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CHAPTER-1 GST IN INDIA – AN INTRODUCTION

Intra-State Supply

ILLUSTRATION 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.

I. Supply of goods/ services by A to B

	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.

II. 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 utilise such credit for being set off against the CGST and SGST payable on the supply of goods/services made by him to C.

	Amount (in `)
Value charged for supply of goods/ services (` 10,000 x 120%)	12,000
Add: CGST @ 9%	1080
Add: SGST @ 9%	1080
Total price charged by B from C for local supply of goods/ services	14160

Computation of CGST, SGST payable by B to Government

	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

ILLUSTRATION 2

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

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

	Amount (in `)
Value charged for supply of goods/services	10,000
Add: CGST @ 9%	900
Add: SGST @ 9%	900
Total price charged by X from A for intra-State supply of goods/services	11,800

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

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

	Amount (in `)
Value charged for supply of goods/services (` 10,000 x 120%)	12,000
Add: IGST @ 18%	2,160
Total price charged by A from B for inter-State supply of goods/services	14,160

Computation of IGST payable to Government

	Amount (in `)
IGST payable	2,160
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 utilised in the payment of IGST to the Central Government.

III. 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 utilise such credit for being set off against the CGST and SGST payable on the local supply of goods/services made by him to C.

	Amount (in `)
Value charged for supply of goods/ services (` 12,000 x 120%)	14,400
Add: CGST @ 9%	1,296
Add: SGST @ 9%	1,296
Total price charged by B from C for local supply of goods/services	16,992

Computation of CGST, SGST payable to Government

	Amount (in `)
CGST payable	1,296
Less: Credit of IGST	1,296
CGST payable to Central Government	Nil
SGST payable	1,296
Less: Credit of IGST (` 2,160 - ` 1,296)	864
SGST payable to State Government	432

Central Government will transfer IGST credit of ` 864 utilised 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 Centre to State 2	(864)		864
Total	1,296	Nil	1,296

QUESTIONS

1. List some of the benefits that GST to 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.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. A dual GST has been implemented in India. Elaborate.

ANSWER:

A dual GST has been implemented in India with the Centre and States simultaneously levying it on a common tax base. The GST levied by the Centre on intra-State supply of goods and / or services is called the Central GST (CGST) and that levied by the States/ Union territory is called the State GST (SGST)/ Union GST (UTGST). Similarly, Integrated GST (IGST) is levied and administered by Centre on every inter-State supply of goods and/or services. India is a federal country

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where both the Centre and the States have been assigned the powers to levy and collect taxes through appropriate legislation. Both the levels of Government have distinct responsibilities to perform according to the division of powers prescribed in the Constitution for which they need to raise resources. A dual GST, therefore, keeps with the Constitutional requirement of fiscal federalism.

9. 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 onsupplies in the course of inter-State trade or commerce shall be levied andcollected by the Government of India and such tax shall be apportioned betweenthe Union and the States in the manner as may be provided by Parliament by lawon the recommendations of the Goods and Services Tax Council.

Here, supply of goods, or of services, or both in the course of import intothe 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 theConsolidated Fund of India. Where an amount collected as IGST has beenused for payment of SGST or vice versa, such amount shall not form part ofthe Consolidated Fund of India/State respectively. This is to facilitatetransfer of funds between the Centre and the States.

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

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

ANSWER:

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

Parliament has exclusive power to make laws with respect to goods andservices tax where the supply of goods, or of services, or both takes place inthe 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, theaforesaid provisions shall apply from the date to be notified by theGovernment on the recommendations by the GST Council.

CHAPTER-2 SUPPLY UNDER GST

1. 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:

Section 2(30) provides that a 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. Circular No. 11/11/2017 GST dated 20.10.2017 has clarified that supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc. printed with logo, design, name, address or other contents supplied by the recipient of such printed goods, are composite supplies.

Further, section 8(a) stipulates that a composite supply comprising two or more supplies, one of which is a principal supply, is treated as a supply of such principal supply. Hence, one needs to ascertain what constitutes the principal supply in this supply. As per section 2(90), principal supply is the 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.

The above circular further clarifies that in the composite supply of printing of books, pamphlets, brochures, annual reports, and the like, where only 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.

Accordingly, in the given case, the supply of printed books by Satyamev Printers is a composite supply wherein the principal supply is supply of printing services. Thus, the rate of GST applicable thereon is the rate applicable on supply of printing services, i.e. 18%.

2. 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.

3. 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)].

4. 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%.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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].

10. 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.

11. 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.

12. 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 28.06.2017[32]], 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.

13. (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.

14. Mrs. Kajal, a registered supplier of Jaipur (Rajasthan), has made the following supplies in the month of January:
(i) Supply of a laptop along with the laptop bag to a customer of Mumbai for ` 55,000 (exclusive of GST).

(ii) 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.
(iii) 100 kits are given as free gift to Jaipur customers (all unrelated) on the occasion of Mrs. Kajal's birthday. Each kit consists of 1 hair oil and 1 beauty soap. Cost of each kit is ` 35. Input tax credit has not been taken on the goods contained in the kit.

(iv) Event management services provided free of cost to her brother (wholly dependent on her) for his son's marriage function in Indore (Madhya Pradesh). Cost of providing said services is ` 80,000.

(v) 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 Mrs. Kajal's godown at Jaipur to Function Garden, Ajmer. Since Mrs. Kajal is not a GTA, transportation services provided by her are exempt vide Notification No. 12/2017 CT (R) dated 28.06.2017[31].
Assume rates of GST to be as under:-

S. No.	Particulars	Rate of GST
1.	Laptop	18%
2.	Laptop bag	28%
3.	Hair oil	18%
4.	Beauty soap	28%
5.	Hair comb	12%
6.	Event management service	5
7.	Service of renting of chairs and coolers	12%
8.	Transportation service	5%

From the above information, examine each of the above supplies made by Mrs. Kajal for the month of January and determine the rate of GST applicable on the same.

ANSWER:

S. No.	Particulars	Rate of GST
(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	18%

	terms of section 8(a). Accordingly, rate of principal supply, i.e. laptop will be charged.]	
(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).]	28%
(iii)	Free gifts to customers [Cannot be considered as supply under section 7 read with Schedule I as the gifts are given to unrelated customers without consideration.]	Nil
(iv)	Event management services provided free of cost to her brother for his son's marriage shall be considered as supply as the services are being provided to a related person. Since it is an individual supply, it will be taxed at the rate applicable on said service.	5%
(v)	Chairs and coolers hired out to Function Garden [Transportation services provided by Mrs. Kajal are exempt. 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. Accordingly, transportation service will also be taxed at the rate applicable for renting of chairs and coolers*]	12%

*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, 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.

CHAPTER-3 CHARGE OF GST

EXAMPLES

(1) Maharashtra GST Act, 2017 extends to whole of the State of the Maharashtra.
***State:** includes a Union territory with Legislature [Section 2(103) of the CGST Act].

(2) George, a tourist from USA, visits India and purchases a shawl in Delhi. In this case, even though the place of supply and location of supplier are in the same State, it will be treated as inter-State transaction and will be exigible to IGST.

(3) A shoes' dealer 'Prithviraj' has offices in Maharashtra and Goa. He makes intra-State supply of goods from both these offices. In order to determine whether 'Prithviraj' is eligible to avail benefit of the composition scheme for goods, turnover of both the offices would be taken into account and if the same does not exceed ` 1.5 crore, 'Prithviraj' can opt to avail the composition levy scheme (subject to fulfilment of other prescribed conditions) for goods for both the offices.

(4) A hair stylist 'Billoo Barber' has his salon in Delhi and Haryana, making intra-State supplies. In order to determine whether 'Billoo' is eligible to avail benefit of the composition scheme for services, turnover of both the salons would be taken into account and if the same does not exceed ` 50 lakh, 'Billoo' can opt to avail the composition levy scheme (subject to fulfilment of other prescribed conditions) for both the salons.

(5) A photographer 'Champak' has commenced providing photography services in Delhi from April this year. His turnover for various quarters till December is as follows:
April-June ` 20 lakh
July-Sept ` 30 lakh
Oct-Dec ` 20 lakh
In the given case, since Champak has started the supply of services in the current financial year, his aggregate turnover in the preceding FY is Nil. Consequently, in the current FY, he is eligible for composition scheme for services. He becomes eligible for the registration when his aggregate turnover exceeds ` 20 lakh. While registering under GST, he opts for composition scheme for services. For determining his 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], he 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, his aggregate turnover reaches ` 50 lakh*. Consequently, his option to avail composition scheme for services shall lapse by the end of July-Sept quarter and thereafter, he is required to pay tax at the normal rate of 18%. Thus, the tax payable for Oct-Dec quarter is ` 20 lakh × 18%, i.e. ` 3,60,000.

*while computing aggregate turnover for determining Champak's 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.

(6) Ramsewak is engaged in supply of goods. His turnover in preceding FY is ` 60 lakh. Since his aggregate turnover in the preceding FY does not exceed ` 1.5 crore, he is eligible for composition scheme for goods in current FY. Further, in current FY, he can supply services [other than restaurant services] upto a value of not exceeding:
(a) 10% of ` 60 lakh, i.e. ` 6 lakh
or
(b) ` 5 lakh,
whichever is higher.
Thus, he can supply services upto a value of ` 6 lakh in current FY. If the value of services supplied exceeds ` 6 lakh, he becomes ineligible for the composition scheme for goods and has to opt out of the same.

(7) A person availing composition scheme during a financial year crosses the turnover of ` 1.5 crore on 9th of December. The option availed shall lapse from the day on which his aggregate turnover during the financial year exceeds ` 1.5 crore, i.e. on 9th December, in this case.

(8) A dealer 'Kishorilal' has two offices in Delhi and is eligible for composition levy for goods. If 'Kishorilal' opts for the composition scheme for goods, both the offices would pay taxes under composition scheme and abide by all the conditions as may be prescribed for the said composition scheme.

QUESTIONS

1. 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.

2. 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.

3. 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.

4. Varun & Arun Associates started a partnership firm of architects in Bhopal (Madhya Pradesh) on 1st April, The firm provides architecture services, in Madhya Pradesh. It provided the following details of its turnover:
April - June ` 20 lakh
July - Sept ` 30 lakh
Oct - Dec ` 20 lakh
The firm has obtained the registration under section 22 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:
The composition scheme under sub-sections (1) and (2) of section 10 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) 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 under section 19(2A), 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 also included.

5. Examine whether the suppliers are eligible for composition levy under section 10 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 juices 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?
ANSWER:
As per section 10(1), the following registered persons, whose aggregate turnover in the preceding financial year did not exceed ` 1.5 crore, may opt 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) 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 conditions 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 under sub-sections (1) and (2) of section 10 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 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.

(c) The turnover limit for being eligible for composition scheme under sub-sections (1) and (2) of section 10 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) 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 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) in the current financial year. Further, the answer will remain the same even if Deepti Services Ltd. also start supplying beauty products alongwith 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.

6. B & D Company, a partnership firm, in Nagpur, Maharashtra is a wholesaler of a taxable product 'P' and product 'Q' exempt by way of a notification. 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 30th June (`)	Turnover for the quarter ended 30th September (`)
'P'	60,00,000	50,00,000
'Q'	17,65,000	17,00,000

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	1st October	2,00,000	3,000	2,03,000
2307	1st October	1,36,000	2,250	1,38,250
2308	2nd October	67000	39,250	1,06,250
2309	3rd October	58,750	33,750	92,500
2310	5th October	1,00,000	-	1,00,000
2311	6th October	94,000	6,000	1,00,000
2312	6th October	-	17,000	17,000
2313	8th October	50,000	6,000	56,000
2314	9th October	60,000	9,000	69,000
2315	.....	.....	.....	.....
.....	.....	.....	.....	.....

Further, B & D Company paid freight of ` 1,40,000 to Goods Transport Agency during the period April to October. Assume equal amount of freight is paid each month on the 10th day of each month. Also, assume that the goods for which the freight is paid on 10th day of the month are transported between 11th to 20thday of the month.

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

Compute the GST liability (ignoring ITC provisions) of B & D Company for the period April to October under composition scheme under sub-sections (1) and (2) of section 10 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) read with Notification No.14/2019 CT dated 07.03.2019 as amended, the option availed by a registered person to pay tax under composition scheme under sub-sections (1) and (2) of section 10 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), 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 3rd October [aggregate of both taxable and exempt turnover from 1st April to 3rd October, 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). 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) from 3rd October.

Output tax liability of B & D Company under composition scheme
During the period when the firm pays tax under composition scheme, i.e. from 1st April to 2nd October, 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]. 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].
The tax liability for the quarters ended June, September and December under composition scheme will be computed as under-

Particulars	**Quarter ended 30th June** (`)	**Quarter ended 30th September** (`)	**Quarter ended 31st December** (`)
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	2,015
SGST @ 0.5% [B1]	30,000	25,000	2,015
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) x 3]	60,000 [(1,40,000/7) x 3]	Nil [Paid on 10th day for goods transported between 11th to 20th day of the month, so the same will be

			assessed under regular scheme]
CGST @ 2.5% [A2]	1,500	1,500	-
SGST @ 2.5% [B2]	1,500	1,500	-
Total CGST [A1 + A2]	31,500	26,500	2,015
Total SGST [B1 + B2]	31,500	26,500	2,015
Total CGST liability for the period from 1st April to 2nd October		**60,015 [31,500 + 26,500 + 2015]**	
Total SGST liability for the period from 1st April to 2nd October		**60,015 [31,500 + 26,500 + 2015]**	

7. Shubhlaxmi Foods is engaged in supplying restaurant service in Maharashtra. In the preceding financial year, it had a turnover of ` 140 lakh from the restaurant service. Further, it had earned the bank interest of ` 20 lakh from the fixed deposits. You are required to advise Shubhlaxmi Foods whether it is eligible for the composition scheme under sub-sections (1) and (2) of section 10 in the current financial year. Further, assuming that in the current financial year, its turnover is ` 130 lakh from the supply of restaurant services and ` 10 lakh from the supply of farm labour in Maharashtra. It has also earned the bank interest of ` 30 lakh from the fixed deposits. Compute the tax payable by Shubhlaxmi Foods in the current FY.

ANSWER:

As per section 10(1) 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 [Second proviso to section 10(1)].

Although exempt services are included in determining the value of turnover in a State or Union territory, explanation to section 10(1) clarifies that for the purposes of second proviso to section 10(1), the value of exempt supply of services provided 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 for determining the value of turnover in a State or Union territory.

Further, the exempt services are also included in the aggregate turnover [Section 2(6)]. However, explanation 1 to section 10 excludes value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount from aggregate turnover.

In this backdrop, in the given case, the aggregate turnover of Shubhlaxmi Foods in the preceding FY is ` 140 lakh (since bank interest of ` 20 lakh from the fixed deposits will not be taken into account for computing aggregate turnover). Resultantly, it is eligible to opt for composition scheme under sub-sections (1) and (2) of section 10 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, tax payable @ 5% (2½% CGST+ 2½% SGST) of the turnover in the State by Shubhlaxmi Foods in the current financial year is as follows:

= 5% of ` 1,40,00,000 [` 1,30,00,000 + ` 10,00,000]

[(Bank interest of ` 30 lakh from the fixed deposits is not considered while computing turnover in the State for determining the tax payable under composition scheme (In terms of explanation 2 to section 10)]

= ` 7,00,000 [CGST = ` 3,50,000 and SGST = ` 3,50,000]

8. Bansal and Chandiok started a partnership firm of Chartered Accountants in Jaipur (Rajasthan) on 1st April. 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 1st August. Bansal and Chandiok wishes to opt to pay tax at concessional rate under section 10(2A). 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:

The composition scheme under sub-sections (1) and (2) of section 10 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, Bansal and Chandiok 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) 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, Bansal and Chandiok 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).

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 `20 lakh (viz. the threshold limit applicable for registration in the State of Rajasthan).

(ii) July-Sep quarter: While computing the tax payable by the firm in second quarter, the turnover from 1st April 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

9. Mr. Prem is running a restaurant in New Delhi. In the preceding financial year, it has an aggregate 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 small restaurants. He estimated the turnover of such services is upto ` 5 lakh.
Mr. Prem wishes to opt for composition scheme under sub-sections (1) and (2) of section 10 in the current financial year. You are required to advise him for same.

ANSWER:

As per section 10(1) 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 aggregate turnover of Mr. Prem was ` 120 lakh in preceding financial year (i.e. it did not exceed ` 1.5 crore), 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.

10. M/s Heeralal and Sons, registered in Karnataka, has opted to avail the benefit of composition scheme under sub-sections (1) and (2) of section 10. It has furnished the following details for the quarter ended on 30th June.

S. 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 quarter ended on 30th June in following independent situations:
(i) M/s Heeralal and Sons is a manufacturer
(ii) M/s Heeralal and Sons is a trader

ANSWER:

Computation of amount payable under composition scheme

(i) If M/s Heeralal and Sons is a manufacturer:

Tax is to be paid @ 1% (½% CGST+ ½% 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% (½% CGST + ½%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]

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

"Super ride" is a mobile application owned and managed by Perry India 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". Perry India Ltd. claims that cab service is provided by Jorawar Singh and hence, he is liable to pay GST. With reference to the provisions of IGST Act, 2017, determine who is the person liable to pay GST in this case?

ANSWER:

Section 5(5) of the 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 (ECO) means any person who owns, operates or manages digital or electronic facility or platform for supply of goods or services or both [Section 2(45)].

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

12. 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 under sub-sections (1) and (2) of section 10 for one of the place of business in the current year and wants to continue with registration under regular scheme 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), 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 under section 10(1) unless all such registered persons opt to pay tax under said composition scheme.

In the given case, since MN Ltd. has two places of business (they are not separate entities under the 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.

13. Ranveer Industries, registered in Himachal Pradesh, is engaged in making inter-State supplies of readymade garments. The aggregate turnover of Ranveer Industries in the preceding financial year is ` 70 lakh. It has opted for composition levy under sub-sections (1) and (2) of section 10 in the current financial year and paid tax for the April – June quarter of current year under composition levy.
The proper officer has levied penalty for wrongly availing the scheme on 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(1), 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 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 not exceeding the threshold limit of ` 75 lakh 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 and the provisions of section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty.
Thus, the action taken by the proper officer of levying the penalty for wrongly availing the composition scheme is valid in law.

AMENDMENTS MADE VIDE THE FINANCE ACT, 2020

The Finance Act, 2020 has become effective from 27.03.2020. However, most of the amendments made in the CGST Act and IGST Act vide the Finance Act, 2020 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till the time this Study Material is being released for printing. Therefore, the applicability or otherwise of such amendments for May 2021 and/or November 2021 examinations shall be announced by the ICAI only after such notification is issued by the Central Government.

In the table given below, the existing provisions[35] relating to section 10 are compared with the provisions as amended by the Finance Act, 2020.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the provisions given hereunder in place of the related provisions discussed in the Chapter.

Existing provisions	**Provisions as amended by the Finance Act, 2020**	**Remarks**
Sub-section (2) "The registered person shall be eligible to opt under sub-section (1), if– (a)……. (b) he is not engaged in making any supply of goods which are not leviable to tax under this Act (c) he is not engaged in making any inter-State outward supplies of goods (d) he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and (e)……. (f)……."	**Sub-section (2)** "The registered person shall be eligible to opt under sub-section (1), if– (a)……. (b) he is not engaged in making any supply of goods **or services** which are not leviable to tax under this Act (c) he is not engaged in making any inter-State outward supplies of goods **or services** (d) he is not engaged in making any supply of goods **or services** in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and (e)……. (f)……."	Section 10(2) is being amended to harmonise the conditions for eligibility for opting to pay tax under composition scheme under sub-sections (1) and (2) and under sub-section (2A) of the CGST Act

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CHAPTER-4 Exemptions from GST

EXAMPLES

(1) Examples of supply not leviable to tax are alcoholic liquor for human consumption, specified petroleum products namely Petroleum Crude, High Speed Diesel, Motor spirit (commonly known Petrol), Natural Gas and Aviation Turbine Fuel.

Exemption to specified activities or transactions

(2) Services **by way of** transfer of a going concern, as a whole or an independent part thereof.

(3) Services **by way of** renting of residential dwelling for use as residence.

Exemption to specified suppliers

(4) Services provided **by** the Central Government, State Government, Union territory or local authority where the consideration for such services does not exceed ` 5,000.

(5) Services **by** the Reserve Bank of India.

Exemption to specified recipients

(6) Services provided **to** the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory.

(7) Services provided **to** the Central Government, State Government, Union territory administration under any training programme, for which total expenditure is borne by the Central Government, State Government, Union territory administration.

Exemption to specified suppliers and specified recipients

(8) Services **by** the Employees' State Insurance Corporation **to** persons governed under the Employees; State Insurance Act, 1948.

(9) Services provided **by** the Insurance Regulatory and Development Authority of India **to** insurers under the Insurance Regulatory and Development Authority of India Act, 1999.

(10) Principal Notification No. 11/2017 CT (R) dated 28.06.2017 came into force with effect from 01.07.2017. Thereafter, a new entry - Entry no. 3(vi) was inserted w.e.f. 21.09.2017. Subsequently, an explanation was also inserted with respect to entry no. 3(vi) by issue of a notification on 26.07.2018 [i.e. within 1 year of the insertion of entry 3(vi)]. Although the effective date mentioned in the notification which inserted

said explanation was 27.07.2018, said explanation will be effective from the inception of entry 3(vi) in notification i.e. 21.09.2017 and not 27.07.2018.

(11) Sarvsewa Trust, a charitable trust registered under section 12AA of the Income-tax Act, 1961, has organized a Skill Development Programme for the old age people over the age of 65 years residing in Bangalore city (an urban area). Services provided by Sarvsewa Trust do not fall within the purview of 'charitable activities'. The activities relating to advancement of skill development relating to persons over the age of 65 years, are covered under the definition of 'charitable activities' only when such persons are residing in rural area.

(12) KMVN supplies numerous services, namely, medical facilities, catering services, security, accommodation services, etc. to the pilgrims undertaking Kailash-Mansarovar pilgrimage. Such services provided by KMVN in respect of the religious pilgrimage to Kailash-Mansarovar are covered under entry 60 and thus, are exempt.

13) Bhavyajyoti Foundation, a charitable trust registered under section 12AA of the Income-tax Act, 1961, has organized a 'Meditation Camp' for the old age people. GST would be exempt on the same as services provided by entity registered under section 12AA of the Income-tax Act, 1961 by way of advancement of religion, spirituality or yoga are exempt.

(14) Manavtaa Sansthaan, a charitable trust registered under section 12AA of the Income-tax Act, 1961, has organized a 'Basketball Training Camp' for teenagers. GST would be exempt on the same as services provided by entity registered under section 12AA of the Income-tax Act, 1961 by way of training or coaching in sports are exempt.

(15) Raamanand Joshi, a priest, charges ` 12,000 for conducting a religious ceremony on the birthday of Ghanshyam's son. The amount charged for the conduct of any religious ceremony is exempt from GST.

(16) Durgadevi Trust, a religious trust registered under section 12AA of the Income-tax Act, owns and manages a temple in their locality. It rents the commercial shops located in the precincts of the temple for a rent of ` 10,000 per month per shop. The consideration so received is liable to GST as such services are exempt only when the consideration is less than ` 10,000 per month.

(17) Sarvshiksha Foundation, an educational institution registered under section 10(23C)(v) of the Income-tax Act, owns and manages a gurudwara. It rents the community hall located in the precincts of the gurudwara for a rent of ` 9,000 per day for a marriage function. The consideration so received is exempt from GST as the consideration is less than ` 10,000 per day.

(18) Moolchand has leased out to a farmer – Tulsidas - a vacant land for agriculture. The land has a greenhouse and a storage shed which are incidental to its use for agriculture. Leasing of vacant land with a greenhouse and a storage shed which is incidental to its use for agriculture is exempt from GST.

(19) 'Dharam Institute of Technology' (DIT), a private engineering college in M.P., offers post graduate engineering programmes. All the engineering courses including the distance learning post graduate engineering programme offered by DIT are recognised by the law [The All India Council for Technical Education (AICTE)]. Since DIT imparts education as a part of a curriculum for obtaining a qualification recognised by the Indian law, the same is an educational institution.

20) 'Littleways Public School' is a school loacted in Tamil Nadu. The school has two branches – one is a pre-school and another is a higher secondary school affiliated to CBSE. A pre-school and a higher secondary school are educational institutions. Thus, Littleways Public School qualifies as an educational institution.

21) 'Kaladrishti ITI, Gorakhpur is engaged in providing skill development courses in other than designated trades notified under the Apprentices Act, 1961. Since courses offered by Kaladrishti ITI are not in designated trades notified under the Apprentices Act, 1961, education provided by it is not approved as vocational educational course as defined above. Resultantly, it doesn't qualify as an educational institution.

22) 'Super Minds', a coaching institute in Raipur, provides coaching for Institute of Banking Personnel Selection (IBPS) Probationary Officers Exam. Super Minds, being a coaching centre which trains candidates to secure a banking job, is not an educational institution in terms of the exemption notification.

23) Little Millennium – a pre school in outskirts of Mumbai – has subscribed the online journals on child development and experiential learning. Services of supply of online educational journals or periodicals provided, inter alia, to an institution providing services by way of pre-school education are not exempt.

24) SM Transporters has provided services of transportation of students and faculty from their residence to school and back, to Pathwheels School - a higher secondary school. Services of transportation of students, faculty and staff provided, inter alia, to an institution providing services by way of education up to higher secondary school or equivalent are exempt.

25) Shiksha College, offering degree courses, has to conduct its half yearly examination in November. For this purpose, it has paid the honorarium to paper setters and examiners (not on the rolls of Shiksha College) for their services. Further, it availed the printing services for printing the question papers (paper and content are provided by Shiksha College) for conducting examination. Services provided to an educational institution relating to admission to, or conduct of examination by, such institution are exempt. Therefore, services of paper setters and examiners and printing services availed by Shiksha College are exempt.

26) Gyaani Public School – a higher secondary school – has hired Suvidha Services Ltd. for security and housekeeping services in the school. Security and housekeeping services provided within the premises of, inter alia, a higher secondary school are exempt. Therefore, said services provided by Suvidha Services Ltd. are exempt. The school susbequently hired Suvidha Services Ltd. for providing the security and housekeeping services at School's Annual Day function organised in an auditorium outside the school campus. Security and housekeeping services provided to Gyaani Public School for School's Annual Day function organised outside the school campus will be taxable as only the security and housekeeping services performed **within the premises** of the higher secondary school are exempt.

27) Healthy Nursing Home specializes in undertaking plastic surgeries. One such surgery is conducted to repair cleft lip of a newborn baby. In view of above definition, plastic surgeries are not included in health care services. However, plastic surgery conducted to repair a cleft lip will be included in health care services as it reconstructs anatomy or functions of body affected due to congenital defects (i.e. cleft lip).

28) Aarogya Multispecialty Hospital provides palliative care to patients facing serious and life-threatening illness. Palliative care is given to improve the quality of life of patients who have a serious or life-threatening disease, but the goal of such care is not to cure the disease. On request, such care is also provided to patients at their homes. Health care service means 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. It is immaterial whether such service is provided at the clinical establishment or at the home of the patient or at any other place. Thus, palliative care for terminally ill patients provided at their homes is included in health care services.

29) Reiki healing treatment is not a recognized system of medicinces. Therefore, it is not included in health care services.

30) A small business entity is carrying on a business relating to consulting engineer services in Delhi. The aggregate turnover of the entity in the preceding financial year does not exceed the limit of ` 20 lakh. Thus, no tax is payable on the services received by it from Government or a local authority

31) The Karnataka Cricket Association, Bangalore requests the Commissioner of Police, Bangalore to provide security in and around the Cricket Stadium for the purpose of conducting the cricket match. The Commissioner of Police arranges the required security for an agreed consideration. In this case, services of providing security by the police personnel are not exempt. As the services are provided by Government, Karnataka Cricket Association is liable to pay the tax on the consideration paid, albeit under reverse charge mechanism.

