil
Total output tax liability	78,750	78,750	67,500
Less: Eligible ITC	67,812.50	62,812.50	55,732
Net GST payable	10,937.50	15,937.50	11,768

Notes:

- (i) Credit of input tax (CGST & SGST/ IGST) paid on raw materials used in the course or furtherance of business is available in terms of section 16 of the CGST Act.
(ii) Tax on procurements made by a registered person from an unregistered supplier is levied only in case of notified goods and services in terms of section 9(4). Therefore, since no GST is paid on such raw material purchased, there does not arise any question of input tax credit (ITC) on such raw material.
(iii) IGST paid on imported goods qualifies as input tax in terms of section 2(62) of CGST Act, 2017. Therefore, credit of IGST paid on imported raw materials used in the course or furtherance of business is available in terms of section 16 of the CGST Act.
- ITC on consumables, being inputs used in the course or furtherance of business, is available. However, since levy of GST on high speed diesel has been deferred till a date to be notified by Government, there cannot be any ITC of the same.
- ITC on monthly rent is available as the said service is used in the course or furtherance of business.
- Services by employees to employer in the course of or in relation to his employment is not a supply in terms of section 7 read with Schedule III to the CGST Act. Therefore, since no GST is paid on such services, there cannot be any ITC on such services.
- ITC on life insurance service is available if the same is obligatory for an employer to provide to its employees under any law for the time being in force as per proviso to section 17(5)(b).
- Export of goods is a zero rated supply in terms of section 16(1)(a) of the IGST Act. A zero rated supply under bond is made without payment of IGST in terms of section 16(3)(a).
- Since export of goods is a zero rated supply, there will be no apportionment of ITC and full credit will be available as per section 17(2).

Question 8

Mr. George, a registered supplier of goods at Kerala who pays GST under regular scheme, has made the following transactions (exclusive of tax) during April 20XX:

Source	Purchases (₹)	Sales (₹)	Tax Rate
New Delhi	5,00,000	10,00,000	18%
Trivandrum	2,50,000	8,00,000	9% each for SGST & CGST
Total	7,50,000	18,00,000	

He has complied with all the conditions for availing the ITC and has the following ITC credit on 01-04-20XX:

Source	Taxes (₹)	Interest (₹)	Penalty (₹)
CGST	50,000	1500	500
SGST	30,000	1500	500
IGST	1,00,000	2000	500

Compute the minimum net CGST, SGST and IGST payable by Mr. George during April 20XX in cash?

Answer:

Computation of net CGST, SGST and IGST payable in cash by Mr. George during April 20XX

Particulars	Amount (₹)	CGST @ 9% (₹)	SGST @ 9% (₹)	IGST @ 18% (₹)
Sales made outside Kerala (New Delhi) - [Being inter-State sale, the same is liable to IGST.]	10,00,000			1,80,000
Sales made in Trivandrum	8,00,000	72,000	72,000	
Less: ITC available during April 2018 for set off [Refer Working Note Below]		(72,000) CGST	(10,000) IGST	(1,80,000)
			(52,500) SGST	
Net tax liability payable in cash		Nil	9,500	Nil
Net ITC available		500	Nil	Nil
Working Note: ITC available during April 20XX is computed as under:				1,00,000
Opening balance of ITC		50,000	30,000	90,000
Purchases from New Delhi [Being inter-State purchase, IGST would have been paid on it.]	5,00,000			
Purchases from Trivandrum	2,50,000	22,500	22,500	1,90,000
Total input tax credit		72,500	52,500	1,00,000
Note: Since sufficient balance of ITC of CGST is available for paying CGST liability and cross-utilization of ITC of CGST and SGST is not allowed, ITC of IGST has been used to pay SGST (after paying IGST liability) to minimize cash outflow. Interest and penalty paid are not available as credit.				

Question 9

Flowchem Palanpur (Gujarat) has entered into a contract with R Refinery, Abu Road (Rajasthan) on 1st July, 20XX to supply 10 valves on FOR basis for its project, with following terms and conditions:

- 1) List price per valve is ₹ 1,00,000, exclusive of taxes.
- 2) The valves go through two stage third party inspection during manufacturing, as required by R Refinery. Cost of inspection of ₹ 15,000 is directly paid by R Refinery to testing agency.
- 3) A special packing is to be done, as required by R Refinery. Cost of special packing is ₹ 10,000.
- 4) After making supply of valves, Flowchem has to arrange for erection and testing at the site for commissioning. Cost of erection etc. is of ₹ 15,000.
- 5) The goods were dispatched with tax invoice on 20th July, 20XX and they reached the destination at Abu-Road on 21st July, 20XX. The lorry freight of ₹ 5,000 has been paid by R Refinery directly to lorry driver.

Assume the CGST and SGST rates to be 9% each and IGST rate to be 18%. Opening ITC of CGST is ₹ 20,000 and SGST is ₹ 20,000. All the given amounts are exclusive of GST, wherever applicable.

It has also undertaken following local transactions during the month of July, 20XX on which it has paid CGST and SGST as under:

S. No.	Particulars	Amount paid CGST (₹)	Amount paid SGST (₹)
1.	It has availed services of works contractor to erect foundation for fixing the machinery to earth in the factory.	5,000	5,000
2.	It has laid pipe line upto the gate of its factory to bring the water to the factory for the purpose of production facility.	10,000	10,000
3.	For the purpose of smooth and convenient communication in its factory, it has installed telecommunication tower of a mobile company (with due permission), the mobile phones of which have been provided to staff for factory work.	5,000	5,000
4.	It has entered into an agreement with a travel company to provide home travel facility to its employees when they are on leave.	2,500	2,500
5.	It has entered into an agreement with a fitness centre to provide wellness services to its employees after office hours	2,000	2,000

Work out the GST liability [CGST& SGST or IGST, as the case may be] of Flowchem Palanpur (Gujarat) for July, 20XX after making suitable assumptions, if any.

Answer:

Computation of GST liability of Flowchem, Palanpur (Gujarat) for July 20XX

Particulars	CGST @ 9% (₹)	SGST @ 9% (₹)	IGST @ 18% (₹)
Output tax liability [Working Note 1]			1,88,100
Less: ITC available for set off [Working Note 2]	25,000	25,000	(25,000) CGST (25,000) SGST
Net GST liability payable in cash			1,38,100

Working Note 1 - Computation of output tax liability of Flowchem for July 20XX

Particulars	Amount (₹)
List price of 10 valves (₹1,00,000 × 10) ¹	10,00,000
Add: Amount paid by R Refinery to testing agency [Note 1]	15,000
Add: Special packing [Note 2]	10,000
Add: Erection and testing at site [Note 2]	15,000

¹ It has been assumed that the charges for inspection, special packing, erection and freight are in respect of 10 valves.

Particulars	Amount (₹)
Add: Freight [Note 3]	5,000
Value of taxable supply	10,45,000
IGST @ 18% [Note 4]	1,88,100

Notes:

- 1) As per section 15(2) of the CGST Act, 2017, any amount that the supplier is liable to pay in relation to a supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods shall be included in the value of supply.

Assuming that in the given case, arranging inspection was the liability of the supplier, the same should be included in the value of supply charges for the same, however, have been paid directly to the third party service provider by the recipient. Therefore, the value shall be included in taxable value.

- 2) As per section 15(2) of the CGST Act, 2017, any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods shall be included in the value of supply.
- 3) As per section 15(2) of the CGST Act, 2017, any amount that the supplier is liable to pay in relation to a supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods shall be included in the value of supply.

Since, in the given case, the supply contract is on FOR basis, payment of freight is the liability of supplier but the same has been paid by the recipient and thus, should be included in the value of supply.

- 4) As per section 10(1) of the IGST Act, 2017, where the supply involves movement of goods, the place of supply is the location of the goods at the time at which the movement of goods terminates for delivery to the recipient, which in the given case is Abu Road (Rajasthan). Since the location of the supplier (Gujarat) and the place of supply (Rajasthan) are in two different States, the supply is an inter-State supply liable to IGST.

Working Note 2 - Computation of ITC available with Flowchem for the month of July 20XX

Particulars	CGST (₹)	SGST (₹)
Opening input tax credit	20,000	20,000
Wok contract services availed for erecting foundation for fixing the machinery to the earth in the factory [Note 1]	5,000	5,000
Laying of pipe line upto the gate of factory [Note 2]	Nil	Nil
Installation of telecommunication towers [Note 2]	Nil	Nil
Services of travel company to provide home travel facility to employees Note 3]	Nil	Nil
Services of fitness centre to provide wellness services to employees [Note 3]	Nil	Nil
Total ITC	25,000	25,000

Notes:

- 1) As per section 17(5) of the CGST Act, 2017, ITC on works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an

input service for further supply of works contract service, is blocked. Further, plant and machinery includes foundation and structural supports used to fix the machinery to earth.

- 2) As per section 17(5) of the CGST Act, 2017, ITC on goods and/ or services received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such and/ or services are used in course/ furtherance of business, is blocked. However, plant and machinery excludes pipelines laid outside the factory premises and telecommunication tower
- 3) As per section 17(5) of the CGST Act, 2017, ITC on travel benefits extended to employees on home travel concession and membership of health and fitness centre is blocked unless it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

Question 10

Mr. NY, a supplier of goods pays GST under regular scheme. Mr. NY is not eligible for any threshold exemption. He has made the following outward taxable supplies during September 20XX:

Particulars	Rate of Tax			Amount (₹)
	CGST	SGST	IGST	
Intra State Supply of goods				
Product A	6%	6%	-	8,00,000
Product B	9%	9%	-	2,00,000
Inter State Supply of goods				
Product A	-	-	12%	3,00,000
Product B	-	-	18%	1,50,000

He has also furnished the following information in respect of supplies received by him during September 20XX:

Particulars	Rate of Tax			Amount (₹)
	CGST	SGST	IGST	
Intra State Supply of goods				
Product A	6%	6%	-	2,00,000
Product B	9%	9%	-	1,00,000
Inter State Supply of goods				
Product A	-	-	12%	1,50,000
Product B	-	-	18%	80,000

Mr. NY has following ITCs with him at the beginning of September 20XX:

Particulars	₹
CGST	40,000
SGST	28,000
IGST	44,600

Note:

- i. Both inward and outward supplies are exclusive of taxes, wherever applicable.
- ii. All the conditions necessary for availing the ITC have been fulfilled.

Compute net GST payable by Mr. NY for the month of September 201XX.

Make suitable assumptions wherever required.

Answer:

Computation of GST payable by Mr. NY for the month of September, 20XX:

S. No.	Particulars	CGST (₹)	SGST (₹)	IGST (₹)
(i)	Intra-State supply of goods			
	Product A	48,000	48,000	
	Product B	18,000	18,000	
(ii)	Inter-State supply of goods			
	Product A			36,000
	Product B			27,000
	Total	66,000	66,000	63,000

Computation of total ITC available

S. No.	Particulars	CGST (₹)	SGST (₹)	IGST (₹)
(i)	Opening balance	40,000	28,000	44,600
(ii)	Intra-State supply of goods			
	Product A	12,000	12,000	
	Product B	9,000	9,000	
(iii)	Inter-State supply of goods			
	Product A			18,000
	Product B			14,400
	Total	61,000	49,000	77,000

Computation of net GST payable (from cash ledger)

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
GST payable	66,000	66,000	63,000
Less: ITC	(61,000)-CGST	(14,000)-IGST (49,000)-SGST	(63,000)-IGST
Net GST payable	5,000	3,000	Nil

Note 1. ITC of IGST shall be first utilize fully to pay IGST, CGST and SGST in that order.

Note 2. IGST credit after setting it against IGST liability of ₹ 63,000/- i.e. ₹ 14,000/- to be adjusted first with SGST liability since CGST credit is almost sufficient to set off CGST liability.

Question 11

Determine the value of supply and the GST liability, to be collected and paid by the owner, with the following particulars:

	₹
Rent of the commercial building	18,00,000
Maintenance charges collected by local society from the owner and reimbursed by the tenant	2,50,000
Owner intends to charge GST on refundable advance, as GST is applicable on advance	6,00,000
Municipal taxes paid by the owner	3,00,000

GST rates applicable on renting of business premises are as follows: CGST

9%

SGST 9%

Provide suitable explanations where required.

Answer:

Computation of Value of Supply and GST liability:

Particulars	Amount (₹)
Rent of the commercial building	18,00,000
Maintenance charges collected by the local society from the owner and reimbursed by the tenant [Being reimbursed by the tenant, such charges ultimately form part of the rent paid by the tenant to the owner and thus, will form part of the value]	2,50,000
Refundable advance [Being refundable, the advance is in the nature of security deposit which does not constitute consideration in terms of section 2(31) of the CGST Act, 2017 and thus, is not includible in the value]	Nil
Municipal taxes paid by the owner [Being an expenditure incurred by the supplier, the same is not includible in the value, assuming that such taxes are not charged to the recipient.]	Nil
Value of supply	20,50,000
CGST @ 9%	1,84,500
SGST @ 9%	1,84,500

Note: Rent and maintenance charges are assumed to be exclusive of GST.

Question 12

Quanto Ltd. is not required to register under CGST Act, 2017, but it wishes to obtain voluntary registration, so it applied for voluntary registration on 17th September, 20XX and registration certificate has been granted to it on 25th September, 20XX. The CGST and SGST liability for the month of September, 20XX is ₹ 24,000 each.

Quanto Ltd. provides the following information of inputs and capital goods held in stock on 24th September, 20XX. It is not engaged in making inter-State outward taxable supplies.

Particulars	Amount (₹)
Input procured on 02-09-20XX lying in stock	
- CGST @ 6%	4,500
- SGST @ 6%	4,500
Input received- on 21-07-20XX contained in semi- finished goods held in	

Particulars	Amount (₹)
stock:	
- CGST @ 6%	7,500
- SGST @ 6%	7,500
Value of inputs contained in finished goods held in stock ₹ 2,00,000 were procured on 19-09-20XX (Last Year)	
- IGST @ 18%	36,000
Inputs valued at ₹ 50,000 procured on 13-09-20XX lying in stock:	
- IGST @ 18%	9,000
Capital goods procured on 12-09-20XX	
-CGST @ 6%	12,000
-SGST @ 6%	12,000

You are required to compute the amount of tax to be paid in cash by Quanto Ltd. for the month of September, 20XX.

You are also required to mention reasons for treatment of all above items.

Answer:

Computation of net GST liability (to be paid in cash) by Quanto Ltd. for the month of September, 20XX:

Particulars	CGST (Rs)	SGST (Rs)
Output tax liability for the month	24,000	24,000
Less: Input tax credit (ITC) [Refer note-2below]	9,000 (IGST) 12,000 (CGST)	12,000 (SGST)
Net GST payable (in cash)	3,000	12,000

Notes:

1. Credit of IGST shall be utilized towards payment of IGST, CGST and SGST in that order. Since Quanto Ltd. does not make any inter-State supply, credit of IGST has been utilized towards payment of CGST [Section 49(5) of the CGST Act, 2017].

2. As per section 18(1)(b) of the CGST Act, 2017-

A person who takes voluntary registration is entitled to take credit of input tax in respect of:

- ◆ inputs held in stock and
- ◆ inputs contained in semi-finished/ finished goods held in stock

on the day immediately preceding the date of grant of registration.

However, he cannot take ITC in respect of capital goods held on the day immediately preceding the date of grant of registration.

ITC on inputs needs to be availed within 1 year from the date of issue of the invoice by the supplier [Section 18(2) of the CGST Act, 2017].

In this case, since Quanto Ltd. has been granted voluntary registration on 25.09.20XX, it will be entitled to ITC on inputs held in stock and inputs contained in semi-finished/ finished goods held in stock, on 24.09.20XX. In view of the said provisions, eligible ITC for Quanto Ltd. is computed as follows:

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
Inputs held in stock since 02.09.20XX	4,500	4,500	
Inputs received on 21.07.20XX contained in semi-finished goods held in stock	7,500	7,500	
Inputs contained in finished goods held in stock which were procured on 19.09.20XX (Last Year) ² [Procured prior to one year, hence ITC cannot be availed]			Nil
Inputs held in stock since 13.09.20XX			9,000
Capital goods procured on 12.09.20XX	Nil	Nil	
Total ITC	12,000	12,000	9,000

Question 13

“Chanakya Academy” is registered under GST in the State of Uttar Pradesh. The Academy runs the following educational institutions:

- (i) ‘Keshav Institute of Technology’ (KIT), a private engineering college in Ghaziabad. KIT also runs distance learning post graduate engineering programmes. Exams for such programmes are conducted in select cities at centres appointed by the KIT. All the engineering courses including the distance learning post graduate engineering programme run by KIT are recognised by the law [The All India Council for Technical Education (AICTE)].
- (ii) ‘Little Millennium’, a pre-school in Lucknow
- (iii) ‘Bright Minds’, a coaching institute in Kanpur. The Institute provides coaching for Institute of Banking Personnel Selection (IBPS) Probationary Officers Exam.
- (iv) ‘Spring Model’ a higher secondary school affiliated to CBSE Board.

The Academy provides the following details relating to the expenses incurred by the various institutions run by it during the period April 20XX to September 20XX:

Table 1

S. No.	Particulars	KIT (₹)	Little Millennium (₹)	Bright Minds (₹)	Spring Model (₹)
(i)	Printing services for printing the question papers (paper and content are provided by the Institutions)	2,50,000		1,50,000	2,00,000
(ii)	Paper procured for printing the question papers	4,30,000		2,58,000	3,44,000
(iii)	Honorarium to paper setters and examiners (not on the rolls of the Institution)	5,00,000			

² It has been assumed that invoice for the said goods is also dated 19.09.20XX (Last Year).

S. No.	Particulars	KIT (₹)	Little Millennium (₹)	Bright Minds (₹)	Spring Model (₹)
(iv)	Rent for exam centres taken on rent like schools etc., for conducting examination	8,00,000		1,00,000	
(v)	Subscription for online educational journals [Little Millennium has taken the subscription for online periodicals on child development and experiential learning]	4,00,000	80,000	2,20,000	2,40,000
(vi)	Hire charges for buses used to transport students and faculty from their residence to the institutions and back	4,80,000	5,50,000	1,30,000	7,50,000
(vii)	Catering services for running a canteen in the campus for students (Catering services for KIT include a sum of ₹ 60,000 for catering at a student event)	3,20,000	2,60,000	1,80,000	5,00,000

(i) 'Bright Minds', a coaching institute in Kanpur. The Institute provides coaching for Institute of Banking Personnel Selection (IBPS) Probationary Officers Exam.

(ii) 'Spring Model' a higher secondary school affiliated to CBSE Board.

The Academy provides the following details relating to the expenses incurred by the various institutions run by it during the period April 20XX to September 20XX:

Table 1

S. No.	Particulars	KIT (₹)	Little Millennium (₹)	Bright Minds (₹)	Spring Model (₹)
(i)	Printing services for printing the question papers (paper and content are provided by the Institutions)	2,50,000		1,50,000	2,00,000
(ii)	Paper procured for printing the question papers	4,30,000		2,58,000	3,44,000
(iii)	Honorarium to paper setters and examiners (not on the rolls of the Institution)	5,00,000			
(iv)	Rent for exam centres taken on rent like schools etc., for conducting examination	8,00,000		1,00,000	

S. No.	Particulars	KIT (₹)	Little Millennium (₹)	Bright Minds (₹)	Spring Model (₹)
(v)	Subscription for online educational journals [Little Millennium has taken the subscription for online periodicals on child development and experiential learning]	4,00,000	80,000	2,20,000	2,40,000
(vi)	Hire charges for buses used to transport students and faculty from their residence to the institutions and back	4,80,000	5,50,000	1,30,000	7,50,000
(vii)	Catering services for running a canteen in the campus for students (Catering services for KIT include a sum of ₹ 60,000 for catering at a student event organised in a banquet hall outside the campus)	3,20,000	2,60,000	1,80,000	5,00,000
(viii)	Security and housekeeping services for the institution(s) (Security and housekeeping services for Spring Model include a sum of ₹ 80,000 payable for security and housekeeping at the student event organised in a banquet hall outside the campus)	6,00,000	4,00,000	3,75,000	4,65,000

The academy further provides the following details relating to the receipts of the various institutions run by it during the period April 20XX to September 20XX:

Table 2

S. No.	Particulars	KIT (₹)	Little Millennium (₹)	Bright Minds (₹)	Spring Model (₹)
(i)	Tuition fee	35,00,000	15,00,000	20,00,000	25,00,000
(ii)	Transport fee charged from students	5,00,000	6,00,000	1,30,000	8,50,000

With the help of the above details –

- determine the amount of GST payable, if any, on goods and services received during April 20XX- September 20XX by the various educational institutions run by the 'Chanakya Academy';
- compute net GST liability of the 'Chanakya Academy' payable from the Electronic

Cash Ledger, for the period April 20XX to September 20XX.

All the amounts given above are exclusive of taxes, wherever applicable. Notes:

- (i) Rate of GST on goods is 12%, catering service is 5% and on other services is 18%.
- (ii) Wherever relevant, all the conditions necessary for availing the IT C have been complied with

Question 14

Musicera Pvt. Ltd., owned by Nitish Daani - a famous classical singer - wishes to organise a 'Nitish Daani Music Concert' in Gurugram (Haryana). Musicera Pvt. Ltd. (registered in Ludhiana, Punjab) enters into a contract with an event management company, Supriya (P) Ltd. (registered in Delhi) for organising the said music concert at an agreed consideration of ₹ 10,00,000. Supriya (P) Ltd. books the lawns of Hotel Dumdum, Gurugram (registered in Haryana) for holding the music concert, for a lump sum consideration of ₹ 4,00,000. Musicera Pvt. Ltd. fixes the entry fee to the music concert at ₹ 5,000. 400 tickets for 'Nitish Daani Music Concert' are sold.

You are required to determine the CGST and SGST or IGST liability, as the case may be, in respect of the supplie(s) involved in the given scenario

Will your answer be different if the price per ticket is fixed at ₹ 450?

Note: Rate of CGST and SGST is 9% each and IGST is 18%. All the amounts given above are exclusive of taxes, wherever applicable.

Answer :

In the given situation, three supplies are involved:

- (i) Services provided by Musicera Pvt. Ltd. to audiences by way of admission to music concert.
- (ii) Services provided by Supriya (P) Ltd. to Musicera Pvt. Ltd. by way of organising the music concert.
- (iii) Services provided by Hotel Dumdum to Supriya (P) Ltd. by way of accommodation in the Hotel lawns for organising the music concert.

The CGST and SGST or IGST liability in respect of each of the above supplies is determined as under:

- (i) As per the provisions of section 12(6) of the IGST Act, 2017, the place of supply of services provided by way of admission to, inter alia, a cultural event shall be the place where the event is actually held.

Therefore, the place of supply of services supplied by Musicera Pvt. Ltd. to audiences by way of admission to the music concert is the location of the Hotel Dumdum, i.e. Gurugram, Haryana.

Since the location of the supplier (Ludhiana, Punjab) and the place of supply (Gurugram, Haryana) are in different States, IGST will be leviable. Therefore, IGST leviable will be computed as follows

Consideration for supply (400 tickets @ ₹ 5,000 per ticket) = ₹ 20,00,000
 IGST @ 18% on value of supply = ₹ 20,00,000 × 18% = ₹ 3,60,000.

- (i) Section 12(7)(a)(i) of IGST Act, 2017 stipulates that the place of supply of services provided by way of organization of, inter alia, a cultural event to a registered person is the location of such person.

Therefore, the place of supply of services supplied by Supriya (P) Ltd. to Musicera Pvt. Ltd. (Ludhiana, Punjab) by way of organising the music concert is the location of the recipient, i.e. Ludhiana (Punjab).

Since the location of the supplier (Delhi) and the place of supply (Ludhiana, Punjab) are in different States, IGST will be leviable. Therefore, IGST leviable will be computed as follows:

Consideration for supply = ₹ 10,00,000

IGST @ 18% on value of supply = ₹ 10,00,000 × 18% = ₹ 1,80,000

- (ii) As per the provisions of section 12(3)(c) of the IGST Act, 2017, the place of supply of services, by way of accommodation in any immovable property for organizing, inter alia, any cultural function shall be the location at which the immovable property is located.

Therefore, the place of supply of services supplied by Hotel Dumdum (Gurugram, Haryana) to Supriya (P) Ltd. by way of accommodation in Hotel lawns for organising the music concert shall be the location of the Hotel Dumdum, i.e. Gurugram, Haryana.

Since the location of the supplier (Gurugram, Haryana) and the place of supply (Gurugram, Haryana) are in the same State, CGST and SGST will be leviable. Therefore, CGST and SGST leviable will be computed as follows:

Consideration for supply = ₹ 4,00,000

CGST @ 9% on value of supply = ₹ 4,00,000 × 9% = ₹ 36,000
SGST @ 9% on value of supply = ₹ 4,00,000 × 9% = ₹ 36,000

If the price for the entry ticket is fixed at ₹ 450, answer will change in respect of supply of service provided by way of admission to music concert, as mentioned in point (i) above. There will be no IGST liability if the consideration for the ticket is ₹ 450 as the inter-State services by way of right to admission to, inter alia, musical performance are exempt from IGST vide Notification No. 9/2017 IT (R) dated 28.06.2017, if the consideration for right to admission to the event is not more than ₹ 500 per person. However, there will be no change in the answer in respect of supplies mentioned in point (ii) and (iii) above

Question 15

Skylark Pvt. Ltd., Noida (Uttar Pradesh) is engaged in various kinds of commercial activities. It manufactures taxable goods as also provides certain services. The company has branch office in New Delhi. The Head office at Noida and the branch office in New Delhi are registered under GST. The branch office at New Delhi is eligible for full input tax credit.

The company has reported a total turnover of ₹ 256 crore (exclusive of GST) for the month of August 20XX. The following information is provided by the company in relation to such turnover:

- (i) The turnover includes ₹ 45 crore from sale of securities which were purchased for ₹ 30 crore in the month of January last year.
- (ii) The company supplied goods worth ₹ 50 crore to ABC Ltd. in UK under a letter of undertaking (LUT). The total export proceeds are received in the month of August 20XX itself; ₹ 30 crore in foreign currency and balance ₹ 20 crore in Indian rupees.
- (iii) The company provided consulting services to Sherpa & Sons in Nepal for ₹ 30 crore under a LUT. The entire consideration is received in Indian rupees in the month of August 20XX itself, with the permission of RBI.
- (iv) The turnover includes supply of goods worth ₹ 10 crore to Shanghai Jianguo Trading Company Ltd., a company based in China. As per the sale contract, the goods were to be assembled at Shanghai Jianguo Trading Company Ltd.'s office in Gurugram, Haryana. The payment of the goods is received in convertible foreign exchange in the month of August 20XX itself.
- (v) Goods worth ₹ 20 crore are supplied under a LUT to DEF Pvt. Ltd. located in a SEZ in the State of Uttar Pradesh.
- (vi) Goods worth ₹ 40 lakh were being procured from a vendor in Japan. While the goods were

in transit, the company secured an order for the said goods for ₹ 50 lakh from a buyer in Thailand. Thus, the goods were directly sent to Thailand without entering India.

- (vii) The company owns three immovable properties in Noida. The first building is let out for running a printing press at ₹ 10 lakh per month. The second building is let out for residential purpose at ₹ 5 lakh per month. The third building is let out to a Cold Storage operator at ₹ 5 lakh per month. The cold storage operator sub-lets the building as a warehouse to store potatoes.
- (viii) The remaining turnover comprised of taxable goods sold within the State and outside the State in the ratio of 3:2.

Total turnover of ₹ 256 crore includes the turnover referred to in points (i) to (vii) above. In addition to above –

- (i) the company transferred its stock (taxable goods) from Noida to Delhi branch without any consideration; the value declared in the invoice is ₹ 4.5 crore (exclusive of GST). The cost of production of such goods is ₹ 10 crore. Such stock is sold to independent buyers at ₹ 15 crore (exclusive of GST).
- (ii) the company had sent goods worth ₹ 12 crore (exclusive of GST) to M/s Sharma Traders in Haryana on approval basis on 15th January, 20XX, 15th February 20XX & 15th March 20XX (₹ 4 crore each month). Goods sent during all the three months are approved in the month of September 20XX.

Compute the GST liability [CGST & SGST or IGST, as the case may be] of Skylark Pvt. Ltd., Noida for the month of August 20XX. Make suitable assumptions wherever required.

Assume the rates of taxes to be as under:

	CGST	SGST	IGST
Goods	6%	6%	12%
Services	9%	9%	18%

Answer :-

Computation of GST liability of Skylark Pvt. Ltd. for the month of August 20XX

S. No.	Particulars	Value (₹ in crores)	CGST @ 6% (₹ in crores)	SGST @ 6% (₹ in crores)	IGST@ 12% (₹ in crores)
Goods					
(i)	Export of goods to ABC Ltd. in UK under a letter of undertaking (LUT) [Note 1]	50			Nil
(ii)	Supply of goods to Shanghai Jianguo Trading Company Ltd. [Note 2]	10			1.20
(iii)	Goods supplied to DEF Pvt. Ltd. located in a SEZ [Note 3]	20			Nil
(iv)	Sale within the State [Note 4]	60.18	3.6108	3.6108	-
(v)	Sale outside the State [Note 4]	40.12			4.8144
(vi)	Stock transfer from Noida to Delhi [Note 5]	4.5			0.54
(vii)	Goods sent for sale on approval basis on 15 th February, 20XX [Note 6]	4.00			0.48

S. No.	Particulars	Value (₹ in crores)	CGST @ 6% (₹ in crores)	SGST @ 6% (₹ in crores)	IGST@ 12% (₹ in crores)
	Total tax liability on goods [A]		3.6108	3.6108	7.0344
	Services		CGST @ 9% (₹ in crores)	SGST @ 9% (₹ in crores)	IGST@ 18% (₹ in crores)
(i)	Export of services to Nepal under a LUT [Note 7]	30			Nil
(ii)	Receipts from renting of buildings [Note 8]	0.15	0.0135	0.0135	
	Total tax liability on services [B]		0.0135	0.0135	
	Neither goods nor services				
(i)	Sale of securities [Note 9]	45	Nil	Nil	Nil
(ii)	Goods procured from vendor in Japan and supplied to buyer in Thailand [Note 10]	0.50			Nil
	Total tax liability on goods and services [(A) + (B)]		3.6243	3.6243	7.0344

Notes:

(1) As per section 2(5) of the IGST Act, 2017, export of goods means taking goods out of India to a place outside India. Receipt of consideration in foreign exchange is not a pre-requisite for export of goods. Export of goods is a zero rated supply in terms of section 16(1)(a) of the IGST Act, 2017. A zero rated supply is supplied without payment of tax under a LUT in terms of section 16(3)(a) of that Act.

(2) As per section 2(5) of the IGST Act, 2017, export of goods means taking goods out of India to a place outside India. Since, in the given case, the goods are being assembled in India (Gurugram, Haryana), the same are not exported.

Hence, the place of supply thereof will be governed by section 10 of the IGST Act, 2017 which prescribes the provisions for determining the place of supply of goods other than supply of goods imported into or exported from India. As per section 10(1)(d) of the IGST Act, 2017, where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly. Therefore, in the given case, the place of supply will be Gurugram, Haryana.

Since the location of the supplier (Uttar Pradesh) and the place of supply (Haryana) are in two different States, the same is an inter-State supply liable to IGST [Section 7(1)(a) of the IGST Act, 2017 read with section 5(1) of that Act].

(3) As per section 7(5)(b) of the IGST Act, 2017, supply of goods and/or services to a special economic zone (SEZ) unit is treated to be a supply of goods and/or services in the course of inter-State trade or commerce. Therefore, supply of goods to a SEZ unit located within the same State shall be liable to IGST [Section 5(1) of the IGST Act, 2017].

Supply of goods and/or services to a SEZ unit is a zero rated supply in terms of section 16(1)(b) of the IGST Act, 2017. A zero rated supply is supplied without payment of tax under a LUT in terms of section 16(3)(a) of that Act.

(4) Remaining turnover will be calculated as under

₹ 256 crore - (₹ 45 crore + ₹ 50 crore + ₹ 30 crore + ₹ 10 crore + ₹ 20 crore +

₹ 0.50 crore + ₹ 0.10 crore + ₹ 0.05 crore + ₹ 0.05 crore) = ₹ 100.30 crore Supply within the State -
₹ 100.30 crore x 3/5 = ₹ 60.18

Supply outside the State - ₹ 100.30 crore x 2/5 = ₹ 40.12

Supply within the State is intra-State supply in terms of section 8(1) of IGST Act, 2017 and thus, chargeable to CGST and SGST. Supply outside the State is inter- State supply chargeable to IGST [Section 7(1) of IGST Act, 2017 read with section 5(1) of the said Act].

- (5) As per section 25(4) of the CGST Act, 2017, a person who has obtained more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as 'distinct persons'.

Schedule I to the CGST Act, 2017 specifies situations where activities are to be treated as supply even if made without consideration. Supply of goods and/or services between 'distinct persons' as specified in section 25 of the CGST Act, 2017, when made in the course or furtherance of business is one such activity included in Schedule I under para 2.

In the given case-

- the location of the supplier is in Noida (Uttar Pradesh); and
- the place of supply is the location of such goods at the time at which the movement thereof terminates for delivery to the recipient i.e., Delhi, in terms of section 10(1)(a) of the IGST Act, 2017.

Therefore, the stock transfer by Noida office to Delhi branch is an inter-State supply as the location of the supplier and the place of supply are in two different States [Section 7(1)(a) of IGST Act, 2017]. Thus, the supply is leviable to IGST in terms of section 5(1) of the IGST Act, 2017.

Rule 28 of the CGST Rules, 2017 prescribes the provisions to determine the value of supply of goods or services or both between distinct or related persons, other than through an agent. Second proviso to the said rule lays down that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services. Therefore, the value of supply in this case will be ₹ 4.5 crore and open market value and cost of production of the goods will be irrelevant.

- (6) As per section 31(7) of the CGST Act, 2017, where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.

In the given case, the time period of six months for goods sent on 15th February, 20XX expires on 15.08.20XX. Therefore, the invoice for the said goods shall be issued on 15.08.20XX and in terms of section 12(2)(a) of the CGST Act, 2017 read with Notification No. 66/2017 CT dated 15.11.2017, this date would also be the time of supply of such goods. Thus, such goods will be liable to tax in the month of August 20XX. Goods sent in the month of January would have been taxed in the month of July and goods sent in the month of March would be taxed in the month of September.

Here,

- the location of the supplier is in Noida (Uttar Pradesh); and
- the place of supply is the location of the goods at the time at which the movement thereof terminates for delivery to the recipient i.e., Haryana in terms of section 10(1)(a) of the IGST Act, 2017.

Since the location of the supplier (Uttar Pradesh) and the place of supply (Haryana) are in two different States, the same is an inter-State supply liable to IGST [Section 7(1)(a) of the IGST

Act, 2017 read with section 5(1) of that Act].