32) Public Works Department of Karnataka entered into an agreement with M/s. ABC, a construction company, for construction of its office complex for an agreed consideration. In the agreement dated 10th July, it was agreed by both the parties that M/s. ABC shall complete the construction work and handover the project on or before 31st December. It was further agreed that any breach of the terms of contract by either party would give right to the other party to claim for damages or penalty. M/s. ABC did not complete the construction and did not handover the project by the specified date i.e., on or before 31st December. As pe the contract, the Department asked for damages/penalty from M/s. ABC and threatened to go to the court if not paid. Resultantly, M/s. ABC paid an amount of ` 10,00,000/- to the Department for non-performance of contract. Amount paid by M/s. ABC to Department is exempt from payment of tax.

33) Services by way of transportation of passengers [not predominantly for tourism purpose] on a vessel, from Kolkata to Port Blair (mainland to island) or Port Blair to Rose Island (inter island) is covered in item (d) of Entry 17 since such transportation is between two places located in India.

34) Hari Prasad owns a truck and operates it himself. He carries the goods booked for his truck without issuance of consignment note. Services provided by Hari Prasad by way of transportation of goods by road are exempt under Entry 18 of the Notification.

35) Subhashini Bank has collected processing fees from its customers on sanction of loan to them. Interest does not include processing fee on sanction of the loan. Hence, the processing fee is not covered in Entry 27 and is thus, taxable. Similarly, minimum balance charges collected by the bank from current account and saving account holders are considered as charges collected over and above interest on loan. Hence, the same are not covered in Entry 27 and is thus, taxable.

36) Tanatan Bank has collected interest on credit card issued to its customers by it. Interest involved in credit card services is specifically excluded from Entry 27 and is thus, taxable.

37) X sells a mobile phone to Y. The cost of mobile phone is ` 40,000. However, X gives Y an option to pay in installments, ` 11,000 every month before 10th day of the following month, over next four months (` 11,000/- × 4 = `44,000/-). As per the contract, if there is any delay in payment by Y beyond the scheduled date, Y would be liable to pay additional/ penal interest amounting to ` 500/- per month for the delay. In some instances, X is charging Y ` 40,000/- for the mobile and is separately issuing another invoice for providing the services of extending loans to Y, the consideration for which is the interest of 2.5% per month and an additional/ penal interest amounting to ` 500/- per month for each delay in payment. In this case, the amount of penal interest is to be included in the value of supply[6]. The transaction between X and Y is for supply of taxable goods i.e. mobile phone. Accordingly, the penal interest would be taxable as it would be included in the value of the mobile, irrespective of the manner of invoicing.

38) X sells a mobile phone to Y. The cost of mobile phone is ` 40,000/-. Y has the option to avail a loan at interest of 2.5% per month for purchasing the mobile from M/s. ABC Ltd. The terms of the loan from M/s. ABC Ltd. allows Y a period of four months to repay the loan and an additional/ penal interest @ 1.25% per month for any delay in payment. Here, the additional/ penal interest is charged for a transaction between Y and M/s. ABC Ltd., and the same is getting covered under exemption Entry 27. Consequently, in this case the 'penal interest' charged thereon on a transaction between Y and M/s. ABC Ltd. would not be subject to GST as the same would be covered under said exemption entry. However, any service fee/ charge or any other charges, if any, are levied by M/s. ABC Ltd. in respect of the transaction related to extending deposits, loans or advances does not qualify to be interest as defined in exemption notification, and accordingly will not be exempt. Moreover, the value of supply of mobile by X to Y would be ` 40,000/- for the purpose of levy of GST.

39) Supply of manpower for cleanliness of roads, public places, architect services, consulting engineer services, advisory services, and like services provided by business entities not involving any supply of goods would be treated as supply of pure services.

40) A governmental authority awards the work of maintenance of street-lights in a Municipal area to an agency which involves apart from maintenance, replacement of defunct lights and other spares. In this case,

the scope of the service involves maintenance work and supply of goods, i.e. composite supply of goods and services.

41) Pyarelal & Co. has obtained registration under GST in the preceding financial year. In the current FY, it sought legal consultancy services for its business from Nyay Advocates – a partnership firm of advocates. The legal services so received by Pyarelal & Co. are not exempt because its aggregate turnover exceeds the threshold exemption limit of registration in the preceding financial year. Further, the tax on the said legal services is payable by Pyarelal & Co. under reverse charge.

42) RWA of Chulbul Housing Society, registered under GST, collected the maintenance charges of ` 6,000 per month per member. In this case, no GST is to be charged by the RWA.

43) If, in above example, other things remaining the same, the RWA of Chulbul Housing Society collected the maintenance charges of ` 9,000 per month per member, GST @18% shall be payable on the entire amount of ` 9,000 and not on [` 9,000 - ` 7,500] = ` 1,500.

44) The turnover of RWA of Bulbul Housing Society located in New Delhi in a financial year is ` 15 lakh. It has collected the maintenance charges of ` 6,000 per month per member. RWA is not providing any other taxable service to its members. In this case, RWA is not required to take registration under GST since its aggregate turnover is less than the applicable threshold limit of ` 20 lakh.

45) In the above example, other things remaining the same, if the maintenance charges collected by the RWA are ` 8,000 per month per member, RWA is still not required to take registration under GST since its aggregate turnover is less than the applicable threshold limit of ` 20 lakh.

46) Gareeb Chand owns two residential apartments in a residential complex and pays ` 15,000/- per month as maintenance charges towards maintenance of these two apartments to the RWA (` 7,500/- per month in respect of each residential apartment). In this case, the exemption from GST shall be available with respect to maintenance charges paid for each apartment.

47) RWA of Tintin Housing Society, registered under GST, has collected the maintenance charges of ` 9,000 per month per member from 1,000 members of the society in the month of May. For paying the GST of ` 16,20,000 [payable @ 18% on the amount of ` 90,00,000], RWA can utilise the ITC of GST of ` 1,00,000 paid by it on purchase of swings for garden, ITC of ` 20,000 on electric cables and ITC of ` 15,000 on plumbing services.

48) Nishant owns a truck which he has rented to Sindhu and Bansal Transport Agency - a GTA. Services by way of giving on hire a means of transportation of goods [truck in the given case] to a GTA [Sindhu and Bansal Transport Agency], are exempt from tax. However, if Nishant had rented a vehicle designed to carry passengers, said activity is not exempt under this entry.

QUESTIONS

1. Examine whether the following independent intra-State services are exempt from GST:
(a) 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).
(b) Minimum balance charges collected by Dhanvarsha Bank from current account and saving account holders.
ANSWER:
(a) 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.
(b) 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.

2. 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.
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.
You are required to examine whether the stand taken by the Department is correct.
ANSWER:
No, the stand taken by the Department is not correct.

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.
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 recognised 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 the entire amount charged by the hospitals 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 clarifies 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

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:

	Amount (`)
Renting of residential dwelling for use as a residence	18,00,000
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 GST liability of Sarva Sugam Charitable Trust for the month of August assuming that the above amounts are exclusive of GST and rate of GST, wherever applicable, is 18%.
Note: The rooms/ Kalyanamandapam/ halls/ open space/ shops owned by the trust are located within the precincts of a religious place, meant for general public, owned by the trust.
ANSWER:
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 are exempt from GST vide exemption notification. However, said exemption is not available if:
(i) charges for rented rooms are ` 1,000 per day or more;
(ii) charges for rented community halls, Kalyan mandapam, open area are` 10,000 per day or more;
(iii) charges for rented shops are ` 10,000 per month or more.
Further, services by way of renting of residential dwelling for use as residence are also exempt vide exemption notification.
Computation of GST liability of Sarva Sugam Charitable Trust for August

Particulars	Value (`)	GST @ 18% (`)
Renting of residential dwelling for use as residence [Exempt vide exemption notification]	18,00,000	Nil
Renting of rooms for devotees [Exempt since charges per day are below `1,000]	6,00,000	Nil
Renting of Kalyanamandapam [Taxable since charges per day exceed `10,000]	12,00,000	2,16,000
Renting of halls and open spaces [Exempt since charges per day are below ` 10,000]	10,75,000	Nil
Renting of shops for business [Exempt since charges per month are below `10,000]	4,75,000	Nil

Renting of shops for business [Taxable since charges per month exceed ` 10,000]	7,50,000	1,35,000
Total	**3,51,000**	

10. Mr. Nagarjun, a registered supplier of Chennai, has received the following amounts in respect of the activities undertaken by him during the month of September:

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 GST liability (ignoring ITC provisions) of Mr. Nagarjun for the month of September assuming that the rate of GST, wherever applicable, is 18% except the GTA services where the rate of GST is 5%. Working notes should form part of your answer.
ANSWER:
Computation of gross GST liability of Mr. Nagarjun

Particulars	Value (`)	GST (`)
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	9,000
Commission received as an insurance agent from insurance company [Note 2]	Nil	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	2,700
Services provided to foreign diplomatic mission located in India [Note 4]	28,000	5,040
Funeral services [Note 5]	Nil	Nil

Supplies on which Mr. Nagarjun is liable to pay GST under reverse charge		
Services received from GTA [Note 6]	45,000	2,250
GST payable		**18,990**

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. Thus, service provided as selector of team is liable to GST.

(2) Commission for providing insurance agent's services is liable to GST. However, 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. 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, services provided to such mission are taxable.

(5) Funeral services being covered in Schedule III of CGST Act 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.

11. 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	2,50,000

on rent for competitive exam training academy	
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.

ANSWER:

Computation of gross GST liability of Vividh Pvt. Ltd.

Particulars	**Value of supply (`)**	**GST @ 18% (`)**
Services provided by way of labour contracts for repairing a single residential unit otherwise than as a part of residential complex [Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex are exempt vide exemption notification. Labour contracts for repairing, are thus, taxable.]	1,30,000	2,34,000
Fee received from students of competitive exam training academy [Fee received from students of competitive exam training academy is taxable as it is not an educational institution since competitive exam training does not lead to grant of a recognized qualification]	5,40,000	97,200
Buses each with seating capacity of 72 passengers given on hire to State Transport Undertaking [Services by way of giving on hire to a state transport undertaking (STU), a motor vehicle meant to carry more than 12 passengers, are exempt from GST vide exemption notification.]	6,00,000	Nil
Services on which tax is payable under reverse charge:		
Rent paid to Local Municipal Corporation [GST is payable under reverse charge in case of renting of immovable property services supplied by a local authority to a registered person.]	2,50,000	45,000
GTA services availed [Since GTA is paying tax @ 12%, tax is payable under forward charge by GTA only and not by Vividh Pvt. Ltd.]	1,80,000	Nil
Gross GST payable		**3,76,200**

12. **"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 to September:

S. No.	Particulars	KIT	Little Millennium	Bright Minds	Spring
(`)		(`)	(`)		(`)
(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	3,20,000	2,60,000	1,80,000	5,00,000
	(Catering services for KIT include a sum of ` 60,000 for catering at a student event organised in a banquet hall outside the campus)				

(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

With the help of the above details, determine the amount of GST payable, if any, (ignoring ITC provisions) on goods and services received during April to September by the various educational institutions run by the 'Chanakya Academy'; all the amounts given above are exclusive of taxes, wherever applicable.
Note: Rate of GST on goods is 12%, catering service is 5% and on other services is 18%.

ANSWER:
(i) Exemption notification exempts select services provided to an educational institution. Here, the "educational institution" means an institution providing services by way of,-
(i) pre-school education and education up to higher secondary school or equivalent;
(ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
(iii) education as a part of an approved vocational education course;
The select services which are exempt when provided to an educational institution are-
(i) transportation of students, faculty and staff;
(ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;
(iii) security or cleaning or house-keeping services performed in such educational institution;
(iv) services relating to admission to, or conduct of examination by, such institution;
(v) 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, 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 exempt17.
In the given case, 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)]. Therefore, since KIT imparts education as a part of a curriculum for obtaining a qualification recognised 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 to September 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 of examination]		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 to such educational institutions]	51,600 [4,30,000 x 12%]		30,960 [2,58,000 x 12%]	41,280 [3,44,000 x 12%]
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 centres 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	86,400 [4,80,000 x 18%]	Exempt	23,400	Exempt

faculty from their residence to the institutions and back			[1,30,000 x 18%]	
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 housekeeping service provided to pre-school and the higher secondary school for the student event organised 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.]	1,08,000 [6,00,000 x 18%]	Exempt	67,500 [3,75,000 x 18%]	14,400 [80,000 x 18%]
Total GST payable on goods and services received	2,62,000	14,400	2,15,460	98,880

CHAPTER-5 PLACE OF SUPPLY

EXAMPLES

(1) MA Pvt. Ltd. of Nasik, Maharashtra sells 10 refrigerators to MB Pvt. Ltd. of Pune, Maharashtra for delivery at place of business of MB Pvt. Ltd. in Pune. The place of supply is Pune in Maharashtra.

(2) MA Pvt. Ltd. of Nasik, Maharashtra sells 20 refrigerators to MC Pvt. Ltd. of Ahmedabad, Gujarat for delivery at place of business of MC Pvt. Ltd. in Ahmedabad. The place of supply is Ahmedabad.

3) X & Co. (a supplier registered in Uttar Pradesh having principal place of business at Noida) asks Y & Co. of Ahmedabad, Gujarat to deliver 50 washing machines to its buyer Z & Co. at Jaipur, Rajasthan. In this case, two supplies are involved, one between X & Co. and Z & Co. and other between Y & Co. and X & Co.
While the former supply is covered under clause (a) of section 10(1), the latter one, i.e. between Y & Co. and X & Co. is covered under clause (b) of section 10(1). Accordingly, in this case, the place of supply of goods is not the location of delivery of such goods (Jaipur) but the principal place of business of third person, i.e. principal place of business of X & Co. located at Noida.

4) MA Pvt. Ltd. (New Delhi) has leased his machine (cost ` 8,00,000) to MB Pvt. Ltd. (Noida, Uttar Pradesh) for production of goods on a monthly rent of ` 40,000. After 14 months MB Pvt. Ltd. requested MA Pvt. Ltd. to sell the machine to it for ` 4,00,000, which is agreed to by MA Pvt. Ltd. In this case, there will be no movement of goods and the same will be sold on as is where is basis. Thus, the location of the machine at the time of such sale will be the place of supply, i.e. Noida.

(5) XZ Ltd. (Mumbai, Maharashtra) opens a new branch office at Gurugram, Haryana. It purchases a building for office from KTS Builders (Gurugram). It also enters into a separate contract with KTS Builders for purchase of pre-installed office furniture and fixtures in the building. Though there will be no GST liability on purchase of building (as sale of building is covered under Schedule III to CGST Act), office furniture and fixtures will be liable to GST. Since there is no movement of office furniture and fixtures, the place of supply of such goods is their location at the time of delivery to the recipient (XZ Ltd.), i.e. Gurugram.

6) MA Pvt. Ltd. (New Delhi) purchases a machine from MB Pvt. Ltd. (New Delhi) for being installed in its factory at Noida, Uttar Pradesh. The place of supply is the site at which the machine is installed, i.e. Noida.

(7) Pure Refineries (Mumbai, Maharashtra) gives a contract to PQ Ltd. (Ranchi, Jharkhand) to supply a machine which is required to be assembled in a power plant in its refinery located in Kutch, Gujarat. The place of supply is the site of assembly of machine, i.e. Kutch even though Pure refineries is located in Maharashtra.

8) Mr. X (New Delhi) boards the New Delhi-Kota train at New Delhi. He sells the goods taken on board by him (at New Delhi), in the train, at Jaipur during the journey. The place of supply of goods is the location at which the goods are taken on board, i.e. New Delhi and not Jaipur where they have been sold.

9) MC Pvt. Ltd. imports electric kettles from China for its Kitchen Store in Noida, Uttar Pradesh. MC Pvt. Ltd. is registered in Uttar Pradesh. The place of supply is Noida.

10) MR Pvt. Ltd. (New Delhi) exports spices from New Delhi to London, UK. The place of supply is London.

11) Mr. A (a Chartered Accountant registered in New Delhi) makes a supply of service to his client MB Pvt. Ltd. of Noida, Uttar Pradesh (registered in Uttar Pradesh). In this case, since the supply is made to a registered person, the place of supply is the location of the registered recipient, i.e. Noida.

(12) Mr. A, a Chartered Accountant in Gurugram, Haryana, (registered in Haryana) provides consultancy services to his client Mr. C who is a resident of New Delhi but is not registered under GST. If the address of Mr. C is available in the records of Mr. A, location of Mr. C, i.e. New Delhi will be the place of supply, else the location of Mr. A, which is Gurugram, will be the place of supply.

13) KTS Builders (Mumbai) is constructing a factory building for PLM Pvt. Ltd. (Kolkata), in New Delhi. The place of supply is the location of the immovable property, i.e. New Delhi.

(14) Shah and Shah, an architectural firm at Kolkata, has been hired by MKF Builders of Mumbai to draw up a plan for a high rise building to be constructed by them in Ahmedabad, Gujarat. The place of supply is the place where the immovable property is intended to be located, i.e. Ahmedabad.

(15) Mr. Ramesh, a Chartered Accountant, (New Delhi) travels to Mumbai for business and stays in a hotel there. The place of supply of accommodation service is the place where the hotel is located, i.e. Mumbai.

(16) Mr. X, a consulting engineer based in Mumbai, Maharashtra renders professional services in respect of an immovable property of Mr. Y (Bangalore) located in Australia. Since the immovable property is located outside India, the place of supply of service is the location of recipient, i.e. Bangalore and not the place where the immovable property is located (Australia).

17 - Lodging accommodation by hotel/inn/guest house etc. and ancillary services excluding the property located in 2 or more contiguous States/ Union territories or both

A hotel chain X charges a consolidated sum of ` 30,000/- for stay in its two establishments in Delhi and Agra, where the stay in Delhi is for 2 nights and the stay in Agra is for 1 night. The place of supply in this case is both in the Union territory of Delhi and in the State of Uttar Pradesh and the service shall be deemed to have been provided in the Union territory of Delhi and in the State of Uttar Pradesh in the ratio 2:1 respectively. The value of services provided will thus be apportioned as ` 20,000/- in the Union territory of Delhi and ` 10,000/- in the State of Uttar Pradesh.

18 - Other services provided in relation to immovable property

There is a piece of land of area 20,000 square feet which is partly in State S1 say 12,000 square feet and partly in State S2, say 8000 square feet. Site preparation work has been entrusted to T. The ratio of land in the two states works out to 12:8 or 3:2 (simplified). The place of supply is in both S1 and S2. The service shall be deemed to have been provided in the ratio of 12:8 or 3:2 (simplified) in the States S1 and S2 respectively. The value of the service shall be accordingly apportioned between the States.

19 - Lodging accommodation by a house boat or vessel and its ancillary services

A company C provides the service of 24 hours accommodation in a houseboat, which will transit both in Kerala and Karnataka in as much as the guests board the house boat in Kerala and stay there for 22 hours but it also moves into Karnataka for 2 hours (as declared by the service provider). The place of supply of this service is in the States of Kerala and Karnataka. The service shall be deemed to have been provided in the ratio of 22:2 or 11:1 (simplified) in the states of Kerala and Karnataka, respectively. The value of the service shall be accordingly apportioned between the States.

(20) Mr. A, a businessman from Pune dines in a restaurant at Mumbai while on a business trip. The place of supply of restaurant service is the location where such service is performed, i.e. Mumbai.

(21) Mr. Timmy Ferreira, a makeup artist at Kolkata, goes to Jaipur, Rajasthan for doing the makeup of Ms. Simran Kapoor, a Bollywood actress based in Mumbai. The place of supply is the location where such service is performed, i.e. Jaipur.

22) DEO Consultants (Kolkata) impart GST training to accounts and finance personnel of Sun Cements Ltd., Guwahati, Assam (registered office) at the company's Kolkata office which is also registered under GST. Since the contract is entered with Guwahati office, and it being a registered recipient, the place of supply is the location of the registered person, i.e. Guwahati.

(23) Mr. Suresh (unregistered person based in Noida) signs up with Excellent Linguistics (New Delhi) for training on English speaking at their New Delhi Centre. Since the recipient is unregistered, the place of supply is the location where services are provided, i.e. New Delhi.

24) Mr. A, a resident of Ghaziabad, Uttar Pradesh, buys a ticket for a circus organized at Gurugram, Haryana by a circus company based in New Delhi. The place of supply is the location where the circus is held, i.e. Gurugram.

(25) Mr. B of New Delhi buys a ticket for an amusement park located in Noida, Uttar Pradesh. The place of the supply is the location where the park is located, i.e. Noida.

26) Mega Events, an event management company at New Delhi, organizes an award function for Shah Diamond Merchants of Ahmedabad (registered in Gujarat), at Mumbai. Since the recipient is a registered person, the place of supply is the location of the recipient, i.e. Ahmedabad.

(27) Mega Events, an event management company at New Delhi, organizes an award function for Shah Diamond Merchants of Ahmedabad (registered in Gujarat), in Mauritius. Since the recipient is a registered person, the place of supply is the location of the recipient, i.e. Ahmedabad.

(28) Grand Wedding Planners (Chennai) is hired by Mr. Ramesh (unregistered person based in Hyderabad) to plan and organise his wedding at New Delhi. The recipient being an unregistered person, the place of supply is the location where the event is held, i.e. New Delhi.

(29) Grand Wedding Planners (Chennai) is hired by Mr. Ramesh (unregistered person based in Hyderabad) to plan and organise his wedding in Seychelles. The recipient being an unregistered person and the event held outside India, the place of supply is the location of the recipient, i.e. Hyderabad and not the location where the event is held, i.e. Seychelles.

30) An event management company E has to organize some promotional events in States S1 and S2 for a recipient R (unregistered). 3 events are to be organized in S1 and 2 in S2. They charge a consolidated amount of ` 10,00,000 from R. The place of supply of this service is in both the States S1 and S2. Say the proportion arrived at by the application of generally accepted accounting principles is 3:2. The service shall be deemed to have been provided in the ratio 3:2 in S1 and S2 respectively. The value of services provided will thus be apportioned as ` 6,00,000/- in S1 and ` 4,00,000/- in S2.

31) M/s XYZ Pvt. Ltd. is a registered company in New Delhi. It sends its courier to Pune through M/s Brue Air Courier Service. The recipient being registered person, the place of supply is the location of recipient, i.e. New Delhi.

(32) Mr. Y, an unregistered person, of New Delhi sends a courier to his brother in Amritsar, Punjab. The recipient being unregistered person, the place of supply is the location where goods are handed over for their transportation, i.e. New Delhi.

(33) PR Pvt. Ltd., a Goods Transportation Agency based in Kanpur, Uttar Pradesh, is hired by Hajela Enterprises (registered supplier in Kanpur) to transport its consignment of goods to a buyer in New Delhi. The recipient being registered, the place of supply is the location of recipient, i.e. Kanpur.

(34) ST Pvt. Ltd., a Goods Transportation Agency based in Noida, Uttar Pradesh, is hired by Chhaya Trade Links (registered supplier in New Delhi) to transport its consignment of goods to a buyer in Kanpur, Uttar Pradesh. The recipient being registered, the place of supply is the location of recipient, i.e. New Delhi.

(35) Mr. Srikant, a manager in a Bank, is transferred from Bareilly, Uttar Pradesh to Bhopal, Madhya Pradesh. Mr. Srikant's family is stationed in Kanpur, Uttar Pradeh. He hires Goel Carriers of Lucknow, Uttar Pradesh

(registered in Uttar Pradesh), to transport his household goods from Kanpur to Bhopal. The recipient being unregistered person, the place of supply is the location where goods are handed over for their transportation, i.e. Kanpur.

(36) M/s JKL Pvt. Ltd. is a registered company in Chennai. It ships goods to its customer in London, United Kingdom through M/s Strong Logistics, a shipping company. The goods being transported outside India, the place of supply is the location of destination of such goods, i.e. London, (UK).

37) Mr. Amar (registered person in New Delhi) travels from Mumbai to Bangalore in Airjet flight. Mr. Amar has bought the tickets for the journey from Airjet's office registered in New Delhi. The place of supply is the location of recipient, i.e. New Delhi.

(38) Mr. C (unregistered person in Chennai) has come to Delhi on a vacation. He buys pre-paid Delhi Metro Card from Delhi Metro (New Delhi) for hassle free commute in the National Capital Region. Recipient being unregistered person, the place of supply is the address of Mr. C, i.e. Chennai. If address of Mr. C is not available with the Delhi Metro, the place of supply will be the location of the supplier of services, i.e. New Delhi.

(39) Mr. Shyam, an unregistered person, based in Gurugram, Haryana books a two-way air journey ticket from New Delhi to Mumbai on 5th December. He leaves New Delhi on 10th December in a late-night flight and lands in Mumbai the next day. He leaves Mumbai on 14th December in a morning flight and lands in New Delhi the same day. The return journey is treated as a separate journey, even if the tickets for onward and return journey are issued at the same time. Thus, being an unregistered person, the place of supply for the outward and return journeys are the locations where the unregistered person embarks on the conveyance for the continuous journey, i.e. New Delhi and Mumbai respectively.

Examples of issue of right to passage for future use-point of boarding not known at the time of issue of right

(40) An airline may issue seasonal tickets, containing say 10 voucher which could be used for travel between any two locations in the country.

(41) The card issued by New Delhi metro could be used by a person located in Noida, or New Delhi or Faridabad, without the New Delhi metro being able to distinguish the location or journeys at the time of receipt of payment.

42) Mr. X is travelling from Delhi to Mumbai in an Airjet flight. He desires to watch an English movie during the journey by making the necessary payment. The place of supply of such service of showing 'movie on demand' is the first scheduled point of departure of the conveyance for the journey, i.e. Delhi.

43) Mr. X (Kolkata) gets a landline phone installed at his home from Skybel Ltd. The place of supply is the location where the telecommunication line is installed, i.e. Kolkata.

(44) Mr. Y (Mumbai) gets a DTH installed at his home from RT Ltd. The place of supply is the location where the DTH is installed, i.e. Mumbai.

(45) Mr. D (Mumbai) takes a post-paid mobile connection in Mumbai from Skybel Ltd and gives his residence address at Mumbai as the address for billing with supplier. The place of supply is the location of billing address of the recipient, i.e. Mumbai.

(46) Mr. E (New Delhi) gets his post-paid mobile bill (billing address New Delhi) paid online from Goa. The place of supply is the location of the billing address of the recipient, i.e. New Delhi.

(47) Mr. C (Pune) purchases a pre-paid card from a selling agent in Mumbai. The place of supply is the address of the selling agent or re-seller, i.e. Mumbai.

(48) Mr. F (Puducherry) gets a pre-paid mobile recharged from a grocery shop in Chennai. The place of supply is the location where such pre-payment is received, i.e. Chennai.

49 – Circuit between two points or places

A company T installs a leased circuit between the Delhi and Mumbai offices of a company C. The starting point of this circuit is in Delhi and the end point of the circuit is in Mumbai. Hence, one point of this circuit is in Delhi and another in Maharashtra. The place of supply of this service is in the Union territory of Delhi and the State of Maharashtra. The service shall be deemed to have been provided in the ratio of 1:1 in the Union territory of Delhi and the State of Maharashtra, respectively.

50 – Intermediate point or place in the circuit

A company T installs a leased circuit between the Chennai, Bengaluru and Mysuru offices of a company C. The starting point of this circuit is in Chennai and the end point of the circuit is in Mysuru. The circuit also connects Bengaluru. Hence, one point of this circuit is in Tamil Nadu and two points in Karnataka. The place of supply of this service is in the States of Tamil Nadu and Karnataka. The service shall be deemed to have been provided in the ratio of 1:2 in the States of Tamil Nadu and Karnataka, respectively.

51 – Intermediate point or place in the circuit

A company T installs a leased circuit between the Kolkata, Patna and Guwahati offices of a company C. There are 3 points in this circuit in Kolkata, Patna and Guwahati. One point each of this circuit is, therefore, in West Bengal, Bihar and Assam. The place of supply of this service is in the States of West Bengal, Bihar and Assam. The service shall be deemed to have been provided in the ratio of 1:1:1 in the States of West Bengal, Bihar and Assam, respectively.

52) Mr. A (Chennai) buys shares from a broker in BSE (Mumbai). The place of supply is the location of the recipient of services in the records of the supplier, i.e. Chennai.

(53) Mr. B (New Delhi) withdraws money from Best Bank's ATM in Amritsar. Mr. B has crossed his limit of free ATM withdrawals. The place of supply is the location of the recipient of services in the records of the supplier, i.e. New Delhi.

(54) Mr. C from Varanasi, Uttar Pradesh, visits a bank registered in New Delhi for getting a demand draft made. Mr. C does not have any account with the said bank. Therefore, since the location of recipient is not available in the records of the supplier, the place of supply is the location of the supplier of services, i.e. New Delhi.

55) Mr. A, CEO of XY Ltd., Mumbai (a company registered in Maharashtra) buys insurance cover for the inventory stored in company's factory located at Mumbai, from Excellent Insurers, Chennai (registered in Tamil Nadu). The place of supply is the location of the registered recipient, i.e. Mumbai.

56) Ms. B (unregistered resident of Kolkata) goes to her native place Patna, Bihar and buys a medical insurance policy for her parents there from Safe Insurers, Patna (registered in Bihar). The place of supply is the location of the recipient of services in the records of the supplier, i.e. Patna.

57 - Advertisements in newspapers and publications

ABC is a government agency which deals with the all the advertisement and publicity of the Government. It has various wings dealing with various types of publicity. In furtherance thereof, it issues release orders to various agencies and entities. These agencies and entities thereafter provide the service and then issue invoices to ABC indicating the amount to be paid by them. ABC issues a release order to a newspaper for an advertisement on 'Beti bachao beti padhao', to be published in the newspaper DEF (whose head office is in Delhi) for the editions of Delhi, Pune, Mumbai, Lucknow and Jaipur. The release order will have details of the newspaper like the periodicity, language, size of the advertisement and the amount to be paid to such a newspaper.
The place of supply of this service shall be in the Union territory of Delhi, and the States of Maharashtra, Uttar Pradesh and Rajasthan. The amounts payable to the Pune and Mumbai editions would constitute the proportion of value for the State of Maharashtra which is attributable to the dissemination in Maharashtra. Likewise, the amount payable to the Delhi, Lucknow and Jaipur editions would constitute the proportion of value attributable to the dissemination in the Union territory of Delhi and States of Uttar Pradesh and Rajasthan respectively. DEF should issue separate State-wise and Union territory-wise invoices based on the editions.

58 - Advertisements through printed material like pamphlets, leaflets, diaries, calendars, T-shirts, etc.

As a part of the campaign 'Swachh Bharat', ABC has engaged a company GH for printing of 1,00,000 pamphlets (at a total cost of ` 1,00,000) to be distributed in the States of Haryana, Uttar Pradesh and Rajasthan. In such a case, ABC should ascertain the breakup of the pamphlets to be distributed in each of the three States, i.e. Haryana, Uttar Pradesh and Rajasthan, from the Ministry or department concerned at the time of giving the print order. Let us assume that this breakup is 20,000, 50,000 and 30,000 respectively. This breakup should be indicated in the print order. The place of supply of this service is in Haryana, Uttar Pradesh and Rajasthan. The ratio of this breakup, i.e. 2:5:3 will form the basis of value attributable to the dissemination in each of the three States. Separate invoices will have to be issued State-wise by GH to ABC indicating the value pertaining to that State, i.e. ` 20,000 - Haryana, ` 50,000 - Uttar Pradesh and ` 30,000 - Rajasthan.

59 - Advertisements in hoardings (other than those on trains

ABC as part of the campaign 'Saakshar Bharat' has engaged a firm IJ for putting up hoardings near the Airports in the 4 metros, i.e. Delhi, Mumbai, Chennai and Kolkata. The release order issued by ABC to IJ will have the city-wise, location-wise breakup of the amount payable for such hoardings.
The place of supply of this service is in the Union territory of Delhi and the States of Maharashtra, Tamil Nadu and West Bengal. In such a case, the amount actually paid to IJ for the hoardings in each of the 4 metros will constitute the value attributable to the dissemination in the Union territory of Delhi and the States of Maharashtra, Tamil Nadu and West Bengal respectively. Separate invoices will have to be issued State-wise and Union territory-wise by IJ to ABC indicating the value pertaining to that State or Union territory.

60 - Advertisements on trains

ABC places an order on KL for advertisements to be placed on a train with regard to the 'Janani Suraksha Yojana'. The length of a track in a State will vary from train to train. Thus, for advertisements to be placed on the Hazrat Nizamuddin Vasco Da Gama Goa Express which runs through Delhi, Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra, Karnataka and Goa, KL may ascertain the total length of the track from Hazrat Nizamuddin to Vasco Da Gama as well as the length of the track in each of these States and Union territory from the website www.indianrail.gov.in. The place of supply of this service is in the Union territory of Delhi and States of Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra Karnataka and Goa. The value of the supply in each of these States and Union territory attributable to the dissemination in these States will be in the ratio of the length of the track in each of these States and Union territory. If this ratio works out to say 0.5:0.5:2:2:3:3:1, and the amount to be paid to KL is ` 1,20,000, then KL will have to calculate the State-wise and Union territory-wise breakup of the value of the service, which will be in the ratio of the length of the track in each State and Union territory. In the given example, the State-wise and Union territory-wise breakup works out to Delhi (` 5,000), Haryana (` 5,000), Uttar Pradesh (` 20,000), Madhya Pradesh (` 20,000), Maharashtra (` 30,000), Karnataka (` 30,000) and Goa (` 10,000). Separate invoices will have to be issued State-wise and Union territory-wise by KL to ABC indicating the value pertaining to that State or Union territory.

61 - Advertisements on railway tickets

ABC has issued a release order to MN for display of advertisements relating to the 'Ujjwala' scheme on the railway tickets that are sold from all the Stations in the States of Madhya Pradesh and Chattisgarh.
The place of supply of this service is in Madhya Pradesh and Chattisgarh. The value of advertisement service attributable to these two States will be in the ratio of the number of railway stations in each State as ascertained from the Railways or from the website www.indianrail.gov.in. Let us assume that this ratio is 713:251 and the total bill is ` 9,640. The breakup of the amount between Madhya Pradesh and Chattisgarh in this ratio of 713:251 works out to ` 7,130 and ` 2,510 respectively. Separate invoices will have to be issued State-wise by MN to ABC indicating the value pertaining to that State.

62 - Advertisements on radio stations

For an advertisement on 'Pradhan Mantri Ujjwala Yojana', to be broadcast on a FM radio station OP, for the radio stations of OP Kolkata, OP Bhubaneswar, OP Patna, OP Ranchi and OP Delhi, the release order issued by

ABC will show the breakup of the amount which is to be paid to each of these radio stations.
The place of supply of this service is in West Bengal, Odisha, Bihar, Jharkhand and Delhi. The place of supply of OP Delhi is in Delhi even though the studio may be physically located in another State. Separate invoices will have to be issued State-wise and Union territory-wise by MN to ABC based on the value pertaining to each State or Union territory.

63 - Advertisement on television channels

ABC issues a release order with QR channel for telecasting an advertisement relating to the 'Pradhan Mantri Kaushal Vikas Yojana' in the month of November, 2017. In the first phase, this will be telecast in the Union territory of Delhi, States of Uttar Pradesh, Uttarakhand, Bihar and Jharkhand. The place of supply of this service is in Delhi, Uttar Pradesh, Uttarakhand, Bihar and Jharkhand. In order to calculate the value of supply ttributable to Delhi, Uttar Pradesh, Uttarakhand, Bihar and Jharkhand, QR has to proceed as under — I. QR will ascertain the viewership figures for their channel in the last week of September 2017 from the Broadcast Audience Research Council.

Let us assume it is 1,00,000 for Delhi and 2,00,000 for the region comprising of Uttar Pradesh and Uttarakhand and 1,00,000 for the region comprising of Bihar and Jharkhand.

II. Since the Broadcast Audience Research Council clubs Uttar Pradesh and Uttarakhand into one region and Bihar and Jharkhand into another region, QR will ascertain the population figures for Uttar Pradesh, ttarakhand, Bihar and Jharkhand from the latest census.

III. By applying the ratio of the populations of Uttar Pradesh and Uttarakhand, as so ascertained, to the Broadcast Audience Research Council viewership figures for their channel for this region, the viewership figures for Uttar Pradesh and Uttarakhand can be calculated. Let us assume that the ratio of the populations of Uttar Pradesh and Uttarakhand works out to 9:1. When this ratio is applied to the viewership figures of 2,00,000 for this region, the viewership figures for Uttar Pradesh and Uttarakhand work out to 1,80,000 and 20,000 respectively. IV. In a similar manner, the breakup of the viewership figures for Bihar and Jharkhand can be calculated. Let us assume that the ratio of populations is 4:1 and when this is applied to the viewership figure of 1,00,000 for this region, the viewership figure for Bihar and Jharkhand works out to 80,000 and 20,000 respectively.

V. The viewership figure for each State works out to Delhi (1,00,000), Uttar Pradesh (1,80,000), Uttarakhand (20,000), Bihar (80,000) and Jharkhand (20,000). The ratio is thus 10:18:2:8:2 or 5:9:1:4:1 (simplification).
VI. This ratio has to be applied when indicating the breakup of the amount pertaining to each State. Thus, if the total amount payable to QR by ABC is ` 20,00,000, the State-wise breakup is ` 5,00,000 (Delhi), ` 9,00,000 (Uttar Pradesh) ` 1,00,000 (Uttarakhand), ` 4,00,000 (Bihar) and ` 1,00,000 (Jharkhand). Separate invoices will have to be issued State-wise and Union territory-wise by QR to ABC indicating the value pertaining to that State or Union territory.

64 - Advertisements in cinema halls

ABC commissions ST for an advertisement on 'Pradhan Mantri Awas Yojana' to be displayed in the cinema halls in Chennai and Hyderabad. The place of supply of this service is in the States of Tamil Nadu and Telangana. The amount actually paid to the cinema hall or screens in a multiplex, in Tamil Nadu and Telangana as the case may be, is the value of advertisement service in Tamil Nadu and Telangana respectively. Separate invoices will have to be issued State-wise and Union territory-wise by ST to ABC indicating the value pertaining to that State.

65 - Advertisements on internet

ABC issues a release order to WX for a campaign over internet regarding linking Aadhaar with one's bank account and mobile number. WX runs this campaign over certain websites. In order to ascertain the State-wise breakup of the value of this service which is to be reflected in the invoice issued by WX to ABC, WX has to first refer to the Telecom Regulatory Authority of India figures for quarter ending March, 2017, as indicated on their website www.trai.gov.in. These figures show the service area wise internet subscribers. There are 22 service areas. Some relate to individual States some to two or more States and some to part of one State and another complete State. Some of these areas are metropolitan areas. In order to calculate the State-wise breakup, first the State-wise breakup of the number of internet subscribers is arrived at. (In case figures of internet subscribers of one or more States are clubbed, the subscribers in each State is to be arrived at by applying the ratio of the respective populations of these States as per the latest census.). Once the actual number of subscribers for each State has been determined, the second step for WX involves calculating the State-wise ratio of internet subscribers. Let us assume that this works out to 8:1:2..... and so on for Andhra Pradesh, Arunachal Pradesh, Assam... and so on. The third step for WX will be to apply these ratios to the total amount payable to WX so as to arrive at the value attributable to each State. Separate invoices will have to be issued State-wise and Union territory-wise by WX to ABC indicating the value pertaining to that State or Union territory.

Advertisements through SMS

(66) In the case of the telecom circle of Assam, the amount attributed to the telecom circle of Assam is the value of advertisement service in Assam.

67) The telecom circle of North East covers the States of Arunachal Pradesh, Meghalaya, Mizoram, Nagaland, Manipur and Tripura. The ratio of populations of each of these States in the latest census will have to be determined and this ratio applied to the total number of subscribers for this telecom circle so as to arrive at the State-wise figures of telecom subscribers. Separate invoices will have to be issued State-wise by the service provider to ABC indicating the value pertaining to that State.

(68) ABC commissions UV to send short messaging service to voters asking them to exercise their franchise in elections to be held in Maharashtra and Goa. The place of supply of this service is in Maharashtra and Goa. The telecom circle of Maharashtra consists of the area of the State of Maharashtra (excluding the areas covered by Mumbai which forms another circle) and the State of Goa. When calculating the number of subscribers pertaining to Maharashtra and Goa, UV has to -

I. obtain the subscriber figures for Maharashtra circle and Mumbai circle and add them to obtain a combined figure of subscribers;

II. obtain the figures of the population of Maharashtra and Goa from the latest census and derive the ratio of these two populations;
III. this ratio will then have to be applied to the combined figure of subscribers so as to arrive at the separate figures of subscribers pertaining to Maharashtra and Goa;
IV. the ratio of these subscribers when applied to the amount payable for the short messaging service in Maharashtra circle and Mumbai circle, will give breakup of the amount pertaining to Maharashtra and Goa. Separate invoices will have to be issued State-wise by UV to ABC indicating the value pertaining to that State.

(69) The telecom circle of Andhra Pradesh consists of the areas of the States of Andhra Pradesh, Telangana and Yanam, an area of the Union territory of Puducherry. The subscribers attributable to Telangana and Yanam will have to be excluded when calculating the subscribers pertaining to Andhra Pradesh.

70) MX Pvt. Ltd. (New Delhi) imports a machine from Germany for being installed in its factory at New Delhi. To install such machine, MX Pvt. Ltd. takes the service of an engineer who comes to India from Germany for this specific installation. The place of supply of installation service, which requires the physical presence of machinery, is the location where the service is actually performed, i.e. New Delhi.

(71) A mobile company located in United States of America (USA) takes services of a software company located in Bangalore for installation of a software in its mobiles in USA. The Indian software company provides its services through electronic means from its office in India. The place of supply is the location where goods (mobile phones) are situated at the time of supply of service, i.e. USA.

(72) ABC Ltd., Hyderabad has exported a machine to a company in Indonesia. The machine stops functioning and is thus, imported by ABC Ltd. for free repairs in terms of the sale contract. The machine is exported after repairs without being put to any use in India. The place of supply of repair service is the location of the recipient, i.e. Indonesia.

(73) QR Pvt. Ltd. imports raw diamonds from a diamond merchant in Belgium for the purpose of cutting, polishing and finishing the same. After the work is completed, the finished diamonds are exported to the diamond merchant in Belgium. The place of supply of the services undertaken by QR Pvt. Ltd. is the location of the recipient, i.e. Belgium.

(74) Mr. X, a hair stylist registered in New Delhi, travels to Singapore to provide his services to Ms. Y, a resident of Singapore. The place of supply is the location where the services are actually performed, i.e. Singapore.

(75) PQR Consultants, New Delhi, bags a contract for doing a market research for a vehicle manufacturing company based in South Korea, in respect of its upcoming model of a car. The research is to be carried out in five countries including New Delhi in India. Since the services are supplied at more than one location including a location in the taxable territory, the place of supply is the location in the taxable territory, i.e. New Delhi.

76 - Services supplied on the same goods

A company C which is located in Kolkata is providing the services of testing of a dredging machine and the testing service on the machine is carried out in Orissa and Andhra Pradesh. The place of supply is in Orissa and Andhra Pradesh and the value of the service in Orissa and Andhra Pradesh will be ascertained by dividing the value of the service equally between these two States.

77 – Services supplied on different goods

A company C which is located in Delhi is providing the service of servicing of two cars belonging to Mr. X. One car is of manufacturer J and is located in Delhi and is serviced by its Delhi workshop. The other car is of manufacturer A and is located in Gurugram and is serviced by its Gurugram workshop. The value of service attributable to the Union territory of Delhi and the State of Haryana respectively shall be calculated by applying the ratio of the invoice value of car J and the invoice value of car A, to the total value of the service.

78 – Services supplied to individuals

A makeup artist M has to provide make up services to an actor A. A is shooting some scenes in Mumbai and some scenes in Goa. M provides the makeup services in Mumbai and Goa. The services are provided in Maharashtra and Goa and the value of the service in Maharashtra and Goa will be ascertained by applying the generally accepted accounting principles.

79) Mr. C, an architect (New Delhi), provides professional services to Mr. Z of New York in relation to his immovable property located in Pune. The place of supply is the location of immovable property, i.e. Pune.

(80) Mr. C, an architect (New Delhi), enters into a contract with Mr. Z of New York to provide professional services in respect of immovable properties of Mr. Z located in Pune and New York. Since the immovable properties are located in more than one location including a location in the taxable territory, the place of supply is the location in the taxable territory, i.e. Pune.

81) A circus team from Russia organizes a circus in New Delhi. The place of supply is the location where the event is actually held, i.e. New Delhi.

(82) An event management company registered in New Delhi organises an art exhibition displaying works of an international painter based in Dubai. The exhibition is organised in 3 countries including New Delhi in India. Since the service is supplied at more than one location including a location in the taxable territory, the place of supply is the location in the taxable territory, i.e. New Delhi.

83) Mr. C, a non-resident, has an NRE account with Varanasi Bank (registered in Uttar Pradesh) in India. The place of supply of banking services provided by the Varanasi Bank to Mr. C, a non-resident customer, is the location of the supplier of service, i.e. Varanasi.

(84) XYZ & Sons, Kolkata, is an agent who facilitates supply of goods between foreign customers and Indian sellers. The place of supply is the location of the supplier of services, i.e. Kolkata.

(85) Mr. D, an unregistered person based in New Delhi hires a yacht from a company based in London, UK for 20 days. The place of supply is the location of the supplier of services, i.e. London.

86) A shipping line, registered in Mumbai, Maharashtra transports a shipment of flowers from Mumbai to Paris, for an event management company based in Paris. The place of supply of services by the shipping line is the location of destination of goods transported, i.e. Paris.

(87) Mr. A, a foreign tourist, has booked a ticket for New Delhi-Sri Lanka flight from an airlines registered in New Delhi for a continuous journey without any stopover. The place of supply of services by airlines is the place where the passenger embarks on the conveyance for a continuous journey, i.e. New Delhi

QUESTIONS

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.

2. What will be the place of supply if the goods are delivered by the supplier to a 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.

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).

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].

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.

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)].

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)].

8. What is the place of supply for mobile connection? Can it be the location of supplier?
ANSWER:
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.

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.

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)].

11. 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.

12. Damani Industries has recruited Super Events Pvt. Ltd., an event management company of Gujarat, for organising 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 organised at Dubai?

ANSWER:

Section 12(7)(a)(i) 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 organised at Dubai, the answer will remain the same, i.e. the place of supply is the location of recipient (Damani Industries)– Mumbai, Maharashtra.

13. Priyank Sales of Pune, Maharashtra enters into an agreement to sell goods to Bisht Enterprises of Bareilly, Uttar Pradesh. While the goods were being packed in Pune godown of Priyank Sales, Bisht got an order from Sahil Pvt. Ltd. of Shimoga, Karnataka for the said goods. Bisht Enterprises agreed to supply the said goods to Sahil Pvt. Ltd. and asked Priyank Sales to deliver the goods to Sahil Pvt. Ltd. at Shimoga.

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

ANSWER:

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

As per section 10(1)(b), 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 Enterprises has received the goods and the place of supply of such goods is the principal place of business of Bisht Enterprises. Accordingly, the place of supply between Priyank Sales (Pune) and Bisht Enterprises (Bareilly) will be Bareilly, Uttar Pradesh.

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

Section 10(1)(a) 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 Pvt. Ltd.), i.e. Shimoga, Karnataka.

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 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 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), 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 x 18% = ` 3,60,000.
(ii) Section 12(7)(a)(i) 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 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 x 18% = ` 1,80,000
(iii) 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 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 x 9% = ` 36,000
SGST @ 9% on value of supply = ` 4,00,000 x 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.

15. 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), 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), 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.

16. 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. The company has charged US $ 1,00,000 (exclusive of GST) to its foreign customer for the services provided by it. With reference to the provisions of GST law, examine whether the said supply will amount to export of service?

ANSWER:

Section 2(13) 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. 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.
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 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, in the given case, place of supply is in India, this transaction does not tantamount to export of service.

17. Mr. Murthy, an unregistered person and a resident of Pune, Maharashtra hires the services of Sun Ltd. an event management company registered in Delhi, for organising of the new product launch in Bengaluru, Karnataka.
(i) Determine the place of supply of services provided by Sun Ltd.
(ii) What would be your answer if the product launch takes place in Bangkok?
(iii) What would be your answer if Mr. Murthy is a registered person and product launch takes place in-
(a) Bengaluru
(b) Bangkok?
ANSWER:
(i) As per section 12(7)(a)(ii), 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).
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.

18. 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	Property 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), 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), 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).

19. 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 Traders. Sewing machines are being shipped in a lorry by Asha Enterprises.
Briefly explain the following:
(a) the place of supply;
(b) the nature of supply:- whether inter-State or intra-State and
(c) whether CGST/SGST or IGST 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)]. 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, 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)].
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, liable to CGST and SGST.

20. Determine the place of supply for the following independent cases:
(i) Grand Gala Events, an event management company at Kolkata, organises two award functions for Narayan Jewellers of Chennai (Registered in Chennai, Tamil Nadu) 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 organise his son's wedding at Mumbai, Maharashtra.
Will your answer be different if the wedding is to take place in 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).
Since, in the given case, the award functions at New Delhi and Singapore are organized for Narayan Jewellers (registered in Chennai), place of supply in both the cases is the location of Narayan Jewellers, i.e. Chennai, Tamil Nadu.
(ii) As per section 12(7)(a)(ii), 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.

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CHAPTER-6 TIME OF SUPPLY

EXAMPLES

1) A Ltd. enters into an agreement with B Ltd. to supply 100 kg of raw material. However, A Ltd. supplies only 80 kg of raw material and issues the invoice for the same. Here, the supply would be deemed to have been made in respect of 80 kg of raw material, i.e. to the extent covered by the invoice. Therefore, the provisions relating to time of supply will also be applicable to supply of 80 kg of raw material and not for entire 100 kg of raw material.

2) B Ltd. sells goods to C Ltd. on 10th June. The invoice for the same is issued on the same day. Payment for the goods is received on 20th June. Time of supply of goods for the purpose of payment of tax is 10th June being the date of issue of invoice in terms of section 31.

(3) B Ltd. sells goods to C Ltd. on 10th June. The invoice for the same is issued on 10th June. Payment for the goods is received on 5th June. Time of supply of goods for the purpose of payment of tax is 10th June being the date of issue of invoice in terms of section 31.

4) B Ltd. sells goods to C Ltd. on 10th June. The invoice for the same is issued on 12th June. Payment for the goods is received on 20th June. Time of supply of goods for the purpose of payment of tax is 10th June being the last date on which invoice ought to have been issued in terms of section 31.

(5) B Ltd. enters into a contract with C Ltd. for supply of goods over a period of one year starting from the month of January. As per the contract, C Ltd. makes payment on 10th day of each month. B Ltd. issues the invoice on the same day. Time of supply of the goods for the purpose of payment of tax will be 10th day of each month.

(6) B Ltd. sends goods to C Ltd. for sale on approval basis on 10th January. C Ltd. approves the goods on 15th August. B Ltd. should issue the invoice on 10th July as the supply gets fructified after six months from the date of removal. Time of supply of the goods for the purpose of payment of tax is 10th July being the last date on which invoice ought to have been issued in terms of section 31.

7) B Ltd. sells goods to C Ltd. on 4th June. The goods are taxable under reverse charge. Invoice for the same is issued on 4th June. C Ltd. receives the goods on 12th June. C Ltd. records the payment in the books of account on 30th June and the same is debited from the bank account of C Ltd. on 2nd July. Time of supply of the goods is 12th June being the earliest of the three stipulated dates namely, date of receipt of goods, date of payment and date immediately following 30 days of issuance of invoice.

(8) B Ltd. sells goods to C Ltd. on 4th June. The goods are taxable under reverse charge. Invoice for the same is issued on 4th June. C Ltd. receives the goods on 6th July. C Ltd. records the payment in the books of account on 21st July and the same is debited from the bank account of C Ltd. on 31st July. Time of supply of the goods is 5th July being the earliest of the three stipulated dates namely, date of receipt of goods, date of payment and date immediately following 30 days of issuance of invoice.

(9) B Ltd. sells goods to C Ltd. on 4th June. The goods are taxable under reverse charge. Invoice for the same is issued on 4th June. C Ltd. receives the goods on 27th June. C Ltd. records the payment in the books of account on 10th June and the same is debited from the bank account of C Ltd. on 2nd July. Time of supply of the goods is 10th June being the earliest of the three stipulated dates namely, date of receipt of goods, date of payment and date immediately following 30 days of issuance of invoice.

10) A Ltd. sells food coupons to B Ltd. The company gives these coupons to its employees as part of the agreed perquisites. The coupons can be redeemed for purchase of any item of food /provisions in the outlets that are part of the program. As the supply against which the coupon will be redeemed is not known on the date of the sale of the coupon, the time of supply of the coupon will be the date on which the employee redeems it against food / provision items of his choice.

(11) With each purchase of a large pizza during the Christmas week from Perfect Pizza, one can buy a voucher for ` 20 which will be redeemable till 5th Jan for a small pizza. As the supply against which the voucher will be redeemed is known on the date of issue of the vouchers, the time of supply is the date of issue of the voucher.

12) A Ltd. sold goods to B Ltd. on 6th June with a condition that interest @ 2% per month will be charged if B Ltd. failed to make payment within 15 days of the delivery of the goods. Goods were delivered as also the invoice was issued on 6th June. B Ltd. paid the consideration for the goods on 6th July along with applicable interest. Time of supply for the goods sold is the date of issue of invoice, i.e. 6th June and the time of supply for addition in value by way of interest is the date when such addition in value is received by A Ltd., i.e. 6th July.

13) A Ltd. provides services to B Ltd. on 10th June. A Ltd. issues the invoice for the services on 15th June. Payment is received in the bank account of A Ltd. on 20th June and is recorded in the books of account of A Ltd. on 30th June. Date of receipt of payment is 20th June being the earlier of two stipulated dates namely, date on which the payment is recorded in the books of account of the supplier and date on which the payment is credited to the supplier's bank account. Since the invoice is issued within 30 days from the date of supply of service, time of supply of services is 15th June being the earlier of the two stipulated dates namely, date of issuance of invoice and date of receipt of payment.

(14) A Ltd. provides services to B Ltd. on 10th June. A Ltd. issues the invoice for the services on 7th July. Payment is received in the bank account of A Ltd. on 20th June and is recorded in the books of account of A Ltd. on 30th June. Date of receipt of payment is 20th June being the earlier of two stipulated dates namely, date on which the payment is recorded in the books of account of the supplier and date on which the payment is credited to the supplier's bank account. Since the invoice is issued within 30 days from the date of supply of service, time of supply of services is 20th June being the earlier of the two stipulated dates namely, date of issuance of invoice and date of receipt of payment.

(15) A Ltd. provides services to B Ltd. on 10th June. A Ltd. issues the invoice for the services on 15th July. Payment is received in the bank account of A Ltd. on 20th June and is recorded in the books of account of A Ltd. on 30th June. Here, invoice is not issued within 30 days of provision of service. Therefore, time of supply of services is 10th June being the earlier of the two stipulated dates namely, date of provision of service and date of receipt of payment.

16) A telephone company receives ` 5000 against an invoice of ` 4800. The excess amount of ` 200 can be adjusted against the next invoice. The company has the option to take the date of the next invoice as the time of supply of service in relation to the amount of ` 200 received in excess against the earlier invoice.

17) A Ltd. provides services to B Ltd. on 10th June. The services are taxable under reverse charge. A Ltd. issues the invoice for the services on 15th June. Payment is debited from the bank account of B Ltd. on 20th June and is recorded in the books of account of B Ltd. on 30th June. Time of supply of services is 20th June being the earliest of the three stipulated dates namely, date on which payment is recorded in the books of account of recipient of services, date on which payment is debited from the bank account of the recipient of services and date immediately following 60 days since issue of invoice.