- (7) The given case is an export of service as per section 2(6) of the IGST Act, 2017, as-
- (i) the supplier of service is located in India (Noida);
 - (ii) the recipient of service is located outside India (Nepal);
 - (iii) the place of supply of service is outside India (Place of supply of consulting service will be the location of recipient, i.e. Nepal);
 - (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India (Receipt of export consideration in Indian rupees is permitted by RBI in the given case); and
 - (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.

Export of services is a zero rated supply in terms of section 16(1)(a) of the IGST Act, 2017. A zero rated supply is supplied without payment of tax under a LUT in terms of section 16(3)(a) of that Act.

- (8) Letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of service in terms of para 2(b) of the Schedule II to the CGST Act, 2017. Services by way of renting of residential dwelling for use as residence is exempt from tax [Notification No. 12/2017 CT (R) dated 28.06.2017]. Therefore, rent of ₹ 10 lakh received from letting out of building for printing press will be liable to tax and rent of ₹ 5 lakh received from letting out of building for residential purposes will be exempt from tax.

Further, services by way of loading, unloading, packing, storage or warehousing of agricultural produce is exempt from tax [Notification No. 12/2017 CT (R) dated 28.06.2017]. However, in the given case, the Cold Storage Operator and not Skylark Pvt. Ltd. is engaged in warehousing of agricultural produce. Therefore, the Cold Storage Operator providing warehousing services for potatoes, being an agricultural produce, will be eligible for such exemption and services provided by Skylark Pvt. Ltd., being services of renting of immovable property (₹ 5 lakh), will be liable to tax.

In case of letting out of first and third buildings,

- the location of the supplier is in Noida (Uttar Pradesh); and
- the place of supply is the location of the immovable property, i.e. Noida in terms of section 12(3)(a) of the IGST Act, 2017.

Since the location of the supplier (Uttar Pradesh) and the place of supply (Noida) are in the same State, the same is an intra-State supply in terms of section 8(1) of the IGST Act, 2017 and is thus, liable to CGST and SGST.

- (9) GST is leviable on supply of goods and/or services [Section 9(1) of the CGST Act, 2017]. Securities are specifically excluded from the definition of goods and services as provided under clause (52) and clause (102) respectively of section 2 of the CGST Act, 2017. Therefore, sale of securities will not be liable to GST.
- (10) Paragraph 7 of the Schedule III to CGST Act, 2017 provides that supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India (third country shipments) is treated neither as a supply of goods nor a supply of services. Thus, there is no GST liability on such sales. Further, since such goods do not enter India at any point of time, customs duty and IGST leviable on imported goods will also not be leviable on such goods.

Question 16

Pethalal has obtained registration in the current financial year in Uttar Pradesh. His turnover in the preceding financial year was ₹ 19,90,000. He has received the following amounts in respect of the activities undertaken by him in the month of September:

S. No.	Particulars	Amount (₹)
(i)	Funeral services	8,80,000
(ii)	Services of warehousing of jaggery	50,000
(iii)	Electrically operated buses given on hire to Municipal Corporation	5,00,000
(iv)	Service provided to recognized sports body as commentator	2,00,000
(v)	Commission received as an insurance agent from insurance company	65,000
(vi)	Commission received as business facilitator for the services provided to the urban branch of a nationalized bank with respect to savings bank accounts	15,000
(vii)	Security services (supply of security personnel) provided to Damodar Engineering College (DEC)* [registered under GST] for the security of the college premises *All the engineering courses run by DEC are recognised by the law [The All India Council for Technical Education (AICTE)]	28,000

Further, he has received following services in the month of September:

S. No.	Particulars	Amount (₹)
(a)	Freight paid to unregistered goods transport agency for his business activities relating to serial number (i) above	1,00,000
(b)	Legal advice received from M/s Kanoon Associates, a partnership firm, seeking advice in relation to a tax dispute of the business	50,000

All the transactions stated above are intra-State transactions and amounts given are exclusive of GST, wherever applicable.

You are required to calculate net GST payable by Pethalal for the month of September. There was no opening balance of input tax credit. Rate of CGST and SGST is 9% each for all the outward supplies made by Pethalal **Computation of net GST payable by Pethalal**

Particulars	Amount (₹)	CGST (₹)	SGST (₹)
<u>Supplies on which Pethalal is liable to pay GST under forward charge</u>			
Funeral services [Note 1]	8,80,000		
Services of warehousing of jaggery [Note 2]	50,000		
Services by way of giving on hire electrically operated buses to Municipality [Note 3]	5,00,000		

Particulars	Amount (₹)	CGST (₹)	SGST (₹)
Service provided to recognized sports body as commentator [Note 4]	2,00,000		
Commission received as an insurance agent from insurance company [Note 5]	65,000	= 2,00,000 × 9%	= 2,00,000 × 9%
Commission received as business facilitator for the services provided to the urban branch of a nationalised bank with respect to savings bank accounts [Note 6]	15,000	= 18,000	= 18,000
Security services (supply of security personnel) provided to DEC for the security of the college premises [Note 7]	28,000		
Value of taxable supply	2,00,000		
		18,000	18000
		100000*2.5%= 2500	100000*2.5 % = 2500
		2500	2500
		Nil	Nil
		20,500	20,500
Total tax liability on outward supplies (A)		18,000	18,000
Supplies on which Pethalal is liable to pay GST under reverse charge			
Services received from GTA [Note 8]	1,00,000	= 1,00,000	= 1,00,000
Legal services received [Note 9]	50,000	× 2.5%	× 2.5%
Value of taxable supply	1,00,000	= 2,500	= 2,500
Total tax liability on inward supplies under reverse charge (B) - payable in cash [Note 10]		2,500	2,500
ITC available on input services [Note 8]		Nil	Nil
Net GST payable (A) + (B)		20,500	20,500

Notes:

- (1) Funeral services being covered in entry 4 of Schedule III to the CGST Act, 2017 are not a supply and thus, are outside the ambit of GST.
- (2) Services by way of storage/ warehousing of, inter alia, jaggery are exempt from GST vide Exemption Notification No. 12/2017 CT(R) dated 28.06.2017 (hereinafter referred to as exemption notification). Thus, services of warehousing of jaggery are exempt.
- (3) Services by way of giving on hire to a local authority, an Electrically operated vehicle (EOV) meant to carry more than 12 passengers are exempt vide exemption notification.

Buses are EOVs meant to carry more than 12 passengers. Hence, services of giving electrically operated buses on hire to Municipal Corporation are exempt from GST.

- (4) Services provided to a recognized sports body by an individual only as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body are exempt from GST vide exemption notification. Thus, service provided as commentator is liable to GST.

Though commission for providing insurance agent's services to any person carrying on insurance business is liable to GST, the tax payable thereon is to be paid by the recipient of service i.e., insurance company, under reverse charge in terms of Notification No. 13/2017 CT(R) dated 28.06.2017 (hereinafter referred to as reverse charge notification). Thus, Pethalal will not be liable to pay GST on such commission.

- (5) Services provided by a business facilitator to a banking company with respect to accounts in its rural area branch are exempt from GST vide exemption notification. Thus, services provided by him in respect of urban area branch of the bank will be taxable. However, the tax payable thereon is to be paid by the recipient of service i.e., banking company, under reverse charge in terms of reverse charge notification. Hence, Pethalal will not be liable to pay GST on commission received for said services.
- (6) Services provided to an educational institution, by way of security services performed in such educational institution are exempt from GST only when said services are provided to an institution providing services by way of pre-school education and education up to higher secondary school or equivalent, vide exemption notification. Thus, in the given case, security services provided to DEC are not exempt. Further, the tax on security services (supply of security personnel) provided by any person other than a body corporate to a registered person is payable by the recipient of service under reverse charge in terms of reverse charge notification. Hence, Pethalal will not be liable to pay GST in the given case.
- (7) GST on services provided by a GTA (not paying tax @ 12%) to, inter alia, a registered person is payable by the recipient of service i.e., the registered person, under reverse charge in terms of reverse charge notification. Since in the given case, GTA is unregistered, Pethalal is liable to pay tax under reverse charge @ 5% (CGST @ 2.5% and SGST @ 2.5%). Further, since said input services are being exclusively used for effecting non-taxable supplies [funeral services], input tax credit of the GST paid on the same will not be available.
- (8) Legal services provided by a partnership firm of advocates to a business entity (with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017) are exempt from GST vide exemption notification. Since the aggregate turnover of Pethalal did not exceed ₹ 20 lakh [the applicable threshold limit for registration for Pethalal being a supplier of services] in the preceding FY, legal services received by him are exempt from GST.
- (9) As per section 49(4) of the CGST Act, 2017, amount available in the electronic credit ledger may be used for making payment towards output tax. However, tax payable under reverse charge is not an output tax in terms of section 2(82) of the CGST Act, 2017. Therefore, tax payable under reverse charge cannot be set off against the input tax credit and thus, will have to be paid in cash.

Since all the transactions given hereunder are intra-State, CGST and SGST are payable in terms of section 9(1) of the CGST Act, 2017

- (10) As per section 49(4) of the CGST Act, 2017, amount available in the electronic credit ledger may be used for making payment towards output tax. However, tax payable under reverse charge is not an output tax in terms of section 2(82) of the CGST Act, 2017.

Therefore, tax payable under reverse charge cannot be set off against the input tax credit and thus, will have to be paid in cash.

- (11) Since all the transactions given hereunder are intra-State, CGST and SGST are payable in terms of section 9(1) of the CGST Act, 2017

Question 17

Dushyant rents out a commercial building owned by him to Bharat for the month of December, for which he charges a rent of ₹19,50,000. Dushyant pays the maintenance charges of ₹ 1,00,000 (for the December month) as charged by the local society. These charges have been reimbursed to him by Bharat. Further, Bharat had given ₹ 2,50,000 to Dushyant as interest free refundable security deposit. Further, Dushyant has paid the municipal taxes of ₹ 2,85,000 which he has not charged from Bharat. You are required to determine the value of supply and the GST liability of Dushyant for the month of December assuming CGST and SGST rates to be 9% each.

Note: All the amounts given above are exclusive of GST.

Answer

Computation of the value of supply and the GST liability of Dushyant for the month of December

Particulars	Amount (₹)
Rent of the commercial buiding	19,50,000
Maintenance charges paid to the local society, reimbursed by Bharat [Being reimbursed by the tenant - Bharat, such charges ultimately form part of the rent paid by Bharat to Dushyant and thus, will form part of the value]	1,00,000
Interest free refundable security deposit [Being refundable, the security deposit does not constitute consideration in terms of section 2(31) of the CGST Act, 2017 and thus, is not includible in the value]	Nil
Municipal taxes paid by Dushyant [Being an expenditure incurred by the supplier, the same is not includible in the value since such taxes are not charged to the recipient.]	Nil
Value of supply	20,50,000
CGST @ 9%	1,84,500
SGST @ 9%	1,84,500

Question 18

Jaskaran, a registered supplier of Delhi, has made the following supplies in the month of January, 20XX

S. No.	Particulars	Amount* (₹)
(i)	Supply of 20,000 packages at ₹ 30 each to Sukhija Gift Shop in Punjab [Each package consists of 2 chocolates, 2 fruit juice bottles and a packet of toy balloons]	6,00,000
(ii)	10 generators hired out to Morarji Banquet Halls, Chandigarh [including cost of transporting the generators (₹ 1,000 for each generator) from Jaskaran's warehouse to the Morarji Banquet Halls]	2,50,000
(iii)	500 packages each consisting of 1 chocolate and 1 fruit juice bottle given as free gift to Delhi customers on the occasion of Diwali [Cost of each package is ₹ 12, but the open market value of such package of goods and of goods of like kind and quality is not available. Input tax credit has not been taken on the items contained in the package]	
(iv)	Catering services provided free of cost for elder son's business inaugural function in Delhi [Cost of providing said services is ₹ 55,000, but the open market value of such services and of services of like kind and quality is not available.]	

*excluding GST

You are required to determine the GST liability [CGST & SGST and/or IGST, as the case may be] of Jaskaran for the month of January, 20XX with the help of the following additional information furnished by him for the said period:

- Penalty of ₹ 10,000 was collected from Sukhija Gift Shop for the payment received with a delay of 10 days.
- The transportation of the generators from Jaskaran's warehouse to the customer's premises is arranged by Jaskaran through a Goods Transport Agency (GTA) who pays tax @ 12%.
- Assume the rates of GST to be as under:

Goods/services supplied	CGST	SGST	IGST
Chocolates	9%	9%	18%
Fruit juice bottles	6%	6%	12%
Toy balloons	2.5%	2.5%	5%
Service of renting of generators	9%	9%	18%
Catering service	9%	9%	18%

Answer**1. Computation of GST liability of Jaskaran for the month of January, 20XX**

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
Supply of 20,000 packages to Sukhija Gift Shop, Punjab [Note-1]			1,09,526 [6,08,475 × 18%]
Renting of 10 generators to Morarji Banquet Halls, Chandigarh [Note-2]			45,000 [2,50,000 × 18%]
500 packages given as free gift to the customers [Note-3]	Nil	Nil	Nil
Catering services provided free of cost for elder son's business inaugural function in Delhi [Note-3]	5,445 [60,500 × 9%]	5,445 [60,500 × 9%]	
Total GST liability (rounded off)	5,445	5,445	1,54,526

Notes:

As per section 2(74) of the CGST Act, 2017, mixed supply means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

Supply of a package containing chocolates, fruit juice bottles and a packet of toy balloons is a mixed supply as each of these items can be supplied separately and is not dependent on any other. Further, as per section 8(b) of the CGST Act, 2017, the mixed supply is treated as a supply of that particular supply which attracts the highest rate of tax. Thus, in the given case, supply of packages is treated as supply of chocolates [since it attracts the highest rate of tax]. Consequently, being an inter-State supply of goods, supply of packages to Sukhija Gift Shop of Punjab is subject to IGST @ 18% each.

Further, value of supply includes interest or late fee or penalty charged for delayed payment of any consideration for any supply in terms of section 15(2)(d) of the CGST Act, 2017. Thus, penalty of ₹ 10,000 [considered as inclusive of GST] collected from Sukhija Gift Shop for the delayed payment will be included in the value of supply. The total value of supply is ₹ 6,08,475 [₹ 6,00,000 + (₹ 10,000 × 100/118)]

Services by way of transportation of goods by road except the services of a Goods Transportation Agency (GTA) are exempt vide Notification No. 9/2017 IT (R) dated 28.06.2017. Since Jaskaran is not a GTA, transportation services provided by him are exempt from GST. However, since the generators are invariably hired out along with their transportation till customer's premises, it is a case of composite supply under section 2(30) of the CGST Act, 2017 wherein the principal supply is the renting of generator.

As per section 8(a) of the CGST Act, 2017, the composite supply is treated as the supply of the principal supply. Therefore, the service of transportation of generators will also be taxed at the rate applicable for renting of the generator (principal supply).

Consequently, being an inter-State supply of service, service of hiring out the generators to Morarji Banquet Halls of Chandigarh is subject to IGST @ 18% each.

As per section 7(1)(c) of the CGST Act, 2017, an activity made without consideration can be treated as supply only when it is specified in Schedule I of the CGST Act, 2017. Para 2.

of Schedule I provides that supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business, are to be treated as supply even if made without consideration.

However, since the question does not provide that customers are related to Jaskaran, free gifts given to the customers cannot be considered as a supply under section 7. Consequently, no tax is leviable on the same.

Further, the catering services provided by Jaskaran to his elder son without consideration will be treated as supply as Jaskaran and his elder son, being members of same family, are related persons in terms of explanation (a)(viii) to section 15 of the CGST Act, 2017 and said services have been provided in course/furtherance of business. Value of supply of services between related persons, other than through an agent is determined as per rule 28 of the CGST Rules, 2017. Accordingly, the value of supply is the open market value of such supply; if open market value is not available, the value of supply of goods or services of like kind and quality. However, if value cannot be determined under said methods, it must be worked out based on the cost of the supply plus 10% mark-up. Thus, in the given case, value of catering services provided to the elder son of Jaskaran is ₹ 60,500 [₹ 55,000 × 110%]. Further, being an intra-State supply of services, catering services are subject to CGST and SGST @ 2.5% each.

As per Notification No. 13/2017 CT(R) dated 28.06.2017, GST is payable by the recipient on reverse charge basis on the receipt of services of transportation of goods by road from a goods transport agency (GTA) provided such GTA has not paid GST @ 12%. Since in the given case, Jaskaran has received services from a GTA who has paid GST @ 12%, reverse charge provisions will not be applicable.



Question 1

A machine was originally imported from Japan at Rs. 250 lakh in July, 20XX on payment of all duties of customs. The said machine was exported (sent-back) to supplier for repairs in December, 20XX and re-imported without any re-manufacturing or re-processing in October next year after repairs. Since the machine was under warranty period, the repairs were carried out free of cost.

However, the fair cost of repairs carried out (including cost of material Rs. 6 lakh) would have been Rs. 9 lakh. Actual insurance and freight charges (to and fro) were Rs. 3 lakh. The rate of basic customs duty is 10% and integrated tax is 12%. Ignore GST compensation cess.

Compute the amount of customs duty payable (if any) on re-import of the machine after repairs. The ownership of the machine has not been changed during the period.

Note: The importer intends to avail exemption, if any, with regard to re-importation of goods which had been exported for repairs abroad.

Answer:

As per Notification No. 45/2017 Cus. dated 30.06.2017, duty payable on re-importation of goods which had been exported for repairs abroad is the duty of customs which would be leviable if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not), insurance and freight charges, both ways. However, following conditions need to be satisfied for availing this concession:

- goods must be re-imported within 3 years, extendable by further 2 years, after their exportation;
- exported goods and the re-imported goods must be the same;
- ownership of the goods **should** not change.

Since all the conditions specified above are fulfilled in the given case, the customs duty payable on re-imported goods will be computed as under:

Particulars	Rs.
Value of goods re-imported after exports [Rs. 9 lakh (including cost of materials) + Rs. 3 lakh]	12,00,000
Add: Basic customs duty @ 10% (A)	1,20,000
Add: Social Welfare Surcharge @ 10% on Rs. 1,20,000 (B)	12,000
Value for computing integrated tax	13,32,000
Integrated tax @ 12% (Rs. 13,32,000 x 12%) - (C)	1,59,840
Customs duty and integrated tax payable [(A) +(B)+ (C)]	2,91,840

Question 2

Distinguish between Jetsam and Flotsam.

Answer:

Jetsam and Flotsam are goods which are jettisoned (i.e. thrown with speed) from the vessel into the sea to reduce weight of vessel to prevent it from sinking. They are not abandoned goods. Jetsam gets sunk whereas Flotsam does not sink but floats. Duty is payable on both unless they are entitled to be admitted free of duty.

Question 3

An importer, imported consignment of goods, chargeable to duty @ 40% ad valorem. The vessel arrived on 31st May, 20XX. A bill of entry for warehousing the goods was presented on 2nd June, 20XX and the goods were duly warehoused. In the meantime, an exemption notification was issued on 15th October, 20XX reducing the effective customs duty to 25% ad valorem.

Thereafter, the importer filed a bill of entry for home consumption on 20th October claiming 25% duty. The customs Department charged higher rate of duty @ 40% ad valorem. Give your views on the same, discussing the relevant provisions of the Customs Act, 1962.

Answer:

According to section 15(1)(b) of the Customs Act, the relevant date for determination of rate of duty and tariff value in case of goods cleared from a warehouse is the date on which a bill of entry for home consumption in respect of such goods is presented. Therefore, the relevant date for determining the duty in the given case will be 20.10.20XX (the date on which the bill of entry for home consumption is presented) and thus, the relevant rate of duty will be 25%.

Question 4

What will be the impact on the customs duty if the goods are –:

- (i) damaged inside the warehouse before clearance for home consumption
- (ii) deteriorated inside the warehouse before clearance for home consumption
- (iii) destroyed in the warehouse before clearance for home consumption
- (iv) destroyed on the wharf, before clearance for home consumption
- (v) destroyed after clearance from warehouse

Answer:

- (i) When the goods are damaged inside the warehouse abatement in customs duty, on resultant loss in value, has been provided through section 22. Section 22 contemplates that for claiming abatement of duty, the damage (not deterioration) should occur at any time before clearance of the imported goods for home consumption from the warehouse. However, the damage should not be attributable to the importer. It should be proved to the satisfaction of Assistant Commissioner or Deputy Commissioner of Customs that the imported goods have actually suffered damages. The claim for abatement is not tenable unless the importer factually proves the damage. The following equation provides the way to calculate the abatement of duty.

$$\text{Duty after damage} - \text{Value after damage} = \frac{\text{Duty before damage}}{\text{Value before damage}}$$

- (ii) As discussed above, in case of warehoused goods, only damages are covered and not deterioration, hence abatement will not be available in this case and full duty will have to be paid.

However, as per first proviso to section 68 of Customs Act, 1962, owner of any warehoused goods may, at any time before an order for clearance of goods for home consumption has been made in respect of such goods, relinquish his title to the goods. Upon such relinquishment, duty will not be payable on such goods but rent, interest, other charges and penalties would be payable.

- (iii) When the goods are destroyed in the warehouse before clearance for home consumption, customs duty will be remitted as per the provisions of section 23. Section 23(1) applies when the goods have been lost (otherwise than as a result of pilferage) or destroyed in entirety i.e. whole or part of goods is lost once for all. The goods cease to exist and cannot be retrieved. The loss is generally on account of natural causes such as fire, flood etc., and no human element

is present as in section 13. The loss or destruction may occur at any time before clearance for home consumption. The loss/destruction has to be proved to the satisfaction of Assistant Commissioner or Deputy Commissioner.

- (iv) As all the conditions of section 23 are fulfilled, duty will be remitted in this case also.
- (v) As per the discussion made in (iii) above it is clear that remission of duty is possible only when destruction occurs before clearance for home consumption. In case of destruction after clearance from a warehouse, no remission of duty is possible.

Question 5

Peerless Scraps, imported during August 20XX, by sea, a consignment of metal scrap weighing 6,000 M.T. (metric tonnes) from U.S.A. They filed a bill of entry for home consumption. The Assistant Commissioner passed an order for clearance of goods and applicable duty was paid by them. Peerless Scraps thereafter found, on taking delivery from the Port Trust Authorities (i.e., before the clearance for home consumption), that only 5,500 M.T. of scrap were available at the docks although they had paid duty for the entire 6,000 M.T., since there was no short-landing of cargo. The short-delivery of 500 M.T. was also substantiated by the Port-Trust Authorities, who gave a "weighment certificate" to Peerless Scraps.

On filing a representation to the Customs Department, Peerless Scraps has been directed in writing to justify as to which provision of the Customs Act, 1962 governs their claim for remission of duty on the 500 M.T. not delivered by the Port-Trust.

You are approached by Peerless Scraps as "Counsel" for an opinion/advice. Examine the issues and tender your opinion as per law, giving reasons.

Answer:

As per provisions of section 23, where it is shown to the satisfaction of Assistant or Deputy Commissioner that any imported goods have been lost or destroyed, otherwise than as a result of pilferage at any time before clearance for home consumption, the Assistant or Deputy Commissioner shall remit the duty on such goods. Therefore, duty shall be remitted only if loss has occurred before clearance for home consumption.

In the given case, it is apparent from the facts that quantity of scrap received in India was 6000 metric tonnes and 500 metric tonnes thereof was lost when it was in custody of Port Authorities i.e. before clearance for home consumption was made. Also, the loss of 500 MT of scrap cannot be construed to be pilferage, as loss of such huge quantity cannot be treated as "Petty Theft".

Hence, Peerless Scraps may take shelter under section 23 justifying his claim for remission of duty.

Question 6

What are the provisions relating to effective date of notifications issued under section 25 of the Customs Act, 1962?

Answer:

Date of effect of every notification issued will be the date of its issue by the Central Government for publication in the Official Gazette, unless provided otherwise in the notification. Issue means signed by competent authority and sent for publication to Government press.

The provision is made as there may be delay of one or two days in publishing in Gazette e.g. if the notification is issued on 2nd November and published in Official Gazette on 4th November, the notification will be effective from 2nd November.

The above rules do not apply to exemptions granted through special orders. Special orders are issued separately for each case and communicated to the beneficiary directly by the Government.

Question 7

ASC Ltd. entered in to technical collaboration with MSC Ltd. of Netherlands and imported drawings and designs in paper form through professional courier and post parcels. ASC Ltd. declared the value of these drawings and designs at a very nominal value. However, the Assistant Commissioner of Customs valued these drawings and designs at intrinsic value and levied duty on them. ASC Ltd. contended that customs duty cannot be levied on drawings and designs as they do not fall in the definition of goods under the Customs Act, 1962.

Do you feel the stand taken by the ASC Ltd. is tenable in law? Support your answer with a decided case law, if any.

Answer:

This issue has been settled by the Supreme Court in the case of Associated Cement Companies Ltd. v. CC 2001 (128) ELT 21 (SC). The Apex Court observed that though technical advice or information technology are intangible assets, but the moment they are put on a media, whether paper or cassettes or diskettes or any other thing, they become movable and are thus, goods. Therefore, the Supreme Court held that drawings, designs, manuals and technical material are goods liable to customs duty.

Therefore, the stand taken by the ASC Ltd. is not correct in law.

Note: At present, drawings fall under heading under 4906 and 4911 and are exempt as per Sr No. 275 of Notification No. 12/2012 Cus dated 17.03.2012.

Question 8

An importer imported certain inputs for manufacture of final product. A small portion of the imported inputs were damaged in transit and could not be used in the manufacture of the final product. An exemption notification was in force providing exemption in respect of specified raw materials imported into India for use in manufacture of specified goods, which was applicable to the imports made by the importer in the present case.

Briefly examine whether the importer could claim the benefit of the aforesaid notification in respect of the entire lot of the inputs imported including those that were damaged in transit.

Answer:

The facts of the case are similar to the case of BPL Display Devices Ltd. v. CCEx., Ghaziabad (2004) 174 ELT 5 (SC) wherein the Supreme Court has held that the benefit of the notifications cannot be denied in respect of goods which are intended for use for manufacture of the final product but cannot be so used due to shortage or leakage.

The Apex Court has held that no material distinction can be drawn between loss on account of leakage and loss on account of damage. The benefit of said exemption cannot be denied as inputs were intended for use in the manufacture of final product but could not be so used due to shortage/leakage/damage. It has been clarified by the Supreme Court that words "for use" have to be construed to mean "intended for use".

Therefore, the importer can claim the benefit of the notification in respect of the entire lot of the inputs imported including those that were damaged in transit.

Question 9

M/s. Pure Energy Ltd. is engaged in oil exploration and has imported software containing seismic data. The importer is entitled to exemption from customs duty subject to the condition that an "essentiality certificate" granted by the Director General of Hydrocarbons is produced at the time of importation of the goods. Though the importer applied for the certificate within the statutory time limit prescribed for the same, the certificate was not made available to the importer within a reasonable time by the Director General of Hydrocarbons. The customs department rejected the importer's claim for exemption.

Examine briefly whether the department's action is sustainable in law.

Answer:

This issue has been addressed by the Supreme Court in the case of Commissioner of Customs v. Tullow India Operations Ltd. (2005) 189 ELT 401 (SC). The Apex Court has observed that if a condition is not within the power and control of the importer and depends upon the acts of public functionaries, non-compliance of such a condition, subject to just exceptions cannot be held to be a condition precedent which would disable it from obtaining the benefit for all times to come.

In the given case also the certificate has not been granted within a reasonable time. Therefore, in view of the above-mentioned judgement, the importer M/s Pure Energy Ltd. cannot be blamed for the lapse by the authorities. The Directorate General of Hydrocarbons is under the Ministry of Petroleum and Natural Gas and such a public functionary is supposed to grant the essentiality certificate within a reasonable time so as to enable the importer to avail of the benefits under the notification.

Question 10

Lucrative Laminates imported resin impregnated paper and plywood for the purpose of manufacture of furniture. The said goods were warehoused from the date of its import. Lucrative Laminates sought an extension of the warehousing period which was granted by the authorities. However, even after the expiry of the said date, it did not remove the goods from the warehouse. Subsequently, Lucrative Laminates applied for remission of duty under section 23 of the Customs Act, 1962 on the ground that the said goods had lost their shelf life and had become unfit for use on account of non-availability of orders for clearance.

Explain, with the help of a decided case law, if any, whether the application for remission of duty filed by the Lucrative Laminates is valid in law?

Answer:

No, the application for remission of duty filed by the Lucrative Laminates is not valid in law. The facts of the given case are similar to the case of CCE v. Decorative Laminates (I) Pvt. Ltd. 2010 (257) E.L.T. 61 (Kar.). The High Court, while interpreting section 23, stipulated that section 23 states that only when the imported goods have been lost or destroyed at any time before clearance for home consumption, the application for remission of duty can be considered. Further, even before an order for clearance of goods for home consumption is made, relinquishing of title to the goods can be made; in such event also, an importer would not be liable to pay duty.

Therefore, the expression "at any time before clearance for home consumption" would mean the time period as per the initial order during which the goods are warehoused or before the expiry of the extended date for clearance and not any period after the lapse of the aforesaid periods. The said expression cannot extend to a period after the lapse of the extended period merely because the licence holder has not cleared the goods within the stipulated time.

Moreover, since in the given case, the goods continued to be in the warehouse, even after the expiry of the warehousing period, it would be a case of goods improperly removed from the warehouse as per section 72(1)(b) read with section 71.

The High Court, overruling the decision of the Tribunal, held that the circumstances made out under section 23 were not applicable to the present case since the destruction of the goods or loss of the goods had not occurred before the clearance for home consumption within the meaning of that section. When the goods are not cleared within the period or extended period as given by the authorities, their continuance in the warehouse will not attract section 23 of the Act.

Further, in *Kesoram Rayon v. CC* 1996 (86) ELT 464, the Supreme Court has held that goods which are not removed from warehouse within the permissible period, are deemed to be improperly removed on the day they ought to have been removed. In view of this decision, goods would be deemed to have been removed when licensing period was over. Hence, section 23 would not be applicable as such loss occurred after 'deemed removal' of goods.

Question 11

Explain, with reference to decided case law, whether clearances from Domestic Tariff Area (DTA) to Special Economic Zone is chargeable to export duty under the SEZ Act, 2005 or the Customs Act, 1962.

Answer:

In the case of *Tirupati Udyog Ltd. v. UOI* 2011 (272) E.L.T. 209 (A.P.), it is held that the clearances of goods from DTA to Special Economic Zone are not chargeable to export duty either under the SEZ Act, 2005 or under the Customs Act, 1962 on the basis of the following observations:-

- The charging section needs to be construed strictly. If a person is not expressly brought within the scope of the charging section, he cannot be taxed at all.
- SEZ Act does not contain any provision for levy and collection of export duty on goods supplied by a DTA unit to a Unit in a Special Economic Zone for its authorised operations. Since there is no charging provision in the SEZ Act providing for the levy of customs duty on such goods, export duty cannot be levied on the DTA supplier.
- Reading section 12(1) of the Customs Act, 1962 along with sections 2(18), 2(23) and 2(27) makes it apparent that customs duty can be levied only on goods imported into or exported beyond the territorial waters of India.

Since both the SEZ unit and the DTA unit are located within the territorial waters of India, supplies from DTA to SEZ would not attract section 12(1) [charging section for customs duty].

The above view has also been confirmed in *Essar Steel v. UOI* 2010 (249) ELT 3 (Guj.) [maintained by SC] wherein the Departmental appeal has been dismissed by Supreme Court on 12.07.2010 - 2010 (255) ELT A115.

Question 12

M/s. XYZ, a 100% export oriented undertaking (100% E.O.U. in short) imported DG sets and furnace oil duty free for setting up captive power plant for its power requirements for export production. This benefit was available vide an exemptions notification. They used the power so generated for export production but sold surplus power in domestic tariff area.

Customs Department has demanded duty on DG sets and furnace oil as surplus power has been sold in domestic tariff area. The notification does not specifically restrict the use of imported goods for manufacture of export goods.

Do you think the demand of the Customs Department is valid in law.

Answer:

The facts of the case are similar to the case of *Commissioner v. Hanil Era Textile Ltd.* 2005 (180) ELT A044 (SC) wherein the Supreme Court agreed to the view taken by the Tribunal that in the absence

of a restrictive clause in the notifications that imported goods are to be solely or exclusively used for manufacture of goods for export, there is no violation of any condition of notification, if surplus power generated due to unforeseen exigencies is sold in domestic tariff area.

Therefore, no duty can be demanded from M/s XYZ for selling the surplus power in domestic tariff area for the following reasons:

- (i) They have used the DG sets and furnace oil imported duty free for generation of power, and
- (ii) such power generated has been used for manufacturing goods for export, and
- (iii) only the surplus power has been sold, as power cannot be stored.

Question 13

Referring to section 25 of the Customs Act, 1962, discuss the following:

- (i) Special exemption
- (ii) General exemption

Answer:

- (i) **Special Exemption:** As per section 25(2) of the Customs Act, 1962, if the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from payment of duty, any goods on which duty is leviable only under circumstances of an exceptional nature to be stated in such order. Further, no duty shall be collected if the amount of duty leviable is equal to, or less than, Rs. 100. This type of exemption is called as ad hoc exemption. Order under section 25(2) is not required to be published in the Official Gazette.
- (ii) **General Exemption:** As per section 25(1) of the Customs Act, 1962, if the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon. Further, this exemption applies to all importers while exemption under section 25(2) is for specific importer and specific goods under import.

Question 14

Write a brief note on the following with reference to the Customs Act, 1962:

- (i) Remission of duty on imported goods lost
- (ii) Pilfered goods

Answer:

- (i) **Remission of duty on imported goods lost:** Section 23(1) of the Customs Act, 1962 provides for remission of duty on imported goods lost (otherwise than as a result of pilferage) or destroyed, if such loss or destruction is at any time before clearance for home consumption. Such loss or destruction covers loss by leakage. Duty is payable under this section but it is remitted by Assistant/Deputy Commissioner of Customs if the importer is able to prove the loss or destruction. Thus, unless remitted, duty has to be paid and burden of proof is on the importer. The provisions of this section are applicable for warehoused goods also.
- (ii) **Pilfered goods:** Section 13 provides that if imported goods are pilfered after unloading thereof but before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, no duty is payable on the goods, unless the pilfered goods are restored to importer. In such a case, duty on pilfered goods is payable by the Port authorities. Also, the

importer does not have to prove pilferage. However, the loss must be only due to pilferage. Section 13 is not applicable for warehoused goods.

Question 15

Distinguish between Pilfered goods and Lost/destroyed goods

Answer:

	Pilfered goods	Lost/Destroyed goods
1.	Covered by section 13	Covered by section 23(1)
2.	No duty payable on such goods	Duty paid on such goods to be remitted
3.	Department gets compensation from the custodian [Section 45(3)]	No such compensation
4.	Petty theft by human being	Loss/Destruction by fire, flood etc (Act of God)
5.	Restoration possible	Restoration is not possible
6.	Occurrence is after unloading and before Customs clearance order for home consumption or warehousing	Occurrence may be at any time before clearance for home consumption
7.	Occurrence in warehouse not recognized	Occurrence in warehouse is recognized
8.	Duty need not be calculated	Duty should be calculated for determining the remission amount
9.	No need to prove pilferage. It is quite obvious	Should be proved and remission sought for

Question 16

Goods manufactured or produced in India, which were earlier exported and thereafter imported into India will be treated at par with other goods imported into India. Is the proposition correct or any concession is provided on such import? Discuss briefly.

Answer:

The given proposition is correct i.e., goods produced in India, which were earlier exported and thereafter imported into India will be treated at par with other goods imported into India [Section 20 of the Customs Act, 1962]. However, the following concessions are being provided in this regard:

- (i) Maximum import duty will be restricted to duty drawback or refund availed or integrated tax not paid at the time of export.
- (ii) Where the goods were originally exported for repairs, the duty on re-importation is restricted to the fair cost of repairs including cost of materials used in repairs whether such costs are actually incurred or not, insurance and freight charges, both ways done abroad.

The above two concessions are given subject to the condition that:

- a) the re-importation is done within 3 years or 5 years if time is extended.
- b) the exported goods and re-imported goods must be the same.

In case of point (ii) above, the ownership of the goods should also not have changed.

However, these concessions would not be applicable if-

- re-imported goods had been exported by EOU or a unit in FTP

- re-imported goods had been exported from a public/private warehouse
- re-imported goods which fall under Fourth schedule to the Central Excise Act, 1944.

[Notification No. 45/2017 Cus dated 30.06.2017]

- (iii) When exported goods come back for repairs and re-export, the re-imported goods **other than the specified goods** can avail exemption from paying of import duty subject to the following conditions:
- a. the re-importation is for repairs only
 - b. the time limit is 3 years. In case of Nepal, such time-limit is 10 years.
 - c. the goods must be re-exported after repairs
 - d. the time limit for export is 6 months (extendable to one year).

Question 17

Write a brief note on stages of imposition of taxes and duties.

Answer:

Three stages of imposition of taxes and duties

All taxes and duties are imposed in three stages, which are levy, assessment and collection:-

- (a) **Levy** is the stage where the declaration of liability is made and the persons or the properties in respect of which the tax or duty is to be levied is identified and charged.
- (b) **Assessment** is the procedure of quantifying the amount of liability. The liability to tax or duty does not depend upon assessment.
- (c) The final stage is where the tax or duty is actually collected. The **collection of tax or duty** may for administrative or other reasons be postponed to a later time.

Question 18

Discuss the provisions relating to denaturing or mutilation of goods.

Answer:

Section 24 of the Customs Act, 1962 provides that an importer can request Central Government to make rules for permitting to denature/mutilate the imported goods, which are ordinarily used for more than one purpose, so as to render them unfit for one or more of such purpose.

If any imported goods can be used for more than one purpose and duty is leviable on the basis of its purpose of utilisation, than denaturing or mutilation of such goods is useful. By denaturing, goods are made unfit for other purposes. After denaturing process, goods can be used only for one purpose and accordingly duty can be levied.

Question 19

Briefly explain the provisions relating to abatement of duty on damaged or deteriorated goods under section 22 of the Customs Act, 1962.

Answer:

ABATEMENT OF DUTY ON DAMAGED OR DETERIORATED GOODS [SECTION 22]

Where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs -

- (a) that any imported goods had been damaged or had deteriorated at any time before or during the unloading of the goods in India; or
- (b) that any imported goods, other than warehoused goods, had been damaged at any time after the unloading thereof in India but before their examination under section 17, on account of any accident not due to any wilful act, negligence or default of the importer, his employee or agent; or
- (c) that any warehoused goods had been damaged at any time before clearance for home consumption on account of any accident not due to any wilful act, negligence or default of the owner, his employee or agent,

such goods shall be chargeable to duty in accordance with the provisions of sub-section (2) [Sub-section (1)].

The duty to be charged on the goods referred to in sub-section (1) shall bear the same proportion to the duty chargeable on the goods before the damage or deterioration which the value of the damaged or deteriorated goods bears to the value of the goods before the damage or deterioration [Sub-section (2)].

For the purposes of this section, the value of damaged or deteriorated goods may be ascertained by either of the following methods at the option of the owner:-

- (a) the value of such goods may be ascertained by the proper officer, or
- (b) such goods may be sold by the proper officer by public auction or by tender, or with the consent of the owner in any other manner, and the gross sale proceeds shall be deemed to be the value of such goods [Sub-section (3)].

Question 20

Briefly explain the following with reference to the provisions of the Customs Act, 1962:

- (i) Indian customs waters
- (ii) India

Answer:

“Indian customs waters” means the waters extending into the sea up to the limit of Exclusive Economic Zone under section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 and includes any bay, gulf, harbour, creek or tidal river.

If a person has committed any offence punishable under customs law within the Indian customs waters, he may be arrested. Also, goods may be confiscated and vessel be stopped in the Indian customs waters if the same is found to be used in the smuggling. Further, prohibited goods can also be confiscated if brought within the Indian customs waters.

India [Section 2(27)]:-“India” includes the territorial waters of India.

Meaning and significance of territorial waters of India

Territorial waters of India extend to 12 nautical miles into sea from the appropriate base line.

Goods are deemed to have been imported if the vessel enters the imaginary line on the sea at the 12th nautical mile i.e. if the vessel enters the territorial waters of India. Therefore, a vessel not bound to India should not enter these waters. India includes not only the surface of sea in the territorial waters, but also the air space above and the ground at the bottom of the sea.

Question 21

Distinguish between Indian territorial waters and Indian custom waters.

Answer:

Territorial waters of India extend to 12 nautical miles into sea from the appropriate base line.

Goods are deemed to have been imported if the vessel enters the imaginary line on the sea at the 12th nautical mile i.e. if the vessel enters the territorial waters of India. Therefore, a vessel not bound to India should not enter these waters. India includes not only the surface of sea in the territorial waters, but also the air space above and the ground at the bottom of the sea.

“Indian customs waters” means the waters extending into the sea up to the limit of Exclusive Economic Zone under section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 and includes any bay, gulf, harbour, creek or tidal river.

If a person has committed any offence punishable under customs law within the Indian customs waters, he may be arrested. Also, goods may be confiscated and vessel be stopped in the Indian customs waters if the same is found to be used in the smuggling. Further, prohibited goods can also be confiscated if brought within the Indian customs waters.

Question 22

Write a brief note on the constitutional provisions governing the levy of customs duties.

Answer:

All the enactments enacted by the Parliament should have its source in the Constitution of India. The power for enacting the laws is conferred on the Parliament and on the legislature of a State by Article 245 of the Constitution.

The said Article states: Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the legislature of a State may make laws for the whole or any part of the state. No law made by the Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

Article 246 governs the subject matter of the laws made by the Parliament and by the legislature of states. The matters are listed in the seventh schedule to the Constitution.

The seventh schedule is classified into three lists as follows:

List I [referred as Union List] This list enumerates the matters in respect of which the Parliament has an exclusive right to make laws. Entry 83 of Union List has given the power to Central Government to levy duties of Customs including export duties.

List II [referred as State List] This list enumerates the matters in respect of which the legislature of any state has an exclusive right to make laws.

List III [referred as the concurrent list] This list enumerates the matters in respect of which both the Parliament and, subject to List I, legislature of any state, have powers to make laws. Parliament has a further power to make any law for any part of India not comprised in a state, notwithstanding that such matter is included in the state list.

Question 23

In January, 2020, Rock & Rock India Ltd. imported a consignment from U.S.A (by sea). The value of consignment was ₹ 7,50,000 and total duty payable was ₹ 1,50,000.

Company filed bill of entry for home consumption but before inspection and clearance for home consumption it found that the goods were damaged.

On filing a representation to the Customs Department, proper officer refused the claim for abatement because goods were already unloaded. The proper officer is in agreement with the claim that the value of goods has come down to only ₹ 1,50,000.

Levy of & Exemptions from Customs Duty

Examine the issue with reference to the relevant statutory provisions and calculate the amount of total duty payable:

Would your answer be different in the above case if the goods get deteriorated after unloading and examination but before clearance for home consumption, and value comes down to ₹ 7,00,000 ?

Answer

The abatement of duty is allowed where it is shown to the satisfaction of the Assistant/Deputy Commissioner of Customs that, *inter alia*, any imported goods, other than warehoused goods, had been damaged at any time after the unloading thereof in India but before their examination, on account of any accident not due to any wilful act, negligence or default of the importer.

Thus, in view of the above-mentioned provisions, the stand taken by the proper officer of refusing the claim for abatement is not valid in law.

The duty to be charged on the damaged goods shall be reduced in proportion to the reduction in the value of goods on account of damage.

Thus, in the given case, the amount of total duty payable
= [₹ 1,50,000/₹ 7,50,000] × ₹ 1,50,000 = ₹ 30,000

The abatement of duty is allowed in case of deterioration only if such deterioration occurs before or during the unloading of goods. Since in this case, imported goods have deteriorated before clearance for home consumption but after unloading, abatement of duty will not be allowed and full duty will have to be paid



Question 1

What will be the dates of commencement of the definitive anti-dumping duty in the following cases under section 9A of the Customs Tariff Act, 1975 and the rules made thereunder:

- i. where no provisional duty is imposed;
- ii. where provisional duty is imposed;
- iii. where anti-dumping duty is imposed retrospectively from a date prior to the date of imposition of provisional duty.

Answer:

The Central Government has power to levy anti-dumping duty on dumped articles in accordance with the provisions of section 9A of the Customs Tariff Act, 1975 and the rules framed thereunder.

- (a) In a case where no provisional duty is imposed, the date of commencement of anti-dumping duty will be the date of publication of notification, imposing anti-dumping duty under section 9A(1), in the Official Gazette.
- (b) In a case where provisional duty is imposed under section 9A(2), the date of commencement of anti-dumping duty will be the date of publication of notification, imposing provisional duty under section 9A(2), in the Official Gazette.
- (c) In a case where anti-dumping duty is imposed retrospectively under section 9A(3) from a date prior to the date of imposition of provisional duty, the date of commencement of anti-dumping duty will be such prior date as may be notified in the notification imposing anti-dumping duty retrospectively, but not beyond 90 days from the date of such notification of provisional duty.

Question 2

With reference to the Customs Tariff Act, 1975, discuss the validity of the imposition of customs duties in the following cases:-

- (a) Both countervailing duty and anti-dumping duty have been imposed on an article to compensate for the same situation of dumping.
- (b) Countervailing duty has been levied on an article for the reason that the same is exempt from duty borne by a like article when meant for consumption in the country of origin.
- (c) Definitive anti-dumping duty has been levied on articles imported from a member country of World Trade Organization as a determination has been made in the prescribed manner that import of such article into India threatens material injury to the indigenous industry.

Answer:

- (a) **Not valid.** As per section 9B of the Customs Tariff Act, 1975, no article shall be subjected to both countervailing and anti-dumping duties to compensate for the same situation of dumping or export subsidization.

- (b) **Not valid.** As per section 9B of the Customs Tariff Act, 1975, countervailing or anti-dumping duties shall not be levied by reasons of exemption of such articles from duties or taxes borne by the like articles when meant for consumption in the country of origin or exportation or by reasons of refund of such duties or taxes.
- (c) **Valid.** As per section 9B of the Customs Tariff Act, 1975, no definitive countervailing duty or anti-dumping duty shall be levied on the import into India of any article from a member country of the World Trade Organization or from a country with whom Government of India has a most favored nation agreement, unless a determination has been made in the prescribed manner that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India.

Question 3

With reference to section 9AA of Customs Tariff Act, 1975, state briefly the provisions of refund of anti-dumping duty.

Answer:

According to the provisions of section 9AA of the Customs Tariff Act, 1975, where an importer proves to the satisfaction of the Central Government that he has paid any anti-dumping duty imposed on any article, in excess of the actual margin of dumping in relation to such article, he shall be entitled to refund of such excess duty. However, the importer will not be entitled for refund of provisional anti-dumping duty under section 9AA as the same is refundable under section 9A(2) of the said Act. Refund of excess anti-dumping duty paid is subject to provisions of unjust enrichment - Automotive Tyre Manufacturers Association v. Designated Authority 2011 (263) ELT 481 (SC).

Question 4

With reference to section 9A(1A) of the Customs Tariff Act, 1975, mention the ways that constitute circumvention of antidumping duty imposed on an article which may warrant action by the Central Government.

Answer:

As per section 9A(1A) of the Customs Tariff Act, 1975, following are the ways that would constitute circumvention (avoiding levy of duty by unscrupulous means) of antidumping duty imposed on an article that may warrant action by the Central Government:

- (i) altering the description or name or composition of the article subject to such anti-dumping duty,
- (ii) import of such article in an unassembled or disassembled form,
- (iii) changing the country of its origin or export, or
- (iv) any other manner, whereby the anti-dumping duty so imposed is rendered ineffective.

In such cases, investigation can be carried out by Central Government and then anti dumping can be imposed on such articles.

Question 5

When shall the safeguard duty under section 8B of the Customs Tariff Act, 1975 be not imposed? Discuss briefly.

Answer:

The safeguard duty under section 8B of the Customs Tariff Act, 1975 is not imposed on the import of the following types of articles:

- (i) Articles originating from a developing country, so long as the share of imports of that article from that country does not exceed 3% of the total imports of that article into India;
- (ii) Articles imported by a 100% EOU or units in a Special Economic Zone unless the duty is specifically made applicable on them or the article imported is either cleared as such into DTA or used in the manufacture of any goods that are cleared into DTA. In such cases, safeguard duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.

Question 6

What are the conditions required to be fulfilled by the importer to make the imported goods eligible for preferential rate of duty prescribed by the Central Government by notification under section 25 of the Customs Act, 1962?

Answer:

The Government may by notification under section 25 of the Customs Act, 1962 prescribe preferential rate of duty in respect of imports from certain preferential areas. The importer will have to fulfill the following conditions to make the imported goods eligible for preferential rate of duty:

- (i) At the time of importation, he should make a specific claim for the preferential rate.
- (ii) He should also claim that the goods are produced or manufactured in such preferential area.
- (iii) The area should be notified under section 4(3) of the Customs Tariff Act, 1975 to be a preferential area.
- (iv) The origin of the goods shall be determined in accordance with the rules made under section 4(2) of the Customs Tariff Act, 1975.

Determination of Origin' is important to allow concessional rate of customs duty. Generally, as per the rules (a) if the goods are un-manufactured, it should be grown or produced in that area (b) If it is fully manufactured in that country, it should be manufactured from material produced or with un-manufactured materials from that country. (c) if it is partially manufactured in that country, final process should be completed in that country and at least specified percentage of expenditure on material or labour should be in that country.

Question 7

Write a note on "Emergency power to impose or enhance import duties under section 8A of the Customs Tariff Act, 1975".

Answer:

Section 8A of Customs Tariff Act, 1975 provides that where the Central Government is satisfied that the basic customs duty leviable on any article should be increased and that circumstances exist which render it necessary to take immediate action, it may, by notification amend the First Schedule of the Customs Tariff to increase the import duty leviable on such article to such extent as it thinks necessary.

Question 8

Determine the customs duty payable under the Customs Tariff Act, 1975 including the safeguard duty of 30% under section 8B of the said Act with the following details available on hand:

Assessable value of Sodium Nitrite imported from a developing country from 26th February, 2018 to 25th February, 2019 (both days inclusive)	Rs. 30,00,000
Share of imports of Sodium Nitrite from the developing country against total imports of Sodium Nitrite to India	4%
Basic custom duty	10%
Integrated tax	12%
Social welfare surcharge	10%

Note: Ignore GST compensation cess.

Answer:**Computation of customs duty and integrated tax payable thereon**

Particular	Amount (Rs.)
Assessable value of sodium nitrite imported	30,00,000
Add: Basic custom duty @ 10% (Rs.30,00,000 × 10%)	3,00,000
Safeguard duty @ 30% on Rs. 30,00,000 [Safeguard duty is imposable in the given case since share of imports of sodium nitrite from the developing country is more than 3% of the total imports of sodium nitrite into India (Proviso to section 8B(1) of the Customs Tariff Act, 1975)]	9,00,000
Social welfare surcharge @ 10% × Rs.3,00,000	30,000
Total	42,30,000
Integrated tax (Rs.42,30,000 × 12%) [Note]	5,07,600
Total customs duty payable (Rs.3,00,000 + Rs.9,00,000+ Rs.30,000+ Rs.5,07,600)	17,37,600

Note: It has been clarified by DGFT vide Guidance note that value for calculation of integrated tax shall also include safeguard duty amount.

Question 9

Differentiate between protective duty and safeguard duty.

Answer:

Protective duties: are intended to give protection to indigenous industries. If resort to protective duties is not made there could be a glut of cheap imported articles in the market making the indigenous goods unattractive.

Factors to be considered while giving protection through protective duties: The protection through protective duties is given considering the following factors.

- (a) The protective duties should not be very stiff so as to discourage imports.
- (b) It should be sufficiently attractive to encourage imports to bridge the gap between demand and supply of those articles in the market.

SAFEGUARD DUTY [SECTION 8B OF THE CUSTOMS TARIFF ACT]

Circumstances in which safeguard duty can be imposed: Central Government can impose the safeguard duty if it is satisfied that,

- (a) Any article is imported into India in increased quantities;
- (b) Such increased importation is causing or threatening to cause serious injury to domestic industry.

The duty is imposed by issuing a notification in the Official Gazette.

Question 10

Briefly examine the nature and significance of the levy of anti-dumping duty under the Customs Tariff Act, 1975.

Answer:

When the export price of a product imported into India is less than the Normal Value of 'like articles' sold in the domestic market of the exporter, it is known as dumping. Although there is nothing inherently illegal or immoral in exporter charging a price less than the price prevailing in its domestic market, Designated Authority can initiate necessary action for investigations and subsequent imposition of anti-dumping duties, if such dumping causes or threatens to cause material injury to the domestic industry of India.

Anti-dumping action can be taken only when there is an Indian industry which produces "like articles" when compared to the allegedly dumped imported goods. Further, this duty is country specific i.e. it is imposed on imports from a particular country.

Under the General Agreement on Tariffs and Trade (GATT) provisions, anti-dumping duties higher than the margin of dumping cannot be imposed. However, a lesser duty which is adequate to remove the injury to the domestic industry, is permissible. In India, the Government is obliged to restrict the anti-dumping duty to the lower of the two i.e., dumping margin and the injury margin.

Section 9A(1) of the Customs Tariff Act, 1975 provides that where any article is exported by an exporter or producer from any country or territory (hereinafter in this section referred to as the exporting country or territory) to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.

Every notification issued under this section shall as soon as may be after it is issued, be laid before each House of Parliament [Sub-section (7)]. Further, the provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act [Sub-section (8)].

Computation of anti-dumping duty: Anti-dumping duty is:

- (i) Margin of dumping
- or
- (ii) Injury margin whichever is lower.

The anti-dumping duty chargeable under this section is in addition to any other duty imposed under this Act or any other law for the time being in force.

Question 11

Chaintop Industries has challenged the imposition of anti-dumping duty retrospectively on the grounds that it is unconstitutional. Explain whether it would succeed in its contention.

Answer

Section 9A(3) of the Customs Tariff Act, 1975 provides that the anti-dumping duty can be imposed with retrospective effect provided the Government is of the opinion that:-

- (a) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury, and
- (b) the injury is caused by massive dumping of an article imported in a relatively short time, which in the light of timing and volume of the imported article dumped and other circumstances is likely to seriously undermine the remedial effect of the anti-dumping duty liable to be levied.

The duty can be levied retrospectively by issuing a notification but not beyond 90 days from the date of notification.

Thus, Chaintop Industries would succeed in its contention only if all of the above conditions are not satisfied.

Question 12

Determine the total duties payable under Customs Act if Mr. Rao imported rubber from Malaysia at landed price (exclusive of duties) of ₹25 lakh. It has been notified by the Central Government that share of imports of rubber from the developing country against total imports to India exceeds 5%. Safeguard duty notified on this product is 30%, IGST u/s 3(7) is 12% and BCD is 10%.

Answer

Computation of total duties payable under the Customs Act

S. No.	Particulars	(₹)
1	Landed price	25,00,000
2	Add: Basic customs duty @ 10%	2,50,000
3	Add: Safeguard duty @ 30% on ₹ 25,00,000	7,50,000
4	Add: Social welfare surcharge (SWS) @ 10% on ₹ 2,50,000 [While calculating SWS, safeguard duty is excluded]	25,000
5	Add: Integrated tax 12% of ₹ 35,25,000 (₹ 25,00,000 + ₹ 2,50,000 + ₹ 7,50,000 + ₹ 25,000) [Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable SWS]	4,23,000
6	Total customs duties and tax payable [₹ 2,50,000 + ₹ 7,50,000 + ₹ 25,000 + ₹ 4,23,000]	14,48,000

Question 13

During the year 2020, the customs authorities have noticed that there is an increased quantity of Product XYZ being imported into the country. Determine whether the Central Government should consider levying safeguard duty or anti-dumping duty with appropriate reasons. Also enumerate any exemptions/reliefs available from such duty.

Answer

In the given case, since Product XYZ is being imported into the country in increased quantity, Central Government should consider levying safeguard Duty and not anti-dumping duty.

Anti-dumping duty is imposed when any article is exported from any country to India at less than its normal value, which is not the case here.

However, safeguard duty can be imposed only when Central Government is satisfied that such increased importation is causing/threatening to cause serious injury to the domestic industry.

Exemptions/reliefs:

- (a) Safeguard duty shall not be imposed on articles originating from developing country if the share of imports of that article from that country $\leq 3\%$ of the total imports of that article into India.
- (b) Safeguard duty shall not be imposed on articles originating from more than one developing country if the aggregate of imports from developing countries each with less than 3% import share taken together $\leq 9\%$ of the total imports of that article into India.
- (c) Safeguard duty shall not be applicable on articles imported by a 100% EOU/ SEZ unit unless

specifically made applicable;

- (d) Safeguard duty shall not be applicable on articles imported by a 100% EOU/ SEZ unit unless the article imported is either cleared as such/ used in the manufacture of any goods that are cleared, into DTA.
- (e) Central Government may exempt notified quantity of any article, when imported from any country into India, from whole/ part of the safeguard duty.



Question 1

Whats the purpose of including Interpretation Rules in Customs Tariff? Do they form part of the Tariff Schedule? Explain the Akin Rule of interpretation.

Answer:

The Customs Tariff has a set of six Rules for Interpretation of the Tariff Schedule and three General Explanatory Notes. The six Rules of Interpretation and three General Explanatory Notes are integral part of the Tariff Schedule. The purpose of their inclusion in Customs Tariff is to standardize the manner in which the nomenclature in the schedule is to be interpreted so as to reduce classification disputes.

Rule 4 of the Rules of Interpretation is called as akin rule. This rule lays down that goods which cannot be classified in accordance with rules 1, 2 and 3 of the Rules of Interpretation shall be classified under the heading appropriate to the goods to which they are most akin. In other words, akin rule' is a residual rule which is to be applied when classification is not possible by applying any of the earlier rules. It is a rule of last resort.

Question 2

Write a note on "Project Imports" under the Customs Tariff Act, 1975.

Answer:

Project Imports are the imports of machinery, instruments, and apparatus etc., falling under different classifications, required for initial set up of a unit or for substantial expansion of an existing unit.

Heavy customs duty on imported machinery for projects make the initial project cost very high and project may become unviable. Hence, concept of 'project import' is introduced to bring machinery etc. required for initial setup or substantial exemption at concessional customs duty.

In a project several different items are required, each of which is importable at different rates of customs duties. Thus, this simple method is adopted, as otherwise, classifying each machinery and its parts in different heads and valuing them would have been cumbersome and would have delayed clearances, which would cause demurrages. Further, individual exemption notification will apply even for items grouped under the said heading of the customs tariff liable to duty at the project rate as per recent Supreme Court judgement.

The items eligible for project import are specified in Heading 9801 of the Customs Tariff Act, 1975. These are: all items of machinery including prime movers, instruments, apparatus and appliances, control gear and transmission equipment, auxiliary equipment (including those for research and development, testing and quality control); as well as components or raw materials for manufacture of these items and their components; required for initial setting up of a unit or substantial expansion of a specified (1) industrial project (2) Irrigation project (3) Power projects (4) Mining project (5) Project for exploration of oils or other minerals and (6) Other projects as may be notified by Central Government.

The spare parts, raw material and consumables stores upto 10% of the value of goods can be imported.

Few of the eligible projects are:

- (1) Industrial plant
- (2) Irrigation project
- (3) Power project
- (4) Mining project
- (5) Oil & mineral exploration project
- (6) Other projects as notified by the Central Government

Question 3

Explain rule 3 of the rules for Interpretation of the Customs Tariff.

Answer:

Rule 3 - Classification in case goods are classifiable under two or more headings: The application of this rule arises when the goods consists of more than one material or substance.

When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

Rule 3(a) - Specific over general

The heading which provides the most specific description shall be preferred to headings providing a more general description.

However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

Rule 3(b) - Essential character principle: Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified with reference to (a), shall be classified as if they consisted of material which gives them their essential character, in so far as this criterion is applicable.

Rule 3(c) - Latter the better: When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.



Question 1

M/s IES Ltd. (assessee) imported certain goods at US \$ 20 per unit from an exporter who was holding 30% equity in the share capital of the importer company. Subsequently, the assessee entered into an agreement with the same exporter to import the said goods in bulk at US \$ 14 per unit. When imports at the reduced price were effected pursuant to this agreement, the Department rejected the transaction value stating that the price was influenced by the relationship and completed the assessment on the basis of transaction value of the earlier imports i.e., at US \$20 per unit under rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules 2007.

State briefly, whether the Department's action is sustainable in law?

Answer:

No, the Department's action is not sustainable in law. Rule 2(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, inter alia, provides that persons shall be deemed to be "related" if one of them directly or indirectly controls the other. The word "control" has not been defined under the said rules. As per common parlance, control is established when one enterprise holds at least 51% of the equity shareholding of the other company. However, in the instant case, the exporter company held only 30% of shareholding of the assessee. Thus, exporter company did not exercise control over the assessee. So, the two parties cannot be said to be related. indirectly controls the other. The word "control" has not been defined under the said rules. As per common parlance, control is established when one enterprise holds at least 51% of the equity shareholding of the other company. However, in the instant case, the exporter company held only 30% of shareholding of the assessee. Thus, exporter company did not exercise control over the assessee. So, the two parties cannot be said to be related.

The fact that assessee had made bulk imports could be a reason for reduction of import price. The burden to prove under-valuation lies on the Revenue and in absence of any evidence from the Department to prove under-valuation, the price declared by the assessee is acceptable.

In the light of foregoing discussion, it can be inferred that Department's action is not sustainable in law.

Question 2

Answer the following with reference to the provisions of section 14 of the Customs Act, 1962 and the rules made thereunder:

- (i) What shall be the value, if there is a price rise of the imported goods in international market between the date of contract and the date of actual importation but the importer pays the contract price?
- (ii) Whether the payment for post-importation process is includible in the value if the same is related to imported goods and is a condition of the sale of the imported goods?

Answer:

- (i) The value of the imported goods or export goods is its transaction value, which means the price actually paid or payable for the goods. Where a contract has been entered into, the transaction value shall be the price stated in the contract, unless it is not legally acceptable.

Price rise between date of contract and date of actual import is irrelevant, as the price actually paid or payable shall be taken to be the value. Thus, price stated in the contract (unless unacceptable) shall be taken.

- (ii) As per explanation to Rule 10(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the payment for post-importation process is includible in the value of the imported goods if the same is related to such imported goods and is a condition of the sale thereof.

Question 3

Mother Mary Hospital and Research Centre imported a machine from Delta Scientific Equipments, Chicago for in house research. The price of the machine was settled at US \$ 5,000. The machine was shipped on 10.04.20XX. Meanwhile, the Hospital Authorities negotiated for a reduction in the price. As a result, Delta Scientific Equipments agreed to reduce the price by \$ 850 and sent the revised price of \$ 4,150 under a telex dated 15.04.20XX. The machine arrived in India on 18.04.20XX. The Commissioner of Customs has decided to take the original price as the transaction value of the goods on the ground that the price is reduced only after the goods have been shipped.

Do you agree to the stand taken by the Commissioner? Give reasons in support of your answer.

Answer:

No, the Commissioner's approach is not correct in law.

As per section 14 of the Customs Act, the transaction value of the goods is the price actually paid or payable for the goods at the time and place of importation. Further, the Supreme Court in the case Garden Silk Mills v. UOI has held that importation gets complete only when the goods become part of mass of goods within the country. Therefore, since in the instant case the price of the goods was reduced while they were in transit, it could not be contended that the price was revised after importation took place. Hence, the goods should be valued as per the reduced price, which was the price actually paid at the time of importation.

Question 4

'A' had imported goods from Finland. Due to deep draught at the port, such goods were not taken to the jetty in the port but were unloaded at the outer anchorage. The charges incurred for such unloading and transport of the goods from outer anchorage to the jetty in barges (small boats) were Rs. 1,35,000. 'A' claims that such charges form part of the loading and unloading charges and should be deemed to be included in the CIF value of such goods, made under rule 10(2)(b) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Discuss the tenability of 'A's' claim.

Answer:

As per Rule 2(da), "place of importation" means the customs station, where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse. Therefore, the outer anchorage where the goods are unloaded would not be the place of importation. Rule 10(2)(a) stipulates that for the purposes of section 14(1) of the Customs Act, 1962 and Valuation rules, value of imported goods shall be the value of such goods and shall include, the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation.

Therefore, in cases where the big mother vessels cannot enter the harbour for any reason and goods are brought to the docks by smaller vessels like barges, the cost incurred by the importer for bringing the goods to the landmass or place of consumption, such as barge charges will also be included in the cost of transportation. Therefore, 'A's claim is not tenable in law.

Question 5

A material was imported by air at CIF price of 5,000 US\$. Freight paid was 1,500 US\$ and insurance cost was 500 US\$. The banker realized the payment from importer at the exchange rate of Rs. 71 per dollar. Central Board of Indirect taxes and Customs notified the exchange rate as Rs. 70 per US\$. Find the value of the material for the purpose of levying duty.

Answer:

Computation of assessable value

Particulars	Amount
CIF value	5000 US \$
Less: Freight	1500 US \$
Less: Insurance	500 US \$
Therefore, FOB value	3000 US \$
Assessable value for Customs purpose	
FOB value	3000 US \$
Add: Freight (20% of FOB value) [Note 1]	600 US \$
Add: Insurance (actual)	500 US \$
CIF for customs purpose	4100 US \$
Exchange rate as per CBIC [Note 2]	Rs. 70 per US \$
Assessable value (Rs. 70 x 4100 US \$)	Rs. 2,87,000

Notes:

1. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
2. Rate of exchange determined by CBIC is considered [clause (a) of the explanation to section 14 of the Customs Act, 1962].

Question 6

From the particulars given below, find out the assessable value of the imported goods under the Customs Act, 1962:

	US\$
Cost of the machine at the factory of the exporter	10,000
Transport charges from the factory of exporter to the port for shipment	500
Handling charges paid for loading the machine in the ship	50
Buying commission paid by the importer	50

	US\$
Freight charges from exporting country to India	1,000
Exchange rate to be considered: 1\$ = Rs. 70	
Actual insurance charges paid are not ascertainable	

Answer:

Computation of assessable value of the imported goods

	US\$
1. Cost of the machine at the factory	10,000.00
2. Transport charges up to port	500.00
3. Handling charges at the port	50.00
4. FOB	10,550.00
5. Freight charges up to India	1,000.00
6. Insurance charges @ 1.125% of FOB [Note 1]	118.69
7. CIF	11,668.69
	Rs.
8. CIF in Indian rupees @ Rs. 70/ per \$	Rs. 8,16,808.30
9. Assessable Value	Rs. 8,16,808.30
Assessable Value (rounded off)	8,16,808

Notes:

1. Insurance charges have been included @ 1.125% of FOB value of goods [Third proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
2. Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

Question 7

Compute export duty from the following data:

- i. FOB price of goods: US \$ 1,00,000.
- ii. Shipping bill presented electronically on 26.04.20XX.
- iii. Proper officer passed order permitting clearance and loading of goods for export (Let Export Order) on 04.05.20XX.
- iv. Rate of exchange and rate of export duty are as under:
- v. Rate of exchange is notified for export by Central Board of Indirect taxes and Customs.

(Make suitable assumptions wherever required and show the workings.)

Answer:

Computation of export duty

Particulars	Amount (US \$)
FOB price of goods [Note 1]	1,00,000
	Amount (Rs.)
Value in Indian currency (US \$ 1,00,000 x Rs. 70) [Note 2]	70,00,000
Export duty @ 8% [Note 3]	5,60,000

Notes:

- As per section 14(1) of the Customs Act, 1962, assessable value of the export goods is the transaction value of such goods which is the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation.
- As per third proviso to section 14(1) of the Customs Act, 1962, assessable value has to be calculated with reference to the rate of exchange notified by the CBIC on the date of presentation of shipping bill of export.
- As per section 16(1)(a) of the Customs Act, 1962, in case of goods entered for export, the rate of duty prevalent on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation, is considered.

Question 8

A consignment of 800 metric tonnes of edible oil of Malaysian origin was imported by a charitable organization in India for free distribution to below poverty line citizens in a backward area under the scheme designed by the Food and Agricultural Organization. This being a special transaction, a nominal price of US\$ 10 per metric tonne was charged for the consignment to cover the freight and insurance charges. The Customs House found out that at or about the time of importation of this gift consignment there were following imports of edible oil of Malaysian origin:

The rate of exchange on the relevant date was 1 US \$ = Rs. 70.00 and the rate of basic customs duty was 10% ad valorem. Ignore Integrated tax and GST Compensation Cess. Calculate the amount of duty leviable on the consignment under the Customs Act, 1962 with appropriate assumptions and explanations, where required.

Answer:

Determination of transaction value of the subject goods:-

In the instant case, while determining the transaction value of the goods, following factors need consideration:-

- In the given case, US \$10 per metric tonne has been paid only towards freight and insurance charges and no amount has been paid or payable towards the cost of goods. Thus, there is no transaction value for the subject goods. Consequently, we have to look for transaction value of identical goods under rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [Customs Valuation (DVIG) Rules, 2007].

2. Rule 4(1)(a) of the aforementioned rules provides that subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued. In the six imports given during the relevant time, the goods are identical in description and of the same country of origin.
3. Further, clause (b) of rule 4(1) of the said rules requires that the comparable import should be at the same commercial level and in substantially same quantity as the goods being valued. Since, nothing is known about the level of the transactions of the comparable consignments, it is assumed to be at the same commercial level.
4. As far as the quantities are concerned, the consignments of 20 and 100 metric tonnes cannot be considered to be of substantially the same quantity. Hence, remaining 4 consignments are left for our consideration.
5. However, the unit prices in these 4 consignments are different. Rule 4(3) of Customs Valuation (DVIG) Rules, 2007 stipulates that in applying rule 4 of the said rules, if more than one transaction value of identical goods is found, the lowest of such value shall be used to determine the value of imported goods. Accordingly, the unit price of the consignment under valuation would be US \$ 160 per metric tonne.