(18) A Ltd. provides services to B Ltd. on 10th June. The services are taxable under reverse charge. A Ltd. issues the invoice for the services on 15th June. Payment is debited from the bank account of B Ltd. on 20th September and is recorded in the books of account of B Ltd. on 15th September. Time of supply of services is 15th August being the earliest of the three stipulated dates namely, date on which payment is recorded in the books of account of recipient of services, date on which payment is debited from the bank account of the recipient of services and date immediately following 60 days since issue of invoice.

(19) A Inc., a foreign company, and B Ltd., an Indian company, are associated enterprises. A Inc. provides technical services to B Ltd. Vide an email dated June 4th, A Inc. informs B Ltd. the cost of technical services provided to it. B Ltd. transfers the payment to A Inc. on 12th August. Time of supply of services is 12th August being the date of payment as there is no prior entry of the amount in the books of account of B Ltd.

20) A Ltd., a company providing hospitality services, enters into agreement with B Ltd. by which B Ltd. markets A Ltd.'s hotel rooms and sells coupons / vouchers redeemable for a discount against stay in the hotel. As the supply against which the voucher will be redeemed is identifiable, the time of supply of the voucher will be its date of issue.

21) Mr. A, an interior decorator, designs and renovates the office of XYZ in June. The invoice is to be raised after approval of the work. In the meantime, the rate of tax is changed on 5th July. Invoice is raised and payment made later in July. Here, the time of supply is after the change in rate of tax, though the service was completed prior to the change.

22) A Ltd. makes custom-made precision tools for which it takes full advance with the purchase order. One such order is received on 13th April and full amount is paid with the order. The tools are manufactured and delivered on 22nd May. Invoice is also issued on the same day. In the meanwhile, rate of tax was increased on the tools of this description from 20th May onwards. Here, increased rate of tax will be applicable as goods are supplied and invoice issued after 20th May.

23) Rate of tax is changed on 10th July. Receipt of payment is recorded in the books of account of the supplier on 8th July. The payment is credited in the supplier's bank account on 15th July. The Bank was open all days between 10th and 15th July. Here, the date of receipt of payment is 15th July.

QUESTIONS

1. Kanchenjunga Pvt. Ltd. supplies taxable goods to Sutlej Pvt. Ltd. for ` 2,50,000 on 23rd June and issues the invoice on 25th June. Payment for the goods is made by Sutlej Pvt. Ltd. on 15th July.
Determine the time of supply 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. As per section 31(1), invoice for supply of goods should be issued before or at the time of removal of goods for supply to the recipient, where supply involves movement of goods. Therefore, time of supply of goods is 23rd June being the last date on which invoice ought to have been issued and not 25th June when the invoice is actually issued.

2. 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? Explain.
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.

3. 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. Determine 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)].

4. Trust Industries Ltd. has entered into a contract with VST Ltd. to supply gas by a pipeline to VST Ltd. for a period of one year. As per the terms of the contract-
(i) VST Ltd. shall make monthly payments [Payment for a month shall be made by 7th day of the next month]
(ii) Every quarter, Trust Industries Ltd. shall issue a statement of account showing the quantity and value of goods dispatched, payments received and payment due.
(iii) The differential amount, if any, as mentioned in the statement of account shall be paid by VST Ltd.
The details of the various events are:

August 5, September 5, October 6	**Payments of ` 2 lakh made in each month for the quarter July-September**
October 3	**Statement of accounts for the quarter July – September issued by the supplier showing amount of ` 2,56,000 as unpaid**
October 17	**Balance payment of ` 56,000 received by supplier for the quarter July – September**

Determine the time of supply of goods 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, invoices should be issued for ` 2 lakh each on or before August 5, and September 5, when monthly payments of ` 2 lakh are received. Further, invoice should also be issued for differential payment of ` 2,56,000 on or before October 3, when statement of account is issued

Thus, assuming that the invoice is issued on August 5, September 5 and October 3, the time of supply for the purpose of payment of tax will be August 5 and September 5 respectively for goods valued at ` 2 lakh each and October 3 for the goods valued at ` 2,56,000.

5. 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.

6. 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	**22nd September**
Case II	**27th 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.

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. 22nd 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. 61st day which is 18th October.

7. 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.	**16th June**
Date on which invoice is issued by Wilson Inc.	**19th August**
Date of debit in the books of account of Kothari Ltd.	**30th September**
Date on which payment is made by Kothari Ltd.	**23rd December**

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]	30th September
OR	
Date of payment [by Kothari Ltd. in the present case]	23rd December

Thus, time of supply is 30th September.

8. Basis the following information, determine the time of supply:

S. No.	Event	Date
(1)	Commencement of provision of service	05th June
(2)	Completion of service	10th October
(3)	Invoice issued	20th October
(4)	Payment received by cheque and entered in the books	15th October
(5)	Amount credited in Bank account	18th October
(6)	Rate changed from 12% to 18%	16th October

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

ANSWER:

The explanation to section 14 lays down that the date of receipt of payment is the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier. However, the date of receipt of payment is the date of credit in the bank account if such credit in the bank account is after 4 working days from the date of change in the rate of tax.

In the given case, the payment has been credited in the bank account within 4 working days from the date of change in the rate of tax. Therefore, the date of receipt of payment is 15th October being the date of entry in the books of account of the supplier which is earlier than the date of credit of the payment in the bank account (18th October).

As per section 14(a)(iii), in case of change in rate of tax, if the service is supplied before the change in rate of tax and the invoice is issued after the change in rate of tax but the payment is received before such change in rate of tax, the time of supply is the date of receipt of payment.
Therefore, applying the provisions of section 14(a)(iii) to the given case, the time of supply is 15th October.

9. 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	16th March	20th March
Date of receipt of advance	20th March	25th March
Date of completion of printing	10th April	5th April
Date of issue of invoice	15th May	10th April
Date of removal of books and letter heads to buyer	13th May	7th April
Date of receipt of balance payment	31st May	30th 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.** In case of supply of printed envelopes by the printer using its physical inputs including paper to print the design, logo etc. supplied by the recipient of goods, predominant supply is supply of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore, such supplies would constitute **supply of goods.**
Accordingly, the time of supply of books and envelopes will be governed by sections 12 and 13 respectively.
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.
As per section 31(1), invoice for supply of goods should be issued before or at the time of removal of goods for supply to the recipient, where supply involves movement of goods. Therefore, in the given case, the last date by which invoice ought to have been issued is 7th April. Thus, the time of supply of envelopes for the purpose of payment of tax is 7th April.
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 given case, invoice for the services is not issued within 30 days, the time of supply for the advance received is the date of receipt of payment, i.e. 20th March being earlier than the date of provision of service. However, the time of supply for the balance payment is the date of provision of service, i.e. 10th April being earlier than the date of receipt of balance payment.

10. 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)	10th February	Payment of ` 1,00,000 made by buyer for supply of 'A' to be delivered in the month of March
(ii)	13th February	Receipt of ` 1,00,000 [as mentioned in point (i) above]
(iii)	17th February	Payment of ` 2,00,000 made by buyer for supply of 'B' to be delivered in the month of March
(iv)	20th February	Receipt of ` 2,00,000 [as mentioned in point (iii) above]
(v)	5th March	Product 'A' manufactured and removed
(vi)	6th March	Receipt of product 'A' [as mentioned in point (v) above] by the buyer
(vii)	10th March	Product 'B' manufactured and removed
(viii)	23rd March	Receipt of product 'B' [as mentioned in point (vii) above] by the buyer
(ix)	4th March	Invoice for ` 2,00,000 issued for supply of 'A'
(x)	11th March	Invoice for ` 4,00,000 issued for supply of 'B'
(xi)	25th March	Payment made by the buyer of 'A'
(xii)	31st March	Payment [as mentioned in point (xi) above] received
(xiii)	1st April	Payment made by the buyer of 'B'
(xiv)	4th 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).

CHAPTER-7 VALUE OF SUPPLY

EXAMPLES

(1) Ms. Priya holds 30% shares of ABC Ltd. and 35% shares of XYZ Ltd. ABC Ltd. and XYZ Ltd. are related.

(2) Q Ltd. has a deciding role in corporate policy, operations management and quality control of R Ltd. It can be said that Q Ltd. controls R Ltd. Thus, Q Ltd. and R Ltd. are related.

(3) Alpha Ltd. controls the composition of Board of directors of Beta Ltd. and Gama Ltd. It is said to control both Beta Ltd. and Gama Ltd. Beta Ltd. and Gama Ltd. are related persons.

(4) Brita Ltd. and Grita Ltd. together control Margarita Ltd. Brita Ltd. and Grita Ltd. are related persons.

5) Wholesale price for 1 MT of cement sold by X Ltd. in the ordinary course of business: ` 7,000.
Price of 1 MT of cement sold by X Ltd. to an unrelated customer Y : ` 6,700.
Value of supply made by X Ltd. to Y is ` 6,700 which is the price actually paid or payable and not the wholesale price.

6) Grand Biz contracts with ABC Co. to conduct a dealers' meet. In furtherance of this, Grand Biz contracts with vendors to deliver goods / services, like water, soft drinks, audio system, projector, catering, flowers etc. at the venue on the stipulated dates at the stipulated prices. Grand Biz is liable to make these payments as contracted. The soft drinks supplier wants payment upon delivery; ABC Co. agrees to pay the bill raised by the soft drinks vendor on Grand Biz on receiving the crates of soft drinks. This amount is not billed by Grand Biz to ABC Co. However, it would be added to the value of supply provided by Grand Biz to ABC Co. for payment of GST.

7) Commission: This may be paid to an agent and recovered from the buyer of the goods/services; this is part of the value of the supply.

(8) Packing, if charged by the supplier to the recipient, is similarly part of the value of the supply.

(9) Inspection or certification charges is another element that will be added to the value, if incurred before/at the time of supply and billed to the recipient of supply.

(10) Installation and testing charges at the recipient's site will also be added, being an amount charged for something done by the supplier in respect of the supply at the time of making the supply.

(11) Weighment charges, loading charges, designing charges etc. incurred before/at the time of supply will be added to the value, if billed to the recipient of supply.

12) A supply priced at ` 2,000 is made, with a credit period of 1 month for payment. Thereafter interest @ 12% is chargeable. The payment is received after the lapse of two months from the date of supply. The amount of interest @ 12% p.a. (i.e. 1% per month) on ` 2,000 for one month after the free credit period of one month, is ` 20. Such interest will be added to the value and thus, the value of supply will work out to be ` 2,020, assuming the interest to be exclusive of GST.

13) The selling price of a notebook is ` 50. For notebooks sold to students in Government schools, a company uses its CSR funds to pay the seller ` 30, so that the students pay only ` 20 per notebook. The value of the notebook will be ` 50, as this is a non-government subsidy. If the same subsidy is paid by the Central Government or State Government, the value of the notebook would be ` 20.

Examples of discount deductible from value of supply

(14) Royal Biscuit Co. gives a discount of 30% on the list price to its distributors. Thus, for a carton of Spice Bisk, in the invoice the list price is mentioned as ` 200, on which a discount of 30% is given to arrive at the final price of ` 140. The value is ` 140, as the discount is allowed at the time of supply and shown in the invoice.

Post supply discounts

(15) The agreement of Raju Electrical Appliances with its dealers is that purchase of rice cookers over 1000 pieces in the Diwali month will entitle them to discount of 5% per cooker. Therefore, the quantum of discount can be determined only at the end of Diwali month. However, since the agreement relating to discount was in existence at the time of supply, and the discount can be worked out for each invoice, such post supply discount will be allowed as a deduction from the value of supply of rice cookers. Raju Electrical Appliances can issue credit note for 5% of the value of goods along with GST and claim adjustment of excess tax paid. The dealer must reverse the proportionate input tax credit on the relevant stock to bring it in line with the reduced tax.

(16) Pink and Blue Pvt. Ltd. (PBPL) sold goods to Orange Pvt. Ltd. (OPL) on 15th January at ` 50,000 (exclusive of taxes and discounts) and charged ` 9,000 as IGST @ 18%. The terms of supply stipulated that discount @ 2% will be given to OPL if it makes the payment within one month of the supply. OPL avails the input tax credit of ` 9,000 in the month of January and makes the payment for the goods on 10th February. PBPL issues credit note for ` 1180 [` 1,000 for value of discount and ` 180 for proportionate IGST leviable thereon] to OPL on 11th February. After receiving credit note, OPL reverses the input tax credit of ` 180 attributable to the discount given by the PBPL. PBPL can reduce its GST liability of the month of February by ` 180. OPL would have paid ` 57,820 (` 50,000 + ` 9,000 - ` 1,000 - ` 180) to PBPL on 10th February.

Examples of discount not deductible from value of supply

(17) In the above example, if the terms of supply did not provide for discount @ 2% for payment within one month but PBPL offers such discount to OPL at the time of payment after negotiation, the discount will not be allowed as a deduction from the value. PBPL will issue a commercial credit note for only the value of discount, i.e. for ` 1,000. OPL will not reverse any input tax credit and PBPL will also not be able to reduce its GST liability for the month of February. In this case, OPL would pay ` 58,000 (` 50,000 + ` 9,000 - ` 1,000) to PBPL on 10th February.

(18) A company announces turnover discounts after reviewing dealer performance during the year. The discounts are based on performance slabs and are given as cash-back. As these discounts were not known at the time of supply of the goods, they will not be deducted from value of those goods. Hence, the company will not be able to adjust excess tax paid from its tax liability.

19) X Pvt. Ltd. offers a new mobile phone worth ` 20,000/- to Y in exchange of old mobile phone and cash payment of ` 16,000. Exchange value of old phone lowers the price of a new phone. The known market value of the new phone (without exchange of old phone), i.e. the open market value is ` 20,000, which is the taxable value in this case.

(20) Laptop is manufactured and supplied for ` 40,000. Part value is received in barter in the form of a printer valued at ` 4000. Market value of the laptop is not known. Its taxable value will be ` 44,000.

Example of related person

(21) Mr. A and Mr. B are legally recognised partners in the partnership firm A&B Co. Mr. A & Mr. B are related persons. Thus, a transaction of supply between Mr. A & Mr. B in the course or furtherance of business is treated as supply even if made without consideration.

22) ABC Pvt. Ltd., a registered supplier, is a manufacturer of taxable goods. The company's factory is located in Noida, Uttar Pradesh and depot in Gurugram, Haryana. Gurugram depot is eligible for full ITC. Noida factory agrees to supply goods worth ` 1,00,000 to a customer of Gurugram depot (on its behalf). Noida factory ships the goods directly to the customer in Gurugram and bills the Gurugram depot. Noida factory has the option of billing to Gurugram depot at ` 90,000 (90% of ` 1,00,000). It can also bill the Gurugram depot on actual cost as Gurugram depot is eligible for full ITC. In the same scenario, if goods are replaced by services, the option of valuing the services @ 90% of value charged by the recipient to unrelated customer will not be available. However, since recipient is eligible for full ITC, the value of supply of service declared in the invoice shall be taken as open market value (taxable value).

23) ABC Ltd. supplies goods to its agent and the agent is supplying goods of like kind and quality in subsequent supplies at a price of ` 1,000 per unit on the day of the supply. ABC Ltd. also supplies goods to an unrelated customer at the price of ` 950 per unit on the day of the supply. The value of the supply made by ABC Ltd. to agent shall be ` 950 per unit or where it exercises the option, the value shall be 90% of ` 1,000 i.e., ` 900 per unit.

24) A cosmetics company buys its products from a subcontractor, who supplies "testers" of each product, to be placed in retail outlets, free of charge. These are of different size from the product that is sold. The company and the sub-contractor are related persons. The sub-contractor does not have details of cost of acquisition of such testers. As none of the methods in rules 27 to 30 will work for valuing these testers, the value will have to be determined by using reasonable means consistent with the principles and general provisions of section 15 and the Rules. A possible method may be pro rata reduction of the price based on difference in size from the product that is sold.

25) The Government of a State runs a lottery where face value of a lottery ticket is ` 250 and the price notified by the State Government in the Official Gazette is ` 240. Here, the value of lottery is ` 195.313, i.e. higher of ` 187.50 (240 x 100/128) or ` 195.313 (250 x 100/128).

(26) The Government of a State runs a lottery where face value of a lottery ticket is ` 250 and the price notified by the State Government in the Official Gazette is ` 260. Here, the value of lottery is ` 203.13, i.e. higher of ` 195.313 (250 x 100/128) or ` 203.13 (260 x 100/128).

27) On 10th May, Mr. Doshi converted USD $ 100 into ` 7,400 @ ` 74 per USD through Eastern Money Changers. RBI reference rate on 10th May for US $ is ` 75 per US $. The value of supply in this case is (` 75 – ` 74)* $ 100 = ` 100 and GST will be levied on this amount. If the RBI reference rate is not available, then 1% of ` 7,400 i.e., ` 74 will be the value of supply of service.

28) US $ 9,000 are converted into UK £ 4,500. RBI reference rate at that time for US $ is ` 74 per US dollar and for UK £ is ` 98 per UK Pound. In this case, neither of the currencies exchanged is Indian Rupee.
Hence, in the given case, value of taxable service would be 1% of the lower of the following:-
(a) US dollar converted into Indian rupees = $ 9,000 × ` 74 = ` 4,41,000
(b) UK pound converted into Indian rupees = £ 4,500 × ` 98 = ` 6,66,000
Value of supply of service = 1% of ` 4,41,000 = ` 4,410

29) A company X Ltd., which deals in buying and selling of second hand cars, purchases a second hand Maruti Alto Car of March, 2014 make (Original price ` 5 lakh) for ` 3 lakh from an unregistered person. It incurs ` 30,000 on minor furbishing and sells the car for ` 3,50,000. The company does not avail any ITC. The value for GST purpose shall be ` 50,000, i.e. the difference between the selling and the purchase price of the company.

30) If ` 1,500 worth of meal coupons are supplied by the taxable person, the value of supply of such coupons under GST law will also be ` 1,500.

31) A is an importer and B is a custom broker. A approaches B for customs clearance work in respect of an import consignment. The clearance of import consignment and delivery of the consignment to A would also require taking service of a transporter. So A, also authorises B, to incur expenditure on his behalf for procuring the services of a transporter and agrees to reimburse B for the transportation cost at actuals. Here, B is providing customs brokers service to A, which would be on a principal to principal basis. The ancillary service of

transportation, is procured by B on behalf of A as a pure agent and expenses incurred by B on transportation should not form part of value of customs broker service provided by B to A. This, in sum and substance is the relevance of the pure agent concept in GST.

32) Corporate services firm A is engaged to handle legal work pertaining to the incorporation of Company B.

- Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to Registrar of the Companies.
- The fees charged by the Registrar of the Companies for registration and approval of the name are compulsorily levied on B.
- A is merely acting as a pure agent in the payment of those fees.
- Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

Some examples of expenditure/costs incurred as pure agent are:

(33) Port fees, port charges, custom duty, dock dues, transport charges etc. paid by customs broker on behalf of the owner of goods.

34) Expenses incurred by C&F agent and reimbursed by principal such as freight, godown charges.

35) Suppose a customs broker issues an invoice for reimbursement of a few expenses and for consideration towards agency service rendered to an importer. the amounts charged by the customs broker are as below:

s.no	Component charged in invoice	Amount
1	Agency income	10000
2	Traveling expenses; Hotel expenses	15000
3	Customs duty	55000
4	Docks dues	5000

In the above situation, agency income and travelling/ hotel expenses shall be added for determining the value of supply by the customs broker whereas docks dues and the customs duty shall not be added to the value, provided the conditions of pure agent are satisfied.

36) If the value inclusive of tax is ` 100/- and applicable GST rate is 18% [IGST or CGST, SGST/UTGST] then,
Tax amount = (100x18)/(100+18)= 1800/118=` 15.25

ILLUSTRATIONS

ILLUSTRATION 1

BW Ltd. manufactures tobacco products. It has provided the following particulars relating to goods sold by it to CF Ltd.

Particulars	`
Price of the goods (exclusive of all taxes/duties and discounts)	60,000
Excise duty	6,000
Packing charges	2,000
Freight (arranged by BW Ltd.)	1600
Total amount billed to CF Ltd. before any discount	69,600
Discount @ 2% of the price of goods recorded in the invoice	

The final amount charged from CF Ltd. is ` 69,600 less discount @ 2%.

Determine the value of taxable supply made by BW Ltd.

ANSWER

Computation of value of taxable supply

Particulars	`
Price of the goods (exclusive of taxes and discounts)	60,000
Add: Excise duty [Note 1]	6,000
Packing charges [Note 2]	2,000
Freight [Note 3]	1,600
Less: Discount @ 2% on ` 60,000 [Note 4]	(1,200)
Value of taxable supply	**68,400**

Notes:

(1) As per section 15(2)(a), any taxes, duties, cesses, fees and charges other than CGST, SGST, UTGST, IGST and GST Compensation Cess, if charged separately by the supplier should be included in the value of supply. Thus, excise duty charged separately has been added in the value.

(2) As per section 15(2)(c), incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply should be included in the value. Thus, packing charges have been added in the value.

(3) Since transport is arranged by the supplier, the contract of supply becomes a composite supply; the principal supply being the supply of goods. Therefore, freight becomes part of the value of the composite supply.

(4) As per section 15(3)(a), the value of the supply does not include any discount which is given before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply. Therefore, since in this case, discount is known at the time of supply and recorded in the supply, it is deductible from the value.

ILLUSTRATION 2

SA Ltd. is a manufacturer of biscuits. The price of a 200 gm pack of biscuit sold by SA Ltd. is ` 30. It has received subsidy of ` 5 per pack of biscuit sold from NM Ltd. as part of NM Ltd.'s CSR activity. SA Ltd. supplied 1000 packs of biscuits @ ` 25 per pack to one of its wholesalers namely, MA Pvt. Ltd. during a tax period. Loading charges of ` 1200 have also been charged separately from MA Pvt. Ltd. MA Pvt Ltd. delayed the payment of consideration and thus, paid ` 5,000 as interest (no separate amount of GST is paid on the interest by MA Ltd.) in the next tax period. Assume the rate of GST to be 18%.

Determine the value of taxable supply made by SA Ltd.

ANSWER

Computation of value of taxable supply

Particulars	`
Price of 1,000 packs of biscuits @ ` 25	25,000
Add: Subsidy received from NM Ltd. @ ` 5 for 1000 packs of biscuits [Note 1]	5,000
Loading charges [Note 2]	1,200
Interest for delay in payment of consideration [Note 3] (rounded off)	4,237
Value of taxable supply	**35,437**

Notes:

(1) As per section 15(2)(e), subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments should be included in the value.

(2) As per section 15(2)(c), incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services should be included in the value.

(3) As per section 15(2)(e), interest or late fee or penalty for delayed payment of any consideration for any supply should be included in the value. However, as per section 12(6), the time of supply to the extent it relates to an addition in the value of supply by way of interest is the date when such interest is received. In the given case, since GST has not been paid separately on the interest, the same is inclusive of GST. Thus, the value has been computed by making back calculations. The time of supply in relation to the addition in value by way of such interest will fall in the next tax period on the date when the same is received.

ILLUSTRATION 3

X Pvt. Ltd., a money changer, has exchanged US $ 10,000 to Indian rupees @ ` 74 per US $. X Pvt. Ltd. wants to value the supply in accordance with rule 32(2)(b) of CGST Rules.

Determine the value of supply made by X Pvt. Ltd.

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-

(i) 1% of the gross amount of currency exchanged for an amount up to ` 1,00,000, subject to a minimum amount of ` 250;
(ii) ` 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 X Pvt. Ltd., under rule 32(2)(b) of CGST Rules is computed as under:

Particulars	`	`
Value of currency exchanged in Indian Rupees ('74 x US$10000)	740000	
Upto '100000		1000
For '640000 (0.5% x '640000)		3200
Value of supply		4200

ILLUSTRATION 4

UB & Sons is an air travel agent. Compute the value of supply of service made by the firm during a month with the help of following particulars furnished by it:

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 UB & Sons 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		31,688
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.

ILLUSTRATION 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 2019-20; out of which ` 100 lakh have been allocated for investment on behalf of the policy holders. Compute the value of supply of life insurance services provided by ALICL:

(i) if the amount allocated for investment has been intimated by ALICL to policy holders at the time of supply of service.

(ii) if the amount allocated for investment has not been intimated by ALICL to policy holders at the time of providing of service.
(iii) if the gross premium charged by ALICL from policy holders is only towards risk cover.
Note: ALICL has started its operations in the year 2019-20. 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 2019-20 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

QUESTIONS

1. Income tax collected at source should be added in value of the supply in terms of section 15(2)(a). Examine the correctness of the statement.
ANSWER:
The statement is not correct. CBIC vide Circular No. 76/50/2018 GST dated 31.12.2018 (amended vide corrigendum dated 7.03.2019) has clarified that for the purpose of determination of value of supply under GST, tax collected at source (TCS) under the provisions of the Income Tax Act, 1961 would not be includible as it is an interim levy not having the character of tax.

2. How should the supply made by a component manufacturer be valued, when he uses moulds and dies owned by the original equipment manufacturer sent free of cost to him? Explain.
ANSWER:
Circular No. 47/21/2018 GST dated 08.06.2018 has clarified that while calculating the value of the supply made by the component manufacturer using moulds and dies owned by Original Equipment Manufacturers (OEM) sent free of cost (FOC) to him, the value of such moulds and dies shall not be added to the value of supply made by him because the cost of moulds/dies was not to be incurred by the component manufacturer and thus, does not merit inclusion in the value of supply in terms of section 15(2)(b).
However, if the contract between OEM and component manufacturer was for supply of components made by using the moulds/dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on FOC basis, the amortised cost of such moulds/dies shall be added to the value of the components.

3. Examine whether the following discounts ought to be excluded to determine the value of supply:
(i) Company offering 20% discount for purchases above ` 10,000
(ii) Company offering additional discount of 1% on purchase of 10,000 pieces in a year
(iii) After selling a product, the company re-values the product at a lower value and issues credit note to the buyer for the differential amount

ANSWER:
(i) The given case is a case of staggered discounts where rate of discount increases with increase in purchase volume. Such discounts are shown on the invoice itself. Therefore, the same are excluded to determine the value of supply.
(ii) The given case is a case of volume discount which are offered by the suppliers to their stockists, etc. Such discounts are established in terms of an agreement entered into at or before the time of supply though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been effected and generally at the year end. Such type of volume discounts are excluded to determine the value of supply provided they satisfy the parameters laid down in section 15(3) including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document (s) issued by the supplier.
(iii) This is a case of secondary discounts. These are the discounts which are not known at the time of supply or are offered after the supply is already over. Therefore, such discounts shall not be excluded while determining the value of supply.

4. Rajesh & Co., a partnership firm, provides financial and management consultancy to a group of companies for an annual retainership fee of ` 15 lakh. Further, the firm is provided with a car (along with a driver) for its exclusive use throughout the year. The fuel cost is also borne by the Group. Rajesh & Co. pays GST on the amount of ` 15 lakh.
Is the value for the service provided by Rajesh & Co. correct under GST law? If not, please elaborate.
ANSWER:
Rajesh & Co. gets a car along with driver (including the fuel) for the whole year, which is an additional non-monetary consideration for its services. The monetary value of such additional consideration 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 relating to valuation.

5. 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 the supply of 'y' made by Gupta and Co. to State Marketing Corporation 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 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 customers.

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.

6. Easy Coupons Ltd. sells coupons that are redeemable against specified luxury food products at retail outlets. Each coupon is sold for value of ` 900 but is redeemable for supplies worth ` 1000.
What is the value of supply of such coupon under GST law?
ANSWER:
In terms of rule 32(6) 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.

7. 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 law?
ANSWER:
Since the supply is made to a distinct person, the same will be valued in accordance with rule 28 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.