Computation of amount of duty payable CIF value of 800 metric tonnes:

= 800 × 160		= US \$ 1,28,000
CIF Value (in Rupees)		= Rs. 89,60,000
Assessable Value		= <u>Rs.89,60,000</u>
10% of Ad Valorem duty on Rs.89,60,000		= Rs. 8,96,000
Add: Social Welfare Surcharge @ 10% (rounded off)		= <u>Rs. 89,600</u>
Total custom duty payable		=Rs. 9,85,600

Question 9

Foreign Trade International Ltd. has imported one machine from England. It has given the following particulars:

(i)	Price of machine	8,000 UK Pounds
(ii)	Freight paid (air)	2,500 UK Pounds
(iii)	Design and development charges paid in UK	500 UK Pounds
(iv)	Commission payable to local agent of exporter @ 2% of price of machine, in Indian Rupees	
(v)	Date of bill of entry	24.10.20XX (Rate BCD 10%; Exchange rate as notified by CBIC Rs. 100 per UK Pound)

(vi)	Date of arrival of aircraft	20.10.20XX (Rate of BCD 20%; Exchange rate as notified by CBIC Rs. 98 per UK Pound)
(vii)	Integrated tax is 12%	
(viii)	Insurance charges have been actually paid but details are not available.	

Compute the total customs duty and integrated tax payable by Foreign Trade International Ltd.

Note: Ignore GST Compensation Cess.

Answer:

Computation of total duty and integrated tax payable

Particular	Amount
Price of machine	8,000 UK pounds
Add: Design and development charges [Note 1]	500 UK pounds
Total	8,500 UK pounds

	(Rs.)
Total in rupees @ Rs. 100 per pound [Note 2]	Rs. 8,50,000.00
Add: Local agency commission [Note 1]	
(2% of 8000 UK pounds) = 160 UK pounds × Rs. 100	Rs. 16,000.00
FOB value as per Customs	8,66,000.00
Add: Air freight (8,66,000 × 20%) [Note 3]	1,73,200.00
Add: Insurance @ 1.125% of customs FOB [Note 4]	9,742.50
CIF Value	10,48,942.50
Assessable value (rounded off)	10,48,942.00
Add: Basic custom duty @ 10% [Note 5]	1,04,894.20
Add: Social Welfare Surcharge @ 10% on Rs. 1,04,894.20	10,489.42
Total	11,64,325.62
Add: Integrated tax @ 12% [Note 7]	1,39,719.07
Total duty and integrated tax payable (Rounded off)	2,55,102
(Rs. 1,04,894.20+ Rs. 10,489.42+ Rs. 1,39,719.07)	

Notes:

1. Design and development charges paid in UK and commission paid to local agent (since it is not buying commission) are includible in the assessable value [Rule 10 of the Customs (Determination of Value of Imported Goods) Rules, 2007]
2. The rate of exchange notified by the CBIC on the date of presentation of bill of entry has been considered [Section 14 of the Customs Act, 1962].
3. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
4. Where the insurance charges are not ascertainable, such cost is taken as 1.125% of FOB value of the goods [Third proviso to Rule 10(2) of the Customs (Determination of value of Imported Goods) Rules, 2007].
5. Section 15 of the Customs Act, 1962 provides that rate of duty shall be the rate in force on the date of presentation of bill of entry or the rate in force on the date of arrival of aircraft, whichever is later.
6. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Question 10

Compute the total duty and integrated tax payable under the Customs Law on an imported equipment based on the following information:

- (i) Assessable value of the imported equipment US \$ 10,100
- (ii) Date of bill of entry is 25.4.20XX. Basic customs duty on this date is 10% and exchange rate notified by the Central Board of Indirect taxes and Customs is US \$ 1 = Rs. 65.
- (iii) Date of entry inwards is 21.4.20XX. Basic customs duty on this date is 20% and exchange rate notified by the Central Board of Indirect taxes and Customs is US \$ 1 = Rs. 70.
- (iv) Integrated tax: 12%
- (v) Social Welfare surcharge 10%

Make suitable assumptions where required and show the relevant workings and round off your answer to the nearest rupee.

Note: Ignore GST Compensation Cess.

Answer:

Computation of total customs duty and integrated tax payable

Particulars	Rs.
Assessable value (\$ 10,100 × 65) [Note-1]	6,56,500.00
Add: Basic custom duty @ 10% [Note-2]	65,650.00
Add: Social Welfare Surcharge @ 10% on Rs. 65,650	6,565.00
Total	7,28,715.00
Add: Integrated tax @ 12% [Note-3]	87,445.80
Total Customs duty and integrated tax payable (rounded off to nearest rupee)	1,59,660

Note:

1. Rate of exchange notified by CBIC as prevalent on the date of filing of bill of entry would be the applicable rate [Proviso to section 14(1) of Customs Act, 1962].
2. Rate of duty would be the rate as prevalent on the date of filing of bill of entry or entry inwards whichever is later. [Proviso to section 15 of the Customs Act, 1962].
3. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Question 11

Assessable value of an item imported is Rs. 1,00,000. Basic customs duty is 10%, integrated tax is 12%, and social welfare surcharge is 10% on duty. Compute the amount of total customs duty and integrated tax payable.

Note: Ignore GST Compensation Cess.

Answer:**Computation of total customs duty and integrated tax payable**

	Particulars	Rs.
1.	Assessable Value	1,00,000
2.	Basic customs duty @ 10%	10,000
3.	Add: Social Welfare surcharge* @ 10% on Rs. 10,000	1000
4.	Sub-total	1,11,000
5.	Integrated tax @ 12% of Rs. 1,11,000	13,320
	Total customs duty and integrated tax payable [(2) + (3) + (5)]	24,320

*Social Welfare surcharge is presently exempt on IGST and GST compensation cess

Question 12

From the following particulars, calculate total customs duty and integrated tax payable:

- (i) Date of presentation of bill of entry: 20.6.20XX [Rate of BCD 20%; Inter-bank exchange rate: Rs. 61.60 and rate notified by CBIC Rs. 70].
- (ii) Date of arrival of aircraft in India: 30.6.20XX [Rate of BCD 10%; Inter-bank exchange rate: Rs. 61.80 and rate notified by CBIC Rs. 73.00].
- (iii) Rate of Integrated tax: 12%. Ignore GST Compensation Cess.
- (iv) CIF value 2,000 US Dollars; Air freight 500 US Dollars, Insurance cost 100 US Dollars.
- (v) Social Welfare Surcharge 10%

Answer:

Computation of total customs duty and integrated tax payable

Particulars		Amount
CIF value		2000 US Dollars
Less: Freight	500	
Insurance	100	600 US Dollars
FOB Value		1400 US Dollars
Add: Air Freight [Note1]	280	
Insurance (actual amount)	100	380 US Dollars
		1780 US Dollars
		Rs.
Value @ Rs. 70.00 [Note 2]		1,24,600.00
Assessable Value		1,24,600.00
Basic Custom Duty @ 10% (a) [Note 3]		12,460.00
Add: Social Welfare Surcharge @ 10% on 12,460 (b)		1,246.00
Sub-total		1,38,306.00
Integrated tax (12% on Rs. 1,38,306) (c) [Note 4]		16,596.72
Total duty and integrated tax (a + b + c) (rounded off)		30,303

Note:

1. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to Rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
2. Rate of exchange notified by CBIC on the date of presentation of bill of entry would be the applicable rate. [Proviso to Section 14(1) of the Customs Act, 1962].
3. Rate of duty would be the rate as prevalent on the date of filing of bill of entry or arrival of aircraft, whichever is later [proviso to section 15 of the Customs Act, 1962].
4. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Question 13

15000 chalices were imported for charitable distribution in India by XY Charitable Trust. The Trust did not pay either for the cost of goods or for the design and development charges, which was borne by the supplier. Customs officer computed its FOB value at USD 20,000 (including design and development charges), which was accepted by the Trust. Other details obtained were as follows:

	Particulars	Amount
1.	Freight paid (air) (in USD)	4,500
2.	Design & development charges paid in USA (in USD)	2,500

	Particulars	Amount
3.	Commission payable to an agent in India (in Rs.)	12,500
4.	Exchange rate notified by CBIC and rate of basic duty is as follows: Date of Bill of Entry BCD Exchange Rate in Rs. 08.09.20XX 20% 70 Date of arrival of aircraft BCD Exchange Rate in Rs. 30.09.20XX 10% 72	
5.	The inter-bank rate was 1 USD = Rs. 73 Integrated tax	12%
6.	Social Welfare surcharge as applicable	

Compute the amount of total customs duty and integrated tax payable on importation of chalices. Make suitable assumptions where required. Working notes should form part of your answer.

Note: Ignore GST Compensation Cess.

Answer:

Computation of total customs duty and integrated tax payable

Particulars	Amount
FOB value computed by Customs Officer (including design and development charges)	20,000 US \$
Exchange rate [Note 1]	Rs.70 per \$ Rs.
FOB value computed by Customs Officer (in rupees)	14,00,000.00
Add: Commission payable to agent in India	12,500.00
FOB value as per customs	14,12,500.00
Add: Air freight (Rs.14,12,500 × 20%) [Note 2]	2,82,500.00
Add: Insurance (1.125% of Rs.14,12,500) [Note 3]	15,890.63
CIF value for customs purposes	17,10,890.63
Assessable value	17,10,890.63
Add: Basic custom duty @ 10% (Rs.17,10,890.63 × 10%) - rounded off [Note 4]	1,71,089
Add: Social Welfare surcharge @ 10% on Rs. 1,71,089 rounded off	17,109
Total	18,99,089
Integrated tax @ 12% (Rs.18,99,089 × 12%) [Rounded off] [Note 5]	2,27,890
Total customs duty and integrated tax payable (Rs. 1,71,089 + Rs. 17,109 + Rs. 2,27,890)	4,16,088

Note:

1. Rate of exchange notified by CBIC on the date of filing of bill of entry has to be considered [Third proviso to section 14 of the Customs Act, 1962].
2. In case of goods imported by air, freight cannot exceed 20% of FOB value [fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
3. Insurance charges, when not ascertainable, have to be included @ 1.125% of FOB value of goods [Third proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
4. 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 [Proviso to section 15 of the Customs Act, 1962].
5. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Question 14

Mr. Backpack imported second-hand goods from a UK supplier by air, which was contracted on CIF basis. However, there were changes in prices in the international market between the date of contract and actual importation. As a result of several negotiations, the parties agreed for a negotiated price payable as follows:

Particulars	Contract Price (£)	Changed Price (£)	Negotiated Price (£)
CIF Value	5000	5800	5500
Air Freight	300	600	500
Insurance	500	650	600

Other details for computing assessable value and duty payable are tabled below:

Particulars	Amount
Vendor inspection charges (inspection carried out by foreign supplier on his own, not required under contract or for making the goods ready for shipment)	£ 600
Commission payable to local agent @ 1% of FOB in local currency	

Date of bill of entry	Basic customs duty	Exchange rate in Rs. (notified by CBIC)
18.02.20XX	10%	102
Date of arrival of aircraft	Basic custom duty	Exchange rate in Rs. (notified by CBIC)
15.02.20XX	15%	98

Inter-bank rate 1 UK Pound = Rs. 106

Compute the assessable value and calculate basic customs duty payable by Mr. Backpack.

Answer:

Computation of custom duty payable

Particulars	Amount (£)
CIF value (negotiated price) [Note-1]	5,500
Less: Air freight	500
Less: Insurance	600
FOB value	4,400
Add: Vendor inspection charges [Note-2]	Nil
FOB value as per Customs	4,400
Freight [Note-3]	500
Insurance [Note-4]	600
	5,500
Exchange rate is Rs.102 per £ [Note-5]	
	Rs.
Value in rupees	5,61,000.00
Add: Commission payable to local agent [1% of FOB value] [Note-6] = (US \$ 4,400 × Rs.102) × 1%	4,488.00
Total	5,65,488.00
Assessable value	5,65,488.00
Add: Basic custom duty @ 10% [Note-7] - rounded off	56,548.80
Social Welfare Surcharge (10% of Rs.56,548.80) [rounded off]	5,655.00
Customs duty payable [rounded off]	62,204.00

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. 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)].
- Actual amount incurred towards freight will be considered since freight is not more than 20% of FOB value [Fifth proviso to rule 10(2) of 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 CBIC 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 (since it is not buying commission) is includible in the assessable value on the presumption that local agent has been appointed by the exporter [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.

Question 15

F. Ltd. imported a machine from UK in May, 20XX. The details in this regard are as under:

- (i) FOB value of the machine: 10,000 UK Pound
- (ii) Freight (Air): 3,000 UK Pound
- (iii) Licence fee, the buyer was required to pay in UK: 400 UK Pound
- (iv) Buying commission paid in India Rs. 20,000
- (v) Date of bill of entry was 20.05.20XX and the rate of exchange notified by CBIC on this date was Rs. 99.00 per one pound. Rate of BCD was 7.5%.
- (vi) Date of arrival of aircraft was 25.05.20XX and the rate of exchange notified by CBIC on this date was Rs. 98.50 per pound and rate of BCD was 10%.
- (vii) Integrated tax was 12% and ignore GST Compensation Cess.
- (viii) Insurance premium details were not available.

You are required to compute the total customs duty and integrated tax payable on the importation of machine. You may make suitable assumptions wherever required.

Answer:

Computation of assessable value and total customs duty and integrated tax payable by F Ltd.

Particular	Amount (£)
FOB value	10,000
Add: License fee required to be paid in UK [Note - 1]	400
Customs FOB value	10,400
Exchange rate is Rs.99 per £ [Note - 2]	
	Rs.
Value in rupees	10,29,600.00
Add: Air freight [Restricted to 20% of Rs. 10,29,600 (customs FOB value)] [Note - 3]	2,05,920.00

Particular	Amount (£)
Insurance @ 1.125% of Rs.10,29,600 [Note - 4]	11,583.00
Buying commission is not includible in the assessable value [Note - 5]	
CIF Value	12,47,103.00
Assessable value	12,47,103.00
Rate of duty is 10% [Note - 6]	
Add: Basic custom duty @ 10% (Rs.12,47,103 × 10%) - rounded off (A)	1,24,710
Add: Social Welfare Surcharge (10% of Rs.1,24,710) [rounded off] (B)	12,471
Value for integrated tax	13,84,284
Add: Integrated tax @ 12% -rounded off (C) [Note - 7]	1,66,114
Total customs duty and integrated tax payable [(A) + (B) + (C)]	3,03,295

Note:

1. Engineering and design charges paid in UK, licence fee relating to imported goods payable by the buyer as a condition of sale, materials and components supplied by the buyer free of cost and actual insurance charges paid are all includible in the assessable value - Rule 10(1)(c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [hereinafter referred to as Customs Valuation Rules].
2. Rate of exchange notified by CBIC on the date of filing of bill of entry has to be considered [Third proviso to section 14 of the Customs Act, 1962].
3. In case of goods imported by air, freight cannot exceed 20% of FOB value [Fifth proviso to rule 10(2) of the Customs Valuation Rules].
4. Insurance charges, when not ascertainable, have to be included @ 1.125% of FOB value of goods [Third proviso to rule 10(2) of the Customs Valuation Rules].
5. Buying commission is not included in the assessable value [Clause (a)(i) of sub-rule (1) of rule 10 of the Customs Valuation Rules].
6. 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 [Proviso to section 15 of the Customs Act, 1962].
7. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Question 16

Briefly explain the following with reference to the Customs (Determination of Value of Imported Goods) Rules, 2007:

- (i) Goods of the same class or kind
- (ii) Computed value

Answer:

- (i) As per rule 2(1)(c) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, goods of the same class or kind, means imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector and includes identical goods or similar goods.
- (ii) As per rule 2(1)(a) of the said rules, computed value means the value of imported goods determined in accordance with rule 8. The value of imported goods is taken as computed value when valuation is not possible as per any of rules earlier than rule 8 and cost is ascertainable.

As per rule 8, subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of -

- a. the cost or value of materials 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 expenses under sub-rule (2) of rule 10.

Question 17

Whether the assessable value of the warehoused goods which are sold before being cleared for home consumption, should be taken as the price at which the original importer has sold the goods?

Answer:

Section 14 of the Customs Act provides that the value of the imported goods shall be the transaction value of goods which is the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation. The sale of goods after warehousing them in India cannot be considered a sale for export to India. It cannot be stated that the export of goods is not complete even after the imported goods were cleared for warehousing in the country of import. Hence, the price at which the imported goods are sold after warehousing them in India does not qualify to be the transaction value as per section 14. This has been clarified vide Circular No. 11/2010 Cus. dated 03.06.2010.

Question 18

Explain when are the costs and services as given in rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 be added to the value of the identical goods under rule 4.

Answer:

As per rule 4(1)(c) of the Customs Valuation (Determination of Value of Imported Goods Rules, 2007) where imported goods are being valued as per rule 4, the value of the identical goods is adjusted to take into account the difference attributable to the commercial level or to the quantity or both. According to rule 4(2) where costs and charges referred to in rule 10 are included in the value of identical goods, adjustment has to be made of the difference in such costs and charges between the imported goods and the identical goods.

Therefore, if the value of the identical goods does not include certain specific costs and charges relating to the imported goods, these are to be included as per rule 10.

Question 19

Examine the validity of the following statements with reference to the Customs Act, 1962 giving brief reasons:

- (i) Service charges paid to canalizing agent are not includible in the assessable value of imports. Such agent imports the goods from foreign sellers and enters into an agreement to sell such goods with buyers in India in high seas.
- (ii) Charges for “vendor inspection” on the second hand 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.

Answer:

- (i) The statement is not valid. Since the canalizing agent is not the agent of the importer nor does he represent the importer abroad, purchases in bulk by canalizing agency from foreign seller and subsequent sale by it to Indian importer on high seas sale basis are independent of each other. Hence, the commission or service charges paid to the canalizing agent are includible in the assessable value as these cannot be termed as buying commission [Hyderabad Industries Ltd. v. UOI 2000 (115) ELT 593 (SC)].
- (ii) The statement is valid. As per rule 10(1)(e) of the Customs (Determination of Value of Imported Goods) Rules, 2007, 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.

Thus, 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)].

Question 20

An importer entered into a contract for supply of crude sunflower seed oil @ U.S. \$ 435 C.I.F./ Metric ton. Under the contract, the consignment was to be shipped in the month of July. The period was extended by mutual agreement and goods were shipped on 5th August at old prices.

In the meanwhile, the international prices had gone up due to volatility in market and other imports during the month of August were at higher prices. Department sought to increase the assessable value on the basis of the higher prices of contemporaneous imports.

Decide whether the contention of the Department is correct, with reference to a decided case law, if any.

Answer:

No, the contention of the Department is not correct.

The facts of the given case are similar to the case of CCus., Vishakhapatnam v. Aggarwal Industries Ltd. 2011 (272) E.L.T. 641 (SC). The Supreme Court, in the instant case, observed that since the contract entered into for supply of crude sunflower seed oil @ US \$ 435 CIF/metric ton could not be performed on time, the extension of time for shipment was agreed upon by the contracting parties.

The Supreme Court pointed out that the commodity involved had volatile fluctuations in its price in the international market, but having delayed the shipment; the supplier did not increase the price of the commodity even after the increase in its price in the international market.

Further, there was no allegation regarding the supplier and importer being in collusion. Thus, the appeal was allowed in the favour of the assessee and the contract price was accepted as the 'transaction value'.

Question 21

BSA & Company Ltd. has imported a machine from U.K. From the following particulars furnished by it, arrive at the assessable value for the purpose of customs duty payable.

	Particulars	Amount
(i)	Price of the machine	10,000 U.K. Pounds
(ii)	Freight (air)	3,000 U.K. Pounds
(iii)	Engineering and design charges paid to a firm in U.K.	500 U.K. Pounds
(iv)	License fee relating to imported goods payable by the buyer as a condition of sale	20% of Price of machine
(v)	Materials and components supplied in UK by the buyer free of cost valued at Rs. 20,000	
(vi)	Insurance paid to the insurer in India	Rs. 6,000
(vii)	Buying commission paid by the buyer to his agent in U.K.	100 U.K. Pounds

Other particulars:

- (i) Inter-bank exchange rate: Rs. 98 per U.K. Pound.
- (ii) CBIC had notified for purpose of section 14 of the Customs Act, 1962, exchange rate of Rs. 100 per U.K. Pound.
- (iii) Importer paid Rs. 5,000 towards demurrage charges for delay in clearing the machine from the Airport.

(Make suitable assumptions wherever required and show workings with explanations)

Answer:

Computation of assessable value of machine imported by BSA & Co.

Particulars	Amount (£)
Price of the machine	10,000
Add: Engineering and design charges paid in UK [Note 1]	500
Licence fee relating to imported goods payable by the buyer as a condition of sale (20% of Price of machine) [Note 1]	2,000
Total	12,500

	Amount (Rs.)
Value in Indian currency [£12,500 x Rs.100] [Note 2]	12,50,000
Add: Materials and components supplied by the buyer free of cost [Note 1]	20,000
FOB	12,70,000
Add: Freight [Note 3]	2,54,000
Insurance paid to the insurer in India [Note 1]	6,000
CIF value	15,30,000
Assessable value	15,30,000

Notes:

1. Engineering and design charges paid in UK, licence fee relating to imported goods payable by the buyer as a condition of sale, materials and components supplied by the buyer free of cost and actual insurance charges paid are all includible in the assessable value [Rule 10 of the Customs (Determination of Value of Imported Goods) Rules, 2007].
2. As per Explanation to section 14(1) of the Customs Act, 1962, assessable value should be calculated with reference to the rate of exchange notified by the CBIC.
3. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
4. Buying commission is not included in the assessable value [Rule 10(1)(a) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
5. Only ship demurrage charges on chartered vessels are included in the cost of transport of the imported goods. Thus, demurrage charges for delay in clearing the machine from the Airport will not be includible in the assessable value [Explanation to Rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].

Question 22

Briefly explain with reference to the provisions of the Customs Act, the relevant date for determination of rate of duty and tariff valuation for imports through a vehicle where bill of entry is filed prior to the arrival of the vehicle.

Answer:

As per section 15(1) of the Customs Act, 1962, the relevant date for determination of rate of duty and tariff valuation of goods entered for imports through a vehicle is the date of presentation of bill of entry OR date of arrival of the vehicle, whichever is later.

Therefore, the relevant date for determination of rate of duty and tariff valuation for imports through a vehicle where bill of entry is filed prior to the arrival of the vehicle will be the date of the arrival of the vehicle.

Question 23

With reference to the provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, explain briefly the chief reasons on the basis of which the proper officer can raise doubts on the truth or accuracy of the declared value.

Answer:

As per explanation to rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the chief reasons on the basis of which the proper officer can raise doubts on the truth or accuracy of the declared value may include:-

- a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;
- b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
- c) the sale involves special discounts limited to exclusive agents;
- d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
- e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;
- f) the fraudulent or manipulated documents.

Question 24

Jagat Corporation Limited imported some goods from US. The details of the transaction are as follows:-

Authority	Rate of exchange
CBIC	1 US \$=Rs. 70
RBI	1 US \$=Rs. 71

CIF value of the goods is \$ 1,50,000

Rate of basic custom duty is 10%

Rate of social welfare surcharge is 10%

Integrated tax is 18%. Ignore GST Compensation Cess.

Calculate total customs duty and integrated tax payable thereon.

Answer:

Computation of total custom duty and integrated tax payable

Particulars	Amount
CIF Value	\$ 1,50,000.00
Assessable value (in Rs.) = \$1,50,000 × Rs. 70 (Note -1)	Rs. 1,05,00,000.00
Add: Basic custom duty @ 10% (Rs. 1,05,00,000 × 10%)	Rs. 10,50,000.00
Add: Social Welfare surcharge [Rs.10,50,000 × 10%]	Rs. 1,05,000
Sub-total	1,16,55,000.00
Add: Integrated tax (Rs. 1,16,55,000 × 18%) (Note-2)	Rs. 20,97,900.00
Total custom duty and integrated tax payable (rounded off)	Rs. 32,52,900

Notes:-

- (1) The applicable exchange rate is the rate notified by CBIC [Explanation to section 14(1) of the customs Act, 1962].
- (2) Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Question 25

ABC Industries Ltd. imports an equipment by air. CIF price of the equipment is 6,000 US\$, freight paid is 1,200 US\$ and insurance cost is 1,800 US\$. The banker realizes the payment from importer at the exchange rate of Rs. 61 per US\$. Central Board of Indirect taxes and Customs notifies the exchange rate as Rs. 70 per US\$ while rate of exchange notified by RBI is Rs. 72 per US\$. ABC Industries Ltd. expends Rs. 56,000 in India for certain development activities with respect to the imported equipment.

Basic customs duty is 10%, Integrated tax is leviable @ 12% and social welfare surcharge is 10% on duty. Ignore GST Compensation Cess.

You are required to compute the amount of total duty and integrated tax payable by ABC Industries Ltd. under Customs law.

Answer:**Computation of customs duty and integrated tax payable by ABC Industries Ltd.**

Particulars	Amount
CIF value	6,000 US \$
Less: Freight	1,200 US \$
Less: Insurance	1,800 US \$
FOB value	3,000 US \$
Add: Freight (20% of FOB value) [Note 1]	600 US \$
Add: Insurance (actual)	1,800 US \$
CIF	5,400 US \$
Exchange rate as per CBIC [Note 3]	Rs. 70 per US \$
Assessable value = Rs. 70 x 5,400 US \$	Rs. 3,78,000
Add: Basic customs duty @ 10%	Rs. 37,800
Add: Social Welfare Surcharge @ 10%	Rs. 3,780
Sub-total	Rs. 4,19,580
Integrated tax @ 12% of Rs. 4,19,580 [Note 5]	Rs. 50,349.60
Total customs duty and integrated tax payable [Rs.37,800 + Rs. 3,780 + Rs.50,349.60]	Rs. 91,929.60
Total customs duty and integrated tax payable (rounded off)	Rs. 91,930

Notes:

1. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
2. Rate of exchange determined by CBIC is considered [Clause (a) of the explanation to section 14 of the Customs Act, 1962].
3. Rule 10(1)(b)(iv) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 inter alia provides that value of development work undertaken elsewhere than in India is includible in the value of the imported goods. Thus, development charges of Rs. 56,000 paid for work done in India have not been included for the purposes of arriving at the assessable value.
4. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Question 26

Compute the total customs duty and integrated tax payable under Customs law on an imported machine, based on the following information:

		US \$
(i)	Cost of the machine at the factory of the exporter	20,000
(ii)	Transport charges from the factory of exporter to the port for shipment	800
(iii)	Handling charges paid for loading the machine in the ship	50
(iv)	Freight charges from exporting country to India	5,000
(v)	Buying commission paid by the importer	100
		(Rs.)
(vi)	Lighterage charges paid by the importer at port of importation	12,000
(vii)	Freight incurred from port of entry to Inland Container depot	60,000
(viii)	Ship demurrage charges paid at port of importation	24,000
Date of bill of entry	20.01.20XX (Rate BCD 20%; Exchange rate as notified by CBIC Rs. 70 per US \$)	
Date of entry inward	25.03.20XX (Rate of BCD 10%; Exchange rate as notified by CBIC Rs. 75 per US \$)	
Integrated tax	12%	

Note: Ignore GST Compensation Cess.

Answer:

Computation of customs duty and integrated tax payable on the imported goods

Particulars	US \$
Cost of the machine at the factory	20,000
Transport charges up to port	800
Handling charges at the port	50
FOB	20,850
FOB value in Indian rupees @ Rs. 70/- per \$ [Note 1]	14,59,500
Freight charges up to India [US \$ 5,000 x Rs. 70]	3,50,000
Lighterage charges paid by the importer [Note 2]	12,000
Ship demurrage charges on chartered vessels [Note 2]	24,000
Insurance charges @ 1.125% of FOB [Note 3]	16,419.38
CIF	18,61,919.38
Add: Basic customs duty @ 10% [Note 4] [a]	1,86,192
Add: Social Welfare surcharge @ 10% [b]	18,619.20
Total	20,66,730.58
Add: Integrated tax @ 12% of Rs. 20,66,730.58 [c] [Note 5]	2,48,007.67
Total custom duty and integrated tax payable [(a) +(b) + (c)] rounded off	4,52,819

Notes:

1. Rate of exchange notified by CBIC on the date of presentation of bill of entry is considered [Explanation to section 14 of the Customs Act, 1962].
2. Cost of transport of the imported goods includes ship demurrage charges and lighterage charges [Explanation to Rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
3. Insurance charges is included @ 1.125% of FOB value of goods [Third proviso to rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
4. Rate of duty is the rate prevalent on the date of presentation of bill of entry or the rate prevalent on the date of entry inwards, whichever is later [Section 15 of the Customs Act, 1962].
5. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable Social welfare surcharge. Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
6. Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
7. Freight incurred from port of entry to Inland Container depot is not includible in assessable value [Rule 10(2)(a) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

Question 27

Kaveri Enterprises imported some goods from Italy. On the basis of certain information obtained through computer printouts from the Customs House, Department alleged that during the period in question, large number of consignments of such goods were imported at a much higher price than the price declared by Kaveri Enterprises. Therefore, Department valued such goods on the basis of transaction value of identical goods as per rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and demanded the differential duty along with penalty and interest from the Kaveri Enterprises. However, Department did not provide these printouts to Kaveri Enterprises.

Kaveri Enterprises contended that Department's demand was without any basis in law, without any legally admissible evidence and opposed to the principles of natural justice as the computer printouts which formed the basis of such demand had not been supplied to them. Resultantly, they had no means of knowing as to whether any imports of comparable nature were made at the relevant point of time.

You are required to examine the contention of Kaveri Enterprises, with the help of a decided case law, if any.

Answer:

The facts of the given case are similar to the case of Gira Enterprises v. CCus. 2014 (307) ELT 209 (SC) decided by the Supreme Court. In the instant case, the Supreme Court observed that since Revenue did not supply the copy of the computer printout, which formed the basis of the conclusion that the appellants under-valued the imported goods, the appellants obviously could not and did not have any opportunity to demonstrate that the transactions relied upon by the Revenue were not comparable transactions.

The Supreme Court held that mere existence of alleged computer printout was not proof of existence of comparable imports. Even if assumed that such printout did exist and content thereof were true, such printout must have been supplied to the appellant and they should have been given reasonable opportunity to establish that the import transactions were not comparable.

In view of the above-mentioned judgment, contention of Kaveri Enterprises is correct.

Question 28

M/s Impex imported some consignment of goods on 01.6.20XX. A bill of entry for warehousing of goods was presented on 05.6.20XX and the materials were duly warehoused. The goods were subject to duty @ 50% ad valorem. In the meanwhile, on 01.07.20XX, an exemption notification was issued reducing the effecting customs duty @ 30%, ad valorem. M/s Impex filed their bill of entry for home consumption on 01.08.20XX claiming duty @ 30% ad valorem. However, Customs Department charged duty @ 50% ad valorem being the rate on the date of clearance into the warehouse.

Explain with reference to the provisions of the Customs Act, 1962:

- (i) the rate of duty applicable for clearance for home consumption in this case.
- (ii) whether the rate of exchange on 01.08.20XX could be adopted for purpose of conversion of foreign currency into local currency?

Answer:

- (i) (i) Section 15(1)(b) of the Customs Act, 1962 provides that in the case of goods cleared from a warehouse, rate of duty applicable is the rate of duty in force on the date on which a bill of entry for home consumption in respect of such goods is presented.

In the given case, since M/s Impex has filed the bill of entry for home consumption on 01.08.20XX, rate of duty is the rate prevalent on the said date viz. 30%.

- (ii) Third proviso to section 14 of the Customs Act, 1962 provides that the rate of exchange notified by the CBIC as prevalent on the date of presentation of bill of entry for warehousing is the applicable rate of exchange for conversion of foreign currency into local currency.

Therefore, in the given case, rate of exchange that would be prevalent on date of presentation of bill of entry for warehousing i.e. 05.06.20XX and not the one prevalent on date of presentation of bill of entry for home consumption i.e., 01.08.20XX, would be adopted.

Question 29

Differentiate between deductive value and computed value.

Answer:

DEDUCTIVE VALUE

- (1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions: –
- (i) either 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) the 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 the goods.
- (2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.
- (3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.
- (b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

COMPUTED VALUE

Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:-

- (a) the cost or value of materials 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 expenses under sub-rule (2) of rule 10.

Question 30

What is residual method of valuation? Discuss with reference to the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Answer:

RESIDUAL METHOD

- (1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India.

Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

- (2) No value shall be determined under the provisions of this rule on the basis of—
 - (i) the selling price in India of the goods produced in India;
 - (ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
 - (iii) the price of the goods on the domestic market of the country of exportation;
 - (iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;
 - (v) the price of the goods for the export to a country other than India;
 - (vi) minimum customs values; or
 - (vii) arbitrary or fictitious values.

The residuary method can be considered if valuation is not possible by any other method. [Sanjay Chandiram v. CC 1995 (77) E.L.T. 241 (S.C.)]

Question 31

Enumerate the various costs and services that are to be added under rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 to arrive at the “transaction value”.

Answer:

COST AND SERVICES

- (1) In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods:
- (a) the following to the extent they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods, namely:-
 - (i) commissions and brokerage, except buying commissions;
 - (ii) the cost of containers which are treated as being one for customs purposes with the goods in question;
 - (iii) the cost of packing whether for labour or materials.
 - (b) The value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of imported goods, to the extent that such value has not been included in the price actually paid or payable, namely:-
 - (i) materials, components, parts and similar items incorporated in the imported goods;
 - (ii) tools, dies, moulds and similar items used in the production of the Imported goods;
 - (iii) materials consumed in the production of the imported goods;
 - (iv) engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods.
 - (c) royalties and licence fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
 - (d) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;

all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.

Explanation- Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includible referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods.

- (2) For the purposes of sub-section (1) of section 14 of the Customs Act, 1962 and these rules, the value of the imported goods shall be the value of such goods, and shall include -
- (a) the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation;
 - (b) the cost of insurance to the place of importation:

However, where the cost referred to in clause (a) is not ascertainable, such cost shall be 20% of the free on board value of the goods:

Further that where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in clause (b) is ascertainable, the cost referred to in clause (a) shall be 20% of such sum:

Where the cost referred to in clause (b) is not ascertainable, such cost shall be 1.125% of free on board value of the goods:

Where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in clause

(a) is ascertainable, the cost referred to in clause (b) shall be 1.125% of such sum:

In the case of goods imported by air, where the cost referred to in clause (a) is ascertainable, such cost shall not exceed 20% of free on board value of the goods:

In the case of goods imported by sea or air and transshipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded.