8. 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. Also, Dushyant has paid municipal tax 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 [Note 1]	1,00,000
Municipal tax paid by Dushyant [Note 2]	Nil
Value of supply	**20,50,000**
CGST @ 9%	**1,84,500**
SGST @ 9%	**1,84,500**

Notes:
(1) Since such charges are reimbursed by the tenant (Bharat), such charges ultimately form part of the rent paid by Bharat to Dushyant and thus, form part of the value.
(2) Since municipal tax is paid by the supplier (Dushyant) and not charged to the recipient, the same is not includible in the value.

9. 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/duties 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 an NGO in relation to the goods sold (The price of ` 76,000 given above is after considering the subsidy)	5,000

Vayu Ltd. offers 3% discount on 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	`
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 an 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:
1. 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).
2. 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).
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).
4. Since discount is known at the time of supply, it is deductible from the value in terms of section 15(3)(a).

10. 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 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) 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) 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]	Nil
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) 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).

(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) 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]	(840)
Value of taxable supply of one unit of television	**8,760**
Value of taxable supply of televisions for the quarter July-September [` 8,760 x 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) 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).

(3) Since all the conditions specified in section 15(3)(b) 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 x (8,400 x 10%) x 18%].

11. Prada Forex Private Limited, registered in Delhi, is a money changer. It has undertaken the following purchase and sale of foreign currency:

(i) 1,000 US $ are purchased from Nandi Enterprises at the rate of ` 74 per US $. RBI reference rate for US $ on that day is ` 74.60.

(ii) 2,000 US $ are sold to Menavati at the rate of ` 74.50 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 rule 32(2)(a) and rule 32(2)(b).

ANSWER:

Rule 32(2) prescribes the provisions for determining the value of supply of services in relation to the purchase or sale of foreign currency, including money changing.

Determination of value under rule 32(2)(a)

(i) 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:

= (RBI reference for US $ - Buying rate of US $) × Total number of units of US $ bought

= (74.6 – 74) × 1,000

= ` 600/-

(ii) 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% of the gross amount of Indian Rupees received

= 1% of (74.50 × 2,000)

= ` 1,490/-

Determination of value under rule 32(2)(b)

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)
3.	Exceeding ` 10,00,000	` 5,500 + 0.1% of the (gross amount of currency exchanged - 10,00,000) OR ` 60,000 whichever is lower

Thus, the value of supply in the given cases would be computed as under:

(i) Gross amount of currency exchanged = ` 74 × 1,000 = ` 74,000.

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 ` 74,000 or ` 250, whichever is higher, i.e. = ` 740/-

(ii) Gross amount of currency exchanged = ` 74.50 × 2,000 = ` 1,49,000.

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 (` 1,49,000 - ` 1,00,000), i.e. = ` 1,245/-

12. 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. authorises 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 provided following details:

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, 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 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;

(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:

Particulars	**Amount (`)**
Agency charges	5,00,000
Add: Unloading of machine at Kandla port, Gujarat	Nil
Charges for transport of machine from Kandla port, Gujarat to its godown in Ahmedabad, Gujarat	Nil
Charges for transport of machine from Rudra Logistics' Ahmedabad godown to the warehouse of Rolly Polly Export Import House in Mumbai, Maharashtra	Nil
Customs duty	Nil
Dock charges	Nil
Port charges	Nil
Hotel expenses	45,000
Travelling expenses	50,000
Telephone expenses	2,000
Value of supply	5,97,000

Yes, the 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.

13. 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;
(c) 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.

14. Dev Enterprises is the supplier of water coolers. Dev Enterprises supplied water coolers to an unrelated party, Vimal Traders for consideration of ` 2,95,000 (inclusive of GST @ 18%). Vimal Traders also gave some materials to Dev Enterprises [valuing ` 10,000 (exclusive of GST)] as consideration for such supply.

At the same time, Dev Enterprises has supplied the same goods to another unrelated 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.
(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).
Here, the value will be determined with the help of rule 27 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.

15. 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:

Sl. 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 policy10% of ` 1,00,00,000	10,00,000
Total value of supply	**55,00,000**

16. Aviant Ltd., registered in Noida (Uttar Pradesh), is a supplier of machinery used for making bottle caps. The supply of machinery is effected as under:

– 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.

– Apart from the price of the machinery, Aviant Ltd. charges from the customer the following incidental expenses:

- **associated handling and loading charges of ` 10,000**
- **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.

– Transportation of machinery to the customer's premises is arranged by Aviant 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.

– 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-

- **recovers the discount (no separate amount of GST is recovered) given; and**
- **charges simple interest @ 1% per month or part of the month (no separate amount of GST is recovered) 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.**

– For every machinery supplied, Aviant Ltd. receives a price linked subsidy of ` 2,00,000 from its holding company Diligent Ltd.

Aviant Ltd. has supplied a machinery to an unrelated party, Daffodil Pvt. Ltd. on 1st August at a price of ` 40,00,000 (excluding all taxes). Invoice was issued on 1st August by Aviant Ltd. The corporate office of Daffodil Ltd., which is at New Delhi, has entered into contract with Aviant Ltd. for supply of machinery. However, the machinery has been installed at Daffodil Pvt. Ltd's registered manufacturing unit located in Gurugram (Haryana). Daffodil Pvt. Ltd. has paid the freight directly to the GTA. Discount @ 2% on the price of machinery excluding taxes was given to Daffodil Pvt. Ltd. as it agreed to make the payment within 15 days. However, Daffodil Pvt. Ltd. paid the consideration on 31st October.

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 Aviant Ltd.

Particulars	(`)
Price of machine [Note 1]	40,00,000
Add: Handling and loading charges [Note 2]	10,000
Installation and commissioning charges [Note 3]	1,00,000
Transportation cost [Note 4]	Nil
Price linked subsidy from Diligent Ltd. [Note 5]	2,00,000
Total price of the machine	43,10,000
Less: 2% cash discount on price of machinery = ` 40,00,000 × 2% [Note 6]	(80,000)
Taxable value of supply	42,30,000
Tax liability for the month of August [Note 10]	
IGST @ 12% [Note 8 and Note 7] – **[A]**	5,07,600
Tax liability for the month of October [Note 10]	
Add: Interest collected @ 3% on ` 41,10,000 [Note 9]	1,23,300
Cash discount recovered [Note 9]	80,000
Value of interest and cash discount inclusive of tax	2,03,300
IGST = (` 2,03,300/112) x 12% - [B]	21,782
Total IGST payable on the machinery [A] + [B]	**5,29,382**

Notes:

(1) As per section 15(1), 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..

(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).

(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).

(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 (Aviant Ltd), in this case, merely arranges for the transport and does not provide the transport service on its own account. Therefore, there will be no impact from valuation point of view on transport expenses incurred for supply of machinery as the supplier is not the party to such supply of services.

(5) 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).

(6) Cash discount was deducted by Aviant Ltd. upfront at the time of supply on 1st August, and hence, the same is excluded from the value of supply as it did not form part of the transaction value.

(7) In the given case-
♦ the location of the supplier is in Noida (UP); and
♦ 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.

(8) 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), 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.

(9) Interest for the delayed payment (which excludes subsidy related amount of Rs 2,00,000 as the same was not recoverable from the recipient) of any consideration for any supply is includible in the value of supply in terms of section 15(2)(d). 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 are inclusive of tax. Thus, tax payable thereon has to be computed by making back calculations in terms of rule 35.

(10) Invoice for the supply has been issued on 1st August . Thus, the time of supply of goods is 1st August in terms of section 12(1)(a).
As per section 12(6), 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, the date when the full payment was made. The supplier may issue a debit note for such interest and cash discount recovered.

CHAPTER-8 INPUT TAX CREDIT

EXAMPLES

(1) Atlas Pvt. Ltd. is a manufacturer of taxable goods. It has received 50 invoices for inputs and input services from various suppliers during the month of September. Invoices involve ITC of ` 5 lakh. Suppliers have furnished in their GSTR-1s 40 invoices involving ITC of ` 3 lakh as on the due date of furnishing
of GSTR-1s. ITC that can be claimed by Atlas Pvt. Ltd. in its GSTR-3B for the month of September is-
Amount of eligible ITC available as per GSTR-1s of suppliers + 10% of amount of eligible ITC available as per GSTR-1s of the suppliers = ` 3,00,000 + ` 30,000 = ` 3,30,000 Atlas Pvt. Ltd. may avail balance ITC of ` 1.7 lakh in case suppliers upload details of some of the invoices for the month of September involving ITC of ` 1.545 lakh out of invoices involving ITC of ` 2 lakh, details of which had not been uploaded by the suppliers [` 3 lakh + ` 1.545 lakh = ` 4.545 lakh (5/1.1)].

2) In the above example, if suppliers furnish in their GSTR 1s 40 invoices involving ITC of ` 3.5 lakh as on the due date of furnishing of GSTR-1s, ITC that can be claimed by Atlas Pvt. Ltd. in its GSTR-3B for the month of September will be –
Amount of eligible ITC available as per GSTR-1s of suppliers + 10%
of amount of eligible ITC available as per GSTR-1s of the suppliers
` 3,50,000 + ` 35,000 = ` 3,85,000
Atlas Pvt. Ltd. may avail balance ITC of ` 1.15 lakh in case suppliers upload details of some of the invoices involving ITC of ` 1.045 lakh out of outstanding invoices involving `
1.5 lakh [` 3.5 lakh + R ` 1.045 lakh = `4.545 lakh].

3) In the Example No. 1, if suppliers furnish in their GSTR 1s 42 invoices involving ITC of ` 4.6 lakh as on the due date of furnishing of GSTR-1s, ITC that can be claimed by Atlas Pvt. Ltd. in its GSTR-3B for the month of September will be –
Amount of eligible ITC available as per GSTR-1s of suppliers + 10% of amount of eligible ITC available as per GSTR-1s of the suppliers
` 4,60,000 + ` 40,000* = ` 5,00,000
*Additional ITC availed shall be limited to ensure that the total ITC availed does not exceed the total eligible ITC.

4) A is a trader who places an order on B for a consignment of soda ash. A receives a buying order from C for the same quantity of soda ash. A instructs B to deliver the goods to C, and in turn he raises an invoice on C. Though the goods are not physically received at the premises of A, section 16(2)(b) allows ITC of such goods to A.

5) The registered head office (New Delhi) of ABC Pvt. Ltd. enters into a contract with DEF Pvt. Ltd. of New Delhi for repair and maintenance of computers systems installed at its registered branch office in Bengaluru, Karnataka. DEF Pvt. Ltd. issues an invoice on ABC Pvt. Ltd., New Delhi for the services provided by it. Though the actual services are received by the branch office and not by the head office, section 16(2)(b) allows ITC of such repair and maintenance services to head office

6) XYZ enters into a contract with ABC for supply of 10 MT of a chemical for ` 1,18,000 (inclusive of GST of ` 18,000) in the month of August. The chemical is to be delivered in lots over a period of three months. ABC raises the invoice for the entire amount in August and XYZ also makes the payment in the same month but the supply is completed in November. Though XYZ paid the full tax as early as August, it can take the ITC of the same only on receipt of last instalment of the chemical in the month of November.

7) Due to a quality dispute, PZP Ltd withheld payment on a machine supplied by a vendor till it could be rectified. Over 180 days went by in this dispute. The credit taken by PZP on the invoice got added to the output tax liability of PZP and thus, it had to pay back the credit. Only after the vendor rectified the machine and PZP released the payment, could PZP take the credit again.

8) A registered supplier purchases a machinery for business purposes. The value of the machinery is ` 10 lakh and GST paid thereon is ` 1.80 lakh. ITC of ` 1.80 lakh cannot be availed by the supplier if he has claimed depreciation on such amount under income-tax law.

9) Hercules Machinery delivered a machine to XYZ in the month of January under Invoice no. 49 dated 28th January for ` 4,15,000 plus GST and undertook trial runs and calibration of the machine as per the requirements of XYZ. The amount chargeable for the post-delivery activities was covered in a debit note raised in the month of April for ` 50,000 plus GST. XYZ did not file its annual return till the month of October. Due date for filing the return for the month of September is 20th October. Though the debit note is received in the next financial year, it relates to an invoice received in the preceding financial year. Therefore, the time limit for taking ITC available on ` 50,000 as well as on ` 4,15,000 is 20th October, earlier of the date of filing the annual return for the preceding financial year or the return for the month of September.

10) A registered person is in the business of manufacturing shoes. He gave 50 pairs of shoes to his friends free of cost. ITC on inputs and input services attributable to such 50 pair of shoes being used for non-business purposes will not be available.

(11) A registered person manufactures a product 'X' chargeable to 18% GST, a product 'Y' chargeable to NIL rate of tax and a product 'Z' which is exported without payment of tax under bond. All the three products are manufactured from common inputs and input services. ITC on inputs and input services attributable to product 'Y' being an exempt supply, will not be available.

12) ITC on cars purchased by a manufacturing company for official use of its employees is blocked.

(13) ITC on cars purchased by a car dealer for sale to customers is allowed.

(14) ITC on cars purchased by a company engaged in renting out cars for transportation of passengers, is allowed.

(15) ITC on cars purchased by a car driving school is allowed.

(16) ITC on buses (seating capacity for 24 persons) purchased by a company for transportation of its employees from their residence to office and back, is allowed.

(17) ITC on trucks purchased by a company for transportation of its finished goods is allowed.

(18) ITC on aircraft purchased by a manufacturing company for official use of its CEO is blocked.

(19) ITC on aircraft purchased by an Aviation School providing training on flying aircrafts, is allowed.

(20) ITC on general insurance taken on a car used by employees of a manufacturing company for official purposes, is blocked.

(21) ITC on maintenance & repair services availed by a company for a truck used for transporting its finished goods, is allowed.

(22) ITC on general insurance services taken on cars manufactured by a car manufacturing company is allowed.

23) A manufacturing company purchases food items for being served to its customers, free of cost. ITC on such goods is blocked.

(24) AB & Co., a caterer of Amritsar, has been awarded a contract for catering in a marriage to be held at Ludhiana. The firm has given the contract for supply of snacks, to be served in the marriage, to CD & Sons, a local caterer of Ludhiana. ITC on such outdoor catering services availed by AB & Co., is allowed.

(25) ITC on outdoor catering services availed by a garment exporter for a marketing event organised for its prospective customers, is blocked.

26) Outdoor catering service is availed by a company to run a free canteen in its factory. The Factories Act, 1948 requires the company to set up a canteen in its factory. ITC on such outdoor catering is allowed.

(27) The Managing Director of a company has taken membership of a club, the fees for which is paid by the company. ITC on such service is blocked.

(28) A company avails services of a travel agency for organizing a free vacation for its top performing employees. ITC on such services is blocked.

29) ITC on works contracts services availed by a software company for construction of its office, is blocked.

(30) CD & Co., a works contractor of Noida, has been awarded a contract for construction of a commercial complex in Lucknow. The firm avails services of EF & Co., a local works contractor of Lucknow, for the construction of complex. ITC on such works contract services availed by CD & Co., is allowed.

31) ITC on works contract services availed by an automobile company for construction of a foundation on which a machinery (to be used in the production process) is to be mounted permanently, is allowed.

(32) ITC on works contract services availed by a manufacturing company for construction of pipelines to be laid outside its factory, is blocked.

(33) A consulting firm has availed services of a works contractor for repair of its office building. The company has booked such expenditure in its profit and loss account. ITC on such services is allowed.

(34) A telecommunication company has availed services of a works contractor for repair of its office building. The company has capitalized such expenditure. ITC on such services is blocked.

35) A company buys cement, tiles etc. and avails the services of an architect for construction of its office building. ITC on such goods and services is blocked.

(36) MN & Constructions procures cement, paint, iron rods and services of architects and interior designers for construction of a commercial complex for one of its clients. ITC on such goods and services is allowed to MN & Co.

(37) A company buys cement, tiles etc. and avails the services of an architect for renovation of its office building. The company has booked such expenditure in its profit and loss account. ITC on such goods and services is allowed.

(38) ITC on goods and/or services used by an automobile company for construction of a foundation on which a machinery (to be used in the production process) is to be mounted permanently, is allowed.

39) Mr. X owns a retail showroom of tyres and tyre tubes. He takes 4 tyres from the showroom for his personal car. Being used for personal consumption, ITC on such 4 tyres is blocked.

40) If a manufacturer has availed ITC of ` 10/- at the time of manufacture of medicines valued at ` 100/-. At the time of return of such medicine on the account of expiry, the ITC available to the manufacturer on the basis of fresh invoice issued by wholesaler is ` 15/-. So, when the time expired goods are destroyed by the manufacturer, he would be required to reverse ITC of ` 15/- and not of ` 10/.

41) 'Z' becomes liable to pay tax on 1st August and has obtained registration on 15th August. 'Z' is eligible for ITC on inputs held in stock and as part of semi-finished goods or finished goods held in stock as on 31st July. 'Z' cannot take ITC on capital goods.

(42) 'A' applies for voluntary registration on 5th June and obtains registration on 22nd June. 'A' is eligible for ITC on inputs held in stock and as part of semi-finished goods or finished goods held in stock as on 21st June. 'A' cannot take ITC on capital goods.

(43) 'B', a registered taxable person, was paying tax under composition scheme upto 30th July. However, w.e.f. 31st July, 'B' becomes liable to pay tax under regular scheme. 'B' will be eligible for ITC on inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods as on 30th July. ITC on capital goods will be reduced by 5% per quarter from the date of the invoice.

44) Capital goods have been in use for 4 years, 6 month and 15 days. The useful remaining life in months = 5 months ignoring a part of the month.
ITC taken on such capital goods = C
ITC attributable to remaining useful life = C x 5/60

45) A company XYZ is registered in two States of M.P. and U.P. Its total value of assets is worth ` 100 crore, while its assets in State of M.P. and U.P are ` 60 crore and ` 40 crore respectively. It demerges a part of its business to company ABC. As a part of such demerger, assets of XYZ amounting to ` 30 Crore are transferred to company ABC in State of M.P, while assets amounting to ` 10 crore only are transferred to ABC in State of U.P. (Total assets amounting to ` 40 crore at all-India level are transferred from XYZ to ABC). The unutilized ITC of XYZ in State of M.P. shall be transferred to ABC on the basis of ratio of value of assets in State of M.P., i.e. 30/60 = 0.5 and not on the basis of all-India ratio of value of assets, i.e. 40/100=0.4. Similarly, unutilized ITC of XYZ in State of U.P. will be transferred to ABC in ratio of value of assets in State of U.P, i.e. 10/40 = 0.25.

46) The ITC balances of transferor X in the State of Maharashtra under CGST, SGST and IGST heads are 5 lakh, 5 lakh and 10 lakh respectively. Pursuant to a scheme of demerger, X transfers 60% of its assets to transferee B. Accordingly, the amount of ITC to be transferred from A to B shall be 60% of 20 lakh (total sum of CGST, SGST and IGST credit) i.e. 12 lakh.

47) ABC Ltd, a confectionary manufacturer, has paid bills of an advertising company amounting to ` 24 lakh for advertising campaigns for two varieties of cakes, which are manufactured at separate locations in Pune and Bangalore. The company had a total turnover of ` 112 crores in the previous financial year. The turnover of the Pune unit was ` 5 crores, and the turnover of the Bangalore unit was ` 10 crores. The aggregate turnover here is taken as ` 15 crores, as advertising was for cakes, which are manufactured at these two units only.

48) The Corporate office of ABC Ltd. is at Bangalore, with its business locations of selling and servicing of goods at Bangalore, Chennai, Mumbai and Kolkata. Software license and maintenance is used at all the locations, but invoice for these services (indicating CGST and SGST) are received at Corporate Office. Since the software is used at all the four locations, the ITC of entire services cannot be claimed at Bangalore. The

same has to be distributed to all the four locations. For that reason, the Bangalore Corporate office has to act as ISD to distribute the credit.
If the corporate office of ABC Ltd, an ISD situated in Bangalore, receives invoices indicating ` 4 lakh of CGST, `4 lakh of SGST and ` 7 lakh of IGST, it can distribute the ITC of CGST, SGST as well as IGST of ` 15 lakh amongst its locations at Bangalore, Chennai, Mumbai and Kolkata through an ISD invoice containing the amount of credit distributed.

49) The Corporate office of ABC Ltd. is at Bangalore, with its business locations of selling and servicing of goods at Bangalore, Chennai, Mumbai and Kolkata. Software license and maintenance is used at all the locations, but invoice for these services (indicating CGST and SGST) are received at Corporate Office. Since the software is used at all the four locations, the ITC of entire services cannot be claimed at Bangalore. The same has to be distributed to all the four locations. For that reason, the Bangalore Corporate office has to act as ISD to distribute the credit. If the corporate office of ABC Ltd, an ISD situated in Bangalore, receives invoices indicating ` 4 lakh of CGST, `4 lakh of SGST and ` 7 lakh of IGST, it can distribute the ITC of CGST, SGST as well as IGST of ` 15 lakh amongst its locations at Bangalore, Chennai, Mumbai and Kolkata through an ISD invoice containing the amount of credit distributed.

50) Amount of ITC available and output tax liability under different tax heads

Head	Output tax liability (₹)	ITC (₹)
IGST	1000	1300
CGST	300	200
SGST/UTGST	300	200
Total	**1600**	**1700**

Option 1

ITC of	Discharge of output IGST liability (₹)	Discharge of output CGST liability (₹)	Discharge of output SGST/UTGST liability (₹)	Balance of ITC (₹)
IGST	1000	200	100	0
ITC of IGST has been completely exhausted				
CGST	0	100	-	100
SGST/UTGST	0	-	200	0
Total	**1000**	**300**	**300**	**100**

Option 2

ITC of	Discharge of output IGST liability (₹)	Discharge of output CGST liability (₹)	Discharge of output SGST/UTGST liability (₹)	Balance of ITC (₹)
IGST	1000	100	200	0
ITC of IGST has been completely exhausted				
CGST	0	200	-	0
SGST/UTGST	0	-	100	100
Total	**1000**	**300**	**300**	**100**

There can be other options also for utilization of ITC of IGST against CGST and SGST liabilities. In this example, two options for utilizing ITC of IGST against CGST and SGST liabilities are shown.

ILLUSTRATIONS

ILLUSTRATION 1

XYZ Ltd, having its head Office at Mumbai, is registered as ISD. It has three units in different cities situated in different States namely 'Mumbai', 'Jabalpur' and 'Delhi' which are operational in the current year.

M/s XYZ Ltd furnishes the following information for the month of July:

(i) CGST paid on services used only for Mumbai Unit: ` 3,00,000/-

(ii) IGST, CGST & SGST paid on services used for all units: ` 12,00,000/-

Total turnover of the units for the previous financial year are as follows: -

Unit	Turnover (`)
Total Turnover of three units	` 10,00,00,000
Turnover of Mumbai unit	` 5,00,00,000
Turnover of Jabalpur unit	`3,00,00,000

Determine the credit to be distributed by XYZ Ltd. to each of its three units.

Answer

Particulars	Credit distributed to all units (`)			
	Total credit available	Mumbai	Jabalpur	Delhi
CGST paid on services used only for Mumbai Unit	300000	300000	0	0
IGST, CGST & SGST paid on services used for all units Distribution on pro rata basis to all the units which are operational in the current year	12,00,000	6,00,000	3,60,000	2,40,000
Total	15,00,000	9,00,000	3,60,000	2,40,000

Note 1: Credit distributed pro rata on the basis of the turnover of all the units is as under: -

(a) Unit Mumbai: (` 5,00,00,000/ ` 10,00,00,000) * ` 12,00,000 = ` 6,00,000

(b) Unit Jabalpur: (` 3,00,00,000/ ` 10,00,00,000) * ` 12,00,000 = ` 3,60,000

(c) Unit Delhi: (` 2,00,00,000/ `10,00,00,000) * ` 12,00,000 = ` 2,40,000

ILLUSTRATION 2

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 inward supplies during the month of April (current financial year):

S. No.	Items	GST paid in (`)
(i)	Life Insurance premium paid by the company for the life insurance of factory employees as per the policy of the company. There is no legal obligation for such insurance for employees.	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 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 ` 4,00,000 and claimed depreciation of ` 44,800 (@ 10%) on the full amount of ` 4,48,000 under Income Tax Act, 1961	48,000

Other information:

(1) In the month of September of previous financial year, PQR Company Ltd. availed ITC of ` 2,40,000 on purchase of raw material which was directly sent to job worker's premises under a challan on 25th September (previous financial year). The said raw material has not been received back from the job worker up to 30th April (current financial year).

(2) All the above inward supplies except at S. No. (iii) above have been used in the manufacture of taxable goods. Inward supplies at S. No. (iii) above have been used in the manufacture of exempt goods.

Compute the amount of net ITC available with PQR Company Ltd. for the month of April with necessary explanations for the treatment of various items as per the provisions of the CGST Act. Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled.

ANSWER

Computation of ITC available with PQR Company Ltd. for the month of April

Particulars	ITC (`)
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 supply [Note 3]	50,000
Work contractor's service [Note 4]	30,000

Capital goods purchased in respect of which depreciation is claimed on the tax component [Note 5]	Nil
Goods sent to job worker's premises [Note 6]	-
Total ITC available	**80,000**

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. Since it is not obligatory for the employer in the instant case and thus, the ITC thereon is blocked [Second proviso to section 17(5)(b)].

(2) ITC cannot be taken since invoice is missing and delivery challan is not a valid document to avail ITC [Section 16(2)(a)].

(3) ITC can be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply [Section 16(2) of the IGST Act].

(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)].

(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)].

(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 [Sub-sections (2) and (3) of section 19].
Hence, the ITC taken by PQR Company Ltd. in the month of September last year is valid and since one year period has yet not lapsed in April, there will be no tax liability on such inputs.

ILLUSTRATION 3

Siddhi Ltd. is a registered manufacturer engaged in taxable supply of goods. Siddhi Ltd. purchased the following goods during the month of January. The following particulars are provided by the company:

S. No.	Particulars	GST (`)
1.	Capital goods purchased on which depreciation has been taken on full value including GST paid thereon	15,000

2.	**Goods purchased from Ravi Traders (Invoice of Ravi Traders is received in month of January but goods were received in month of March)**	**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**	**50,000**
5.	**Truck purchased for delivery of finished products**	**80,000**

Determine the amount of ITC available with Siddhi Ltd. for the month of January by giving necessary explanations for treatment of various items as per the provisions of the CGST Act. Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled.

ANSWER

Computation of ITC available with Siddhi Ltd. for the month of January

Particulars	**GST (`)**
Capital goods [Note 1]	Nil
Goods purchased from Ravi Traders [Note 2]	Nil
Cars purchased for making further supply [Note 3]	Nil
Goods used for setting telecommunication towers [Note 4]	Nil
Trucks purchased for delivery of output goods [Note 5]	80,000
Total ITC available with Siddhi Ltd.	**80,000**

Notes:

(1) 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(3).

(2) ITC in respect of goods not received cannot be availed in terms of section 16(2)(b).
Since the goods have been received in the month of March, ITC thereon can be availed in the month of March and not in the month of January even though the invoice for the same has been received in the month of January.

(3) Though ITC on motor vehicles used for further supply of such vehicles is not blocked, ITC on goods destroyed for whatever reason is blocked [Clauses (a) and (h) of section 17(5)].

(4) ITC on goods used by a taxable person for construction of immovable property (other than plant and machinery) on his own account is blocked even when such goods are used in the course or furtherance of business [Section 17(5)(d)].
However, explanation to section 17 excludes telecommunication towers from the purview of plant and machinery. Therefore, ITC thereon will not be allowed.

(5) Section 17(5)(a) blocks ITC in respect of only those motor vehicles which are used for transportation of persons albeit with certain exceptions. Thus, ITC on motor vehicles used for transportation of goods is allowed.

QUESTIONS

1. 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.

2. 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.

3. 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.

4. A garment factory receives a Government order for making uniforms for a commando unit. This supply is exempt from tax under a notification issued under section 11 of the CGST Act. 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 (exclusive of taxes) of the other products of the factory and exempted uniforms in July is ` 4 crore and ` 1 crore respectively, the ITC on thread and lining material procured in July is ` 5000 and ` 15000 respectively.
Calculate the eligible ITC on thread and lining material.
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.
Credit attributable to exempt supplies = Common credit x (Exempt turnover/ Total turnover)
Common credit = ` 15,000 + ` 5,000 = ` 20,000
Exempt turnover = ` 1 crore
Total turnover = ` 5 crore [` 1 crore + ` 4 crore]
Credit attributable to exempt supplies = (` 1 crore /` 5 crore) x ` 20,000 = ` 4,000.
Ineligible credit of ` 4,000 will be reversed in Form GSTR-3B. Credit of ` 16,000 will be eligible credit for the month of July.

5. Ceramity Ltd. has following units:
A: Factory in Tumkur, Karnataka; turnover of ` 27 crores in 2019-20;
B: Service centre in Hyderabad, Telangana; turnover of ` 1 crore in 2019-20;
C: Service centre in Chennai, Tamil Nadu; turnover of 2 crores in 2019-20;
Ceramity Ltd.'s corporate office functions as ISD. It has to distribute ITC of ` 9 lakh for May, 2020. Of this, an invoice involving tax of ` 3 lakh pertains to technical consultancy for Tumkur unit.
Explain in brief how should the ITC be distributed?

ANSWER:

As per rule 39(d) relating to ITC, -

• ` 3 lakh is attributable to Tumkur unit, and will be transferred to Tumkur unit only.

• ` 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 2019-20.

o Tumkur unit will get (27 crore / 30 crore) x 6 lakh = ` 5.4 lakh;

o Hyderabad service centre will get (1 crore /30 crore) x 6 lakh = ` 20,000; and

o Chennai service centre will get (2 crore /30 crore) x 6 Lakh = ` 40,000.

Ceramity Ltd. should issue ISD invoices (from GSTN obtained separately for ISD) for distributing ITC (as calculated above) to its units. It should be clearly indicated in the invoices that the same are issued only for distribution of ITC.

6. 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 forward charge on 15th August for which tax invoice was also issued on the same date. The inputs were received by Mohan Ltd. on 15th August. Mohan Ltd. availed credit of ` 24,000 on 20th September by filing Form GSTR-3B for August month. However, Mohan Ltd. did not make any payment towards such supply along with tax thereon to the supplier. Is Mohan Ltd. eligible to avail ITC on such supply?

Discuss ITC 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, Mohan Ltd. is eligible to avail 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) read with rule 37].

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 while filing form GSTR-3B for the month of March.

7. State the conditions that need to be followed by an input service distributor for distribution of credit.

ANSWER:

The following conditions need to be followed by an input service distributor (ISD) for distribution of credit:

(i) The ISD is required to obtain a separate registration for distribution of credit.

(ii) The credit can be distributed to the recipients of credit against an ISD invoice containing prescribed details.

(iii) The amount of the credit distributed shall not exceed the amount of credit available for distribution.

(iv) The credit related to an input service must be distributed only to the particular recipient to whom that input service is attributable.

(v) 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.
(vi) 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.
(vii) 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.
(viii) Both ineligible and eligible ITC are to be distributed separately.
(ix) ITC of CGST, SGST/UTGST and IGST are to be distributed separately.
(x) ITC of CGST, SGST/UTGST in respect of recipient located in the same State/Union Territory is distributed as CGST and SGST/UTGST respectively.
(xi) 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).
(xii) ITC on account of IGST is distributed as IGST.

8. With reference to the provisions of section 17, examine the availability of ITC 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) 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). It is assumed that the expenditure incurred towards works contract service is capitalised in the books of MBF Ltd. and no depreciation has been claimed on the tax component.

(ii) Section 17(5)(d) 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) On a conjoint reading of section 17(5)(a) and 17(5)(ab), it can be concluded that 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.

9. On 25th August, M/s Agarwal & Agarwal, a registered supplier of taxable goods located in Bengaluru (Karnataka), purchased one machine for ` 12,39,000 (including IGST) from one supplier of Maharashtra who issued the invoice on the same date. M/s Agarwal & Agarwal put the machinery to use on the same day and availed ITC for the eligible amount.
M/s Agarwal & Agarwal used the machine in the process of manufacture of taxable goods. However, M/s Agarwal & Agarwal sold this machine to Mr. Suresh Kumar of Andhra Pradesh on 20th August of next year for ` 7,50,000 (excluding IGST).
With reference to section 18(6), determine the amount payable, if any, by M/s Agarwal & Agarwal at the time of sale of the machine.
Note: The applicable rate of IGST is 18%.
ANSWER:
As per section 18(6), if capital goods/ plant and machinery on which 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 of such outward supply determined under section 15.
Accordingly, the amount payable on supply of machinery by M/s Agarwal & Agarwal shall be computed as follows:

Particulars	**Amount (`)**
ITC taken on the machinery (` 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 = (` 1,89,000 × 5%) × 3 quarters (ii) For the current year = (` 1,89,000 × 5%) × 2 quarters	28,350 18,900
Amount required to be paid **(A)** **	1,41,750
Duty leviable on transaction value (` 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 is required to pay an amount of ` 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 rule 40(2), i.e. 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 rule 44(6), i.e. ITC involved in the remaining useful life (in months) of the capital goods/ machine can be reversed on pro-rata basis, taking the useful life as 5 years.

10. 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 ITC in respect of the following expenses incurred by it during the course of its business operations:
(i) 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 parking shed in its premises
ANSWER:
As per section 16(1), 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) specifies certain goods and services on which the input tax credit is not available.
In the light of the foregoing provisions, the availability of 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).
(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 parking 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.

11. 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	**6,200**
Common credit for the month of September (T_m) = T_c ÷ 60 = 4,200 ÷ 60 [Rule 43(1)(e)]	70
Common credit attributable to exempt supplies in a month (T_e) = (E ÷ F) x 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) × ` 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**

Note: *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 'T_r' and shall be the aggregate of 'T_m' for all such capital goods. However, clause (f) has been omitted vide the said notification. Consequently, the term "T_r" 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 'T_m' has been used here. It may be noted that as per the erstwhile clause (f) of rule 43(1) value of 'T_r' was the aggregate of 'T_m.'

12. X, a manufacturer of roofing sheets, has total ITC of ` 1,60,000 available with him on 01st June. He provides the following information pertaining to the goods and services procured during the month of June:

(1) Input tax on raw materials is ` 40,000. The raw material is used for both taxable and exempt activity.

(2) Input tax on catering services procured from 'Harvest Caterers' in connection with his housewarming ceremony is ` 10,000.

(3) Input tax on raw materials used in manufacture of exempt supplies of ` 2 lakh is ` 20,000.
(4) Input tax on cosmetic and plastic surgery of manager of the factory is ` 30,000.
Total turnover for the month of June is ` 60 lakh exclusive of tax.
Compute the ITC available for the month of June and net GST payable from Electronic Cash Ledger by X for the month of June. Rate of GST is 18% (Ignore CGST, SGST or IGST for the sake of simplicity).
Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled. All the purchases are made from registered suppliers.
ANSWER:

Computation of ITC available and net GST payable from Electronic Cash Ledger for the month of June

Particulars	**Amount (`)**
GST on taxable turnover for the month of June [` 60,00,000 × 18%]	10,80,000
Less: ITC available as on 30th June in terms of rule 42	

ITC available in the Electronic Credit Ledger on 1st June	` 1,60,000	
Add: Total ITC credited to the Electronic Credit Ledger in the month of June [Refer working note below]	` 40,000	
Less: ITC out of common credit attributable to exempt supply [Refer working note below]	(` 1,290)	1,98,710
Net GST payable from Electronic Cash Ledger	**8,81,290**	

Working Note:

Computation of ITC (out of common credit) attributable to exempt supplies

Particulars	**Amount (`)**
Input tax on raw materials [Note1]	40,000
Input tax on catering for housewarming [Note 2]	Nil
Input tax on inputs contained in exempt supplies [Note 3]	Nil
Input tax on cosmetic and plastic surgery of CEO of company [Note 4]	Nil
Total ITC credited to the Electronic Credit Ledger in terms of rule 42 in the month of June	40,000
Common credit [Note 5]	40,000
ITC attributable towards exempt supplies [Note 6]	**1,290**

Notes:

(1) 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)].

(2) ITC on outdoor catering is blocked in terms of section 17(5) 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].
(3) Input tax on inputs used for making exempt supplies is not available as ITC and thus, not credited to the Electronic Credit Ledger in terms of rule 42.

(4) ITC on cosmetic and plastic surgery is blocked in terms of section 17(5) 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].
(5) Since there are no inputs and input services which are used exclusively for effecting taxable supplies, the entire ITC credited to Electronic Credit Ledger, i.e. ` 40,000 will be the common credit [Rule 42].
(6) ITC attributable towards exempt supplies = Common credit x (Aggregate value of exempt supplies during the tax period / Total turnover during the tax period)
= ` 40,000 × ` 2,00,000/ ` 62,00,000 - (rounded off)
= ` 1,290

13. Sarani Weavers, at Pune, Maharashtra is a registered input service distributor and intends to distribute ITC for the month of March. The following are the details available for such distribution:

Branch	Turnover of the last quarter (`)	ITC specifically applicable to the branch (`)
Ganganagar Branch (Rajasthan)	10,00,000	IGST – ` 12,000 CGST – ` 3,000 SGST –` 3,000
Madhugiri Branch (Karnataka)	5,00,000	Nil
Kosala Branch (UP)	15,00,000	Nil
Mumbai Branch (Maharashtra)	20,00,000	IGST – ` 1,50,000 CGST– ` 15,000 SGST– ` 15,000

ITC available on input services used commonly by all branches is as under:
CGST - ` 60,000
SGST - ` 60,000
IGST - ` 1,20,000
ITC (IGST) of ` 10,000 pertaining to March (last year) was inadvertently not distributed. Whether the same can be considered for distribution in March this year?
Madhugiri, Karnataka branch uses input services to manufacture exempted products. Turnover excludes duties & taxes payable to Central and State Government.
Determine the manner of input tax distribution.
ANSWER:
As per section 20 read with rule 39:
(i) Total GST credit (CGST+ SGST + IGST) of ` 18,000 specifically attributable to Ganganagar Branch, Rajasthan will be distributed as IGST credit of ` 18,000 only to Ganganagar Branch, Rajasthan [Since recipient and ISD are located in different states].
(ii) IGST credit of ` 1,50,000, CGST credit of ` 15,000 and SGST credit of ` 15,000 specifically attributable to Mumbai Branch, Maharashtra will be distributed as IGST credit of ` 1,50,000, CGST credit of ` 15,000 and SGST credit of ` 15,000 respectively, only to Mumbai Branch, Maharashtra [Since recipient is located in the same State in which ISD is located].

(iii) CGST credit of ` 60,000, SGST credit of ` 60,000 and IGST credit of `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: ` 48,000 [`2,40,000 x (10,00,000/ 50,00,000)] as IGST credit.
- Madhugiri Branch, Karnataka will get: ` 24,000 [`2,40,000 x (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: ` 72,000 [`2,40,000 x (15,00,000/ 50,00,000)] as IGST credit.
- Mumbai Branch, Maharashtra will get:
` 24,000 [60,000 x (20,00,000/ 50,00,000)] as CGST credit,
`24,000 [60,000 x (20,00,000/ 50,00,000)] as SGST credit and
` 48,000 [1,20,000 x (20,00,000/ 50,00,000)] as IGST credit.

(iv) ITC of ` 10,000 of March (last year) cannot be distributed in March this year as ITC available for distribution in a month is to be distributed in the same month.

14. George Pvt. Ltd., a registered supplier of goods at Kerala who pays GST under regular scheme, has made the following transactions (exclusive of tax) during a tax period:

Purchases (`)	Sales (`)	Tax Rate
5,00,000 [Purchases made from registered person in New Delhi]	10,00,000 [Sale made to registered person in New Delhi]	IGST - 18% CGST – 9% SGST- 9%
2,50,000 [Purchases made from registered person in Trivandrum, Kerala]	8,00,000 [Sales made to registered person in Trivandrum]	

The company has complied with all the conditions for availing the ITC. The following further information regarding various balances available with it on the first day of the tax period, is provided by the company:

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 from the Electronic Cash Ledger by George Pvt. Ltd. for the tax period as also ITC to be carried forward to next tax period, if any.

ANSWER:

Computation of minimum net CGST, SGST and IGST payable from the electronic cash ledger by George Pvt. Ltd. for the tax period

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 [Being intra-State sale, the same is liable to CGST & SGST]	8,00,000	72,000	72,000	

Less: ITC available during the tax period 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**
ITC to be carried forward to next tax period		500 (72,500-70,000)	Nil (52,500-52,500)	Nil (1,90,000-1,90,000
Working Note: **ITC available during the tax period is computed as under:**				
Opening balance of ITC		50,000	30,000	1,00,000
Purchases from New Delhi [Being inter-State purchase, IGST would have been paid on it.]	5,00,000			90,000
Purchases from Trivandrum	2,50,000	22,500	22,500	
Total input tax credit		**72,500**	**52,500**	**1,90,000**
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 for payment of output tax liability under GST. It can be used only against corresponding interest/penalty under the GST law.				

15. Quanto Enterprises is not required to register under CGST Act. However, it applied for voluntary registration on 17th September. Registration certificate has been granted to the firm on 25th September. The CGST and SGST liability of the firm for the month of September is ` 24,000 each. The firm is not engaged in making inter-State outward taxable supplies. Quanto Enterprises provides the following information regarding capital goods and inputs held in stock by it as on 24th September:

Particulars	**Amount (`)**
Inputs procured on 2nd September lying in stock	
- CGST @ 6%	**4,500**
- SGST @ 6%	**4,500**
Input received on 21st July contained in semi-finished goods held in stock:	
- CGST @ 6%	**7,500**
- SGST @ 6%	**7,500**
Value of inputs contained in finished goods held in stock- ` 2,00,000 [Such inputs were procured on 19th September last year. Invoice for the goods was also dated the same day]	
- IGST @ 18%	**36,000**
Inputs valued at ` 50,000 procured on 13th September lying in stock:	
- IGST @ 18%	**9,000**
Capital goods procured on 12th September	
-CGST @ 6%	**12,000**
-SGST @ 6%	**12,000**

You are required to compute the net GST payable from Electronic Cash Ledger by Quanto Enterprises for the month of September.
You are also required to mention reasons for treatment of all above items.
ANSWER:
Computation of net GST payable from Electronic Cash Ledger by Quanto Enterprises for the month of September

Particulars	**CGST (Rs)**	**SGST (Rs)**
Output tax liability for the month	24,000	24,000
Less: ITC [Notes 1 & 2]	9,000 (IGST)	12,000 (SGST)
	12,000 (CGST)	
Net GST payable (from electronic cash ledger)	**3,000**	**12,000**

Notes:
1. Credit of IGST is first utilized towards payment of IGST and thereafter for CGST and SGST in any order and in any proportion. Credit of CGST and SGST can be utilized only after IGST credit has been fully utilized [Rule 88A read with sections 49(5), 49A and 49B].

Since Quanto Enterprises does not make any inter-State supply, in the above answer, entire credit of IGST has been utilized towards payment of CGST. Credit of IGST can also be utilised against SGST liability or against both CGST and SGST liabilities in any proportion and thus, the final answer will change accordingly.
2. As per section 18(1)(b) 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)].
In this case, since Quanto Enterprises has been granted voluntary registration on 25th September, it will be entitled to ITC on inputs held in stock and inputs contained in semi-finished/ finished goods held in stock, on 24th September. In view of the said provisions, eligible ITC for Quanto Enterprises is computed as follows:

Particulars	**CGST (`)**	**SGST (`)**	**IGST (`)**
Inputs held in stock since 2nd September	4,500	4,500	
Inputs received on 21st July contained in semi-finished goods held in stock	7,500	7,500	
Inputs contained in finished goods held in stock which were procured on 19th September last year [Procured prior to one year, hence ITC cannot be availed]			Nil
Inputs held in stock since 13th September			9,000
Capital goods procured on 12th September	Nil		Nil
Total ITC	**12,000**	**12,000**	**9,000**

16. B & D Company, a partnership firm, in Nagpur, Maharashtra is a wholesaler of taxable product 'P' and product 'Q' exempted by way of a notification. 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 30th June (`)	Turnover for the quarter ended 30th September (`)
'P'	60,00,000	50,00,000
'Q'	17,65,000	17,00,000

Particulars	Stock as on 30th June (`)	Stock as on 30th September (`)	Stock as on 31st October (`)
'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 30th September 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. The said stock could not be sold during the month of October. 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	R	Total (`)
2306	1st October	2,00,000	3,000	2,03,000
2307	1st October	1,33,000	5,250	1,38,250
2308	2nd October	67000	39,250	1,06,250
2309	3rd October	58,750	33,750	92,500
2310	5th October	1,00,000	-	1,00,000
2311	6th October	94,000	6,000	1,00,000
2312	6th October	-	17,000	17,000
2313	8th October	50,000	6,000	56,000
2314	9th October	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).

Note: Make suitable assumptions wherever required. Stock is valued at cost price.

ANSWER:

As per section 10(3) 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), 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 3rd October [aggregate of both taxable and exempt turnover from 1st April to 3rd October, i.e. ` 1,50,05,000 (` 1,44,65,000 + ` 2,03,000 + ` 1,38,250 + ` 1,06,250 + `92,500)].

Thus, the firm will pay tax under regular scheme (Section 9) from 3rd October.

As per section 18(1)(c) read with rule 40, 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)].

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 **2nd October** will be computed as under:

Particulars		**Amount (`)**
Stock of taxable inputs as on 30th September [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 is considered]		10,00,000
Add: Purchases [No purchases are made in October]		Nil
Less: Cost of taxable goods sold from 1st October to 2nd October [(2,00,000 + 1,33,000 + 67,000]) x 80%]		3,20,000
Stock of taxable inputs as on 2nd October [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		3,00,000
Stock of inputs on which ITC can be claimed		3,80,000
ITC of CGST @ 9%	[Since all purchases are intra-State and from the suppliers registered under regular scheme]	**34,200**
ITC of SGST @ 9%		**34,200**

17. 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, 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 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 1st October for being used in manufacturing all the three products	2,00,000	36,000
(b)	Machinery 'V' purchased on 1st October for being used in manufacturing product 'Alpha' and 'Gama'	1,00,000	18,000
(c)	Machinery 'W' purchased on 1st October for being exclusively used in manufacturing product 'Beta'	3,00,000	54,000
(d)	Machinery 'Y' purchased on 1st October four years ago for being exclusively used in manufacturing product 'Beta'. From 1st October, such machinery will also be used for manufacturing product 'Gama'.	4,00,000	72,000
(e)	Machinery 'Z' purchased on 1st October two years ago for being used in manufacturing all the three products	3,00,000	54,000
(f)	Raw Material used for manufacturing 'Alpha' purchased on 5th October	1,50,000	27,000
(g)	Raw Material used for manufacturing 'Beta' purchased on 10th October	2,00,000	36,000
(h)	Raw Material used for manufacturing 'Gama' purchased on 15th October	1,00,000	18,000

Compute the following:
(i) Amount of ITC credited to Electronic Credit Ledger, for the month of October
(ii) Amount of aggregate value of common credit (T_c)
(iii) Common credit attributable to exempt supplies, for the month of October

(iv) GST liability of the company payable through Electronic Cash Ledger, for the month of October
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%. Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled. Ignore interest, if any and make suitable assumptions wherever required.
ANSWER:

S. No.	Particulars	ITC (`)
(i) Amount of ITC credited to Electronic Credit Ledger, for the month of October		
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
Amount of ITC credited to Electronic Credit Ledger, for the month of October		**99,000**
(ii) Aggregate value of common credit (T_c) – Note 7		
Value of 'A' for Machinery 'U' purchased on 1st October		36,000
Value of 'A' for Machinery 'Z' purchased on 1st October 2 years ago for effecting both taxable and exempt supplies		54,000
Input tax claimed on Machinery 'Y' purchased on 1st October 4 years ago for effecting taxable supplies but used for effecting both taxable and exempt supplies from 1st October in the current year [Note 8]		72,000
Aggregate value of common credit (T_c)		**1,62,000**
(iii) Common credit attributable to exempt supplies, for the month of October		
Common credit for the month of October (T_m) [Note 9]		2,700
Common credit attributable to exempt supplies, for the month of October (T_e) – Note 10		**1,080**
(iv) Computation of GST liability of the company for October payable through Electronic Cash Ledger		
IGST payable on 'Alpha' [` 9,00,000 x 18%]		1,62,000
IGST payable on 'Beta' [Exempt]		Nil
IGST payable on 'Gama' [` 6,00,000 x 18%]		1,08,000
Total IGST payable on outward supply		2,70,000
Common credit attributable to exempt supplies for the month of October [Note 11]		1,080
Total output tax liability of October		2,71,080
Less: ITC available in the Electronic Credit Ledger		99,000

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)].

(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)].

(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)].

(4) Machinery 'Y' is being used for effecting both taxable and exempt supplies from 1st October. 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 1st October two years ago. 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].

(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)].

(8) Where any capital goods which were used exclusively for effecting taxable supplies are subsequently also used for effecting exempt supplies, the ITC 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)].

(9) 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) as under:

= T_c ÷ 60

= ` 1,62,000 ÷ 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 'T_e', and shall be calculated as:

T_e= (E÷ F) x 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)].

=T_r x Turnover of exempt supplies during the month of October/ Total turnover of XYZ Pvt. Ltd. during the month of October

= ` 2,700 x 10,00,000/25,00,000 = ` 1,080

(11) Common credit attributable to the exempt supplies (T_e) 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)].

*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 'T_r' and shall be the aggregate of 'T_m' for all such capital goods.

However, clause (f) has been omitted vide the said notification. Consequently, the term "T_r" 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 'T_m' has been used here. It may be noted that as per the erstwhile clause (f) of rule 43(1) value of 'T_r' was the aggregate of 'T_m.'

18. 'All-in-One Store' is a retail 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 a month:
(i) Aggregate value of various items sold in the Store:
Taxable items – ` 42,00,000
Items exempted vide a notification – ` 12,00,000
Items not leviable to GST – ` 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 ` 5,00,000. Such items are sold in the Mumbai Store at ` 8,00,000.
(iii) Aggregate value of various items procured for being sold in the Store:
Taxable items – ` 55,00,000
Items exempted vide a notification – ` 15,00,000
Items not leviable to GST – ` 5,00,000
(iv) Freight paid to goods transport agency (GTA) for inward transportation of taxable items – ` 1,00,000
(v) Freight paid to GTA for inward transportation of exempted items – ` 80,000
(vi) Freight paid to GTA for inward transportation of non-taxable items - ` 20,000
(vii) Monthly rent payable for the complex – ` 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 – ` 2,50,000
(ix) Salary paid to the regular staff at the Store – ` 2,00,000
(x) GST paid on inputs used for personal purpose – ` 5,000
(xi) GST paid on rent a cab services availed for transportation of employees, which is not obligatory under any law – ` 4,000
(xii) GST paid on items given as free samples – ` 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 payable from Electronic Cash Ledger for the month

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% (Ignore CGST, SGST or IGST for the sake of simplicity).
(2) All the purchases are made from registered suppliers.
(3) Wherever applicable, the amounts given are exclusive of taxes.
(4) Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled.
ANSWER:

A. Computation of ITC credited to Electronic Credit Ledger

As per rule 42, 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 ['C_1'] 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)

Computation of total input tax involved [T]

Particulars	**(`)**
GST paid on taxable items [` 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 - [` 1,00,000 x 5%]	5,000
GST paid under reverse charge on freight paid to GTA for inward transportation of exempted items - [` 80,000 x 5%]	4,000
GST paid under reverse charge on freight paid to GTA for inward transportation of non-taxable items - [` 20,000 x 5%]	1,000
GST paid on monthly rent - [` 5,50,000 x 18%]	99,000
GST paid on packing charges [` 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 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 during the month [T]	11,57,000

Computation of T_1, T_2, T_3

Particulars	(`)
GST paid on monthly rent attributable to personal purposes [1/3 of ` 99,000]	33,000
GST paid on inputs used for personal purpose	5,000
Input tax exclusively attributable to non-business purposes [T_1]	**38,000**

GST paid under reverse charge on freight paid to GTA for inward transportation of exempted items [As per section 2(47), 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). 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 [T_2]	**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) 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.	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)].	4,000
Input tax for which credit is blocked under section 17(5) [T3] **	**8,000**

****Since GST paid on inputs used for personal purposes has been considered while computing T_1, the same has not been considered again in computing T_3.

ITC credited to the electronic credit ledger

$C_1 = T - (T_1+T_2+T_3)$

= ` 11,57,000 – (` 38,000 + ` 5,000 + ` 8,000) = ` 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	**(`)**
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 [T_4]	**9,95,000**

Common Credit $C_2 = C_1 - T_4$
=` 11,06,000 – ` 9,95,000
= ` 1,11,000

C. Computation of ITC attributable towards exempt supplies out of common credit

ITC attributable towards exempt supplies is denoted as 'D_1' and calculated as-
$D_1 = (E \div F) \times C_2$
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 the month
= ` 15,00,000 (` 12,00,000 + `3,00,000)
Total turnover in the State during the tax period
= ` 65,00,000 (` 42,00,000 + ` 12,00,000 + `3,00,000 + ` 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. 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 because the goods are to be distributed as free samples, ITC on which is blocked. 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.

D_1 = (15,00,000 ÷ 65,00,000) x 1,11,000
= ` 25,615 (rounded off)

D. Computation of Eligible ITC out of common credit

Eligible ITC attributed for effecting taxable supplies is denoted as 'C_3', where-
$C_3 = C_2 - D_1$
= ` 1,11,000 - ` 25,615
= ` 85,385

E. Computation of Net GST liability for the month

Particulars	**GST (`)**
GST liability under forward charge	
Taxable items sold in the store [` 42,00,000 x 18%]	7,56,000
Taxable items transferred to Goa Store [` 8,00,000 x 18%]	1,44,000
Total output tax liability under forward charge	9,00,000
Less: ITC credited to the electronic ledger	**10,80,385**
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 [` 1,00,000 x 5%]	5,000
Freight paid to GTA for inward transportation of exempted items [` 80,000 x 5%]	4,000
Freight paid to GTA for inward transportation of non-taxable items [` 20,000 x 5%]	1,000
Total tax liability under reverse charge [B]	10,000
Net GST liability to be paid in cash [A] + [B] As per section 49(4), 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). Therefore, tax payable under reverse charge cannot be set off against the ITC 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	**(`)**
GST paid on taxable items [` 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 [` 1,00,000 x 5%]	5,000
GST paid under reverse charge on freight paid to GTA for inward transportation of exempted items [` 80,000 x 5%] [As per section 2(47), 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 attributable to exempt supplies is to be excluded]	Nil
GST paid under reverse charge on freight paid to GTA for inward transportation of non-taxable items [` 20,000 x 5%] [Exempt supply includes non-taxable supply in terms of section 2(47). 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 [(` 5,50,000 x 18%) – 1/3 of [(` 5,50,000 x 18%)]	66,000

GST paid on packing charges [` 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 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)]	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) 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.]	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)]	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

19. 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 a month:

(`)		
(1) Details of sales:		
Supply of taxable goods		**50,00,000**
Supply of goods not leviable to GST		**10,00,000**
(2) Details of goods purchased for being sold in the shop:		
Taxable goods		**45,00,000**
Goods not leviable to GST		**4,00,000**
Details of expenses:		
3)	**Monthly rent payable for the shop**	**3,50,000**
Telephone expenses paid		**50,000**

(` 30,000 for land line phone installed at the shop and ` 20,000 towards mobile phone bills of the employees – Mobile phones are given to employees for official use)	
Audit fees paid to a Chartered Accountant (` 35,000 for filing of income tax return & the statutory audit of preceding financial year and ` 25,000 for filing of GST return)	60,000
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 goods not leviable to GST	50,000
Freight paid to goods transport agency (GTA) for inward transportation of taxable goods	1,50,000
Goods given as free samples (Not included in Taxable goods value of 45,00,000)	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. Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled.