Explanation-

The cost of transport of the imported goods referred to in clause (a) includes the ship demurrage charges on chartered vessels, lighterage or barge charges.

Question 32

In the context of Customs Valuation (Determination of Price of Imported Goods) Rules, 2007, explain the meaning of:

- (i) Similar goods
- (ii) Identical goods

Answer:

“identical goods” means imported goods -

- (i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods;
- (ii) produced in the country in which the goods being valued were produced; and
- (iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these

imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods.

“similar goods” means imported goods –

- (i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;
- (ii) produced in the country in which the goods being valued were produced; and
- (iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods.

Question 33

Briefly discuss the provisions relating to date for determining the rate of duty and tariff valuation of imported goods.

Answer:

FOR IMPORTED GOODS [SECTION 15]

Section 15 of the Customs Act, 1962 specifies the relevant date for determining the rate of duty and tariff valuation of imported goods. They are different for different situations as given below:

Goods are entered for home consumption under section 46 – The relevant date for the three modes of transport as laid down by section 15(1)(a) read with proviso would be as follows:

- (i) For goods imported by vehicle at land customs station – the relevant date is the date of filing the B/E under section 46 or date of arrival of vehicle, whichever is later.
- (ii) For goods imported by a vessel at a customs port – the relevant date is the date of filing the B/E under section 46 or date of entry inwards to vessel under section 31, whichever is later.
- (iii) For goods imported by aircraft at a customs airport – the relevant date is the date of filing the B/E under section 46 or date of arrival of aircraft, whichever is later.
- (iv) Goods cleared from a warehouse under section 68 – the relevant date is the date on which a bill of entry for home consumption in respect of such goods is presented.
- (v) In the case of any other goods – the relevant date is the date of payment of duty.

These provisions relating to determination of relevant date do not apply to baggage and imports by post, in which sections 78 and 83 apply respectively.

Question 34

Compute export duty from the following data:

- (i) FOB price of goods: US \$ 50,000.
- (ii) Shipping bill presented electronically on 26.04.20XX.
- (iii) Proper officer passed order permitting clearance and loading of goods for export (Let Export Order) on 06.05.20XX.
- (iv) Rate of exchange and rate of export duty are as under:

	Rate of Exchange	Rate of Export Duty
On 26.04.20XX	1 US \$ = ₹ 70	10%
On 06.05.20XX	1 US \$ = ₹ 73	8%

- (v) Rate of exchange is notified for export by Central Board of Indirect taxes and Customs.

Answer:

Computation of export duty

Particulars	Amount (US \$)
FOB price of goods [Note 1]	50,000
	Amount (₹)
Value in Indian currency (US \$ 50,000 x ₹ 70) [Note 2]	35,00,000
Export duty @ 8% [Note 3]	2,80,000

Notes:

- As per section 14(1) of the Customs Act, 1962, assessable value of the export goods is the transaction value of such goods which is the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation.
- As per third proviso to section 14(1) of the Customs Act, 1962, assessable value has to be calculated with reference to the rate of exchange notified by the CBIC on the date of presentation of shipping bill of export.
- As per section 16(1)(a) of the Customs Act, 1962, in case of goods entered for export, the rate of duty prevalent on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation, is considered.

Question 35

Sphinx Merchandise Ltd. has exported some goods to USA by air. The FOB price of goods exported is US \$ 1,00,000.

Compute the export duty payable by Sphinx Merchandise Ltd. with the help of following details provided.

Particulars	Date	Rate of duty	Rate of exchange notified by CBIC	Rate of exchange prescribed by RBI
Presentation of shipping bill	17.06.20XX	12%	1 US \$ = 65	1 US \$ = 64
Let export order	19.07.20XX	10%	1 US \$ = 64	1 US \$ = 65

Answer:**Computation of export duty**

Particulars	Amount (US \$)
Assessable value [Note 1]	1,00,000
	Amount (₹)
Assessable value = US \$ 1,00,000 x ₹ 65 [Note 2]	65,00,000
Export duty @ 10% [Note 3]	6,50,000

Notes:-

1. The transaction value, i.e. FOB price of export goods, is considered as assessable value in terms of section 14(1) of the Customs Act, 1962.
2. As per third proviso to section 14(1) of the Customs Act, 1962, assessable value has to be calculated with reference to the rate of exchange notified by CBEC on date of presentation of shipping bill of export.
3. The rate of duty prevalent on the date of let export order is considered for computing export duty in terms of section 16(1)(a) of the Customs Act, 1962.

Question 36

Kankan Corp had imported a machine from USA for ₹ 365 lakh on payment of appropriate customs duty in February. However, in July, the machine had to be sent back to the supplier for repair (not amounting to manufacture) from the factory of Kankan Corp. This machine was repaired and thereafter, re-imported by Kankan Corp in November next year. The supplier has agreed to provide discount of 60% of the fair cost of repairs, resulting in Kankan Corp paying USD 12,000.

Following further particulars are available:

Particulars	Date	Rate of Duty	Inter Bank Exchange rate	Rate notified by CBEC
Bill of Entry	21 st February	12%	61.40	62
Aircraft arrival	26 th February	15%	62.50	63.25

Integrated tax is leviable @ 12%

	Outwards (Amt. in ₹)	Inwards (Amt. in ₹)
Insurance	23,000	27,000
Air Freight	93,500	1,06,500

Determine total duty payable with appropriate notes for your computation assuming that Kankan Corp is not an EOU.

Answer:

Notification No. 45/2017 Cus. dated 30.06.2017 stipulates that in case of re-importation of goods

exported for repairs, duty is payable on fair cost of repairs carried out, insurance and freight charges - both ways, subject to fulfillment of following conditions:-

- (a) The time limit for re-importation is 3 years
- (b) The exported goods and the re-imported goods must be the same.
- (c) The ownership of the goods should not have changed.

Since all the specified conditions are fulfilled in the given case, total duty payable will be computed as under:-

Computation of total duty payable by Kankan Corp.

Particulars	Amount
Fair cost of repairs (in dollars) = \$12,000/40%	\$ 30,000
	₹
Fair cost of repairs (in rupees) = \$30,000 × ₹ 62 [Note-1]	18,60,000.00
Add: Inward and outward insurance [₹ 23,000 + ₹ 27,000]	50,000.00
Add: Inward and outward air freight [₹ 93,500 + ₹ 1,06,500]	2,00,000.00
Assessable Value	21,10,000.00
Add: Basic customs duty (BCD) @15% [Note-2]	3,16,500.00
Add: Social Welfare Surcharge @ 10% of BCD	31,650.00
Value for computing IGST	24,58,150.00
IGST @ 12%	2,94,978.00
Total duty and tax payable = [₹ 3,16,500 + ₹ 31,650 + ₹ 2,94,978]	6,43,128

Notes:-

1. Rate of exchange notified by the CBEC on date of presentation of bill of entry would be the applicable rate in terms of third proviso to section 14(1) of the Customs Act, 1962.
2. Rate of duty is the rate in force on date of presentation of bill of entry or arrival of aircraft, whichever is later in terms of proviso to section 15(1) of the Customs Act, 1962

Question 37

Rudraksh Manufacturers, Kolkata, is engaged in manufacturing the textile articles. It has decided to enhance its production capacity in the current year. Therefore, it imports a machine through vessel from George Inc., USA at a price of \$ 31,650 (including transport charges from the factory of George Inc. upto US port of \$ 2,500 and handling charges at US port of \$ 1,750). Rudraksh Manufacturers has provided the following additional information in respect of machine imported:

S.No.	Particulars	Amount
(i)	Charges for design and engineering work undertaken for the machine in US	US \$ 1,750
(ii)	Buying commission paid by Rudraksh Manufacturers	US \$ 150
(iii)	Freight charges from USA to India	US \$ 3,000
(iv)	Unloading and handling charges paid at the place of importation	₹ 2,250
(v)	Exchange rate to be considered: 1\$ = ₹ 60	

The actual insurance charges paid are not ascertainable. You are required to determine the assessable value of the imported machine under the Customs Act, 1962 from the given particulars

Answer :

Computation of assessable value of imported goods

Particulars	Amount (US \$)
Price of the machine (including transport charges from the factory of George Inc. upto US port and handling charges at US port) [Note-1]	31,650
Add: Charges for design and engineering work undertaken for the machine in USA [Note 2]	1,750
Buying commission [Note 3]	Nil
FOB value	33,400.00
Add: Freight charges up to India [Note-1]	3,000.00
Insurance charges @ 1.125% of FOB [Note 4]	375.75
CIF value	36,775.75
Add: Unloading and handling charges paid at the place of importation [Note 5]	Nil
Assessable value	36,775.75
Assessable value in Indian rupees @ ₹ 60/ per \$	₹ 22,06,545

Notes:

- (1) The cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation are includible in the assessable value [Rule 10(2)(a) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR)].
- (2) Design and engineering work undertaken elsewhere than in India and necessary for the production of the imported goods is includible in the assessable value [Rule 10(1)(b)(iv) of the CVR].
- (3) Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of the CVR].

- (4) If insurance cost is not ascertainable, the same shall be added @ 1.125% of FOB value of the goods [Third proviso to rule 10(2) of the CVR].
- (5) By virtue of rule 10(2) of the CVR, only charges incurred for delivery of goods "to" the place of importation are includible in the transaction value. The loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation are not to be added to the CIF value of the goods. [Circular No. 39/2017 Cus. dated 26.09.2017].

Question 38

Product 'Z' was imported by Mr. X by air. The details of the import transaction are as follows

Particulars	US \$
Price of 'Z' at exporter's factory	8,500
Freight from factory of the exporter to load airport (airport in the country of exporter)	250
Loading and handling charges at the load airport	250
Freight from load airport to the airport of importation in India	4,500
Insurance charges	2,000

Though the aircraft arrived on 22.08.2020, the bill of entry for home consumption was presented by Mr. X on 20.08.2020.

The other details furnished by Mr. X are

	20.08.2020	22.08.2020
Rate of basic customs duty	20%	10%
Exchange rate notified by CBIC	₹ 70 per US\$	₹ 72 per US\$

Exchange rate prescribed by RBI	₹ 71 per US\$	₹ 72 per US\$
Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975	18%	12%

Compute

- (i) value of product 'Z' for the purpose of levying customs duty
- (ii) customs duty and tax payable

Answer

Computation of assessable value of product 'Z'

Valuation under Custom Act

Particulars		Amount
Ex-factory price of the goods		8,500 US\$
Freight from factory of the exporter to load airport (airport in the country of exporter)	250 US \$	
Loading and handling charges at the load airport	250 US \$	
Freight from load airport to the airport of importation in India	<u>4,500 US \$</u>	
Total cost of transport, loading and handling charges associated with the delivery of the imported goods to the place of importation	5,000 US\$	
Add: Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation (restricted to 20% of FOB value) [Note 1]		1,800 US\$
Insurance (actual)		<u>2,000 US \$</u>
CIF for customs purpose		12,300 US \$
Value for customs purpose		12,300 US \$

Exchange rate as per CBIC [Note 2]	₹ 70 per US\$
	Amount (₹)
Assessable value (₹ 70 x 12,300 US \$)	8,61,000
Add: Basic customs duty @ 10% [Note 3]	86,100
Add: SWS @ 10%	<u>8,610</u>
Value for the purpose of levying integrated tax [Note 4]	9,55,710
Add: Integrated tax @ 12%	1,14,685.2
Total duty & tax payable (rounded off)	2,09,395

Notes

- (1) In the case of goods imported by air, the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation shall not exceed 20% of the FOB value of the goods. [Fifth proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR)].

FOB value in this case is the ex-factory price of the goods (8,500 US\$) plus the cost of transport from factory to load airport (250 US\$) plus loading and handling charges at the load airport (250 US\$) which is 9,000 US\$.

- (2) Rate of exchange determined by CBIC is to be considered [Clause (a) of the explanation to section 14 of

the Customs Act, 1962].

- (3) Section 15 of the Customs Act, 1962 provides that rate of duty shall be the rate in force on the date of presentation of bill of entry or the rate in force on the date of arrival of aircraft, whichever is later.
- (4) Integrated tax is levied on the sum total of the assessable value of the imported goods and customs duties [Section 3(8) of the Customs Tariff Act, 1962]. SWS leviable on integrated tax have been exempted

Question 39

An importer from Cochin imports goods from an exporter in US. The vessel carrying the goods reaches Mumbai port first and from there goods are transhipped to Cochin port.

Determine the assessable value of the imported goods under the Customs Act, 1962 from the following particulars

S.No.	Particulars	Amount
(i)	Cost of the machine at the factory of the exporter	US \$ 20,000
(ii)	Transport charges from the factory of exporter to the port for shipment	US \$ 1,000
(iii)	Handling charges paid for loading the machine in the ship	US \$ 100
(iv)	Buying commission paid by the importer	US \$ 100
(v)	Freight charges from exporting country to India	US \$ 2,000
(vi)	Actual insurance charges paid are not ascertainable	---
(vii)	Charges for design and engineering work undertaken for the machine in US	US \$ 5,000
(viii)	Unloading and handling charges paid at the place of importation	₹ 1,500
(ix)	Transport charges from Mumbai to Cochin port	₹ 25,000
(x)	Exchange rate to be considered: 1\$ = ₹ 70	

Answer

Computation of assessable value of imported goods

Particulars	Amount (US \$)
Price of the machine at the factory of the exporter	20,000
Add: Transport charges upto the port in the country of the exporter [Note 1]	1,000
Handling charges at the port in the country of the exporter [Note 1]	100

Valuation under Custom Act

Charges for design and engineering work undertaken for the machine in US [Note 2]	5,000
Buying commission [Note 3]	<u>Nil</u>
FOB value	26,100.00
Add: Freight charges up to India	2,000.00
Insurance charges @ 1.125% of FOB [Note 4]	293.63
Transport charges from Mumbai to Cochin port [Note 5]	<u>Nil</u>
CIF value	28,393.63
Add: Unloading and handling charges paid at the place of importation [Note 6]	<u>Nil</u>
Assessable value	28,393.63
Assessable value in Indian rupees @ ₹ 70/ per \$	₹19,87,554.10
Assessable value (rounded off)	₹ 19,87,554

Notes:

- (1) The cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation are includible in the assessable value [Rule 10(2)(a) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR)].
- (2) Design and engineering work undertaken elsewhere than in India and necessary for the production of the imported goods is includible in the assessable value [Rule 10(1)(b)(iv) of the CVR].
- (3) Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of the CVR].
- (4) If insurance cost is not ascertainable, the same shall be added @ 1.125% of FOB value of the goods [Third proviso to rule 10(2) of the CVR].
- (5) Cost of insurance, transport, loading, unloading, handling charges associated with transshipment of imported goods to another customs station in India is not included in the assessable value [Sixth proviso to rule 10(2) of the CVR].
- (6) As per rule 10(2) of the CVR, only charges incurred for delivery of goods "to" the place of importation are includible in the transaction value.
- (7) The loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation are not to be added to the CIF value of the goods

Question 40

ABC Industries Ltd. of Mumbai imported one machine through vessel from Japan, in the month of November, 2020.

The following particulars are made available

Valuation under Custom Act

S. No.	Particulars	Amount in Japanese Yen (¥)
	Cost upto port of exportation incurred by exporter	6,00,000
(i)	Loading charges at port of exportation	25,000
	Freight charges from port of export to port of import in India.	1,00,000
(ii)		
(iii)		

Following additional amounts paid by ABC Industries Ltd:-

S. No.	Particulars	Amount in Indian rupees (₹)
(i)	Designing charges, necessary for such machine, paid to consultancy firm in New Delhi	8,00,000
(ii)	Commission paid (not the buying commission) to local agent of exporter.	1,25,000
	Actual landing charges paid at the place of importation.	15,000
(iii)	Actual insurance charges paid to the place of importation are not ascertainable.	-
(iv)	Lighterage charges paid at the port of importation	20,000
(v)	Other Information :	

(i)	Rate of basic customs duty is 10%
(ii)	Rate of social welfare surcharge is 10%
(iii)	Integrated tax leviable under section 3(7) of Customs Tariff Act, 1975 is 12%.
(iv)	Ignore GST compensation cess.
(v)	Rate of exchange to be taken is 1 Japanese Yen (¥) = ₹ 0.71

Arrive at the total customs duty, including integrated tax payable under section 3(7) of the Customs Tariff Act, 1975 with appropriate working notes.

Answer

Computation of assessable value of the imported goods

	Japanese Yen
Cost upto port of exportation	6,00,000
Add: Loading charges at the port of exportation [Note-1]	25,000
Total in Japanese Yen	6,25,000
	₹
Total in Indian rupees @ ₹ 0.71 per Japanese Yen	4,43,750.00
Add: Commission paid to local agent of exporter [Note-3]	1,25,000.00

FOB value as per customs	5,68,750.00
Add: Freight charges from port of export to port of import in India [Note-1] [1,00,000 Japanese Yen × 0.71 = ₹ 71,000]	71,000.00
Add: Lighterage charges paid by the importer at port of importation [Note-1]	20,000
Add: Insurance charges @ 1.125% of FOB [₹ 5,68,750 × 1.125%] [Note-4]	6,398.43
CIF value	6,66,148.43
Assessable Value (rounded off)	6,66,148
Add: Basic customs duty @ 10% of ₹ 6,66,148 (rounded off) (A)	66,615
Add: Social welfare surcharge @ 10% of ₹ 66,615 (rounded off) (B)	6,662
Total	7,39,425
Add: Integrated tax @ 12% of ₹ 7,39,425 (rounded off) (C)	88,731
Total custom duty and integrated tax payable [(A) + (B) + (C)] (rounded off)	1,62,008

Notes

- (1) The cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation are includible in the assessable value [Rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR)]. Further, explanation to rule 10(2), inter alia, clarifies that cost of transport of the imported goods includes lighterage charges
- (2) Design and engineering work is includible in the assessable value only when the same is undertaken elsewhere than in India and necessary for the production of the imported goods [Rule 10(1) of the CVR].
- (3) Buying commission is not included in the assessable value [Rule 10(1) of the CVR]. Commission paid to local agent of exporter is includible in the assessable value since it is not buying commission.
- (4) If insurance cost is not ascertainable, the same shall be added @ 1.125% of FOB value of the goods [Rule 10(2) of the CVR].
- (5) Cost of insurance, transport, loading, unloading, handling charges associated with transshipment of imported goods to another customs station in India is not included in the assessable value [Rule 10(2) of the CVR]

Question 41

Mr. X imported certain goods from a related person Mr. Q of US and transaction value has been rejected. Rules 4 and 5 of the Import Valuation Rules are found inapplicable as no similar/ identical goods are imported in India. Mr. X furnishes cost related data of imports and requests customs authorities to determine value accordingly as per rule 8. The relevant data are

1. Cost of materials incurred by Mr. Q \$ 2000
2. Fabrication charges incurred by Mr. Q \$ 1000
3. Other chargeable expenses incurred by Mr. Q \$ 400
4. Other indirect costs incurred by Mr. Q \$ 250
5. Freight from Mr. Q 's factory to US port \$ 250
6. Loading charges at US port \$ 100
7. Normal net profit margin of Mr. Q is 20% of FOB
8. Air freight from US port to Indian port \$ 1,500
9. Insurance from US port to Indian port \$ 50
10. Exchange rate ₹ 70 per \$

The customs authorities are of the opinion that since value as per rule 7 can be determined at ₹ 4,00,000, there is no need to apply rule 8.

Can the request of Mr. X be legally acceptable? If so, compute the assessable value under the Customs Act, 1962.

Answer

The value of the imported goods is determined under rule 8 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (hereinafter referred to as Import Valuation Rules) if the same cannot be determined under the earlier rules. However, the order of application of rules 7 and 8 can be reversed at the request of the importer and with the approval of the proper officer.

Thus, request of Mr. X for determination of value under rule 8 is legally acceptable, if the same is also approved by the proper officer.

Assuming that the request of Mr. X has been approved by the proper officer, the assessable value of the imported goods under rule 8 will be the sum of-

- (a) the cost of materials and fabrication or other processing;
- (b) an amount for profit and general expenses

the cost or value of all other expenses under rule 10(2) of the said rules

Answer

Computation of assessable value

Particulars	Amount (\$)
Cost of materials	2,000
Add: Fabrication charges	1,000
Other chargeable expenses	400
	<u>250</u>
Other indirect costs	3,650
Cost of the goods at Mr. Q's factory	1,000
Add: Net profit margin @ 20% of FOB, i.e. 25% of total cost	
Total cost till US port = Cost of the goods at factory + Freight from factory to US port and loading charges at US port = \$4,000 [\$3,650 + \$250 + \$100]	
FOB value = Total cost till port + profit = \$5,000 (\$4,000 + \$1,000)	
Add: Freight & loading/unloading charges [In case of import by air, the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation are restricted to 20% of FOB value]	<u>50</u>
Insurance charges	5,700
Assessable value	3,99,000
Assessable value in Indian Rupees (Exchange rate - ₹70 per \$)	

Question 1

M/s Pipli Imports Ltd. imported certain goods, which were unloaded in the customs area on 01.10.20XX. When order for clearance was passed by proper officer on 05.10.20XX, it was found that there was some pilferage of such goods. As the imported goods were in the custody of Port Trust, the Department demanded duty from the custodian under section 45(3) of the Customs Act, 1962, on such pilferage. The Port Trust denied such demand contending that it was not an approved custodian falling under section 45 and possession of goods by it was by virtue of powers conferred under the Major Port Trust Act, 1963. Hence, it is not liable for customs duty on pilfered goods.

M/s Pipli Imports Ltd. has also asked the Port Trust to make good the loss of goods. Examine, whether the demands made by the Department and M/s Pipli Imports Ltd. are justified in law, referring to decided case law.

Answer:

The facts of the case are similar to the case of Board of Trustees v. UOI (2009) 241 ELT 513 (Bom HC DB), wherein the High Court held that considering the language of section 45(3), the liability to pay duty is of the person, in whose custody the goods remain as an approved person under section 45 of the Act. Therefore, section 45(3) applies only to the private custodians who are required to be approved by Principal Commissioner/ Commissioner of Customs under section 45(1). Accordingly, the major ports and airports covered under Major Port Trust Act, 1963 who do not require any approval under section 45(1), are not covered by section 45(3). Thus, the Department cannot demand duty from Port Trust on the pilferage under section 45(3) of the Customs Act, 1962.

Section 45(3) of the Customs Act, 1962 holds the custodian responsible only in respect of the customs duty in respect of pilfered goods. It does not extend to the value of goods lost. However, the Port Trust, as bailee of the goods, is liable for value of the goods to the importer.

Question 2

Mr. Krishna Bhansali, has imported some garments from Paris. He is unable to make self-assessment under section 17(1) of the Customs Act, 1962 because of differential rates for different kinds of material and hence has made a request in writing to the proper officer for provisional assessment pending technical testing. Is he eligible to apply for provisional assessment? Discuss.

Answer:

Yes, Mr. Krishna Bhansali can apply for provisional assessment under section 18 of the Customs Act, 1962. Section 18(1) provides that provisional assessment can be resorted to, inter alia, where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment. While 'unable' is not about willingness but deficiency of information to make an accurate determination of the liability, in this case Mr Bhansali satisfies the criterion because he lacks the information necessary to classify the goods pending technical testing.

Question 3

Mr. Sujoy, an Indian entrepreneur, went to London to explore new business opportunities on 01.04.2016. His wife also joined him in London after three months. The following details are submitted by them with the Customs authorities on their return to India on 15.04.2017:

- a. used personal effects worth Rs. 80,000,
- b. 2 music systems each worth Rs. 50,000,
- c. the jewellery brought by Mr. Sujoy worth Rs. 48,000 [20 grams] and the jewellery brought by his wife worth Rs. 96,000 [40 grams].

With reference to Baggage Rules, 2016, determine whether Mr. and Mrs. Sujoy will be required to pay any customs duty?

Answer:

As per rule 3 of the Baggage Rules, 2016, an Indian resident arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say, used personal effects and travel souvenirs; and articles [other than certain specified articles], upto the value of Rs. 50,000 if these are carried on the person or in the accompanied baggage of the passenger.

Thus, there is no customs duty on used personal effects and travel souvenirs and general duty free baggage allowance is Rs. 50,000 per passenger. Thus, duty liability of Mr. Sujoy and his wife is nil for the used personal effects worth Rs. 80,000 and 2 music systems each worth Rs. 50,000.

As per rule 5 of the Baggage Rules, 2016, the jewellery allowance is as follows:

Jewellery brought by	Duty free allowance
Gentleman Passenger	Jewellery upto a weight of 20 grams with a value cap of Rs. 50,000
Lady Passenger	Jewellery upto a weight of 40 grams with a value cap of Rs. 1,00,000

However, the jewellery allowance is applicable only to a passenger residing abroad for more than 1 year.

Consequently, there is no duty liability on the jewellery brought by Mr. Sujoy as he had stayed abroad for period exceeding 1 year and weight of the jewellery brought by him is 20 grams with a value less than Rs. 50,000.

However, his wife is not eligible for this additional jewellery allowance as she had stayed abroad for a period of less than a year. Thus, she has to pay customs duty on the entire amount of jewellery brought by her as she has already exhausted the general duty free baggage allowance of Rs. 50,000 allowed under rule 3.

Question 4

After visiting USA for a month, Mrs. and Mr. X (Indian residents aged 40 and 45 years respectively) brought to India a laptop computer valued at Rs. 80,000, used personal effects valued at Rs. 90,000 and a personal computer for Rs. 52,000. What is the customs duty payable?

Answer:

- 1) As per Baggage Rules, 2016, an Indian resident arriving from any country other than Nepal, Bhutan or Myanmar is allowed duty free clearance of-
 - a. Used personal effects and travel souvenirs without any value limit.

- b. Articles [other than certain specified articles] upto a value of Rs. 50,000 carried as accompanied baggage [General duty-free baggage allowance].

Further, such general duty-free baggage allowance of a passenger cannot be pooled with the general duty-free baggage allowance of any other passenger.

- 2) One laptop computer when imported into India by a passenger of the age of 18 years or above (other than member of crew) as baggage is exempt from whole of the customs duty [Notification No. 11/2004 Cus. dated 08.01.2004].
- 3) Accordingly, there will be no customs duty on used personal effects (worth Rs. 90,000) of Mrs. and Mr. X and laptop computer brought by them will be exempt from duty.

Duty payable on personal computer after exhausting the duty free baggage allowance will be Rs. 52,000 - Rs. 50,000 = Rs.2,000.

Effective rate of duty for baggage = 38.5% [including social welfare surcharge @ 10%]

Therefore, total customs duty = Rs. 770

Question 5

What is the relevant date for determination of rate of duty under the Customs Act, 1962 in the case of clearance of baggage?

Answer:

As per section 78 of the Customs Act, 1962, the relevant date for determination of rate of duty in case of clearance of baggage is the date on which a declaration is made in respect of such baggage under section 77.

Question 6

State the difference between transit and transshipment of goods under the provisions of the Customs Act.

Answer:

Transit	Transshipment
(i) Section 53 of the Customs Act, 1962 provides for transit of goods.	(i) Section 54 of the Customs Act, 1962 provides for transshipment of goods.
(ii) In case of transit of goods, goods are allowed to remain on the same conveyance.	(ii) In case of transshipment of goods, the conveyance changes i.e., the goods are unloaded from one conveyance and loaded in another conveyance.
(iii) In case of transit of goods, there is continuity of records.	(iii) In transshipment of goods, continuity in the records is not maintained as the goods are transferred to another conveyance.

Note: The rates of duties, wherever mentioned in the illustrations may not always be the actual rate prevalent during the period in question. They may be hypothetical rates assumed to explain the provisions of law with more clarity.

Question 7

'Queen Marry', was a vessel containing the goods imported by XML Ltd. The events relating to its entry into India and the discharge and onward movement and storage of the goods were as follows.

- 24.05.20XX Vessel entered the India territorial waters.
- 25.05.20XX Import manifest was delivered to the customs authorities
- 27.05.20XX XML Ltd filed bill of entry for the goods
- 29.05.20XX Entry inwards granted to the vessel

The rate of customs duty on the goods was increased from 8% to 10% on 28.05.20XX.

At what rate should XML Ltd. pay the customs duty on the goods imported by it?

Answer:

Rate of duty will be 10%, because the bill of entry is deemed to have been filed on the date of entry inward though it was actually filed before the rate of duty increased.

Question 8

Write a brief note on self-assessment in customs under the Customs Act, 1962.

Answer:

ASSESSMENT OF GOODS [SECTION 17]

- (a) **Duty to be self-assessed by the importer/exporter:** An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85 (i.e. stores allowed to be warehoused without assessment of duty), self-assess the duty, if any, leviable on such goods.
- (b) **Verification by proper officer:** The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

Further, the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

For the purposes of verification, the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

- (c) **Reassessment of duty by the proper officer if self-assessment not done correctly:** Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.
- (d) **Speaking order for re-assessment to be passed unless the importer agrees with the reassessment:** Where any re-assessment done is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper

officer shall pass a speaking order on the re-assessment, within 15 days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

Question 9

State briefly the provisions of the Customs Act, 1962 relating to payment of interest in case of provisional assessment.

Answer:

The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order or re-assessment order. The interest shall be payable at the rate fixed by the Central Government under section 28AA. This interest shall be payable from the first day of the month in which the duty is provisionally assessed till the date of payment thereof

Question 10

What is meant by 'boat notes'?

Answer:

Boat notes are issued to cover transport of cargo to or from vessels that cannot come into the port. Refer 'Restrictions on goods being water-borne'. (section 35)

Question 11

Discuss the provisions regarding transit of goods and transshipment of goods without payment of duty under the Customs Act.

Answer:

TRANSIT OF GOODS IN THE SAME VESSEL OR AIR [SECTION 53]

Subject to the provisions of section 11, where any goods imported in a conveyance and mentioned in the arrival manifest or import manifest or the import report, as the case may be, as for transit in the same conveyance to any place outside India or to any customs station, the proper officer may allow the goods and the conveyance to transit without payment of duty, subject to such conditions, as may be prescribed.

TRANSHIPMENT OF GOODS WITHOUT PAYMENT OF DUTY [SECTION 54]

- (1) Where any goods imported into a customs station are intended for transshipment, a bill of transshipment shall be presented to the proper officer in the prescribed form, which is generally prescribed already. Where the goods are being transferred under an international treaty or bilateral agreement between the Government of India and Government of a foreign country, a declaration for transshipment instead of a bill of transshipment shall be presented to the proper officer in the prescribed form.
- (2) Subject to the provisions of sections 11, where any goods imported into a customs station are mentioned in the arrival manifest or import manifest or the import report, as the case may be, as for transshipment to anyplace outside India, such goods may be allowed to be so transhipped without payment of duty.
- (3) Where any goods imported into a customs station are mentioned in the arrival manifest or import manifest or the Import report, as the case may be, as for transshipment:-

- (a) to any major port as defined in the Indian Ports Act, 1908 (15 of 1908), or the customs airport at Mumbai, Calcutta, Delhi, or Chennai or any other custom port or customs airport which the board may, by notification in the Official Gazette, specify in this behalf, or
- (b) to any other customs station and the proper officer is satisfied that the goods bonafide intended for transshipment to such customs station,
the proper officer may allow the goods to be transhipped without payment of duty, subject to such conditions as may be prescribed for the due arrival of such goods at the customs station to which transshipment is allowed.

Question 12

Explain in brief the duty exemption to baggage under section 79(1) of the Customs Act, 1962.

Answer:

DUTY EXEMPTION TO BAGGAGE [SECTION 79]

Section 79(1) of the Customs Act refers to the duty relief available in respect of baggage. It stipulates that the proper officer, may subject to any rules made under sub-section (2) pass free of duty

- (a) any article in the baggage, of a passenger or a member of the crew, in respect of which the said officer is satisfied that it has been in his use for such minimum period as may be specified in the rules;
- (b) any article in the baggage of a passenger in respect of which the officer is satisfied that it is for the use of the passenger or his family or is a bonafide gift or souvenir, provided that the value of each such article and the total value of all such articles does not exceed such limits as may be specified in the rule.

The law thus envisages two categories of baggage, namely those belonging to (a) passengers; and (b) members of the crew.

Similarly, it envisages three classes of goods, namely (a) personal effects, which have been in the use of the person for a minimum period; (b) household effects, which is used by the family including the person; and (c) gifts and souvenirs.

Sub-section (2) of section 79 enables the Central Government to make rules for the purposes of carrying out the provisions of section 79(1). It also stipulates that such rules may specify

- (a) the minimum period for which any article has been used by a passenger or a member of the crew for the purposes of [clause (a) of sub-section (1)] determining personal effects;
- (b) The maximum value of any individual article and the maximum total value of all the articles which may be passed free of duty [under clause
- (c) of sub-section (1)] i.e., household effects, gifts, souvenirs etc;
- (d) the conditions to be fulfilled before or after clearance subject to which the baggage may be passed free of duty. Sub-section (3) of section 79 provides that different rules may be made for different classes of persons.

Question 13

What is the relevant date for determining the rate of duty and tariff valuation in respect of goods imported/exported by post?

Answer:

Relevant date for Rate of duty and tariff valuation in respect of goods imported or exported by post [Section 83]

- (1) The rate of duty and tariff value, if any, applicable to any goods imported by post or courier shall be the rate and valuation in force on the date on which postal authorities or the authorized courier present to the proper officer a list containing the particulars of such goods for the purposes of assessing the duty thereon.

However, where the postal goods arrive on a vessel, and the list containing the particulars is available and is filed by the Post Master, before the arrival of the vessel, the list shall be deemed to have been filed on the date of arrival of the vessel.

The effect of this proviso is that the relevant date for imports by post is the date of submission of the list by the Post Master or the date of arrival of the vessel, whichever is later.

- (2) The rate of duty and tariff value applicable to any goods exported by post or courier shall be the rate and valuation in force on the date on which the exporter delivers such goods to the postal authorities or the authorized courier for exportation.

Question 14

Explain the obligation cast on person-in-charge on arrival of vessels or aircrafts in India under section 29 of the Customs Act, 1962.

Answer:

ARRIVAL OF VESSELS AND AIRCRAFTS IN INDIA [SECTION 29]

This section provides that the person-in-charge of a vessel or an aircraft entering India from any place outside India shall not cause or permit the vessel or aircraft to call or land -

- (a) for the first time after arrival in India; or
(b) at any time while it is carrying passengers or cargo brought in that vessel or aircraft;

at any place other than a customs port or a customs airport, as the case may be, unless permitted by the Board.

In other words, vessels or aircrafts entering India from outside India can only call or land at a customs port or a customs airport. However, the Central Board of Indirect taxes and Customs can permit calling/landing of vessels and aircrafts at any place other than customs port or customs airport. Any contravention of this provisions will operate as a presumption against the person-in-charge of conveyance or beneficial owner to have an intention to illegally imports goods into India. So, entry (or attempt to enter) goods originating from outside India into any place not notified as a customs station is barred.

Exception: The above provisions are not applicable in relation to any vessel or aircraft, which is compelled by accident, stress of weather or other unavoidable cause to call or land at a place other than a customs port or customs airport. However, the person-in-charge of the vessel has the following obligation cast on him:

1. He will have to report the arrival of the vessel or the landing of the aircraft to the nearest customs officer or officer in charge of police station and produce the log book if demanded.
2. He should not allow any unloading of goods without permission and should not allow any passengers or crews to leave the immediate vicinity of the vessel or aircraft. However, the goods can be removed, or the passengers and crews can be allowed to depart if the same is necessary for reason of health, safety or preservation of life or property.

He should comply with all the directions given by such officers with respect to any such goods.

Question 15

Explain briefly the meaning of entry inwards and entry outwards with reference to the customs law.

Answer:

Entry inwards is permission to begin unloading of the imported goods, and entry outwards is permission to begin loading of export goods.

INWARDS GRANTED [SECTION 31]

This section provides that the master of a vessel shall not permit the unloading of any goods until an order has been given by the proper officer granting ENTRY INWARDS to such vessels. This is specified only for vessels and not for aircrafts or vehicles. Application for entry inward has to be submitted along with the import manifest in the prescribed form and will be allowed by the proper officer of customs upon verification. The date of entry inward is entered in the customs record maintained for the purpose.

Section 31(2) provides that Entry Inwards shall not be given until the arrival manifest or import manifest has been delivered or the proper officer is satisfied that a valid reason is given for not delivering it within prescribed time. Grant of Entry Inwards is an acknowledgement of the fact that Customs Department is ready to supervise the unloading of the cargo, and is prepared to assess the goods to duty. It is not given if there is no berth for the ship to dock [Bharat Surfactants Pvt Ltd v Union of India, 1989

(43) ELT 189 (SC)]; or if customs supervision is not possible for other reasons [SRS Engineering Industries v Secretary, Ministry of Finance 2009 (245) ELT 143(Del)]. Nothing in this section shall apply to the unloading of baggage accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods.

Entry inwards date is crucial for the calculation of applicable rate of duty whenever bill of entry has been filed in advance.

Section 31(3) excludes certain items from the scope of the section. It provides that the provisions of the section will not apply to the unloading of baggage accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods.

ENTRY OUTWARDS [SECTION 39]

Section 39 stipulates that export goods are not to be loaded on vessel until entry outwards is granted. The master of the vessel shall not begin the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granting entry-outwards to such vessel. This restriction is for vessels and not for aircraft and vehicles.

Question 16

Which class of importers is required to pay customs duty electronically? Name the dedicated payment gateway set up by the Board (CBIC) to use e-payment facility easily by an importer.

Answer:

Authorized economic operators and those importers who are paying Rs.10,000 or more per bill of entry. They will pay through ICEGAT. Refer para "Mandatory E-payment of duty".

Question 17

Mr. Anil and his wife (non-tourist Indian passengers) are returning from Dubai to India after staying there for a period of two years. They wish to bring gold jewellery purchased from Dubai. Please enumerate provisions of customs laws for jewellery allowance in their case.

Answer:

As per rule 5 of the Baggage Rules, 2016, a passenger who has been residing abroad for more than one year and returns to India shall be allowed duty free clearance of jewellery in bona fide baggage as under:

- Jewellery upto a weight of 20 grams with a value cap of Rs. 50,000 for a gentlemen passenger
- Jewellery upto a weight of 40 grams with a value cap of Rs. 1,00,000 for a lady passenger

Thus, in the given case, Mr. Anil would be allowed duty free jewellery upto a weight of 20 grams with a value cap of Rs. 50,000 and his wife would be allowed duty free jewellery upto a weight of 40 grams with a value cap of Rs. 1,00,000.

Further, in addition to the jewellery allowance, Mr. Anil and his wife would also be allowed duty free clearance of jewellery worth Rs. 1,00,000 (Rs. 50,000 per person) as part of free baggage allowance.

Question 18

Can the customs audit cover a person who is not an exporter or importer?

Answer:

In the 2018 Regulations, 'auditee' is defined in 2(c) to mean "a person who is subject to an audit under section 99A of the Act and includes an importer or exporter or custodian approved under section 45 or licensee of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or export goods or dutiable goods"

Question 19

Differentiate between Inland Container Depots (ICD) and Container Freight Stations (CFS).

Answer:

For most exporters, importers, Customs house and shipping line agents, and even Customs officers, there is no difference between Container Freight Stations (CFS) and Inland Container Depots (ICD). In both the places, the imported goods or export goods are ordinarily kept before clearance by the Customs and where filing of Customs manifests, bills of entry, shipping bills and other

declarations, assessment and all the activities related to clearance of goods for home consumption, warehousing, temporary admissions, re-export, temporary storage for onward transit and outright export, transshipment, etc, take place. So, CFS and ICD mean the same thing for many. However, they do not mean the same facility, says the Central Board of Excise and Customs (CBEC).

A recent CBEC circular clarifies that CFS is merely an appendage to a parent Customs station at a port, airport, land Customs station (LCS) or ICD whereas an ICD is a Customs station in its own right having independent existence on a par with any Customs station at a port, airport or LCS. A CFS is an extension of a port/airport/LCS/ICD customs station, set up with the main objective of decongesting the ports, where only a part of the customs process mainly the examination of goods is normally carried out by Customs.

At CFS, goods are stuffed into containers or de-stuffed therefrom and aggregation/segregation also takes place at such places. Custom's function relating to processing of manifest, import/export declarations that are filed by the carrier/importer or exporter and assessment of bill of entry/shipping bill are performed in the Custom House/Custom Office that exercises jurisdiction over the parent port/airport/ICD/LCS to which the said CFS is attached. In the case of customs stations where automated processing of documents has been introduced, terminals have been provided at such CFSs for recording the result of examination, etc. In some CFSs, extension of service centers have also been made available for filing documents, amendments etc. However, the assessment of the documents is carried out centrally.

On the other hand, an ICD would have an automated system of its own with a separate station code [such as INTKD 6, INSNF6, etc] allotted by the Directorate General of Systems and with the inbuilt capacity to not only enter examination reports but also to enable assessment of documents, processing of manifest, amendments, etc, says the CBEC. So, a Commissioner can approve a standalone ICD but not approve a standalone CFS.

So, for an importer, exporter, CHA or shipping line, how does it matter whether a place is designated as a CFS or ICD?

Essentially, movement of goods from a port, airport or LCS to an ICD shall be in the nature of movement from one custom station to another custom station and will be covered by Goods Imported (Condition of Transshipment) Regulations, 1995. In contrast, movement of goods from a customs station at port/airport/ LCS/ICD to a CFS would be akin to local movement from a custom area of a customs station to another custom area of the same station and such movement is covered by local procedure evolved by the Commissioner of Customs and covered by bonds, bank guarantee, etc.

With this clarification, there ought to be no confusion in compliance with procedures prescribed for import/export of goods or compliance with the provisions of the Customs Act, Rules or Regulations, hopes the CBEC.

Question 20

A fishing trawler is operating 10 nautical miles from the baseline. Is it entitled to duty-free stores?

Answer:

No.

Foreign going vessel or aircraft: [Section 2(21)] means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not includes-

- any naval vessel of any foreign Government taking part in any naval exercise;
- any vessel engaged in fishing or any other operations outside the territorial waters of India;
- any vessel or aircraft proceeding to a place outside India for any purpose whatsoever.

Hence, the definition consists of two limbs:-

- (a) The first limb applies to the vessel/aircraft for the time being engaged in the carriage of passengers/goods between any port/airport in India and any port/airport outside India.
- (b) The second limb covers other vessels which are which are proceeding to a place outside India or engaged in activities outside the territorial waters of India or which are foreign naval vessels taking part in a naval exercise.

India: [Section 2(27)] includes the territorial waters of India.

The definition of India is an inclusive definition and includes not only the land mass of India but also the territorial waters of India. The territorial waters extend to 12 nautical miles into the sea from the appropriate base line.

Question 21

What are the circumstances under which assessment is done provisionally under section 18?

Answer:

Provisional assessment can be resorted to in the following circumstances:

- (a) where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment; or
- (b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or
- (c) where the importer or exporter has produced all the necessary documents and furnished full information, but the proper officer deems it necessary to make further enquiry; or
- (d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry.

Question 22

State the provisions of transshipment of goods without payment of duty under section 54 of the Customs Act, 1962.

Answer:

TRANSHIPMENT OF GOODS WITHOUT PAYMENT OF DUTY [SECTION 54]

- (1) Where any goods imported into a customs station are intended for transshipment, a bill of transshipment shall be presented to the proper officer in the prescribed form, which is generally prescribed already. Where the goods are being transferred under an international treaty or bilateral agreement between the Government of India and Government of a foreign country, a declaration for transshipment instead of a bill of transshipment shall be presented to the proper officer in the prescribed form.

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- (2) Subject to the provisions of sections 11, where any goods imported into a customs station are mentioned in the arrival manifest or import manifest or the import report, as the case may be, as for transshipment to any place outside India, such goods may be allowed to be so transhipped without payment of duty.
- (3) Where any goods imported into a customs station are mentioned in the arrival manifest or import manifest or the Import report, as the case may be, as for transshipment:-
- (a) to any major port as defined in the Indian Ports Act, 1908 (15 of 1908), or the customs airport at Mumbai, Calcutta, Delhi, or Chennai or any other custom port or customs airport which the board may, by notification in the Official Gazette, specify in this behalf, or
 - (b) to any other customs station and the proper officer is satisfied that the goods bonafide intended for transshipment to such customs station,
- the proper officer may allow the goods to be transhipped without payment of duty, subject to such conditions as may be prescribed for the due arrival of such goods at the customs station to which transshipment is allowed.

Question 23

Explain the procedure prescribed in Customs Act, 1962 in case of goods not cleared, warehoused or transhipped within 30 days after unloading.

Answer:

PROCEDURE FOR DISPOSAL OF GOODS NOT CLEARED [SECTION 48]

If there are any goods imported from a place outside India, which are not cleared either for home consumption or for warehouse within 30 days or within such further time as the proper officer may allow or if the title to any imported goods is relinquished, the custodian of the goods is permitted, with the approval of the customs department and after giving notice to the importer, to sell the goods by auction.

CBIC has clarified vide Circular No. 49/2018-Cus dated 03.12.2018 that after the successful bidder has been informed about the result of the auction, a consolidated bill of entry, buyer-wise will be filed with the Customs in the prescribed format by the concerned custodian for clearance of the goods as per section 46 of the customs Act, 1962 read with Un-Cleared Goods (Bill of entry) regulations, 1972 (Regulation 2 & 3).

- (a) The proper officer of Customs shall assess the goods to duty in accordance with the extant law within 15 days of filing of Bill of Entry and after assessment inform the amount of duty payable to the concerned custodian.
- (b) The auctioned goods shall be handed over to the successful bidder after assessment and out-of-charge orders given by the proper officer, on payment of dues.

In the case of sensitive goods like animals, foodstuffs and hazardous goods etc. the custodian with the approval of the proper officer can sell the goods even before the expiry of the 30 days limit. Similarly, in the case of arms or ammunition, which cannot be sold in public auction, the disposal is regulated by the rules made in this regard.

Question 24

Write short notes on:

- a) Export general manifest
- b) Boat note (or restriction on goods being water borne)

Answer:

(a) EGM: EXPORT GENERAL MANIFEST [SECTION 41]

Section 41 has been amended so as to provide a facility, that the departure manifest and export report can also be furnished by a person notified by the Central Government, in addition to the person-in -charge of the conveyance.

It consists of a general declaration of particulars of the vessel, its crew and passengers, its date and port of departure; a list of ship's stores; a list of crew's personal effects; and a cargo declaration which is a complete list of the goods shipped from the port, goods transshipped at the port, goods lying in the vessel but not landed or transshipped ("same bottom cargo"), and dutiable goods, including arms and ammunition, forming part of the equipment of the vessel.

(b) RESTRICTIONS ON GOODS BEING WATER-BORNE [SECTION 35]

In certain circumstances (like size of vessel, hazardous nature of cargo etc) the vessel cannot be berthed at the port the cargo is ferried from or to the ships anchored at mid-sea to the port in boats, otherwise known as lighters.

Section 35 of the Customs Act stipulates that no imported goods shall be water borne for being loaded in any vessel, and no export goods which are not accompanied by a shipping bill, shall be water borne for being shipped unless the goods are accompanied by a boat note in the prescribed form. The Boat Notes Regulations 1976 prescribe the form and manner of issue of boat notes.

However, the board may, by notification give general permission and the proper officer may in any particular case, give special permission, for any goods or any class of goods to be water borne without being accompanied by a boat-note.

Question 25

Discuss briefly:

- a) Temporary detention of baggage
- b) Relevant date for rate of duty and tariff valuation in respect of goods imported and exported by post

Answer:

(a) TEMPORARY DETENTION OF BAGGAGE [SECTION 80]

It may so happen that a passenger has brought with him an article, which is prohibited. The passenger may not insist on taking it into the Indian Territory. On the contrary, he may opt to re-export it or take it with him when he leaves the country.

Similarly, a passenger may not unnecessarily pay duty on an article, which he can conveniently avoid taking into the town, if the duty is heavy. In such case also, he may opt to take the article with him when he leaves the country.

In both the cases, he will have to deposit the article with the customs authorities and take it back at the port of his departure.

"Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under

section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India and if for any reason, the passenger is not able to collect the article at the time of his leaving India the article may be returned to him through any other passenger authorised by him and leaving India or as cargo consigned in his name”.

Declaration – the essence: The declaration of the goods brought in is an absolute necessity. If the goods are not declared under section 77, the passenger cannot subsequently claim the benefit under section 80 and the goods are liable for confiscation.

(b) Relevant date for Rate of duty and tariff valuation in respect of goods imported or exported by post [Section 83]

(1) The rate of duty and tariff value, if any, applicable to any goods imported by post or courier shall be the rate and valuation in force on the date on which postal authorities or the authorized courier present to the proper officer a list containing the particulars of such goods for the purposes of assessing the duty thereon.

However, where the postal goods arrive on a vessel, and the list containing the particulars is available and is filed by the Post Master, before the arrival of the vessel, the list shall be deemed to have been filed on the date of arrival of the vessel.

The effect of this proviso is that the relevant date for imports by post is the date of submission of the list by the Post Master or the date of arrival of the vessel, whichever is later.

(2) The rate of duty and tariff value applicable to any goods exported by post or courier shall be the rate and valuation in force on the date on which the exporter delivers such goods to the postal authorities or the authorized courier for exportation.

Question 26

State in brief the provisions of the Customs Act, 1962 relating to filing of “Arrival manifest or import manifest/ Report”.

Answer:

DELIVERY OF ARRIVAL MANIFEST OR IMPORT MANIFEST OR IMPORT REPORT [SECTION 30]

After ensuring that the vessels are landed only in approved customs port or airports, further duty is cast upon the person in charge of the vessel to deliver the arrival manifest or import manifest.

Arrival manifest or import manifest or import report is a detailed information to customs about goods in the vessels/air crafts which have been brought in at any port/airport for unloading at that particular port/international airport as also that which would be carried further for other ports/airports. Declarations of such cargo has to be made in a prescribed form (which is termed ‘Import General Manifest’ or IGM) and in prescribed manner. Imports via land route require filing of declaration (called ‘Import Report’). Goods involved in an export may be carried in the conveyance (vessel or other) without being delivered in India. The IM/IR must also contain details of goods meant for export and carried by the conveyance. Similar provision for including ‘import goods’ is required by section 41 regarding manifest to be filed for dispatch of goods.

Time limit for delivery of IGM/IR: The person-in-charge of a vessel, or an aircraft, or a vehicle, carrying imported goods or any other person as may be specified by the Central Government, by notification in the Official Gazette, in this behalf shall, in the case of a vessel or an aircraft, deliver

to the proper officer an arrival manifest or import manifest by presenting electronically prior to the arrival of the vessel or the aircraft, as the case may be, and in the case of a vehicle, an import report within twelve hours after its arrival in the customs station, in the prescribed form.

Particulars	Import Document	Time limit for presentation of IM/IR	Mode of presentation
Where the imported goods are brought in a vessel	Arrival manifest or import manifest	Any time prior to the arrival of the vessel	Electronic filing*
Where the imported goods are brought in an aircraft	Arrival manifest or import manifest	Any time prior to the arrival of the aircraft	Electronic filing*
Where the imported goods are brought in a vehicle	Import Report	Within twelve hours after its arrival in the customs station	Manual filing

Question 27

Write a brief note on the declaration made by the owner of baggage.

Answer:

ENTRY OF BAGGAGE BY OWNER [SECTION 77]

Under this section the owner of the baggage has to make a declaration of its contents to the proper officer of customs, for the purpose of clearing it. This is known as Baggage Declaration Form.

Declaring packing list is sufficient declaration.

Question 28

State and summarise the provisions and procedure in the Customs Act, 1962 governing preparation and filing of a bill of entry.

Answer:

FILING OF IMPORT BILL OF ENTRY [SECTION 46]

It is the duty of the importer of any goods to make an application electronically on the customs automated system to the proper officer for clearance of the goods. The importer is required to make an electronic integrated declaration to the Customs Computer Systems through network facility. The Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, provides the details. Bill of Entry is a document of assessment and when assessed becomes an assessment order.

The Principal Commissioner/ Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in the prescribed manner and form. Hence, manual submission of Bill of Entry is allowable in cases where electronic submission is not feasible. The form of the bill of entry is governed by Bill of Entry (Forms Regulations, 1976).

The goods may be cleared for home consumption or for deposit in a warehouse or for transit or

transshipment. Therefore, there are three types of Bills of Entries prescribed for these three different purposes.

Form I (White) – for home consumption.

Form II (Yellow) – for warehousing (into bond)

Form III (Green) – for ex-bond clearance for home consumption (ex-bond). When Bill of Entry is filed electronically, it is in four copies:

- (a) Original, meant for the customs authorities for assessment and collection of duty;
- (b) Duplicate, intended as an authority to the custodian of the cargo to release cargo to the importer from his custody;
- (c) Triplicate, as a copy for record for the importer; and
- (d) Quadruplicate, as a copy to be presented to the bank or Reserve Bank of India for the purposes of making remittance for the imported goods.

The importer is required to declare in the Bill of Entry amongst other things the particulars of packages, the descriptions of the goods, in terms of the description given in the Customs Tariff to enable proper classification of the goods and the correct value of the goods for the determining the amount of duty.

The importer who presents a bill of entry shall ensure the following, namely: –

- (a) the accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any document supporting it; and
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

Time limit for filing: According to section 46(3), the importer shall 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.

The proviso to section 46(3) provides that a bill of entry may be presented at any time not exceeding thirty days prior to the expected arrival of the aircraft/vessel/vehicle by which the goods have been shipped for importation into India.

However, where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay prescribed charges for late presentation of the bill of entry.

Question 29

Under what situations the amount of duty and interest refundable under section 18 of the Customs Act, 1962 shall be paid to the importer/exporter instead of being credited to the Consumer Welfare Fund?

Answer:

The refund of duty and interest thereon is subject to the principle of unjust enrichment and shall be paid to the importer or the exporter, as the case may be, only if such amount is relatable to:

- (a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;
- (c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (d) the export duty as specified in section 26;
- (e) drawback of duty payable under sections 74 and 75.

In all other cases, the amount of such refund and interest shall be credited to the Consumer Welfare Fund [Sub-section 5]

Question 30

State the procedure for clearance of goods imported by post.

Answer:

PROCEDURE FOR IMPORT AND EXPORT OF GOODS BY POST

In the case of goods imported by post the agency for the carriage of goods is the Government of India be it through sea, air or land. The control of the Customs Department is only on goods, whether imported or exported

- (i) on which there is a duty; and
- (ii) which are subject to prohibition or restriction under the Customs Act or any other law for the time being in force.

The customs have no concern over other goods or other mail.

Question 31

Briefly explain the following with reference to the provisions of the Customs Act, 1962:

- (i) Bill of export
- (ii) Import report
- (iii) Imported goods
- (iv) Entry
- (v) Prohibited goods
- (vi) Customs port
- (vii) Goods
- (viii) Stores
- (ix) Conveyance
- (x) Dutiable goods

- (xi) Customs area
- (xii) Adjudicating Authority
- (xiii) Foreign going vessel or aircraft
- (xiv) Assessment

Answer:

Bill of export [Section 2(5)]: means a bill of export referred to in section 50. to be filed when goods are exported via land route

Import report [Section 2(24)]: means the report required to be delivered under section 30. It may be noted that import report is required only when goods are imported via land route.

Imported Goods: [Section 2(25)] means any goods brought into India from a place outside India but does not include goods, which have been cleared for home consumption

Entry [Section 2(16)]: in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes the entry made under the regulations made under section 84

Prohibited goods [Section 2(33)]: means any goods the import or export of which is subject to any prohibition under the Customs Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

Customs port [Section 2(12)]: means any port appointed under clause (a) of section 7 to be a customs port and includes a place appointed under clause (aa) of that section to be an inland container depot.

Goods: [Section 2(22)] "Goods" includes

- (a) vessels, aircrafts and vehicles
- (b) stores
- (c) baggage
- (d) currency and negotiable instruments and
- (e) any other kind of movable property.

Stores [Section 2(38)]: means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting.

The definition does not cover goods for use in a vehicle

Conveyance [Section 2(9)]: includes a vessel, an aircraft and a vehicle

Dutiable goods: [Section 2(14)] means any goods:-

- (a) which are chargeable to duty and
- (b) on which duty has not been paid.

In order to be dutiable, any article must first satisfy both the following conditions:-

- (i) The article should fall within the ambit of the word goods [defined under sec 2(22)].
- (ii) The article should find a mention in the Customs Tariff.

Customs area [Section 2(11)]: “customs area” means the area of a customs station or a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by customs authorities.

Adjudicating authority [Section 2(1)]: means any authority competent to pass any order or decision under this Act, but does not include the Board, Commissioner (Appeals) or Appellate Tribunal. The adjudicating authority can adjudicate demand of customs duty, confiscation and penalties under Customs Act

Foreign going vessel or aircraft: [Section 2(21)] means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not

includes-

- any naval vessel of any foreign Government taking part in any naval exercise;
- any vessel engaged in fishing or any other operations outside the territorial waters of India;
- any vessel or aircraft proceeding to a place outside India for any purpose whatsoever.

Hence, the definition consists of two limbs:-

- (c) The first limb applies to the vessel/aircraft for the time being engaged in the carriage of passengers/goods between any port/airport in India and any port/airport outside India.
- (d) The second limb covers other vessels which are which are proceeding to a place outside India or engaged in activities outside the territorial waters of India or which are foreign naval vessels taking part in a naval exercise.

Assessment [Section 2(2)]: “Assessment” means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975

(hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to –

- (a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;
- (b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;
- (c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;
- (d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;
- (e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;
- (f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods, and includes provisional assessment, self-assessment, reassessment and any

assessment in which the duty assessed is nil.

Question 32

Raghupati Energy Corporation had imported certain goods and got them cleared for home consumption. Subsequently, the Department discovered that import of such goods was prohibited under the Customs Act, 1962. Consequently, the goods were confiscated under section 111 of the Customs Act, 1962 and a penalty was levied under section 112 of the said Act.

Examine the veracity of confiscation of the goods and imposition of penalty by the Department, in the given case, with the help of a decided case law, if any.

Answer

The facts of the case are similar to the case of *Bussa Overseas & Properties P. Ltd. v*

C.L. Mahar, Asstt. C.C., Bombay 2004 (163) E.L.T. 304 (Bom.) [maintained by the Supreme Court] wherein the Bombay High Court observed that once goods are cleared for home consumption, they cease to be imported goods as defined in section 2(25) of the Customs Act, 1962. The goods lose its character of imported goods on being granted clearance for home consumption and thereafter the power to confiscate can be exercised only in cases where the order of clearance is revised and cancelled.

Therefore, in the given case the **confiscation of the goods by the Department is illegal.**

The Bombay High Court further observed that section 112(a) of the Customs Act, 1962 provides that any person who in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such act, is liable to a penalty.

The High Court held that the power to impose penalty can be exercised not only when the goods are available for confiscation but when such goods are liable to confiscation. The expression 'liable to confiscation' clearly indicates that the power to impose penalty can be exercised even if the goods are not available for confiscation. Mere fact that the importers secured such clearance and disposed of the goods and thereafter goods are not available for confiscation cannot divest Customs Authorities of the powers to levy penalty under section 112 of the Act.

Thus, penalty levied by the Department in the given case is tenable in law.

Question 33

Gregory Peg of foreign origin has come on travel visa, to tour in India. He carries with him, as part of baggage, the following

Particulars	Value in ₹
Travel Souvenir	85,000
Other articles carried on in person	1,50,000
120 sticks of cigarettes of ₹100 each	12,000
Fire arm with 100 cartridges (value includes the value of cartridges at @ ₹ 500 per cartridge).	1,00,000

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Determine customs duty payable, if the effective rate of customs duty is 38.50% inclusive of social welfare surcharge, with short explanations where required.

Answer

As per rule 3 of Baggage Rules, 2016, tourist of foreign origin, excluding infant, is allowed duty free clearance of travel souvenirs; and

Articles up to the value of ₹ 15,000 (excluding inter alia fire arms, cartridges of fire arms exceeding 50 and cigarettes exceeding 100 sticks), if carried on in person.

Computation of customs duty payable	₹
Travel souvenir	Nil
Articles carried on in person	1,50,000
Cigarettes [100 sticks can be accommodated in General Free Allowance (GFA)]	10,000
Fire arms cartridge (50 cartridges can be accommodated in GFA)	25,000
Baggage than can be accommodated in GFA	1,85,000
Less: GFA	15,000
Baggage on which duty is payable	1,70,000
Duty payable @ 38.50% (including 10% Social welfare surcharge)	65,450

Note: Fire arms, cartridges of firearms exceeding 50 and cigarettes exceeding 100 sticks are not chargeable to rate applicable to baggage [Notification No. 26/2016 Cus. dated 31.03.2016]. These items are charged @100% applicable to baggage under Heading 9803 of the Customs Tariff.

Question 34

An importer filed a bill of entry after 60 days of filing Import General Manifest. The Deputy Commissioner of Customs imposed a penalty of ₹ 10,000 for late filing of the bill of entry. Since, importer wanted to clear the goods urgently, he paid the penalty. Can penalty be imposed for late filing of the bill of entry? Can bill of entry be filed in advance? Examine the issue regarding period available for filing bill of entry in the light of relevant statutory provisions?

Answer

Yes, charges are payable for late filing of bill of entry if an importer fails to 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, and the proper officer is satisfied that there was no sufficient cause for such delay [Section 46(3) of the Customs Act, 1962].

Yes, a bill of entry can be filed in advance. It can be presented within 30 days of the expected arrival of the aircraft/vessel/vehicle by which the goods have been shipped for importation into India vide proviso to section 46(3) of the Customs Act, 1962.

In the given case also, the time period as described above will be available - with reference to the date of arrival of vessel/aircraft - for filing the bill of entry.

Question 35

Laxmi Company imported goods valued at ₹ 10,00,000 vide a Bill of Entry presented before the proper officer on 15th December, 2019, on which date the rate of customs duty was 20%. The proper officer decided that the goods should be subject to chemical or other test and therefore, the same were provisionally assessed at a value of ₹ 10,00,000 and Laxmi company paid provisional duty of ₹

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2,00,000 on the same date. Laxmi Company wants to voluntarily pay duty of ₹ 1,50,000 on 20th January, 2020.

Can Laxmi Company provisionally pay the duty and what are the conditions which are to be complied before such payment is made?

Determine the amount of interest payable, if any, under section 18 of the Customs Act, 1962 assuming that the payment of ₹ 1,50,000 as stated above is made on 20th January, 2020 and that the final duty is assessed on 31st January, 2020 at ₹ 4,00,000 and the balance duty is paid on the same day.

Answer

(1) Provisional assessment of duty is permitted in case where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test [Section 18 of the Customs Act, 1962]. Thus, Laxmi Company can pay the duty on provisional basis.

Before, the provisional assessment of duty, the importer must furnish such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty finally assessed / re-assessed and the duty provisionally assessed.

(2) Section 18 of the Customs Act, 1962 further stipulates that the importer is liable to pay interest, on any amount payable consequent to the final assessment order @ 15% p.a. from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

Accordingly, amount of interest payable will be

$$= [₹ 1,50,000 \times 15\% \times 51/365] + [₹ 50,000 \times 15\% \times 62/365]$$

$$= ₹ 3,144 + ₹ 1,274$$

$$= ₹ 4,418$$

Question 36

After visiting USA for a month, Mrs. and Mr. Iyer (Indian residents aged 35 and 40 years respectively) brought to India a laptop computer valued at ₹ 70,000, used personal effects valued ₹ 1,40,000 and a personal computer for ₹ 58,000.

Calculate the custom duty payable by Mrs. & Mr. Iyer, if any.

Answer

(1) As per the Baggage Rules, 2016, an Indian resident arriving from a country other than Nepal, Bhutan, or Myanmar, is allowed duty free clearance of-

Used personal effects and travel souvenirs without any value limit.

Articles [other than certain specified articles] up to a value of

₹ 50,000 carried as accompanied baggage [General duty free baggage allowance].

Further, such general duty free baggage allowance of a passenger cannot be pooled with the general duty free baggage allowance of any other passenger.

One laptop computer when imported into India by a passenger of the age of 18 years or above (other than member of crew) is exempt from whole of the customs duty [Notification No. 11/2004 Cus. dated 08.01.2004].

(i) Accordingly, there will be no customs duty on used personal effects (worth ₹ 1,40,000) of Mrs. and Mr. Iyer and laptop computer brought by them will be exempt from duty.

(ii) Duty payable on personal computer after exhausting the duty free baggage allowance will be ₹ 58,000 - ₹ 50,000 = ₹ 8,000.

Effective rate of duty for baggage = 38.50% [including Social Welfare Surcharge]

Therefore, total customs duty = ₹ 3,080.

Question 37

Mrs. X, an Indian resident who was on a visit to China, returned after months. She was carrying with her the following items

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(i)	Personal effects	₹ 75,000
(ii)	Laptop computer	₹60,000
(iii)	Jewellery - 25 grams (purchased in China)	₹ 75,000
(iv)	Music system	₹ 50,000

Compute the customs duty payable by Mrs. X with reference to the Baggage Rules, 2016.

Answer

Computation of customs duty payable by Mrs. X

Particulars	₹
Personal effects [Duty free clearance is allowed]	Nil
Laptop computer [One laptop computer is exempt when imported into India by a passenger ≥ 18 years of age]	Nil
Jewellery [Duty free jewellery allowance is not available to Mrs. X since she did not reside abroad for more than 1 year]	75,000
Music system	50,000
Total value	1,25,000
Less: General duty free baggage allowance of ₹ 50,000	50,000
Value of baggage liable to customs duty	75,000
Rate of Duty	38.50%
Customs duty @ 38.50% (including social welfare surcharge)	28,875



Duty Drawback

Question 1

Spatial Wireless Pvt. Ltd. imported five mainframe computer systems from Flexsonics Computers, USA on 31.01.20XX paying customs duty of Rs. 30.45 lakhs. The computers worked for some time but in June 20XX some technical faults developed in the systems resulting in complete closure of work. On being informed about the problem, Flexsonics Computers sent his technicians from USA, to repair the systems in June 20XX itself. However since no solution was found, the Management of Spatial Wireless Pvt. Ltd re-shipped/returned the goods to Flexsonics Computers, USA on 31.12.20XX.

You are the Financial Controller of the Spatial Wireless Pvt. Ltd. Board of Directors has approached you for advising whether import duty paid can be taken back from the Central Government when goods are sent back. Advise, in the light of the provisions of Customs Act, 1962.

Answer:

Yes, the import duty already paid can be claimed back on five mainframe computer systems imported by Spatial Wireless Pvt. Ltd. in accordance with the provision of section 74 of Customs Act.

Under this section, it is provided that when goods capable of being easily identified, which have been imported into India and upon which duty has been paid on importation are entered for export and the proper officer makes an order permitting clearance and loading of the goods for exportation, 98% of such duty shall be paid back as drawback. However, the goods should be identified to the satisfaction of Assistant Commissioner of Customs as the goods that were imported and the goods should have entered for export within two years from the date of payment of duty on the importation thereof.

Further, it is provided in the section that 98% of drawback shall be allowed only in those cases where the goods have not been used at all after the importation. Various percentages have been fixed by the Government as the amount of drawback payable in respect of goods that are used after their importation.

In the instant case, all the conditions specified in provisions of section 74 are satisfied. The goods are identifiable, import duty has been paid and they are scheduled to be exported within the prescribed time limit. However, the goods have been used for some time. Here, the period between the date of clearance for home consumption and the date when the goods are placed under the customs control for export is more than 9 months, but not more than 12 months. Therefore, Spatial Wireless Pvt. Ltd will be eligible for the drawback claim at the rate of 70% (rate notified by the Government in such case) of the import duty paid.

Question 2

Answer the following with reference to the provisions of the Customs Act, 1962 and rules made thereunder:

1. Mr. A filed a claim for payment of duty drawback amounting to Rs. 50,000 on 30.07.20XX. However, the amount was received on 28.10.20XX. You are required to calculate the amount of interest payable to Mr. A on the amount of duty drawback claimed.
2. Mr. X was erroneously refunded a sum of Rs. 20,000 in excess of actual drawback on 20.06.20XX. A demand for recovery of the same was issued by the Department on 28.08.20XX. Mr. X returned the erroneous refund to the Department on 20.10.20XX. You are required to calculate the amount of interest chargeable from Mr. X.

Provide brief reasons for your answer.

Answer:

1) Computation of interest payable to Mr. A on duty drawback claimed

Particulars	
Duty drawback claimed	Rs. 50,000
No. of days of delay [31.08.20XX to 28.10.20XX]	59 days
Rate of interest	6%

Note: Since the claim of duty drawback is not paid to claimant within 1 month from the date of filing such claim, interest @ 6% per annum is payable from the date after the expiry of the said 1 month period till the date of payment of such drawback [Section 75A(1) of the Customs Act, 1962].

2) Computation of interest chargeable from Mr. X on excess duty drawback paid

Particulars	
Duty drawback erroneously refunded	Rs. 20,000
No. of days of delay [21.06.20XX to 20.10.20XX]	122 days
Rate of interest	15%
Quantum of interest (rounded off) [Rs. 20,000 x 122/365 x 15/100]	1,003

Note: Interest is payable by the claimant on erroneous refund of duty drawback @ 15% per annum for the period beginning from the date of payment of such drawback to the claimant, till the date of recovery of such drawback [Section 75A(2) of the Customs Act, 1962].

Question 3

Ascertain whether the exporter is entitled to duty drawback in the following case and if yes, what is the quantum of such duty drawback?