You are required to compute the following:

(1) Input Tax Credit (ITC) credited to Electronic Credit Ledger

(2) Common credit available for apportionment

(3) ITC attributable towards exempt supplies out of common credit

(4) Net GST payable from Electronic Cash Ledger for the month

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) is not credited to electronic credit ledger [Sections 16 and 17].

In the light of the aforementioned provisions, the ITC credited to electronic credit ledger of Vansh Shoppe is calculated as under:

Particulars	**Amount (`)**	**CGST @ 6% (`)**	**SGST @ 6% (`)**
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 [ITC on health 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)].	10,000	Nil	Nil
Goods given as free samples [ITC on goods disposed of by way of free samples is blocked under section 17(5)(h)]	5,000	Nil	Nil
Particulars	**Amount (`)**	**CGST @ 2.5% (`)**	**SGST @ 2.5% (`)**
Freight paid to GTA for inward transportation of non-taxable goods under reverse charge [Since definition of exempt supply under section 2(47) specifically includes non-taxable supply, the input service of inward transportation of non-taxable goods is being exclusively used for effecting exempt supplies.]	50,000	Nil	Nil
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 common credit, attributable to exempt supplies](Refer point no. 2 & 3 below)		(4,600)	(4,600)
Net ITC available		**2,96,750**	**2,96,750**

(2) Computation of common credit available for apportionment

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 read with rule 42].

Particulars	**CGST (`)**	**SGST (`)**
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 read with rule 42].

Particulars	**CGST (`)**	**SGST (`)**
ITC attributable towards exempt supplies [` 27,600 x (` 10,00,000/` 60,00,000)]	**4,600**	**4,600**

(4) Computation of net GST liability for the month

Particulars	**CGST (`)**	**SGST (`)**
GST liability under forward charge		
Supply of taxable goods [` 50,00,000 x 6%]	3,00,000	3,00,000
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 [` 1,50,000 x 2.5%]	3,750	3,750
Freight paid to GTA for inward transportation of non-taxable goods [` 50,000 x 2.5%]	1,250	1,250
Total 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]. However, tax payable under reverse charge is not an output tax in terms of definition of output tax provided under section 2(82). Therefore, tax payable under reverse charge cannot be set off against the input tax credit and thus, will have to be paid in cash.

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 a tax period:

Particulars	(`)
Turnover of 'M' (excluding export sales)	14,00,000
Turnover of 'N'	6,00,000
Turnover of 'O' (excluding export sales)	10,00,000
Export of 'M' with payment of IGST (not eligible to avail benefit of merchant exports under Notification No. 41/2017)	2,50,000
Export of 'O' under letter of undertaking	10,00,000
Consultancy services provided to unrelated 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 ` 2.50 lakh, being 2% of value) [Entire consideration is received post issuance of completion certificate; building was occupied thereafter]	1,20,00,000
Interest received on investment in fixed deposits with a bank	4,00,000
Sale of shares (Purchase price ` 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 mentioned above [Inputs - ` 35,00,000; Input services - ` 15,00,000]	50,00,000

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 tax period.

Note: Assume that rate of GST on goods and services are 12% and 18% respectively (Ignore CGST, SGST or IGST for the sake of simplicity). Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled. Turnover of Surana & Sons was ` 85,00,000 in the previous financial year.

ANSWER:

Computation of net GST liability of Surana & Sons for the tax period

Particulars	(`)
GST payable on outward supply [Refer Working Note 1]	3,18,000
Less: Input tax credit (ITC) [Refer Working Note 3]	2,78,180
GST payable from Electronic Cash Ledger **[A]**	39,820
Add: GST payable on legal services under reverse charge [` 3,50,000 X 18%] **[B]**	63,000

[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 ` 20 lakh.]	
Total GST paid from Electronic Cash Ledger [A] + [B] [As per section 49(4) 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). Therefore, input tax credit cannot be used to pay tax payable under reverse charge and thus, tax payable under reverse charge will have to be paid in cash.]	1,02,820

Working Note 1
Computation of GST payable on outward supply

Particulars	**Value (`)**	**GST (`)**
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 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.]	10,00,000	Nil
Consultancy services provided to independent clients located in foreign countries.	20,00,000	Nil
[The activity is an export of service in terms of section 2(6) of the IGST Act, 2017 as- • the supplier of service is located in India; • the recipient of service is located outside India; • place of supply of service is 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. [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.] It is assumed that export has been made under LUT		
Sale of building [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, provided the entire consideration has been received after issue of completion certificate by the competent authority or after its occupation, whichever is earlier. Hence, the same is not liable to GST]	1,20,00,000	Nil
Interest received on investment in fixed deposits with a bank [Exempt vide Notification No. 12/2017 CT (R) dated 28.06.2017]	4,00,000	Nil
Sale of shares [Shares are neither goods nor services in terms of section 2(52) and 2(102). Hence, sale of shares is neither a supply of goods nor a supply of services and hence, is not liable to any tax.]	2,50,00,000	Nil
Total GST payable on outward supply		**3,18,000**

Working Note 2

Computation of common credit attributable to exempt supplies during the tax period

Particulars	**(`)**
Common credit on inputs and input services [Tax on inputs - ` 4,20,000 (` 35,00,000 x 12%) + Tax on input services – ` 2,70,000 (` 15,00,000 x 18%)]	6,90,000
Common credit attributable to exempt supplies (rounded off) = Common credit on inputs and input services x (Exempt turnover during the period / Total turnover during the period) = ` 6,90,000 x ` 1,33,50,000/ ` 1,94,00,000 Exempt turnover = ` 1,33,50,000 and total turnover = `1,94,00,000 [Refer note below]	4,74,820

Note:

As per section 17(3), 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, 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, 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 (` 6,00,000), value of sale of building (` 2,50,000 / 2 x 100 = ` 1,25,00,000) and value of sale of shares (1% of ` 2,50,00,000 = ` 2,50,000), which comes out to be ` 1,33,50,000.
Total turnover = ` 1,94,00,000 (` 14,00,000 + ` 6,00,000 + ` 10,00,000 + ` 2,50,000 + ` 10,00,000 + ` 20,00,000 + ` 1,25,00,000 + ` 4,00,000 + ` 2,50,000)

Working Note 3
Computation of ITC available in the Electronic Credit Ledger of the Surana & Sons for the tax period

Particulars	**(`)**
Common credit on inputs and input services	6,90,000
Legal services used in the manufacture of taxable product 'M'	63,000
ITC available in the Electronic Credit Ledger	**7,53,000**
Less: Common credit attributable to exempt supplies during the tax period [Refer Working Note 2]	4,74,820
Net ITC available	**2,78,180**

21. 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 operators. Similarly, excavator operators are supplied only when the excavator is hired out.
M/s XYZ receives the following services:
- 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:
- 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 from Electronic Cash Ledger 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%
(Ignore CGST, SGST or IGST for the sake of simplicity).
Note: - Opening balance of ITC 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: ITC [Refer Working Note 2 below]	2,00,000
Net GST payable from Electronic Cash Ledger	**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
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) 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%.

(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 ITC available for set off

Particulars	GST paid (`)	ITC available (`)
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 ITC available		**2,00,000**

Notes:

(i) Section 17(5)(d) blocks credit on goods/ 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. Further, excavators are special purpose vehicles whose

credit is not restricted under section 17(5)(a), therefore, ITC on maintenance service for excavators shall be allowed.

Therefore, the maintenance service for the excavators does not get covered by the bar under section 17 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) 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.

22. 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 a tax period:

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, social welfare surcharge of ` 0.015 lakh and integrated tax of ` 0.2997 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
(ix) The opening balance of ITC with the company for the tax period is:
CGST - ` 0.15 lakh
SGST - ` 0.08 lakh
IGST - ` 0.09 lakh
Compute (i) ITC available with V-Supply Pvt. Ltd. for the tax period; and (ii) Net GST payable [CGST, SGST or IGST, as the case may be] from Electronic Cash Ledger by V-Supply Pvt. Ltd. for the tax period.
Note-
(i) CGST, SGST & IGST rates to be 9%, 9% and 18% respectively, wherever applicable.
(ii) The necessary conditions for availing ITC have been complied with by V-Supply Pvt. Ltd., wherever applicable.
You are required to make suitable assumptions, wherever necessary.

ANSWER:

Computation of ITC available with V-Supply Pvt. Ltd. for the tax period

S. No.				ITC
Particulars	**`CGST ***	**SGST* `**	**IGST* `**	**Total `**
1. Opening balance of ITC	15,000	8,000	9,000	32,000
2. Raw Material				
Raw material purchased from Bihar [Refer Note 1(i)]			14,400	14,400
Raw material imported from China [Refer Note 1(ii)]			29,970	29,970
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 ITC for raw material	7,650	7,650	44,370	59,670
3. Consumables [Refer Note 2]	9,000	9,000		18,000
4. Transportation charges for bringing the raw material to factory [Refer Note 3]	1,500	1,500		3,000
5. Salary paid to employees on rolls [Refer Note 4]	Nil	Nil	Nil	Nil
6. Premium paid on life insurance policies taken for specified employees [Refer Note 5]	14,400	14,400	-	28,800
7. Audit fee [Refer Note 6	4,500	4,500	-	9,000

8. Telephone expenses [Refer Note 6]	2,700	2,700		5,400
9. Bank charges [Refer Note 6]	900	900		1,800
Total ITC available for the tax period	**55,650**	**48,650**	**53,370**	**157670**

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
Total output tax liability	63,000	63,000	54,000	1,80,000
Less: ITC available for being set off [Note 8 and Note 9]	(55,650)	(48,650)	(53,370)	(1,57,670)
Net GST payable from Electronic Cash Ledger [A]	7,350	14,350	630	22,330
GST payable on inward supply of GTA services under reverse charge through Electronic Cash Ledger [Note 3 and 10] **[B]**		1,500	1,500	3,000
Net GST payable through Electronic Cash Ledger [A] + [B]	**8,850**	**15,850**	**630**	**25,330**

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).

(ii) IGST paid on imported goods qualifies as input tax in terms of section 2(62)(a). 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).

(iii) Tax on intra-State procurements made by a registered person from an unregistered supplier is levied only on notified categories of goods and services. [Section 9(4)].

(iv) ITC is not available on destroyed inputs in terms of section 17(5)(h).

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). 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)]. Hence, there being no levy of GST on diesel, there cannot be any ITC.

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). Thus, input tax paid under reverse charge on GTA service will be available as ITC in terms of section 16(1) 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 ITC 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 ITC on such services

5. ITC 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)]. Therefore, GST paid on premium for life insurance policies will be available as ITC in terms of section 16(1) 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).

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 ITC 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) read with rule 88A, ITC of-
(i) IGST is utilised towards payment of IGST first and then CGST and SGST in any proportion and in any order.
(ii) CGST is utilised towards payment of CGST and IGST in that order. ITC of CGST shall be utilized only after ITC of IGST has been utilised fully.
(iii) SGST is utilised towards payment of SGST and IGST in that order. ITC of SGST shall be utilized only after ITC of IGST has been utilised fully.

10. Section 49(4) 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). Therefore, tax payable under reverse charge cannot be set off against the ITC 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.

23. ABC Company Ltd. of Bengaluru is a manufacturer and registered supplier of machineries. It has provided the following details for a tax period:

Inward supplies	GST paid (`)
Health insurance of factory employees as required by the Factories Act, 1948	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 sent directly to job worker's premises under delivery challan	50,000
Purchase of car used by director exclusively for the purpose of business meetings	25,000
Outdoor catering service availed for business meetings	8,000

ABC Company Ltd. also provides service of hiring of machines along with manpower 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.

Outward supply (exclusive of GST) for the tax period are as follows:

Particulars	Value (`)
Hiring receipts for machine	5,25,000
Service charges for supply of manpower operators	2,35,000

Assume the rates of GST to be as under:
(i) Service of hiring of machine 12%
(ii) Supply of manpower operator service 18%
(Ignore CGST, SGST or IGST for the sake of simplicity)
Compute the amount of ITC available as also the net GST payable from the Electronic Cash Ledger for the tax period by giving necessary explanations for treatment of various items.
Note: Opening balance of ITC 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 payable from Electronic Cash Ledger	**9,200**

Working Notes:

(1) Computation of ITC available with ABC Company Ltd.

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:

1. ITC of health insurance is available in the given case in terms of proviso to section 17(5)(b) since it is obligatory for employer to provide health insurance to its employees under the Factories Act, 1948. –

2. Where the goods against an invoice are received in lots/ instalments, ITC is allowed upon receipt of the last lot/ instalment vide first proviso to section 16(2). Therefore, ABC Company Ltd. will be entitled to ITC of raw materials on receipt of second instalment in next month.

3. Section 17(5)(c) 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.

4. ITC on capital goods directly sent to job worker's premises under challan is allowed in terms of section 19(5) read with rule 45(1).

5. Section 17(5)(a) 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-
(i) further supply of such vehicles,
(ii) transportation of passengers,
(iii) 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 passengers or any other use as specified, ITC thereon will not be available.

6. Section 17(5)(b)(i) 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

	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) read with section 2(90)]. 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).

24. Pari Ltd. of Jodhpur (Rajasthan) is a registered manufacturer of cosmetic products. Pari Ltd. has furnished following details for a tax period:

Particulars		**(`)**
Details of Outward 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**
	Details of expenses	
(i)	**Raw materials purchased from registered suppliers located in Rajasthan**	**1,06,250**
(ii)	**Raw materials purchased from unregistered suppliers located in Rajasthan**	**37,500**
(iii)	**Raw materials purchased from Punjab from registered supplier**	**1,00,000**
(iv)	**Integrated tax paid on raw materials imported from USA**	**22,732**
(v)	**Consumables purchased from registered suppliers located in Rajasthan including high speed diesel (Excise and VAT paid) valuing ` 31,250 for running the machinery in the factory**	**1,56,250**

(vi)	Monthly rent for the factory building to the owner in Rajasthan	1,00,000
(vii)	Salary paid to employees on rolls	6,25,000
(viii)	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 service provider is registered in Rajasthan.	2,00,000
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 opening balance of ITC with Pari Ltd. for the given tax period 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 ITC have been complied with by Pari Ltd., wherever applicable.
Compute (i) ITC available with Pari Ltd. for the tax period; and (ii) Net GST payable [CGST, SGST or IGST, as the case may be] from Electronic Cash Ledger by Pari Ltd. for the tax period.

ANSWER:

Computation of ITC available with Pari Ltd.

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	20,000	15,000	15,000
Total ITC [Note 7]	**67,812.50**	**62,812.50**	**55,732**

Computation of net GST payable

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: ITC	67,812.50	62,812.50	55,732
Net GST payable	**10,937.50**	**15,937.50**	**11,768**

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.
(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 ITC on such raw material.
(iii) IGST paid on imported goods qualifies as input tax in terms of section 2(62). Therefore, credit of IGST paid on imported raw materials used in the course or furtherance of business is available in terms of section 16.
2. 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.
3. ITC on monthly rent is available as the said service is used in the course or furtherance of business.
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 Schedule III to the CGST Act. Therefore, since no GST is paid on such services, there cannot be any ITC on such services.
5. 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).
6. 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).
7. 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).

25. Flowchem Palanpur (Gujarat) has entered into a contract with R Refinery, Abu Road (Rajasthan) on 1st July to supply 10 valves on FOR basis. The following information is provided in this regard:
(1) List price per valve is` 1,00,000, exclusive of taxes.
(2) One of the conditions of the contract is that Flowchem should ensure a two stage third party inspection for the valves during the manufacturing process. Cost of inspection of ` 15,000 (for 10 valves) is directly paid by R Refinery to testing agency.
(3) R Refinery requires a special packing for the valves. Cost of special packing is ` 10,000 (for 10 valves).
(4) Flowchem arranges for erection and testing of the valves supplied by it at R Refinery's site. Cost of erection etc. is ` 15,000 (for 10 valves).
(5) Goods are dispatched with tax invoice on 20th July and they reach the destination at Abu-Road on 21st July. Lorry freight of` 5,000 has been paid by R Refinery directly to the lorry driver.
Assume CGST and SGST rates to be 9% each and IGST rate to be 18%. Opening balance of ITC of IGST is Nil, CGST is ` 20,000 and SGST is ` 20,000. All the given amounts are exclusive of GST, wherever applicable.
Flowchem has also undertaken following local transactions during the month of July on which it has paid CGST and SGST as under:

S. No.	Particulars	Amount paid CGST (`)	Amount paid SGST (`)
1.	Availed services of works contractor to erect foundation for fixing the machinery to earth, in the factory.	5,000	5,000
2.	Laid pipelines (from the water source outside the factory) upto the gate of the factory for the purpose of production facility.	10,000	10,000
3.	For the purpose of smooth and convenient mobile communication in its factory, it has installed telecommunication tower of a mobile company (with due permission)	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 center to provide wellness services to its employees after office hours	2,000	2,000

Work out the net GST [CGST, SGST or IGST, as the case may be] payable from Electronic Cash Ledger of Flowchem, Palanpur (Gujarat) for the month of July after making suitable assumptions, if any.

ANSWER:

Computation of net GST payable by Flowchem for the month of July

Particulars	CGST @ 9% (`)	SGST @ 9% (`)	IGST @ 18% (`)
Output tax liability [Working Note 1]			1,88,100
Less: ITC of CGST [Working Note 2]			(25,000)
Less: ITC of SGST has been utilized only after ITC of CGST has been utilized fully in terms of proviso to section 49(5)(c) [Working Note 2]			(25,000)
Net GST payable from Electronic Cash Ledger			**1,38,100**

Working Note 1

Computation of output tax liability of Flowchem for the month of July

Particulars	Amount (`)
List price of 10 valves (` 1,00,000 x 10)	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
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), 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, 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), 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), 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

Particulars	**CGST (`)**	**SGST (`)**
Opening ITC	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 pipeline up to the gate of factory from water source located outside the 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 center to provide wellness services to employees [Note 3]	Nil	Nil
Total ITC	25,000	25,000

Notes:
(1) As per section 17(5), 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), 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 towers.

(3) As per section 17(5), ITC on travel benefits extended to employees on home travel concession and membership of health and fitness center 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.

AMENDMENTS MADE VIDE THE FINANCE ACT, 2020

The Finance Act, 2020 has become effective from 27.03.2020. However, most of the amendments made in the CGST Act and the IGST Act vide the Finance Act, 2020 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till the time this Study Material is being released for printing. Therefore, the applicability or otherwise of such amendments for May 2021 and/or November 2021 examinations shall be announced by the ICAI only after such notification is issued by the Central Government.

In the table given below, the existing provisions[1] relating to section 16 are compared with the provisions as amended by the Finance Act, 2020.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the provisions given hereunder in place of the related provisions discussed in the Chapter.

Existing provisions	**Provisions as amended by the Finance Act, 2020**	**Remarks**
Sub-section (4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or **invoice relating to such** debit note pertains or furnishing of the relevant annual return, whichever is earlier.	**Sub-section (4)** A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.	Date of issuance of debit note and date of issue of underlying invoice is being de-linked for the purpose of availing input tax credit. Therefore, under the amended position, ITC can be availed on a debit note raised after 30th September following the end of the financial year to which the invoice linked to such debit note pertains.

CHAPTER-9 REGISTRATION

EXAMPLES

1) Raghubir Private Ltd. pays GST on sitting fees paid to its directors for the services rendered by them, under reverse charge. Value of services provided by the directors to Raghubir Private Ltd. will form part of the ggregate turnover of the directors and not of Raghubir Private Ltd.

2) A dealer 'X' has two offices – one in Delhi and another in Haryana. In order to determine whether 'X' is liable for registration, turnover of both the offices would be taken into account and only if the same exceeds the applicable threshold limit, X is liable for registration.

3) Madhur Oils, Punjab, is engaged in supplying machine oil as well as petrol. Supply of petrol is not leviable to GST, but supply of machine oil is taxable. In order to determine whether Madhur Oils is liable for registration, turnover of both non-taxable as well as taxable supplies would be taken into account and if the same exceeds the applicable threshold limit, Madhur Oils is liable for registration.

4) Mohini Enterprises has appointed M/s Bestfords & Associates as its agent. M/s Bestfords & Associates makes supply of goods on its own account as well as on behalf of Mohini Enterprises. All the supplies of goods made by M/s Bestfords & Associates as agent of Mohini Enterprises as well as on its own account will be included in the aggregate turnover of M/s Bestfords & Associates.

5) Prithiviraj of Assam is exclusively engaged in intra-State supply of shoes. His aggregate turnover in the current financial year is ` 22 lakh. In view of the discussion in the above paras, the applicable threshold limit for registration for Prithviraj in the given case is ` 40 lakh. Thus, he is not liable to get registered under GST.
If in above example, all other things remaining the same, Prithiviraj is exclusively engaged in supply of pan masala instead of shoes, he will not be eligible for higher threshold limit of ` 40 lakh and the applicable threshold limit for registration in that given case will be ` 20 lakh. Thus, Prithiviraj will be liable to get registered under GST. If instead of pan masala, Prithiviraj is exclusively engaged in supply of taxable services, the applicable threshold limit for registrationwill still be ` 20 lakh. Thus, Prithiviraj will be liable to get registered under GST. Further, if Prithiviraj is engaged in supply of both taxable goods and services, the applicable threshold limit for registration will be ` 20 lakh only. Thus, Prithiviraj will be liable to get registered under GST.

6) Shivaji of Telangana is exclusively engaged in intra-State supply of toys. Its aggregate turnover in the current financial year is ` 22 lakh. Since Shivaji is making taxable supplies from Telangana, he will not be eligible for higher threshold limit available in case of exclusive supply of goods. The applicable threshold limit for registration for Shivaji in the given case is ` 20 lakh. Thus, he is liable to get registered under GST. If in above example, all other things remaining the same, Shivaji is exclusively engaged in supply of taxable services instead of toys, the applicable threshold limit for registration will still be ` 20 lakh. Thus, Shivaji will be liable to get registered under GST. Further, if Shivaji is engaged in supply of both taxable goods and services, the applicable threshold limit for registration will be ` 20 lakh only. Thus, Shivaji will be liable to get registered under GST.

7) Ashoka of Manipur is exclusively engaged in intra-State supply of paper. Its aggregate turnover in the current financial year is ` 12 lakh. Since Ashoka is making taxable supplies from Manipur which is a Special Category State, the applicable threshold limit for registration for Ashoka in the given case is ` 10 lakh. Thus, he is liable to get registered under GST. If in above example, all other things remaining the same, Ashoka is exclusively engaged in supply of taxable services instead of paper, the applicable threshold limit for registration will still be ` 10 lakh. Thus, Ashoka will be liable to get registered under GST. Further, if Ashoka is engaged in supply of both taxable goods and services, the applicable threshold limit for registration in that given case will be ` 10 lakh only. Thus, Ashoka will be liable to get registered under GST.

8) Raghav of Assam is exclusively engaged in intra-State supply of readymade garments. Its turnover in the current FY from Assam showroom is ` 28 lakh. It has another showroom in Tripura with a turnover of ` 11 lakh in the current FY. Since Raghav is engaged in supplying garments from a Special Category State as per section 22, the applicable threshold limit for him gets reduced to ` 10 lakh. Further, Raghav is liable to get registered under GST in both Assam and Tripura on his aggregate turnover crossing the threshold limit of ` 10 lakh.

9) Uday Enterprises is engaged in supply of taxable goods in Maharashtra. It also supplies alcoholic liquor for human consumption from Nagaland. Its turnover in the current financial year is ` 34 lakh in Maharashtra and ` 8 lakh in Nagaland. Since Uday Enterprises is exclusively engaged in making taxable supplies of goods from Maharashtra, the applicable threshold limit for obtaining registration is ` 40 lakh. However, the threshold limit will not be reduced to ` 10 lakh in this case, as supply of alcoholic liquor for human consumption from Nagaland (one of the Special Category States) are non-taxable supplies. In the given case, since the aggregate turnover of Uday Enterprises exceeds the applicable threshold limit of ` 40 lakh, it is liable to obtain registration. It will obtain registration in Maharashtra, but is not required to obtain registration in Nagaland as he is not making any taxable supplies from said State.

10) Madhur Oils, Punjab, is exclusively engaged in supplying petrol. Supply of petrol is not leviable to GST. Thus, Madhur Oils is not liable for registration as it is engaged exclusively in supplying goods not leviable to tax.

(11) Bhavyajyoti Foundation, a charitable trust registered under section 12AA of the Income-tax Act, 1961, is exclusively engaged in supply of services by way of charitable activities. Services by an entity registered under section 12AA of the Income-tax Act, 1961 by way of charitable activities are exempt from GST. Bhavyajyoti Foundation is not liable for registration as it is exclusively engaged in supplying services exempt from tax.

12) Deshbandhu is an agriculturist engaged in cultivation of wheat in his field in the State of Punjab. He was exclusively engaged in supply of wheat cultivated in his field in the previous year. Thus, he was not liable to registration as he was exclusively engaged in supply of produce out of cultivation of land. In the current year, he decides to start trading in rice apart from supplying his wheat produce. His turnover in the current year is ` 32 lakh from supply of wheat produced and ` 9 lakh from trading of rice. Since he is engaged in trading of rice also, he is not covered under section 23 above. The threshold limit for registration applicable to a person exclusively engaged in supply of goods in the State of Punjab is ` 40 lakh. The aggregate turnover of Deshbandhu in the current year is ` 41 lakh [` 32 lakh + ` 9 lakh] which exceeds the threshold limit. Thus, he will be liable to registration.

13) Manikaran Transporters is a Goods Transport Agency (GTA) engaged exclusively in supplying GTA services liable to tax under reverse charge [since tax is beng paid on GTA services @ 5% in the given case]. Thus, it is exempt from registration as it is engaged exclusively in making supplies, tax on which is liable to be paid on reverse charge basis. Further, Manikaran Transporters supplies said service to Diwakar Manufacturing Pvt. Ltd. whose aggregate turnover does not exceed the applicable threshold limit. However, since Diwakar Manufacturing Pvt. Ltd. has to pay tax on GTA services [@ 5%] under reverse charge, it is required to obtain registration mandatorily irrespective of its aggregate turnover.

14) Dhola & Co., located in Delhi, is engaged in supply of taxable goods[4] in the neighbouring States of Punjab and Haryana. Its aggregate turnover in current FY is ` 10 lakh. Since it is engaged in making inter-State taxable supply of goods, it is required to register mandatorily under GST irrespective of its aggregate turnover. However, if in the above case, Dhola & Co. is engaged in inter- State supply of taxable services instead of goods, it will be eligible for exemption from registration till its aggregate turnover does not exceed ` 20 lakh.

15) Ariza Pvt. Ltd., located in Madhya Pradesh, is a supplier of taxable and notified handicraft goods. It supplies these goods in the neighbouring States of Uttar Pradesh and Orissa. Its aggregate turnover in the month of April is ` 15 lakh. Although Ariza Pvt. Ltd. is engaged in making inter-State supplies of taxable goods, it is not liable to obtain registration till its aggregate turnover does not exceed ` 20 lakh as it has availed the exemption from registration under Notification No. 03/2018 IT

16) Sugam Services Ltd. is engaged in taxable supply of services in Delhi. The turnover of Sugam Services Ltd. exceeded ` 20 lakh on 1st November. It is liable to get registered by 1st December in Delhi.

17) Meethalal & Sons - a supplier in Maharshtra - has three branches in Mumbai, Pune and Mahabaleshwar. Mumbai and Pune branches are engaged in supply of garments and Mahabaleshwar branch engaged in supply of shoes. Either it can obtain single registration for Mahrashtra declaring one of the branches as PPoB (let's say Mumbai) and other two branches (Pune and Mahabaleshwar) as APoB or it can obtain separate GST registration for each of the three branches in Mumbai, Pune and Mahabaleshwar as separate places of business. In case Meethalal & Sons opts to have separate

registrations for its all three branches and Mumbai branch sends some garments [subject to GST] for sale to Pune branch, Mumbai branch must raise a tax invoice and pay tax on such transfer of garments to Pune branch.