FOB value of 2,000 kg of goods exported is Rs. 2,00,000. Rate of duty drawback on such export is Rs. 30 per kg. Market price of goods is Rs. 50,000 (in wholesale market).

Answer:

Section 76(1)(b) of the Customs Act, 1962 inter alia provides that no drawback shall be allowed in respect of any goods, the market price of which is less than the amount of drawback due thereon. In this case, the market price of the goods is Rs. 50,000, which is less than the amount of duty drawback, i.e. 2,000 kgs × Rs. 30 = Rs. 60,000. Hence, no drawback shall be allowed.

Question 4

Write a short note on “prohibition and regulation of drawback” with reference to the provisions of section 76 of the Customs Act, 1962.

Answer:

The provisions in respect of prohibition and regulation of drawback as contained in section 76 of the Customs Act, 1962 are explained hereunder:

- 1) No drawback is allowed in respect of any goods, the market price of which is less than the amount of drawback due thereon. This provision has been made to prohibit export of cheap goods at inflated price to get benefit of higher duty drawback. Further, drawback is also not allowed where the amount of drawback in respect of any goods is less than Rs.50.
- 2) If the Central Government is of the opinion that goods of any specified description in respect of which drawback is claimed are likely to be smuggled back into India, it may, not allow drawback in respect of such goods or alternatively allow the drawback subject to certain restrictions and conditions.

Question 5

Explain briefly the provisions relating to drawback allowable on re-export of duty paid imported goods when:

- (i) Duty paid imported goods are re-exported as such
- (ii) Duty paid imported goods are used before being re-exported

Answer:

- (i) Duty paid imported goods re-exported as such

When duty paid goods are re-exported as such, drawback is allowed under the provisions of section 74(1) of the Customs Act, 1962. Sub-section (1) of section 74 of the Customs Act, 1962 provides that following conditions need to be satisfied before claiming drawback:

- a) the goods should have been imported into India;
- b) the import duty should have been paid thereon;
- c) the goods should be capable of being easily identified as the goods, which were originally imported;
- d) the goods should have been entered for export either on a shipping bill through sea or air or on a bill of export through land, or as baggage, or through post and the proper officer, after proper examination of the goods and after ensuring that there is no prohibition or restriction on their export, should have permitted clearance of such goods for export;
- e) the goods should have been identified to the satisfaction of the Assistant or Deputy Commissioner of Customs as the goods, which were imported, and
- f) the goods should have been entered for export within two years - which can be extended further by Board on sufficient cause being shown - from the date of payment of duty on the importation thereof.

Once these conditions are satisfied, then 98% of the import duty paid on such goods at the time of importation shall be repaid as drawback.

- (ii) Duty paid imported goods re-exported after being used

When duty paid imported goods are used before re-export, drawback is allowed under the provisions of section 74(2) of the Customs Act, 1962. If the imported goods are used after importation, the drawback is allowed at reduced rates as fixed by the Central Government having regard to the duration of use, depreciation in value and other relevant circumstances prescribed by a Notification. If the goods were in possession of the importer, they are treated as used by the importer. Following percentages have been fixed vide Notification No. 19/65-

Cus dated 6-2-1965 as amended as the rates at which drawback of import duty shall be allowed in respect of goods which were used after their importation and which have been out of Customs control:

Length of period between the date of clearance for home consumption and the date when the goods are placed under customs control for export	% of import duty to be paid as duty Drawback
Not more than three months 3 months	95%
More than three months but not more than six months	85%
More than six months but not more than nine months	75%
More than nine months but not more than twelve months	70%
More than twelve months but not more than fifteen months	65%
More than fifteen months but not more than eighteen months	60%
More than eighteen months	Nil

Question 6

Can the rate of drawback be granted provisionally to the exporter where amount or rate of drawback has not been determined? Briefly explain.

Answer:

- (i) The exporter may be granted provisional duty drawback when he executes a bond binding himself to repay the entire or excess amount of drawback. Where an exporter desires that he may be granted drawback provisionally, he may make an application in writing to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, that a provisional amount be granted to him towards drawback on the export of such goods pending determination of the final amount of drawback. The exporter may be allowed provisional duty drawback of an amount not exceeding the amount claimed by him in respect of such export.

However, it is to be noted that rate of drawback is determined provisionally only when exporter intends to get Brand Rate of duty drawback for his exports. The provision has no applicability when exporter intends to get duty drawback on the basis of All Industry Drawback Rates.

Question 7

Write a short note on "interest on drawback" with reference to section 75A of the Customs Act, 1962.

Answer:

Section 75A of the Customs Act provides for payment of interest on delayed payment of drawback. Where any drawback payable to a claimant under section 74 or 75 is not paid within a period of one month from the date of filing a claim for payment of such drawback, interest @ 6% p.a. shall be paid along with the amount of drawback. Such interest shall be paid from the date after the expiry of the said period of one month till the date of payment of such drawback [Section 75A(1)].

Where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under the Customs Act or the rules made thereunder, the claimant shall, within a period of two months from the date of demand, pay in addition to the said amount of drawback, interest at the rate fixed under section 28AA [presently such interest has been fixed @ 15% p.a.] and the amount of interest shall be calculated for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback. [Section 75A(2)].

Question 8

What is the minimum and maximum rate or amount of duty drawback prescribed under the Customs & Central Excise Duties Drawback Rules, 2017? Explain with a brief note.

Answer:

Minimum rate of duty drawback - Rule 8 of Customs and Central Excise Duties Drawback Rules, 2017 provides that no amount or rate of drawback shall be determined in respect of any goods or class of goods under rule 6 or rule 7, as the case may be, if the export value of each of such goods or class of goods in the bill of export or shipping bill is less than the value of the imported materials used in the manufacture of such goods or class of goods, or is not more than such percentage of the value of the imported materials used in the manufacture of such goods or class of goods as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Maximum rate of duty drawback - Rule 9 of Customs and Central Excise Duties Drawback Rules, 2017 provides that the drawback amount or rate shall not exceed one third of the market price of the export product. This provision has been made to avoid over invoicing of export goods.

Question 9

Your client loaded a machine on the vessel for export. He has paid import duty on the components used in the manufacture. The vessel set sail from Mumbai, but runs into trouble and sinks in the Indian territorial waters. The customs department refuses to grant duty drawback for the reason that the goods have not reached their destination. Advise your client citing case law, if any.

Answer:

Rule 2(c) of the Customs and Central Excise Duties Drawback Rules, 2017 inter alia provides that "export" means "taking out of India to a place outside India". Section 2(27) of the Customs Act, 1962 provides that India includes the territorial waters of India.

In case of *CC v. Sun Industries* 1988 (35) ELT (241), the Supreme Court held that the expression "taking out of India to a place outside India" would also mean a place in high seas, if that place is beyond territorial waters of India. Therefore, the goods taken out to the high seas outside territorial waters of India would come within the ambit of expression "taking out of India to a place outside India". The emphasis in the aforementioned judgment was on the movement of the goods outside the territorial waters of India. It is then that an export may be said to have been taken place.

In the instant case, the vessel sunk within territorial waters of India and therefore, there is no export. Accordingly, no duty drawback shall be available in this case. Similar decision was given by the Supreme Court in the case of *UOI v. Rajindra Dyeing & Printing Mills Ltd.* 2005 (180) ELT 433 (SC).

In other words, if the goods cross the territorial waters, drawback will be available even if they do not reach the destination or are destroyed provided the payment for the goods is received in convertible foreign exchange. Para 2.85.2 of HBP Vol. 1 2015-20 states that payment through insurance cover from General Insurance and approved Insurance Companies would be treated as payment realised for exports under various export promotion schemes.

Question 10

M/s. RIL Ltd. claimed duty drawback in respect of its export products. Over 97% of the inputs by weight of the product were procured indigenously and were not excisable. All Industry Rates under the Customs & Central Excise Duties Drawback Rules, 2017 were fixed taking into account the incidence of customs duty on imported inputs.

Explain briefly with reference to clause (ii) of second proviso to rule 3 of the said rules whether the claim of M/s. RIL will merit consideration by the authorities.

Answer:

Clause (ii) of second proviso to rule 3(c) of the Customs and Central Excise Duties Drawback Rules, 2017 inter alia provides that no drawback shall be allowed if the exported goods have been produced or manufactured using imported materials or excisable materials in respect of which duties have not been paid.

In the given case, there was no duty incidence on 97% of the inputs of the export product except the duty incidence on remaining 3% of the inputs, which was insignificant. All Industry Rates fixed for particular export products are applicable to all exporters who export the same. However, in a case where there is clear evidence, as in the present one, that the inputs of such export products have not suffered any duty, no drawback can be claimed. Same view was expressed by the Tribunal in the case of Rubfila International Ltd. v. CCus. Cochin 2005 (190) ELT 485 (Tri.-Bang.) [maintained in Rubfila International Ltd. v. Commissioner - 2008 (224) E.L.T. A133 (S.C.)].

Question 11

With reference to drawback on re-export of duty paid imported goods under section 74 of the Customs Act, 1962, answer in brief the following questions:

- (i) What is the time limit for re-exportation of goods as such?
- (ii) What is the rate of duty drawback if the goods are exported without use?
- (iii) Is duty drawback allowed on re-export of wearing apparel without use?

Answer:

- (i) As per section 74 of the Customs Act, 1962, the duty paid imported goods are required to be entered for export within two years from the date of payment of duty on the importation. This period can be extended by CBIC if the importer shows sufficient reason for not exporting the goods within two years.
- (ii) If duty paid imported goods are exported without use, then 98% of such duty is re-paid as drawback.
- (iii) Yes, duty drawback is allowed when wearing apparels are re-exported without being used. However, Notification No. 19/65 Cus dated 06.02.1965 as amended provides that if wearing apparels have been used after their importation into India, drawback of import duty paid thereon shall not be allowed when they are exported out of India.

Question 12

With reference to the Customs & Central Excise Duties Drawback Rules, 2017, briefly state whether an exporter who has already filed a duty draw back claim under All Industry Rates, can file an application for fixation on special brand rate.

Answer:

Rule 7 of the Customs and Central Excise Duties Drawback Rules, 2017 provides that application for Special Brand Rate cannot be made where a claim for drawback under rule 3 or rule 4 has been made.

In other words, where the exporter has already filed a duty drawback claim under All Industry Rates (AIR) Schedule, he cannot request for fixation of Special Brand Rate of drawback. Thus, the exporter should determine prior to export of goods, whether to claim drawback under AIR or Special Brand Rate.

Question 13

Mr. Samuel, a US resident aged 35 years, has come to India on a tourist visa for a month-long vacation. He carries with him, as part of baggage, the following:

Particulars	Value in ₹
Travel souvenirs	85,000
Other articles carried on in person	1,50,000
80 sticks of cigarettes of ₹ 100 each	8,000
30 cartridges of fire arms valuing ₹ 500 each	15,000
One litre wine	15,000

With reference to the Baggage Rules, 2016, determine whether Mr. Samuel will be required to pay any customs duty?

Answer

As per rule 3 of Baggage Rules, 2016, tourist of foreign origin, excluding infant, is allowed duty free clearance of

- (i) travel souvenirs; and
- (ii) Articles up to the value of ₹ 15,000 (excluding, inter alia, cigarettes exceeding 100 sticks, cartridges of fire arms exceeding 50 and alcoholic liquor or wines in excess of two litres), if carried on in person.

Further, any article the value of which exceeds the duty free allowance admissible to such passenger or member under the Baggage Rules, 2016, is chargeable to customs duty @ 35% [Notification No. 26/2016 Cus. dated 31.03.2016]. The effective rate of duty becomes 38.5% after including social welfare surcharge @ 10% on customs duty.

Accordingly, the customs duty payable by Mr. Samuel will be calculated as under:

Computation of customs duty payable	₹
Travel souvenir	Nil
Articles carried on in person	1,50,000

Computation of customs duty payable	₹
Cigarettes [Since the number of cigarettes does not exceed 100, the same will be covered within the scope of rule 3 of Baggage Rules, 2016 and thus, be eligible for general free allowance (GFA) or concessional rate of duty applicable to baggage vide Notification No. 26/2016 Cus. dated 31.03.2016, as the case may be.]	8,000
Fire arms cartridge [Since the number of fire arms cartridge does not exceed 50, the same will be covered within the scope of rule 3 of Baggage Rules, 2016 and thus, be eligible for GFA or concessional rate of duty applicable to baggage vide Notification No. 26/2016 Cus. dated 31.03.2016, as the case may be.]	15,000
One litre of wine [Since the quantity of wine does not exceed 2 litres, the same will be covered within the scope of rule 3 of Baggage Rules, 2016 and thus, be eligible for GFA or concessional rate of duty applicable to baggage vide Notification No. 26/2016 Cus. dated 31.03.2016, as the case may be.]	15,000
Baggage within the scope of rule 3 of Baggage Rules, 2016	1,88,000
Less: GFA	15,000
Baggage on which duty is payable	1,73,000
Customs duty payable @ 38.5%	66,605

Question 14

Infinity Corporation has imported goods and the following particulars are available for claiming duty drawback under sections 74 & 75 of Customs Act, 1962:

(a)	Custom duty has been paid on goods imported for use and have been out of customs control for 14 months	₹ 14,00,000
(b)	Raghveer exports manufactured goods having FOB value of ₹ 86,000.	
	Rate of duty drawback on FOB value of exports	40%
	Market value of the export product	₹ 96,000

Determine duty drawback with explanations in the above cases

Answer

(a) As per section 74(2) of Customs Act, 1962 read with Notification No. 19/65 Cus dated 06.02.1995 as amended, 65% of import duty is to be paid as duty drawback if goods are used after importation and have been out of customs control

for export for a period of more than 12 months but not more than 15 months.

Therefore, amount of duty drawback = ₹ 14,00,000 × 65% = ₹ 9,10,000

(b) Amount of duty drawback = ₹ 86,000 × 40% = ₹ 34,400

However, the drawback amount should not exceed one third of the market price of the export product as per rule 9 of

Customs & Central Excise Duties Drawback Rules, 2017.

Thus, upper limit of drawback amount = ₹ 96,000 / 3 = ₹ 32,000

Thus, the amount of duty drawback in the present case will be restricted to ₹ 32,000

Question 15

Abdul Overseas Pvt. Ltd. was erroneously refunded a sum of ₹ 30,000 in excess of actual drawback on 16-06-2020. A demand for recovery of the same was issued by the Department on 24-08-2020. Abdul Overseas Private Limited returned the erroneous refund to the Department on 16-10-2020. You are required to calculate the amount of interest chargeable from Abdul Overseas Pvt. Ltd

Provide brief reasons for your answer

Answer

Computation of interest chargeable from Abdul Overseas Pvt. Ltd.

Particulars	
Duty drawback erroneously refunded	₹ 30,000
No. of days of delay [17.06.2020 to 16.10.2020] (Refer Note)	122 days
Rate of interest (Refer Note)	15%
Quantum of interest (rounded off) [₹ 30,000 × 122/365 × 15/100]	1,504

Note: Since the claim of duty drawback is not paid to claimant within 1 month from the date of filing such claim, interest @ 6% per annum is payable from the date after the expiry of the said 1 month period till the date of payment of such drawback [Section 75A(1) of the Customs Act, 1962].

Question 16

M/s PQR has imported used wearing apparel from USA in April, 2020. After receipt, PQR is doubtful that the apparel may not be saleable in India and want to re-export back to USA, without use, which the supplier has accepted. Will PQR be eligible to take drawback of duty paid on imports? Also, list out the conditions for duty drawback.

Answer

Duty drawback is allowed on re-export of imported wearing apparels only when the same has not been used after import.

Since M/s. PQR has re-exported the imported apparels without using the same, it is eligible to take drawback of duty paid on import of apparels provided the following conditions are satisfied:

Duty drawback eligible under Section 75 of Customs Act, 1962 is ₹ 50,000 [₹10,00,000 × 5% = ₹ 50,000]. Market price of such goods is ₹ 40,000/-

As per Section 76(1)(b) of Customs Act, duty drawback shall not be allowed in respect of any goods, if the market price of such goods is less than the amount of drawback due thereon. Hence, M/s Dynamic Exporters is not entitled to get any duty drawback

Question 17

M/s. RIL Ltd. claimed duty drawback in respect of its export products. Over 97% of the inputs by

weight of the product were procured indigenously and were not excisable. All Industry Rates under the Customs & Central Excise Duties Drawback Rules, 2017 were fixed taking into account the incidence of customs duty on imported inputs.

Explain briefly with reference to clause (ii) of second proviso to rule 3 of the said rules whether the claim of M/s. RIL will merit consideration by the authorities.

Answer

Clause (ii) of second proviso to rule 3(c) of the Customs and Central Excise Duties Drawback Rules, 2017 inter alia provides that no drawback shall be allowed if the exported goods have been produced or manufactured using imported materials or excisable materials in respect of which duties have not been paid.

In the given case, there was no duty incidence on 97% of the inputs of the export product except the duty incidence on remaining 3% of the inputs, which was insignificant. All Industry Rates fixed for particular export products are applicable to all exporters who export the same. However, in a case where there is clear evidence, as in the present one, that the inputs of such export products have not suffered any duty, no drawback can be claimed. Same view was expressed by the Tribunal in the case of Rubfila International Ltd. v. CCus. Cochin 2005 (190) ELT 485 (Tri.-Bang.) [maintained in Rubfila International Ltd. v. Commissioner - 2008 (224) E.L.T. A133 (S.C.)].

Question 18

M/s Deepak Business Ltd., had imported goods during 2017. Custom duty has been paid for ₹ 20,00,000 at the time of import. These goods were used and later re-exported after 23 months of import. Is M/s Deepak Business Ltd., eligible for refund of customs duty paid at the time of import. If so, how much?

Answer

Reference to Section 74(2) of Customs Act, 1962 has to be made for examining the eligibility of drawback if any on goods exported after usage. In the given instance, goods were exported after a period of 18 months, where in the percentage of to be paid as drawback allowed is "NIL". Accordingly, M/s Deepak Business Ltd., shall not be eligible to claim any amount of drawback on such re-export made

Question 19

M/s Dynamic Exporters exported goods having FOB value of ₹ 10 lakhs. The All Industry duty drawback on exports of these goods is 5%. Market price of the goods in India is ₹ 40,000. Calculate the duty draw back receivable by M/s Dynamic Exporters.

Answer

Duty drawback eligible under Section 75 of Customs Act, 1962 is ₹ 50,000 [$₹ 10,00,000 \times 5\% = ₹ 50,000$]. Market price of such goods is ₹ 40,000/-

As per Section 76(1)(b) of Customs Act, duty drawback shall not be allowed in respect of any goods, if the market price of such goods is less than the amount of drawback due thereon. Hence, M/s Dynamic Exporters is not entitled to get any duty drawback



Refund

Question 1

The importer has imported an article, which has been valued at Rs. 1000/-. The customs duty on this article comes to Rs. 250/-. Now the importer adds his profit margin of say Rs. 250/- and sells the article for Rs. 1500/-. Now the price charged by the importer consists of the duty element which has been passed on to the buyer.

If later on it is found that there was an error resulting in excess payment of duty, such excess duty is liable to be refunded. But as may be seen above, the importer has already collected the duty from the purchaser and if any refund is granted to him, it would confer on him a double benefit to which he does not have a valid right. Therefore in such cases the refund is credited to the "Consumer Welfare Fund".

Answer:

The landmark judgment on refund is by a Nine Member Bench of the Supreme Court in *Mafatlal Industries Ltd. v. U.O.I.- 1997 (89) E.L.T. 247*. The salient features of this judgment can be summarized as under:

- The theory of unjust enrichment is valid and constitutional. However, the theory that, conversely, the manufacturer would be unjustly impoverished in case of demands has not been agreed to.
- Section 27 (Customs Act) is self contained code for refunds; resort to civil suits or writs is not permissible unless the taxing provision is struck down as unconstitutional. The general theory laid down in certain judgments of both the Supreme Court and High Courts that refund could be claimed within three years of discovery of mistake has been disapproved.
- Unless the levy is struck down as unconstitutional, all Courts must exercise jurisdiction in terms of section 11B and refuse to grant relief if the incidence of tax has been passed on.
- Whatever amount is collected as duty will have to be paid to the Government. If excess is collected than that payable, it would be credited to the Consumer Welfare Fund or given as refund to the person who has borne the incidence of duty.

The Supreme Court has held in *Solar Pesticides case 2000 (116) ELT 401* that the bar of unjust enrichment will apply to refunds even in case of captive consumption of inputs by the importer, as the incidence of duty paid on the inputs are passed on to the customers.

Further, the Supreme Court in the case of *CCE v. Allied Photographics 2004 (166) ELT 3* has held that doctrine of unjust enrichment applies even when duty is paid under protest. It has been held that even if there is no change in price before and after assessment (i.e. before and after imposition of duty), it does not lead to the inevitable conclusion that incidence of duty has been passed on to the buyer, as such uniformity may be due to various factors.

Question 2

State briefly with reference to the provisions of section 27 of the Customs Act, 1962 whether the principle of "unjust enrichment" will apply in case of refund of excess duty paid on car imported for personal use?

Answer:

The bar of unjust enrichment applies in case of refund of customs duty under section 27(2) of the Customs Act, 1962.

The principle of unjust enrichment will not apply to refund of duty on car imported for personal use, as clause (b) of the proviso to sub-section (2) of section 27 of the Customs Act, 1962 stipulates that in case of imports made by an individual for his personal use, the refund should not be credited to consumer welfare fund, but shall be paid to the applicant.

Question 3

Explain the provisions of Customs Act, 1962 relating to computation of limitation for submission of refund application.

Answer:

According to section 27(1) of the Customs Act, 1962, a refund claim should be lodged before the expiry of one year from the date of payment of such duty or interest. The period of limitation of one year should be computed in the following manner:

- a) If the refund claim is lodged by the importer, the time limit should be calculated from the date of payment of duty.
- b) If the refund claim is lodged by the buyer of imported goods, the time limit should be calculated from the date of purchase of goods.
- c) In case of goods which are exempt from payment of duty by an ad-hoc exemption, the limitation of one year should be computed from the date of issue of such exemption order.
- d) Where any duty is paid provisionally, the time limit should be computed from the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment.
- e) Where the refund arises as a result of any judgement/decree/order/direction of the Appellate Authority/ Appellate Tribunal/Court, the time limit should be calculated from the date of such judgement/decree/order/direction.

The time limit of one year is not applicable if duty is paid under protest. Finally, it is worth mentioning that above provisions regarding time limit are mandatory and customs authorities cannot grant a refund which is filed beyond the maximum permissible period.

Question 4

The assessee furnished bank guarantee to the department as required, and imported capital goods at concessional rate of duty under an authorisation with export obligation, but failed to complete the export obligation within the prescribed time. Consequently, the Department invoked the bank guarantee and realized the amount of duty foregone. Subsequently the assessee fulfilled the export obligation and the same was also accepted by the Department. The assessee filed a refund claim for the amount realized by the Department under the bank guarantee. The Department rejected the refund claim on the ground that it was time barred in terms of section 27 of the Customs Act, 1962.

Was the stand taken by the Department correct in law? Examine with the support of case law on the issue.

Answer:

In this case the bank guarantee was for the purpose of security for fulfilment of export obligation. It cannot be construed as payment of 'duty'. As section 27 applies only to refund of duty and not

to refund of other amounts, the time bar under the said section cannot be invoked to deny the refund.

The facts of given case are similar to the facts of CCus. (Exports) v. Jraj Exports (P) Ltd. 2007 (217) ELT 504 (Mad.). The High Court, in the instant case, held that furnishing of bank guarantee for export obligation could not be regarded as payment of duty; therefore time-bar was not applicable for its return.

The High Court relied on the Supreme Court's ruling in the case of Oswal Agro Mills Ltd. and Another v. Asstt. Collector of Central Excise 1994 (70) ELT 48 (SC), wherein it was held that furnishing of bank guarantee pursuant to an order of the Court would not be equivalent to payment of excise duty. The furnishing of bank guarantee is only a security to safeguard the interest of the Revenue. Since section 27 governs the refund of 'duty', and the bank guarantee is not 'duty', the limitation prescribed therein for refund of duty would not apply to refund of a bank guarantee.

Applying the principle laid down in the above said case, the High Court stated that the requirement to establish that the duty incidence had not been passed on by the assessee to any other person would also not get attracted since section 27 has no application to this case. Therefore, the stand of the Department is not correct in law.

Question 5

M/s. HIL imports copper concentrate from different suppliers. At the time of import, the seller issues a provisional invoice and the goods are provisionally assessed under section 18 of the Customs Act, 1962 based on the invoice. When the final invoice is raised, based on the price prevalent in the London Metal Exchange on a predetermined date as agreed in the contract between the buyer and seller, the assessments are finalized on the basis of the price in such invoices.

M/s HIL has filed a refund claim arising out of the finalization of the bill of entry by the authorities. The Department, however, has rejected the refund claim on the grounds of unjust enrichment. Discuss whether the action of the department is correct in law?

Answer:

Section 18 (dealing with provisional assessment) incorporates the principle of unjust enrichment in case of refund arising out of finalization of provisional assessment. Sub-section (5) of section 18 of Customs Act, 1962 provides that if any amount is found to be refundable after finalization of provisional assessment, such refund will be subject to doctrine of unjust enrichment.

Further, section 28D places the onus on the person who has paid duty to prove that he has not passed on the incidence of such duty. In the absence of any proof from such person, section 28D deems that the burden of duty has been passed on to the buyer.

Therefore, in the given case, the Department's action will be correct if M/s HIL does not produce any evidence of bearing the burden of duty.

Question 6

XYZ Ltd imported capital goods and used them in its factory to produce goods for sale. Upon discovery of an error by which excess import duty had been paid on the said capital goods, it filed a claim for refund. As regards unjust enrichment, it contended -

- that the capital goods were not sold and hence the principle of unjust enrichment will not apply to the refund of import duty paid on capital goods; and
- that in any case the price of the finished goods manufactured in the factory remained the same before and after the import and installation of the capital goods, which is sufficient proof to establish that duty burden has not been passed on.

Examine the merits of these contentions, with the support of case law, if any.

Answer:

The incidence of duty can be passed directly or indirectly. Where the capital goods are used for manufacture, the duty paid on their import will go into the costing of the goods manufactured and sold, and can thus be passed on to the buyers. The Large Bench of the Tribunal in the case of SRF Ltd. v. CCus. Chennai 2006 (193) ELT 186 (Tri. - LB) has held that the doctrine of unjust enrichment would be applicable in case of imported capital goods used captively for manufacture of excisable goods. As regards the relevance of the fact that price remained the same before and after the capital goods were imported, the Larger Bench also clarified that uniformity in price before and after assessment does not lead to inevitable conclusion that duty burden has not been passed, as such uniformity may be due to various reasons. In view of this, the contentions of XYZ Ltd are liable to be rejected.

Question 7

Section 26A of Customs Act, 1962 provides for refund of import duty paid if goods are found defective or not as per specifications. Discuss the conditions governing such refund in brief.

Answer:

Often, goods imported are found to be defective or not according to specifications. In such cases, earlier, the refund of customs duty paid at the time of import could be obtained only if the imported goods were physically returned to foreign supplier. Generally, cost of return of the rejected goods is heavy and it is economical to dispose of the goods in India itself. Realising this practical difficulty, section 26A of Customs Act makes provision for refund of import duty paid if goods are found defective or not as per specifications. The refund is admissible if goods are re-exported or relinquished and abandoned to the customs authorities or destroyed. Thus, refund is possible even if goods are destroyed or relinquished in India without re-exporting the same.

The section stipulates the following conditions for the refund:

- (i) the goods are found to be defective or otherwise not in conformity with the specification agreed upon between the importer and the supplier of goods;
- (ii) the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;
- (iii) the goods are identified to the satisfaction of Assistant/Deputy Commissioner of Customs as the goods which were imported;
- (iv) the importer does not claim drawback under any other provision of this Act; and
- (v) the goods are exported or the importer relinquishes his title to the goods and abandons them to customs or such goods are destroyed/rendered commercially valueless in the presence of proper officer in prescribed manner within 30 days from the date on which the order of clearance of imported goods for home consumption is made by the proper officer. This period of 30 days can be extended up to 3 months.

- (vi) An application for refund of duty shall be made before the expiry of 6 months from the relevant date in prescribed form and manner.
- (vii) Imported goods should not be such regarding which an offence appears to have been committed under this Act or any other law.
- (viii) Imported goods should not be perishable goods and goods which have exceeded their shelf life or their recommended storage before use period.

Question 8

What is the minimum monetary limit prescribed in the Customs law below which no refund shall be granted?

Answer:

As per third proviso to section 27(1) of the Customs Act, 1962, the minimum monetary limit below which refund cannot be granted is Rs. 100.

Question 9

Explain the doctrine of unjust enrichment with respect to refund of duty.

Answer:

When an importer imports goods, he has to pay the customs duty on such goods. This duty is recovered from the purchaser when these goods are sold by the importer. In other words, the burden of duty is passed on to the purchaser. Subsequently, if the importer is refunded the duty by the government, this double benefit would be called as unjust enrichment, because he recovers the duty from customer and again gets the said amount from Government as refund. The same applies to a buyer who again passes on the incidence of duty to another person.

Therefore, wherever there is excess payment or collection of duty, the refund is given only to the person who bears the burden of duty and interest, if any. If the person who claims the refund is not the person who bore the burden, the refund is paid into a fund called Consumer Welfare Fund. Therefore, even if the duty / interest is refundable on merits, it is important for the applicant for a refund to prove that he has not passed the burden of duty, in order to succeed in getting refund of duty.

Section 28D provides that every person who has paid duty under the Customs Act, unless the contrary is proved by him, shall be deemed to have passed the full incidence of such duty to the buyer; hence the applicant for refund has to refute the presumption of passing on the incidence of duty.

Question 10

Acme Sales' imports were being provisionally assessed pending a verification that the department was carrying out. Upon completion of the verification, the assessments were finalized, and Acme Sales was asked to pay Rs. 12 lakhs, which it paid. After six months, upon detailed scrutiny of the verification report and taking legal opinion on it, Acme Sales filed a claim for refund of Rs. 8 lakhs on the ground that the differential amount should be Rs. 4 lakhs only and that there were factual errors in the verification report. Was this the correct mode of redressal for Acme Sales? What will be likely outcome of the claim? Discuss on the basis of case law on the subject.

Answer:

Acme Sales received an order finalizing provisional assessment on the basis of a verification report, and requiring payment of Rs. 12 Lakhs. They did not contest this order, but made the payment, and allowed the appeal period of sixty days to lapse. After appeal became time-barred they filed a claim for refund in which they challenged the order. This was a backdoor method of seeking relief against the order; it also asked an officer of the same rank to review the order passed; and it sought to bypass the time limitation for appeal by presenting the appeal as a claim for refund. The Supreme Court has held, in the case of Priya Blue Industries Limited, 2004 (172) ELT 145 (SC), that such a refund claim is not permissible for all these reasons. A person who is aggrieved with an assessment order cannot seek refund without filing an appeal against the assessment order.

Question 11

Mr. N has, over three consignments of 200, 400 and 400 units, imported a total of 1000 units of an article "ZEP", which has been valued at Rs. 1,150 per unit. The customs duty on this article has been assessed Rs. 250 per unit. He adds his profit margin Rs. 350 per unit and sells the article for Rs. 1,750 per unit.

After one month of selling the entire consignment of article "ZEP", Mr. N found that there had been an error in payment of amount of duty, in which duty for the consignment of 200 units was paid as if it was 400 units, resulting in excess payment of duty. Mr. N files an application for refund for Rs. 50,000 (200 X 250). Is the bar of unjust enrichment attracted?

Answer:

Mr. N's invoices show that he collected duty of Rs. 250 per unit on 1,000 items. However he paid duty on 200 items more. This payment, in the normal course, was made before the order permitting the clearance of the goods. It would be evident from the bill of entry that the amount paid was more than the amount of duty assessed. Thus Mr N's case falls within the exception to unjust enrichment listed at clause (g) of the first proviso to section 27(2). He will be able to refute the charge of unjust enrichment. Furthermore, clause (a) of the same sub-section provides that the doctrine of unjust enrichment will not apply to the refund of duty and interest, if any, paid on such duty if such amount is relatable to the duty and interest paid by the importer/exporter, if he had not passed on the incidence of such duty and interest to any other person. Mr N's invoices will show how much duty he collected from his customers, hence he may be covered by this clause also to escape the bar of unjust enrichment.

Question 12

Explain the relevant dates as provided in section 26A(2) of the Customs Act, 1962 for purpose of refund of duty under specified circumstances, namely:

- i. goods exported out of India
- ii. relinquishment of title to goods
- iii. goods destroyed or rendered valueless.

Answer:

The relevant dates provided under Explanation to section 26A(2) of the Customs Act, 1962 for purpose of refund of duty under specified circumstances are as follows:-

	Case	Relevant date
(i)	Goods exported out of India	Date on which the proper officer makes an order permitting clearance and loading of goods for exportation
(ii)	Relinquishment of title to the goods	Date of such relinquishment
(iii)	Goods being destroyed or rendered valueless	Date of such destruction or rendering of goods commercially valueless



Foreign Trade Policy

Question 1

Answer the following questions with reference to the provisions of Foreign Trade Policy:

- (i) Flintex Manufacturers manufactures goods by using imported inputs and supplies the same under Aid Programme of the United Nations. The payment for such supply is received in free foreign exchange. Can Flintex Manufacturers seek Advance Authorization for the supplies made by it?
- (ii) XYZ Ltd. has imported inputs without payment of duty under Advance Authorization. The CIF value of such inputs is Rs. 10,00,000. The inputs are processed and the final product is exported. The exports made by XYZ Ltd. are subject to general rate of value addition prescribed under Advance Authorization Scheme. No other input is being used by XYZ Ltd. in the processing. What should be the minimum FOB value of the exports made by the XYZ Ltd. as per the provisions of Advance Authorization?
- (iii) 'A' has used some duty paid inputs in its export products. However, for the rest of the inputs, he wants to apply for the Advance Authorization. Can he do so? Explain.

Answer:

- (i) Supply to goods to UN or international organizations for their official use or supplied to projects financed by them are 'deemed exports'. Advance Authorization can be issued for supplies made to such 'deemed exports'. Therefore, Flintex Manufacturers can seek an Advance Authorization for the supplies made by it.

- (ii) Advance Authorization necessitates exports with a minimum of 15% value addition (VA).

$$VA = [(A - B)/B \times 100]$$

A = FOB value of export realized, B = CIF value of inputs covered by authorization.

Therefore, the minimum FOB value of the exports made by XYZ Ltd. should be Rs.11,50,000.

- (iii) Yes, 'A' can do so. In case of part duty free and part duty paid imports, both Advance Authorization and drawback will be available. Drawback can be obtained for any duty paid material, whether imported or indigenous, used in goods exported, as per drawback rate fixed by DoR, Ministry of Finance (Directorate of Drawback). Advance Authorization can be used for importing duty free material. Drawback allowed must be mentioned in the application for Advance Authorization. In such case, All Industry Brand Rates are not applicable. The manufacturer has to get specific brand rate fixed from Commissioner for these exported goods.

Question 2

Discuss the similarities and differences between Advance Authorization and DFIA (Duty Free Import Authorization) schemes.

Answer:

In both DFIA and Advance Authorization schemes, import of inputs, oil and catalyst which are required for export products are permitted without payment of customs duty.

The differences between DFIA and Advance Authorization schemes are as follows -

- (i) 'Advance Authorization' is not transferable. DFIA is transferable after export obligation is fulfilled.
- (ii) Advance Authorization scheme requires 15% value addition, while in case of DFIA, minimum 20% value addition is required.
- (iii) Advance Authorization scheme is available to gem and jewellery sector but not DFIA.
- (iv) DFIA cannot be issued where SION (Standard Input Output Norms) prescribes actual user condition [as the material is transferable after fulfilment of export obligation].
- (v) Advance Authorization can be issued even if SION for that product is not fixed. DFIA can be issued only if SION has been fixed for that product to be exported.
- (vi) IGST has been exempted on imports under Advance Authorization scheme upto **31.03.2020**, but there is no such exemption available if imports are under DFIA scheme.

Question 3

Examine whether benefit of Service Exports from India Scheme (SEIS) can be availed with respect to notified services provided by service providers located in India in the current financial year in the following independent cases:

- (i) Net Foreign exchange earned by Mr. Aniket, a service provider, in the year of rendering service is USD 3,000.
- (ii) X and Y Brothers, a firm of service providers, has earned net foreign exchange to the tune of USD 16,500 in the year of rendering service.
- (iii) Mr. Ishaan, a service provider, has earned net foreign exchange of USD 12,000 in the year of rendering service. Out of this, USD 3,000 has been paid to Mr. Ishaan through the credit card of the foreign client.

Note: All the above service providers have an active IEC at the time of rendering services.

Answer:

In order to be eligible for duty credit scrip entitlement under SEIS:-

- (i) Service provider must be located in India.
- (ii) It must provide only notified services in specified manner.
- (iii) It must have an active IEC at the time of rendering such services for which rewards are claimed.
- (iv) An individual service provider/Sole-proprietorship should have minimum net foreign exchange earnings of USD 10,000 and a service provider other than individual/Sole-proprietorship should have minimum NFE of USD 15,000, in the year of rendering service.

Free foreign exchange earned through International Credit Cards and other instruments as permitted by RBI for rendering of service are also be taken into account for computation of NFE.

In the light of the above provisions, the cases are examined as under:

- (a) Mr. Aniket is not eligible for SEIS Scheme as his net foreign exchange earnings are less than USD 10,000 (minimum limit for individuals).

- (b) X and Y Brothers are eligible for the Scheme as their net foreign exchange earnings exceed the limit of USD 15,000 (minimum limit for firms).
- (c) Foreign exchange earned through credit cards is counted for the purpose of computing the limit of minimum net foreign exchange required for being eligible to SEIS Scheme. Thus, Mr. Ishaan is eligible for SEIS Scheme.

Question 4

Two exporters namely, Red Sky Pvt. Ltd. and Black Night Pvt. Ltd. have achieved the status of Status Holders (One Star Export House) in the current financial year. Both the exporters have been regularly exporting goods (other than Gems and Jewellery) every year. What would have been the minimum export performance of the two exporters to achieve such status?

Both the exporters want to establish export warehouses in accordance with the applicable guidelines. What should be their export turnover to enable them to establish export warehouses?

Answer:

Status Holders are business leaders who have excelled in international trade and have successfully contributed to country's foreign trade. All exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder. Status recognition depends upon export performance**.

In order to be categorized as One Star Export House, an exporter needs to achieve the export performance of 3 million US \$ million [FOB/ FOR (as converted)] during current and previous three financial years. Thus, export performance of Red Sky Pvt. Ltd. and Black Night Pvt. Ltd. would have been at least 3 million US \$ million [FOB/ FOR (as converted)] during current and previous three financial years. For granting status, export performance is necessary in at least 2 out of 4 years.

Further, Two Star Export Houses and above are permitted to establish export warehouses. Therefore, Red Sky Pvt. Ltd. and Black Night Pvt. Ltd. can establish export warehouses in India only if they achieve the status of Two Star Export House and above. In order to achieve said status, export performance of the exporters during current and previous three financial years should be as indicated below:

Status Category	Export Performance [FOB/FOR (as converted value on us\$ million]
Two Star Export House	25
Three Star Export House	100
Four Star Export House	500
Five Star Export House	2,000

Question 5

XP Pvt. Ltd., a manufacturer, wants to import capital goods in CKD condition from a foreign country and assemble the same in India. The import of the capital goods will be under notified Project Imports. The capital goods will be used for pre-production processes. The final products of XP Pvt. Ltd. would be supplied in SEZ. XP Pvt. Ltd. wishes to sell the capital goods imported by it as soon as the production process starts.

XP Pvt. Ltd. seeks your advice whether it can avail the benefit of EPCG Scheme for importing the intended capital goods.

Note – Base your opinion on the facts given above assuming that all other conditions required for being eligible to the EPCG Scheme are fulfilled in the above case.

Answer:

Export Promotion Capital Goods Scheme (EPCG) permits exporters to import capital goods at zero customs duty or procure them indigenously without paying duty in prescribed manner.

In return, exporter is under an obligation to fulfill the export obligation. Export obligation means obligation to export product(s) covered by Authorization/permission in terms of quantity or value or both, as may be prescribed/specified by Regional or competent authority. Exports to SEZ unit/developer/co-developer will be considered for discharge of export obligation of EPCG Authorization, irrespective of currency.

The authorization holder can either procure the capital goods (whether used for pre-production, production or post-production) from global market or domestic market. The capital goods can also be imported in CKD/ SKD to be assembled in India.

An EPCG Authorization can also be issued for import of capital goods under Scheme for Project Imports notified by CBIC. Export obligation for such EPCG Authorizations would be 6 times of duty saved.

However, import of capital goods is subject to 'Actual User' condition till export obligation is completed. After export obligation is completed, capital goods can be sold or transferred.

Therefore, based on the above discussion, XP Pvt. Ltd. can import the capital goods under EPCG Scheme. However, it has to make sure that it does not sell the capital goods till the export obligation is completed.

Question 6

What do you understand by the term 'Foreign Trade Policy' (FTP)? Which is the governing legislation for FTP? Which Government authorities administer FTP in India?

Answer:

Foreign Trade Policy is a set of guidelines or instructions issued by the Central Government in matters related to import and export of goods in India viz., foreign trade. The FTP, in general, aims at developing export potential, improving export performance, encouraging foreign trade and creating favorable balance of payments position.

In India, Ministry of Commerce and Industry governs the affairs relating to the promotion and regulation of foreign trade. The main legislation concerning foreign trade is the Foreign Trade (Development and Regulation) Act, 1992 FT (D&R) Act.

In exercise of the powers conferred by the FT (D&R) Act, the Union Ministry of Commerce and Industry, Government of India announces the integrated Foreign Trade Policy (FTP) in every five years with certain underlined objectives. This policy is generally updated every year in April, in addition to changes that are made throughout the year.

The FTP is formulated, controlled and supervised by the office of the Director General of Foreign Trade (DGFT), an attached office of the Ministry of Commerce & Industry, Government of India. DGFT has several offices in various parts of the country which work on the basis of the policy formed by the headquarters at Delhi.

Though the FTP is formulated by DGFT, it is administered in close coordination with other agencies. Other important authorities dealing with FTP are:

- (i) Central Board of Indirect Taxes and Customs (CBIC)
- (ii) Reserve Bank of India (RBI)
- (iii) State VAT Departments

Question 7

Briefly explain as to how FTP is linked with customs laws.

Answer:

The Foreign Trade Policy is closely knit with the Customs laws of India. However, the policy provisions per-se do not override tax laws. The exemptions extended by FTP are given effect to by issue of notifications under respective tax laws (e.g., IGST Act, CGST Act, SGST/UTGST Act, Customs Tariff Act, 1975, Central Excise Act, 1944, Customs Act, 1962 etc.). Thus, actual benefit of the exemption depends on the language of exemption notifications issued by the CBIC.

In most of the cases the exemption notifications refer to policy provisions for detailed conditions. Ministry of Finance/ Tax Authorities cannot question the decision of authorities under the Ministry of Commerce (so far as the issue of authorization etc. is concerned).

Decision of Director General of Foreign Trade (DGFT) is final and binding in respect of (a) Interpretation of any provision of foreign trade policy or provision of Handbook of Procedures, Appendices, Aayat Niryat Forms (b) Classification of any item in ITC(HS).

Question 8

Enumerate the various matters in respect of which policies and regulations are framed under FTP.

Answer:

Following issues are covered under FTP 2015-2020 -

- ◆ General provisions regarding import and export of goods - Chapter 2 of FTP 2015-2020.
- ◆ Export from India Scheme [MEIS and SEIS] to encourage exports of specified goods to specified countries and also export of services - Chapter 3 of FTP 2015-2020.
- ◆ Duty Exemption and Remission Schemes [Advance Authorisation, DFIA and Duty Drawback Scheme and duty remissions schemes under GST law] to enable exporters to import inputs without payment of customs duty - Chapter 4 of FTP 2015-2020.
- ◆ Export Promotion Capital Goods (EPCG) scheme [to obtain capital goods without payment of customs duty] - Chapter 5 of FTP 2015- 2020.
- ◆ EOU/EHTP/STP and BTP schemes - Chapter 6 of FTP 2015-2020.
- ◆ Deemed Exports - Chapter 7 of FTP 2015-2020.
- ◆ Quality Complaints and Trade Disputes - Chapter 8 of FTP 2015-2020.

Policy in respect of Special Economic Zones [SEZ] is contained in SEZ Act, 2005 and Rules.

Question 9

With reference to the provisions of FTP 2015-2020, discuss giving reasons whether the following statements are true or false:

- (i) If any doubt arises in respect of interpretation of any provision of FTP, the said doubt should be forwarded to CBIC, whose decision thereon would be final and binding.
- (ii) Authorization once claimed by an importer cannot be refused by DGFT.
- (iii) IEC is a unique 12 digit PAN based alphanumeric code allotted to a person for undertaking any export/ import activities.
- (iv) Waste generated during manufacture in an SEZ Unit can be freely disposed in DTA on payment of applicable customs duty, without any authorization.
- (v) A Customs Clearance Permit (CCP) is required from DGFT in certain specific cases of import of gifts.

Answer:

- (i) **False.** If any question or doubt arises in respect of interpretation of any provision of the FTP, said question or doubt ought to be referred to DGFT whose decision thereon would be final and binding.
- (ii) **False.** No person may claim an Authorization as a right and DGFT shall have power to refuse to grant or renew the same in accordance with provisions of FT(D&R) Act, rules made thereunder and FTP.
- (iii) **False.** IEC is a unique 10 digit code allotted to a person for undertaking export/ import activities.
- (iv) **True.** Any waste or scrap or remnant including any form of metallic waste & scrap generated during manufacturing or processing activities of an SEZ Unit/ Developer/ Co-developer are allowed to be disposed in DTA freely, without any authorization, subject to payment of applicable customs duty.
- (v) **True.** A Customs Clearance Permit (CCP) for import of gifts is not required from DGFT if such goods are otherwise freely importable under ITC(HS). Thus, only when the goods imported as gifts are not freely importable under ITC(HS), a CCP is required.

Question 10

Mr. A has brought a laptop from USA with him. Such laptop has been used by Mr. B - the seller for few months there. Mr. A contends that he can freely import such laptop as baggage without any restriction/ authorization. Examine the correctness of Mr. A's claim in the light of the provisions of FTP 2015-2020.

Answer:

Import of one laptop computer (notebook computer) as baggage is exempt from whole of the customs duty. Further, Foreign Trade Policy 2015-2020 provides that import of second hand laptop requires authorization.

In view of above, Mr. A's claim is not correct as second hand laptops can be imported only against an authorization.

Question 11

State in brief policy for import of samples.

Answer:

No authorization is required for import of bona fide technical and trade samples. These are importable freely. Samples upto Rs. 3,00,000 can be imported by all exporters without duty.

Authorization for import of samples is required only in case of vegetable seeds, bees and new drugs. Samples of tea upto Rs. 2,000 (CIF) per consignment will be allowed without authorization.

Question 12

State salient aspects of Advance authorization for annual requirements to exporters.

Answer:

Annual Advance authorization would be issued to exporters having past export performance for at least two financial years, to enable them to import the inputs required by them on annual basis.

Advance authorization for Annual Basis can be only on basis of prescribed manner and not on basis of ad hoc norms.

Annual Advance Authorization in terms of CIF value of imports will be granted upto 300% of FOB value of physical exports in preceding financial year and/or FOR value of deemed exports in preceding year or Rs. 1 crore, whichever is higher.

Question 13

What are the salient features of Duty-Free Import Authorization Scheme (DFIA)? Which duties are exempted under this scheme?

Answer:

DFIA is issued to allow duty free import of inputs, oil and catalyst which are required for production of export product. The goods imported are exempt ONLY from basic customs duty.

DFIA shall be issued on post export basis for products for which SION have been notified. Separate DFIA shall be issued for each SION and each port.

No DFIA shall be issued for an export product where SION prescribes 'Actual User' condition for any input.

Holder of DFIA has an option to procure the materials/ inputs from indigenous manufacturer/STE in lieu of direct import against Advance Release Order (ARO)/ Invalidation letter/ Back to Back Inland Letter of Credit. However, DFIA holder may obtain supplies from EOU/EHTP/BTP/STP/SEZ units, without obtaining ARO or Invalidation letter.

Drawback as per rate determined and fixed by Customs authority shall be available for duty paid inputs, whether imported or indigenous, used in the export product.

DFIA or the inputs imported against it can be transferred after the fulfillment of the export obligation. A minimum 20% value addition is required for issuance of DFIA except for items in gems and jewellery sector.

Question 14

Answer the following questions with reference to the provisions of Duty Credit Scrips under Export from India Schemes under FTP 2015-2020.

- (i) Rishita provides services eligible for SEIS Scheme. She wants to sell SEIS scrips earned by her. Can she do so?
- (ii) Can a manufacturer, instead of importing the inputs, source the same indigenously without payment of GST?
- (iii) An exporter was issued duty credit scrip dated 15.07.20XX. What is the period within which he must utilize the scrip?
- (iv) An exporter exported leather footwears through courier using e-commerce of value of Rs. 24,000. Can he apply for duty credit scrips under Merchandise Exports from India Scheme (MEIS)?

Answer:

- (i) **Yes.** The duty credit scrips and goods imported or domestically procured against them are freely transferable.
- (ii) **No.** Utilization of duty credit scrip is not permitted for payment of GST for procurement from domestic sources.
- (iii) The duty credit scrip will be valid for **24 months** from date of issue.
- (iv) **Yes.** Exports of leather footwears through courier using e-commerce of FOB value of Rs. 5,00,000 per consignment are eligible for MEIS.

Question 15

Mention the reward scheme provided under FTP which aims to promote the manufacture and export of notified goods/ products. Discuss the basis of computation of reward under said scheme. How can the duty scrips issued under the Scheme be utilized?

Answer:

The scheme is known as Merchandise Exports from India Scheme (MEIS).

The objective of MEIS scheme is to promote the manufacture and export of notified goods/ products.

Under MEIS, exports of notified goods/products to notified markets shall be eligible for reward at the specified rate(s). Unless otherwise specified, the basis of calculation of reward would be:

- (i) on realized FOB value of exports in free foreign exchange,
 - or
 - (ii) on FOB value of exports as given in the Shipping Bills in free foreign exchange,
- whichever is less.

These scrips can be used for payment of customs duties on import of inputs/goods including notified capital goods.

Question 16

Explain salient features of post export EPCG scheme.

Answer:

In EPCG scheme, first capital goods are imported without payment of customs duty and then export obligation is fulfilled.

In case of post export EPCG scheme, the capital goods are imported on full payment of applicable duties in cash. Later, basic customs duty paid on Capital Goods shall be remitted in the form of freely transferable duty credit scrips. **Capital goods imported under EPCG Authorisation for physical exports are also exempt from IGST and Compensation Cess upto 31.03.2021.**

In case integrated tax and compensation cess are paid in cash on imports under EPCG, incidence of the said integrated tax and compensation cess would not be taken for computation of net duty saved provided input tax credit is not availed.

These Duty Credit Scrips can be used for payment of applicable custom duties for imports. All other provisions of EPCG Scheme apply to post export EPCG scheme also.

Specific Export Obligation under this Scheme shall be 85% of the applicable specific EO [6 times of duties, taxes and cess saved on capital goods imported under EPCG scheme to be fulfilled in 6 years reckoned from authorization issue date]. Average EO remains unchanged.

Duty remission shall be in proportion to the Export Obligation fulfilled.

The advantage of the scheme is that the exporter does not have any specific export obligation when he imports capital goods on payment of full customs duty. Later, he gets remission on the basis of exports made by him.

Question 17

With reference to the provisions relating to EOU, EHTP, STP, BTP & SEZ Schemes as contained in FTP, answer the following questions:

- (i) A unit intending to trade in handicrafts wants to set up an EOU. Is it allowed?
- (ii) An EOU has started production after 4 years 10 months from the date of grant of Letter of Permission (LoP)/ Letter of Intent (LoI). Is it correct?
- (iii) A EOU wants to import a second hand capital goods which is prohibited under ITC (HS). Can it do so?

Answer:

- (i) **No.** Units undertaking to export their entire production of goods and services (except permissible sales in DTA), may be set up under the Export Oriented Unit (EOU) Scheme, Electronics Hardware Technology Park (EHTP) Scheme, Software Technology Park (STP) Scheme or Bio- Technology Park (BTP) Scheme for manufacture of goods, including repair, re-making, reconditioning, re-engineering and rendering of services. Trading units are not covered under these schemes.
- (ii) **No.** EOU/ BTP/ EHTP/ STPs should start production within 2 years from the date of grant of Letter of Permission (LoP)/ Letter of Intent (LoI). In other words, LoP/ LoI have an initial validity of 2 years, by which time unit should have commenced production. Its validity may

be extended further up to 2 years by competent authority. However, proposals for extension beyond four years shall be considered in exceptional circumstances, on a case to case basis by BoA.

- (iii) **No.** Though an EOU is permitted to import duty free second hand capital goods, without any age limit, it cannot import capital goods that are prohibited items of import in the ITC(HS).

Question 18

List some supplies which are 'deemed exports' for purpose of benefits under Foreign Trade Policy 2015-2020.

Answer:

As per FTP 2015-2020, following are treated as deemed exports:

- ◆ Supplies against Advance Authorization/DFIA
- ◆ Supplies to EOU/STP/EHTP/BTP
- ◆ Supplies against EPCG authorization
- ◆ Supply of marine freight containers by 100% EOU
- ◆ Supplies to projects against International Competitive Bidding
- ◆ Supplies to projects where imports permitted at zero customs duty
- ◆ Supply to mega power projects
- ◆ Supplies to UN or International Organizations for their official use.
- ◆ Supplies to nuclear projects

Question 19

Explain the salient features of Foreign Trade Policy.

Answer:

The following are some of the key attributes of the FTP:

- ◆ Export-Import of goods and services is generally free unless specifically regulated by the provisions of the Policy or any other law for the time being in force.
- ◆ Export and import goods are broadly categorized as – (a) Free (b) Restricted (c) Prohibited.
- ◆ Some goods are 'free' for import and export but can be imported/exported only through State Trading Enterprises (STE).
- ◆ There are restrictions on exports and imports for various strategic, health, defence, environment, and other reasons. If the goods are restricted for import/export but not prohibited, the Government can give a permission/license for specific reasons.
- ◆ Exports are promoted through various promotional schemes.

- ◆ Goods and services are to 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 the scheme of EPCG.
- ◆ For units undertaking to export all their production, there are special schemes so that they can avoid taxes at every stage under the scheme of EOU/SEZ.

In certain cases imports get duty exemption/concession for certain special purposes. In such cases, to enable domestic suppliers to compete with the international suppliers, the supplies of domestic suppliers are treated as deemed exports

Question 20

Write a short note on 'Board of Trade'.

Answer:

Board of Trade (BOT) has been constituted to advise Government on Policy measures for increasing exports, review export performance, review policy and procedures for imports and exports and examine issues relevant for promotion of India's foreign trade. Commerce & Industry Minister will be the Chairman of the BOT. Government shall also nominate upto 25 persons, of whom at least 10 will be experts in trade policy. In addition, Chairmen of recognized Export Promotion Councils (EPCs) and President or Secretary-Generals of National Chambers of Commerce will be ex-officio members. BOT will meet at least once every quarter

Question 21

What are the features of Advance Authorization Scheme? Enlist the items which can be and which cannot be imported against Advance Authorization.

Answer:

- ◆ The goods imported are exempt from basic customs duty, additional customs duty, education cess, anti-dumping duty and safeguard duty, unless otherwise specified. However, specified² deemed exports are not exempted from payment of applicable anti-dumping duty and safeguard duty. The conditions for duty free imports against physical exports are provided in notification issued under the Customs law.
- ◆ Period of fulfillment of export obligation under Advance Authorization is 18 months from the date of issue of Authorization or as notified by DGFT.
- ◆ Exports proceeds shall be realized in freely convertible currency except otherwise specified.

Items which can be imported duty free against advance authorization:

- ◆ Inputs, which are physically incorporated in export product (making normal allowance for wastage).
- ◆ Fuel, oil, catalysts which are consumed/ utilised to obtain export product
- ◆ Mandatory spares which are required to be exported/supplied with resultant product permitted upto 10% of CIF value of Authorization.

- ◆ Specified spices only when used for activities like crushing/ grinding
- ◆ /sterilization/ manufacture of oils or oleoresins and not for simply cleaning, grading, re-packing etc.

However, items reserved for imports by STEs cannot be imported against advance authorization.

Question 22

Discuss the benefits granted under FTP to Status Holders.

Answer:

Status holders are granted certain benefits like:

- (a) Authorisation and custom clearances for both imports and exports on self- declaration basis.
- (b) Fixation of Input Output Norms (SION) on priority i.e. within 60 days by Norms Committee.

Exemption from compulsory negotiation of documents through banks. The remittance/ receipts, however, would continue to be received through banking channels

- (a) Exemption from furnishing of Bank Guarantee in Schemes under FTP.
- (b) Two Star Export Houses and above are permitted to establish export warehouses.
- (c) Three Star and above Export House shall be entitled to get benefit of Accredited Clients Programme (ACP) as per the guidelines of CBIC.
- (d) DGFT vide Notification No. 28/2015-20 dated 27th August 2018 has provided that status holders shall be entitled to export freely exportable items (excluding Gems and Jewellery, Articles of Gold and precious metals) on free of cost basis for export promotion subject to an annual limit as below:
 - a) Annual limit of 2% of average annual export realization during preceding three licensing years for all exporters (excluding the exporters of following sectors-(1) Gems and Jewellery Sector, (2) Articles of Gold and precious metals sector).
 - b) Annual limit of Rupees 1 Crore or 2% of average annual export realization during preceding three licensing years, whichever is lower. (for exporters of the following sectors-(1) Gems and Jewellery Sector, (2) Articles of Gold and precious metals sector)

Question 23

Explain the significant features of EPCG Scheme. Which type of capital goods cannot be imported under such Scheme?

Answer:

Export Promotion Capital Goods Scheme (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.

Capital goods imported under EPCG Authorisation for physical exports are also exempt from IGST and Compensation Cess upto **31.03.2021**.

Import under EPCG scheme shall be subject to an export obligation equivalent to 6 times of duties, taxes and cess saved on capital goods to be fulfilled in 6 years reckoned from the date of issue of authorization. Authorisation shall be valid for 18 months from the date of issue of Authorisation.

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.

In case integrated tax and compensation cess are paid in cash on imports under EPCG, incidence of the said integrated tax and compensation cess would not be taken for computation of net duty saved provided input tax credit is not availed.

Question 24

Write short notes on the following with reference to the provisions relating to EOU/EHTP/STP/BTP as contained in the FTP:

- (i) Entitlement for supplies from DTA
- (ii) Inter-unit transfer
- (iii) Sale of unutilized material
- (iv) Replacement/repair of imported/indigenous goods
- (v) Exit from EOU Scheme

Answer:

(i) Entitlements for supplies from DTA

- **Supplies from DTA to EOU/ EHTP/ STP/ BTP units will be regarded as "deemed exports"** and DTA supplier shall be eligible for relevant entitlements for deemed exports, besides discharge of export obligation, if any, on the supplier. The refund of GST paid on such supply would be available to the supplier subject to specified conditions and documentations under GST law.
- In addition, EOU / EHTP / STP / BTP units shall be entitled to following:-
 - ✓ Imported goods are exempt from basic customs duty. Further, IGST and GST compensation cess is exempt upto **31.03.2021**.
 - ✓ Input Tax Credit of GST paid on inputs and capital goods.

(ii) Inter Unit Transfer

- Transfer of manufactured goods from one EOU / EHTP / STP / BTP unit to another EOU / EHTP / STP / BTP unit is allowed on payment of applicable GST and compensation cess with prior intimation to concerned Development Commissioners of the transferor and transferee units as well as concerned Customs authorities, following the prescribed procedure.
- Capital goods may be transferred or given on loan to other EOU/ EHTP/ STP/ BTP/ SEZ units, with prior intimation to concerned DC and Customs authorities on payment of applicable GST and compensation cess. Such transferred goods may also

be returned by the second unit to the original unit in case of rejection or for any reason on payment of applicable GST and compensation cess.

(iii) Sale of Unutilized Material

- ✓ In case an EOU/ EHTP/ STP/ BTP unit is unable to utilize goods (including capital goods and spares that have become obsolete/surplus) and services, imported or procured from DTA, it may be transferred to another EOU/ EHTP/ STP/ BTP/ SEZ unit; or
- ✓ disposed off in DTA with intimation to Customs authorities on payment of applicable duties and/ or taxes and compensation cess. Further, exemption of basic customs duties availed, if any, on the goods, at the time of import will also be payable and submission of import Authorisation; or
- ✓ exported.

Such transfer from EOU/ EHTP/ STP/ BTP unit to another such unit would be treated as import for receiving unit.

- ❖ In case of capital goods, benefit of depreciation, as applicable, will be available in case of disposal in DTA only when the unit has achieved positive NFE taking into consideration the depreciation allowed.
- ❖ No duty shall be payable other than the applicable taxes under GST laws in case capital goods, raw material, consumables, spares, goods manufactured, processed or packaged, and scrap/ waste/ remnants/ rejects are destroyed within unit after intimation to Customs authorities or destroyed outside unit with permission of Customs authorities.
- ❖ Disposal of used packing material will be allowed on payment of duty on transaction value.

(iv) EXIT FROM EOU SCHEME

With approval of DC, an EOU may opt out of scheme. Such exit shall be subject to payment of applicable IGST/ CGST/ SGST/ UTGST and compensation cess, if any, and industrial policy in force. If unit has not achieved obligations, it shall also be liable to penalty at the time of exit.

Question 25

What is 'deemed exports'? Which type of supplies are regarded as deemed exports?

Answer:

Deemed Exports for the purpose of this FTP

It refers to those transactions in which goods supplied do not leave country, and payment for such supplies is received either in Indian rupees or in free foreign exchange. Supply of goods as specified in FTP shall be regarded as "Deemed Exports" provided goods are manufactured in India.

Deemed Exports for the purpose of GST

It would include only the supplies notified under section 147 of the CGST/SGST Act, on the recommendations of the GST Council. The benefits of GST and conditions applicable for such

benefits would be as specified by the GST Council and as per relevant rules and notification. We will restrict our discussion to 'Deemed exports for the purpose for FTP' in this chapter. Deemed exports broadly cover three areas.

- a. Supplies to domestic entities who can import their requirements duty free or at reduced rates of duty.
- b. Supplies to projects/ purposes that involve international competitive bidding.
- c. Supplies to infrastructure projects of national importance.

Question 26

(i) A star export house wishes to import goods which are exempt from duty under Foreign Trade Policy (FTP), subject to fulfilment of export obligation. However, Customs Notification giving effect to the FTP is yet to be issued. Can the export house import the goods claiming exemption from duty under FTP in the absence of Customs Notification?

(ii) Give examples of categories of exports/sectors which are ineligible for duty credit scrip entitlement under MEIS.

Answer

- (i) No. The exemptions extended by Foreign Trade Policy can be taken only when the exemption notification is issued under the relevant tax laws. The provisions of FTP cannot override tax laws.
- (ii) Some of the categories of exports/sectors which are ineligible for duty credit scrip entitlement under MEIS are listed below:
 - (a) Supplies made from DTA units to SEZ units
 - (b) Exports through trans-shipment, i.e. exports that are originating in third country but trans-shipped through India
 - (c) Deemed Exports
 - (d) SEZ/EOU/EHTP/BPT/FTWZ products exported through DTA units
 - (e) Export products which are subject to Minimum export price or export duty
 - (f) Exports made by units in FTWZ.

Question 27

Whether all types of exports categories/sectors are eligible for duty credit scrip entitlement under Merchant Export from India Scheme (MEIS)? If your answer is no, give few examples of the export categories/sectors which are ineligible for duty credit scrip entitlement under MEIS.

Saksham exports a consignment of handicraft items through courier using e-commerce of free on board (FOB) value of ₹ 4,48,000. Determine whether the export consignment of Saksham is eligible for the MEIS benefit

Answer

No, all types of exports categories/sectors are not eligible for duty credit scrip entitlement under

Merchant Export from India Scheme (MEIS).

A few of the ineligible exports categories/sectors under MEIS are listed below:

- (i) Supplies made from domestic tariff area (DTA) units to special economic zone (SEZ) units
- (ii) Exports through transshipment, i.e., exports that are originating in third country but transshipped through India
- (iii) Deemed exports
- (iv) SEZ /export oriented undertaking (EOU) /electronic hardware technology park (EHTP) /bio technology park (BTP) /free trade warehousing zone (FTWZ) products exported through domestic tariff area units
- (v) Export products which are subject to minimum export price or export duty
- (vi) Exports made by units in FTWZ.

Export of handicraft items through courier, using e-commerce, of free on board (FOB) value up to ₹ 5,00,000 per consignment is entitled for rewards under MEIS.

Therefore, the entire consignment of handicraft items exported by Saksham (FOB value ₹ 4,48,000) is eligible for MEIS benefit.

Question 28

Monotype traders wants to enter into export contracts with various customers. It intends to understand the currency denomination while entering into contract with them and seeks your advice as to how it should ensure compliance.

Answer

Monotype Traders can denominate all export contracts and invoices either in freely convertible currency or Indian rupees but export proceeds should be realised in freely convertible currency.

However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non- resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan.

Additionally, rupee payment through Vostro account must be against payment in free foreign currency by buyer in his non-resident bank account.

Contracts for which payments are received through ACU shall be denominated in ACU Dollar. Export contracts and invoices can be denominated in Indian rupees against EXIM Bank/ Government of India line of credit.

Question 29

Jigsaw Puzzle has imported inputs, having CIF value of ₹ 25,00,000 without payment of duty under Advance Authorisation. Inputs are supplied free of cost valued at ₹ 5,00,000 to meet eventualities of quality issues arising during manufacture. On manufacturing, the products are supplied to SEZ units and realisation is in Indian currency through regular current account.

Jigsaw Puzzle wants to know whether it is entitled to Advance Authorisation scheme and what should be the minimum value addition. And you are required to compute FOR value of supplies to SEZ.

Jigsaw Puzzle has manufactured and supplied goods against EPCG authorisation to their customer.

Jigsaw Corporation who are setting up a new unit for exports. The payment for such supply is received in Indian currency. Can Advance Authorization be denied as payment has not been received in free foreign exchange?

Answer

Advance authorisation (AA) can be issued for supplies made to SEZ units (as supplies made to SEZ units are considered as equivalent to physical exports). The minimum value addition required to be achieved under AA is 15%. The FOR value of supplies made to SEZ units is computed as under:

Value addition = (FOR value of supply received - CIF value of inputs / CIF value of inputs) × 100

Notional value of free of cost inputs supplied by foreign buyer needs to be added to the CIF value of imported inputs to compute FOR value of the supplies made to SEZ units.

FOR value of supplies made to SEZ units (after adding minimum 15% value addition) = 30,00,000 × 115% = ₹ 34,50,000

Jigsaw Puzzles will, however, be not eligible for AA as the payment from SEZ unit is not realised from its Foreign Currency Account.

Supply of goods to against EPCG Authorisation is a deemed export eligible for grant of AA. However in this case, AA can also be issued when the payment for such deemed exports is realised in free foreign exchange.

Question 30

From the following particulars, you are required to determine reward under Merchandise Exports from India Scheme (MEIS) under Foreign Trade Policy 2015-2020

- (1) Exports of handloom products through notified courier using e- commerce platform with FOB value of ₹ 5,15,000 per consignment.
- (2) Exports of goods which are subject to minimum export price with FOB value of ₹ 50,000.
- (3) Exports of goods where FOB value declared in shipping bill is ₹ 8,00,000. FOB value realised with exchange gain is ₹ 8,20,000.
- (4) Exports of books through foreign post office using e-commerce platform with FOB value of ₹ 4,95,000 per consignment
- (5) Biotechnology Park products exported through DTA units of ₹ 3,00,000
- (6) Supplies made from DTA units to SEZ units of ₹ 2,00,000
- (7) Rate of reward under MEIS is 7%.

Answer**Computation of rewards under MEIS**

Particulars	Amount eligible for reward (₹)
Export of handloom products through courier using e- commerce platform with FOB value ₹ 5,15,000 [Export of handloom products of FOB value upto ₹ 5,00,000 per consignment is entitled for reward under MEIS.]	5,00,000
Export of goods which are subject to minimum export price [Ineligible for MEIS]	Nil

Foreign Trade Policy

Export of goods where FOB value declared in shipping bill is ₹ 8,00,000 and FOB value realized is ₹ 8,20,000 [FOB value declared in the shipping bill or the FOB value realized, whichever is lower is considered for MEIS rewards]	8,00,000
Export of books through foreign post office using e-commerce platform with FOB value of ₹ 4,95,000 [Export of books of FOB value upto ₹ 5,00,000 per consignment is entitled for reward under MEIS.]	4,95,000
Biotechnology Park products exported through DTA units [Ineligible for MEIS]	Nil

Question 31

Mr. A has brought a laptop from USA with him. Such laptop has been used by Mr. B - the seller for few months there. Mr. A contends that he can freely import such laptop as baggage without any restriction/ authorization. Examine the correctness of Mr. A's claim in the light of the provisions of [FTP 2015-2020](#)

Answer

Import of one laptop computer (notebook computer) as baggage is exempt from whole of the customs duty. Further, Foreign Trade Policy 2015-2020 provides that import of second hand laptop requires authorization.

In view of above, Mr. A's claim is not correct as second hand laptops can be imported against an authorization.