18) Suvarna Industries is engaged in manufacturing activities in Uttar Pradesh. It has two manufacturing units in UP - one in SEZ and another outside SEZ. Under GST, one registration per State is required. However, since in this case, one of the two units of Suvarna Industries is located in SEZ, SEZ unit will have to compulsorily make a separate application for registration as a place of business distinct from unit located outside SEZ in the same State

19) Sugam Services Ltd. is engaged in taxable supply of services in Madhya Pradesh. The turnover of Sugam Services Ltd. exceeded ` 20 lakh on 1st November. It is liable to get registered by 1st December [30 days] in the State of Madhya Pradesh. It applies for registration on 28th November and is granted registration certificate on 5th December. The effective date of registration of Sugam Services Ltd. is 1st November.

(20) In above example, if Sugam Services Ltd. applies for registration on 3rd December and is granted registration certificate on 10th December. The effective date of registration of Sugam Services Ltd. is 10th December.

21) Krishnadev & Co., engaged in supplying taxable goods, is registered in Rajasthan. It wishes to participate in a 5 days' business exhibition being held in Delhi. However, it does not have a fixed place of business in Delhi. In this case, Krishnadev & Co. has to obtain registration as a casual taxable person in Delhi.

22) Varun Enterprises, a sole proprietorship firm, is engaged in supply of electrical goods in Delhi. The firm is registered under GST. Varun is the proprietor of the firm. He wishes to expand his business and his friend – Arun - approaches him to provide additional capital for his business if he is made a partner in Varun's business. Varun agrees and changes the constitution of his business and form a partnership firm – Varun Arun & Co. Since the change in constitution of business from sole proprietorship firm to partnership firm results in change in PAN of the registered person, the partnership firm has to apply for fresh registration. The reason for the same is that GSTIN is PAN based. Any change in PAN would warrant a new registration.

23) Capital goods have been in use for 4 years, 6 month and 15 days. The useful remaining life in months = 5 months ignoring a part of the month.
ITC taken on such capital goods = C
ITC attributable to remaining useful life = C x 5/60

24) The proper officer cancelled the registration of Naman Associates on 11th October. The tax dues of Naman Associates for July-September quarter (determined by the proper officer on 16th December) are ` 50,000. The cancellation of registration of Naman Associates shall have no effect on his liability of tax dues of ` 50,000 even though the tax dues are determined after the cancellation of registration.

25) The registration of Naman Associates was cancelled by the proper officer by an order dated 1st June for its failure to furnish returns. The registration was cancelled with effect from 1st June itself. It applied for revocation of cancellation of registration and the order for revocation of cancellation of Naman Associates is passed on 31st July. In this case, Naman Associates shall be required to furnish all the returns for the period from 1st June to 31st July within a period of 30 days from 31st July, i.e. by 30th August.

26) The registration of Naman Associates was cancelled by the proper officer by an order dated 1st June for its failure to furnish returns. The registration was cancelled with effect from 1st January itself. It applied for revocation of cancellation of registration and the order for revocation of cancellation of Naman Associates is passed on 31st July. In this case, Naman Associates shall be required to furnish all the returns for the period from 1st January to 31st July within a period of 30 days from 31st July, i.e. by 30th August.

QUESTIONS

1. Mahadev Enterprises, a sole proprietorship firm, opened a shopping complex dealing in supply of ready-made garments 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
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 assuming that it is not required to pay any tax on inward supplies under reverse charge.
(2) Explain with reasons whether your answer in (1) will change in the following independent cases:
(a) If Mahadev Enterprises is dealing exclusively 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 (other than notified handicraft goods) amounting to ` 4,00,000.

ANSWER:

As per section 22 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), 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
Intra-State supply of non-taxable goods [As per section 2(47), 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]	-	21,00,000	40,000
Aggregate Turnover	**22,50,000**	**21,00,000**	**13,40,000**

In the given case, Mahadev Enterprises is engaged in exclusive intra-State supply of goods from Himachal Pradesh, Tripura and Uttarakhand. However, since Mahadev Enterprises makes taxable supply of goods from one of the specified Special Category States (i.e. Tripura), it will not be eligible for the higher threshold limit of ` 40 lakh; instead, the threshold limit for registration will be reduced to ` 10 lakh.

(1) In view of the above-mentioned provisions, Mahadev Enterprises is liable to be registered under GST law with the aggregate turnover amounting to ` 56,90,000 (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 requires compulsory registration irrespective of the quantum of aggregate turnover. Thus, Mahadev Enterprises will be liable to registration.

2. 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 product 'X' only within Tamil Nadu and is not registered under GST. Further, all the inward supply of the company are taxable under forward charge. 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 1st July. The purchase price of the capital goods was ` 30 lakh exclusive of GST @ 18%.
However, effective from 1st November, 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 30th September 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) 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).
In the given case, the turnover of the company for the half year ended on 30th September 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 31st October, it was not required to be registered till that day; though voluntary registration was allowed under section 25(3).
However, the position will change from 1st November 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), the aggregate turnover limit of ` 40 lakh includes exempt turnover also.
Therefore, turnover of 'X' prior to 1st November will also 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 1st November (the date on which it becomes liable to registration) in terms of section 25(1).

(b) Section 18(1)(a) 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.

3. 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 product 'Z' only within Tamil Nadu and it not registered under GST. Further, all the inward supply of the company are taxable under forward charge. 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 1st July. The purchase price of the capital goods was ` 20 lakh exclusive of GST @ 18%.
However, effective from 1st November, 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 30th September 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) 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).
In the given case, the turnover of the company for the half year ended on 30th September is ` 50 lakh which is more than the applicable threshold limit of ` 40 lakh. Therefore, as per section 22, the company will be liable to registration. However, since SNP Pvt. Ltd. supplied exempted goods till 31st October, it was not required to be registered till that day; though voluntary registration was allowed under section 25(3).
However, the position will change from 1st November 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), the aggregate turnover limit of ` 40 lakh 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 1st November (the date on which it becomes liable to registration) in terms of section 25(1).

Further, the company cannot avail exemption of ` 40 lakh from 1st November 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), 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 relatable 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 31st October - the day immediately preceding the date from which the supply of product 'Z' became taxable (1st November).

The credit will be available for the remaining useful life of the machinery and will be computed as follows:

Date of purchase of machinery	1st July
Date on which credit becomes eligible	31st October
Number of quarters for which credit is to be reduced	2 (including part of quarter)
GST paid on machinery [` 20,00,000 x 18%]	` 3,60,000
Credit to be reduced [` 3,60,000 x 5% x 2]	` 36,000
Amount of credit that can be taken [` 3,60,000 – ` 36,000]	**` 3,18,000**

4. 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
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 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), 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 non-taxable supplies fromUttarakhand, 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 [As per section 2(47), 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.]		5,00,000
Add: Supply of packed food items from restaurant in Maharashtra	1,50,000	3,50,000 [` 1,50,000 + ` 2,00,000]
Aggregate Turnover	7,00,000	20,50,000

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.

5. 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.[22]
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 suppliers.
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).

6. 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.
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.

7. Pari & Sons is an unregistered dealer. On 10th August, aggregate turnover of Pari & Sons exceeded ` 20,00,000. The firm applied for registration on 27th August and was granted the registration certificate on 1st September.
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) 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) 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 27th August which is within 30 days from the date of becoming liable to registration (10th August), its effective date of registration is 10th August.
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) read with rule 53(2) of CGST Rules, 2017][23].
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 (10th August) and the date of issuance of registration certificate (1st September), on or before 1st October.

8. 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.

Sl. No.	Particulars	Amount (`)
(i)	Sale of diesel on which Sale Tax (VAT) is levied by Rajasthan Government.	1,00,000
(ii)	Supply of goods, after completion of job work, from the place of Jayant Enterprises directly by principal by declaring the place of M/s Jayant Enterprises as its additional place of business.	3,00,000
(iii)	Export of goods 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 Rajasthan24 [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:-

1. As per section 2(47), 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).

2. Supply of goods after completion of job work by a principal by declaring the place of business of job worker its additional place of business shall be treated as the supply of goods by the principal in terms of explanation (ii) to section 22.

3. Export supplies are specifically includible in the aggregate turnover in terms of section 2(6).

4. Supply made without consideration to units within the same State (under same registration) is a not a supply and hence not includible in aggregate turnover.

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 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) irrespective of the turnover limit as it is engaged in making inter-State supply of goods in the form of exports to England.

9. 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 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)]	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 taxable supplies from Manipur, a specified Special Category State, the threshold exemption gets reduced to ` 10 lakh in terms of section 22(1) [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 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.

AMENDMENTS MADE VIDE THE FINANCE ACT, 2020

The Finance Act, 2020 has become effective from 27.03.2020. However, most of the amendments made in the CGST Act and IGST Act vide the Finance Act, 2020 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till the time this Study Material is being released for printing. Therefore, the applicability or otherwise of such amendments for May 2021 and/or November 2021 examinations shall be announced by the ICAI only after such notification is issued by the Central Government.

In the table given below, the existing provisions[25] relating to sections 29 and 30 are compared with the provisions as amended by the Finance Act, 2020.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the provisions given hereunder in place of the related provisions discussed in the Chapter.

Existing provisions	**Provisions as amended by the Finance Act, 2020**	**Remarks**
Section 29(1) "The proper officer may, either on his own motion .....where: (c) the taxable person, other than the person registered under sub-section (3) of section 25, is no longer liable to be registered under section 22 or section 24."	**Section 29(1)** "The proper officer may, either on his own motion .....where: **(c) the taxable person is no longer liable to be registered under section 22 or section 24 or intends to optout of the registration voluntarily made under sub-section (3) of section 25."**	Section 29(1)(c) is being amended to enable the proper officer to cancel the registration of a person who has taken voluntary registration under section 25(3) and wants to optout from the registration so taken.
Section 30(1) **Subject to such conditions .....cancellation order.** **Provided that the registered person who was served notice under sub- section (2) of section 29 in the manner as provided in clause (c) or clause (d) of sub-section (1) of section 169 and who could not reply to the said notice, thereby resulting in cancellation of his registration certificate and is hence unable to file application for revocation of cancellation of registration under sub-section (1) of section 30 of the Act, against such order passed up to 31-3-2019, shall be allowed to file application for revocation of cancellation of the registration not later than 22-7-2019.**	**Section 30(1)** **Subject to such conditions .....cancellation order.** **Provided that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended,—** **(a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days;** **(b) by the Commissioner, for a further period not exceeding thirty days,** **beyond the period specified in clause (a)."**	Proviso to section 30(1) is being substituted so as to empower the jurisdictional tax authorities to extend the period provided to file an application for revocation of cancellation of registration.

CHAPTER-10 TAX INVOICE, CREDIT AND DEBIT NOTES

EXAMPLES

I) Ritu Manufacturers, Delhi supplies goods to Prakhar Electronics, Haryana. The goods were removed from its factory in Delhi on 23rd September. Ritu Manufacturers needs to issue a tax invoice on or before 23rd September.

2) Katyani Security Services Ltd. provides security services to Royal Jewellers for their Jewellery Exhibition to be organized on 5th October. Katyani Security Services Ltd. needs to issue a tax invoice within 30 days of supply of security services, i.e. on or before 4th November.

3) M/s. ABC sends 100 units of specified goods out of India. The activity of merely sending/ taking such specified goods out of India is not a supply. No tax invoice is required to be issued in this case, but the specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55. In case the entire quantity of specified goods is brought back 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, however, the entire quantity of specified goods is neither sold nor brought back within 6 months from the date of removal, a tax invoice would be required to be issued for entire 100 units of specified goods in accordance with the provisions contained in section 12 and section 31 with rule 46 within the time period stipulated under section 31(7).

4) A taxpayer (say a firm of advocates) having aggregate turnover in a FY of more than `500 crore is supplying services to a company (who will be discharging tax liability as recipient under reverse charge mechanism), such invoices have to be reported by said tax payer (since it is a notified person) to IRP.

5) Maharaja Private Limited has an SEZ unit and a regular DTA unit (both having same PAN). The aggregate total turnover of Maharaja Private Limited is more than `500 crores (considering both the GSTINs). However, the turnover of DTA unit is below ` 100 crores for FY 2019-20. In this scenario, SEZ unit is exempt from e - invoicing. However, e-invoicing will be applicable to DTA Unit because the ggregate turnover of the legal entity in this case is > ` 500 crores. The eligibility is based on aggregate annual turnover on the common PAN.

6) An invoice generated by SAP system cannot be read by a machine which is using 'Tally' system, unless a connector is used. With more than 300 accounting/billing software products, there was no way to have connectors for all.

7) Sarabhai Private Ltd. commenced business of supply of goods on 1st April in Delhi. Its turnover exceeded the applicable threshold limit on 3rd September. Thus, it became liable to registration on 3rd September. It applied for registration on 29th September and was granted registration certificate on 5th October. Since it applied for registration within 30 days of becoming liable to registration, registration granted is effective from 3rd September. Sarabhai Private Ltd. may issue Revised Tax Invoices on or before 4th November in respect of taxable supplies effected between 3rd September and 5th October.

8) Patel & Sons is a manufacturer of goods who has opted for composition levy under section 10(1) and (2). It will issue a Bill of Supply to the buyers of goods and not the tax invoice.

9) Rujuta is engaged in providing grooming services. She is not registered under GST law as her turnover is below the threshold limit. Rujuta cannot collect tax on the grooming services provided by her as a person who is not a registered person cannot collect any amount by way of tax under this Act in respect of any supply of goods or services or both.

QUESTIONS

1 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 customers. 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), every registered person supplying taxable goods is required to issue a 'tax invoice'. Section 31(3)(c) stipulates that every registered person supplying exempted goods is required to issue a bill of supply instead of tax invoice.

Further, rule 46A 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) read with rule 46, 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, 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, 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.
As per rule 46(m), a tax invoice shall contain the various particulars, interalia, namely, amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
Hence, Jai has to show the tax amount separately in the tax invoices issued to customers.

2 Avtaar Enterprises, Kanpur started trading exclusively in ayurvedic medicines from July 1. Its turnover exceeded ` 40 lakh on October 3. The firm applied for registration on October 31 and was issued registration certificate on November 5. 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), 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) 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. Therefore, since in the given case there is a time lag between the effective date of registration (October 3) and the date of grant of certificate of registration (November 5), 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 till November 5. Further, the revised invoices can be issued for the said period till December 5.

3 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), 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 may be issued to the person who had made the advance payment.
(ii) As per section 31(7), 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), 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.

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CHAPTER-11 ACCOUNTS AND RECORDS; E-WAY BILL

EXAMPLES

1) Bhanupratap Shoe Manufacturers, registered in Punjab, sold shoes to a retail seller in Gujarat, at a value of ` 48,000 (excluding GST leviable @ 18%) and wants to send the consignment of such shoes to Gujarat. The consignment value will be ` 56,640 [` 48,000 × 118%]. 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.

2) Sindhi Textiles of Ludhiana, registered in Punjab, sends cloth to a job worker in Jalandhar, Punjab on a delivery challan. The value of cloth mentioned in the delivery challan is ` 48,000. Since the movement of goods is for reasons other than supply, the value given in the delivery challan is adopted for the purposes of the e-way bill. Such value does not exceed ` 50,000. Consequently, e-way bill is not required to be issued in this case.

3) A consignor hands over his goods for transportation on Friday to transporter. However, the assigned transporter starts the movement of goods on Monday. The validity period of e-way bill starts only after the details in Part B are updated by the transporter for the first time. In the given situation, Consignor can fill the details in Part A on Friday and handover his goods to the transporter. When the transporter is ready to move the goods, he can fill Part B i.e. the assigned transporter can fill the details in Part B on Monday and the validity period of the e-way bill will start from Monday [CBIC Press Release dated 31.03.2018].

4) Where a conveyance carrying 25 consignments is intercepted and the person-in-charge of such conveyance produces valid e-way bills and/or other relevant documents in respect of 20 consignments, but is unable to produce the same with respect to the remaining 5 consignments, detention/ confiscation can be made only with respect to the 5 consignments and the conveyance in respect of which the violation of the Act or the rules made thereunder has been established by the proper officer.

QUESTIONS

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) read with rule 80 provides that every registered person must get his accounts audited by a Chartered Accountant or a Cost Accountant if his aggregate turnover during a FY exceeds ` 2 crores. Since the turnover of Sindhu Enterprises has exceeded ` 2 crore in current financial year, it has to get its accounts audited by a Chartered Accountant/ Cost Accountant.

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 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.

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).
ANSWER:
Section 35(1) 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.

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.
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):
(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 wastage thereof.
(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.

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).

ANSWER:

Rule 56(11) provides that every agent shall maintain accounts depicting the-

(a) particulars of authorisation received by him from each principal to receive or supply goods or services on behalf of such principal separately;

(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.

6. 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:

(a) Whether e-way bill is mandatorily required to be generated in respect of such movement of goods?

(b) If yes, who is required to generate the e-way bill?

(c) What will be the consequences for non-issuance of e-way bill?

ANSWER:

(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 × 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 thereunder, 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.

7. 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.
ANSWER:

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:
(i) in relation to a supply; or
(ii) for reasons other than supply; or
(iii) due to inward supply from an unregistered person,
shall, generate an electronic way bill (E-way Bill) before commencement of such movement.
CBIC vide 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.

8. 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 Prasannaa, 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 Prasannaa. The goods are transported to Prasannaa in Delhi, in a single conveyance owned by Radhey Transporters.
You are required to advise Beauty Cosmetics Ltd. with regard to issuance of e-way bill(s).

ANSWER:

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.

CHAPTER-12 UNIT-1 PAYMENT OF TAX

QUESTIONS

1. Miss Nitya has following balances in her Electronic Cash Ledger as on 28th February as per GST portal.

Major Heads	Minor Heads	Amount (₹)
CGST	Tax	40,000
	Interest	1,000
	Penalty	800
SGST	Tax	80,000
	Interest	400
	Penalty	1,200
	Fee	2,000
IGST	Tax	45,000
	Interest	200
	Penalty	Nil

Her tax liability for the month of February for CGST and SGST was ` 75,000 each. She failed to pay the tax and contacted you as legal advisor on 12th April 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 20th April.

Other information:

(i) Date of collection of GST was 18th February.

(ii) No other transaction after this up to 20th April.

(iii) Ignore penalty and late fee for this transaction.

(iv) 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 18th February is 20th March. 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 20th April, interest payable on the amount of CGST and SGST each is as follows:

` 75,000 × 18% × 31/365 = ` 1,147 (rounded off)

As per Section 49(10) of the CGST Act, 2017, any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the CGST Act, 2017 can be transferred to the electronic cash ledger for integrated tax, central tax, State tax, Union territory tax or cess, in such form and manner and subject to such conditions and restrictions as may be prescribed. Thus, amount entered under any Minor head (Tax, Interest, Penalty, etc.) and Major Head (CGST, IGST, SGST/UTGST) of the Electronic Cash Ledger can be transferred to any other major or minor head. Consequently, cross-utilization among Major and Minor heads is also 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 in same major/minor head	40,000	1,000	80,000	400
Balance transferred from other major/minor head	**35,000 (Note 1)**	**147 (Note 2)**	**Nil**	**747 (Note 3)**
Amount payable in cash	**Nil**	**Nil**	**Nil**	**Nil**

Note 1 – ` 35,000 shortfall amount has been transferred from cash ledger balance available in Major Head IGST.

Note 2 – ` 147 shortfall amount has been transferred from cash ledger balance in minor head penalty of major head CGST.

Note 3 – ` 747 shortfall amount has been transferred from cash ledger balance in minor head tax of major head SGST.

Since there is no restriction in intra-head or inter-head transfer of available balance in cash ledger as per the relevant provisions, it is upon the taxpayer to decide from which account the shortfall has to be made good.

2. A makes intra-State supply of goods valued at ` 50,000 to B within State of Karnataka. There is no input tax credit balance available with A. B makes inter-State supply to X Ltd. (located in Telangana) after adding 10% as its margin on the value of goods excluding taxes. Thereafter, X Ltd. sells it to Y in Telangana (Intra-State sale) after adding 10% as his margin on the value of goods excluding taxes. Assume that the rate of GST chargeable is 18% (CGST and SGST at 9% each and IGST chargeable at 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 does not have credit of CGST, SGST or IGST. 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%

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 utilised 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

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: Available 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 any order and in any proportion. Central Government will transfer IGST of R` 4,455 utilised in the payment of SGST to Telangana Government

3. Can one use input tax credit for payment of interest, penalty, and payment under reverse charge?
ANSWER:
No, as per section 49(4) the amount available in the electronic credit ledger may be used for making any payment towards 'output tax'.
As per section 2(82), 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.

4. ABC limited filed the return for GST under section 39(1) for the month of November on 20thDecember showing self-assessed tax of r` 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), "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.

5. 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.

6. 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:

IGST: 218,000 *18%*60/365 = 6,450

CGST: 262,000*18%*60/365 = 7,752

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:

IGST: 18,000 * 18% * 60/365 = 532

CGST: 32,000 * 18% * 60/365 = 946

SGST: 32,000 * 18% * 60/365 = 946

7. 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:

(a) self-assessed tax, and other dues related to returns of previous tax periods;

(b) self-assessed tax, and other dues related to the return of the current tax period;

(c) any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74;"

As per the above provisions, self-assessed tax of previous tax period i.e. February shall be paid first and later self-assessed tax of current tax period i.e. July shall be paid.

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	557,500

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

8. 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.

UNIT II: TAX DEDUCTION AT SOURCE AND COLLECTION OF TAX AT SOURCE

EXAMPLES

1) The Municipal Corporation of Chennai deducts CGST at source @1% from the payment to be made to a notified supplier on 4th July. This TDS amount has to be remitted into the Treasury on or before 10th August. The TDS certificate with the above mentioned details has to be issued on before 15th of August.

2) Supplier makes a supply worth ` 10lakhs/- to a recipient and the GST at the rate of 18% is required to be paid. The recipient, while making the payment of ` 10 lakhs/- to the supplier, shall deduct 2% viz ` 2 lakhs as TDS. The value for TDS purpose shall not include 18% GST. The TDS, so deducted, shall be deposited in the account of Government by 10th of the succeeding month. The TDS so deposited in the Government account shall be reflected in the electronic cash ledger of the supplier (i.e. deductee) who would be able to use the same for payment of tax or any other amount.

3) There are many e-Commerce operators [hereinafter referred to as an Operator], like Amazon, Flipkart, Jabong, etc. operating in India. These operators display on their portal products as well as services which are actually supplied by some other person to the consumer. The goods or services belonging to other suppliers are displayed on the portals of the operators and consumers buy such goods/services through these portals. On placing the order for a particular product/service, the actual supplier supplies the selected product/service

through the Operator to the consumer. The price/consideration for the product/ service is collected by the Operator from the consumer and passed on to the actual supplier after the deduction of commission and incidental expenses mutually agreed upon by the Operator.

4) Suppose a certain product is sold at ` 1,120/- [including GST @12%] through an Operator by a supplier. The operator would collect tax @ 1% of the net value of ` 1,120/- i.e. ` 11.20/- in case of inter-State supplies.

5) If the TCS has been collected in the month of July, the amount has to be remitted into the Government Treasury on or before 10th August.

ILLUSTRATION 1

Mr. X is a supplier selling his own products through a web site hosted by him. Does he fall under the definition of an "electronic commerce operator"? Whether he is required to collect TCS on such supplies?

ANSWER

As per the definitions in Section 2(44) and 2(45) of the CGST Act, 2017, Mr. X will come under the definition of an "electronic commerce operator". However, according to Section 52 of the Act ibid, TCS is required to be collected on the net value of taxable supplies made through it by other suppliers where the consideration is to be collected by the ECO. In cases where someone is selling their own products through a website, there is no requirement to collect tax at source as per the provisions of this Section. These transactions will be liable to GST at the prevailing rates.

ILLUSTRATION 2

If Mr. A purchase goods from different vendors and in turn Mr. A, is selling them on his own website under his own billing, Is TCS required to be collected on such supplies?

ANSWER

No. According to Section 52 of the CGST Act, 2017, TCS is required to be collected on the net value of taxable supplies made through E-commerce operator by other suppliers where the consideration is to be collected by the ECO. In this case, there are two transactions - Mr. A purchase the goods from the vendors, and those goods are sold through his own website. For the first transaction, GST is leviable, and will need to be paid to vendor, on which credit is available to Mr. A. The second transaction is a supply on own account of Mr. A, and not by other suppliers and there is no requirement to collect tax at source. The transaction will attract GST at the prevailing rates.

QUESTIONS

1. 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

2. What will happen if the deductor fails to issue TDS Certificate within the time prescribed?
ANSWER:
As per section 51(4), 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.

3. 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 is payable under CGST and the equal rate of TCS is expected under the SGST Act also, in effect aggregating to 1%.

4. 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.**

5. State whether the provisions pertaining to tax collected at source under section 52 of CGST Act, will be applicable in below mentioned scenarios -
(a) Fitan sells watch on its own through its own website
(b) ABC limited who is dealer of Fitan brand sells watches through Slipkart, an electronic commerce operator
ANSWER:
Answers for both the scenarios is as follows:
As per Section 52, 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 Fitan brand sells watches through Slipkart, then the provision of TCS will be applicable to Slipkart.

6. 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. 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 as under:

S.No.	Particulars	Total contract value (inclusive of GST) (`)	Payment due in October (`)
(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 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) a department or establishment of the Central Government or State Government; or
(b) 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
(e) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860, or
(f) 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, 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		--	
(ii)	Supply of car rental services to Municipal Corporation of Delhi (Note-2)	2,95,000	20,000		--	
(iii)	Supply of a heavy machinery to Public Sector Undertaking located in 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			

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			

Notes:

1. 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 × 100 / 118
= ` 2,20,339 (rounded off)
Since the total value of supply under the contract does not exceed ` 2,50,000, tax is not required to be deducted.

2. 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 × 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.

3. 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× 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.

4. 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× 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.

7. 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. You are required to briefly explain the provisions relating to tax deduction at source under section 51 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 31st October. 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**	**5,100**

8. A is an e-commerce operator supplying goods through its electronic portal in capacity of an agent. The goods belong to B and the consideration for such supplies is received by A and remitted to B as per the contractual arrangement. A requires your help in arriving at the rate at which tax shall be collected from the amount which is received by it against the supplies?

Answer:

As per Section 52(1) of the CGST Act, 2017, the TCS provisions are not applicable in cases where the ECO is an agent of the supplier. In the present case, A being an ECO is supplying goods through the electronic portal in capacity of an agent and hence the liability to collect tax as per Section 52 shall not arise in this case.

9. X booked a Hotel in Udaipur, Rajasthan through an e-commerce portal for an amount of ` 25,000. As per the terms and conditions, the amount was payable at the hotel at the time of check in. Whether TCS provisions shall apply in the present case?

Answer:

No, as per the provisions under Section 52 of the CGST Act, 2017 the TCS provisions shall trigger only when the ECO is receiving the consideration for supply from the recipient of supply. In the present case the supplier i.e. the hotel is directly receiving the consideration from the recipient of the services i.e. X. Hence, the present transactions shall not trigger the TCS provisions under Section 52.

CHAPTER-13 RETURNS

EXAMPLES

The GST Council at its 42nd meeting held on 5th October 2020 has recommended the following incremental changes in the return filing process:

1. Effective 01.01.2021, taxpayers with turnover below ` 5 crores may file GSTR-3B and GSTR-1 on quarterly basis. Such taxpayers would, for the first two months of the quarter, have an option to pay 35% of the net tax liability of the last quarter, using an auto generated challan.

2. Effective 01.01.2021, due date of furnishing quarterly GSTR-1 by taxpayers to be revised to 13th of the month succeeding the quarter.

Note – Notification No. 74/2020 CT dated 15.10.2020 has revised the due date for filing quarterly GSTR-1 by the registered persons having aggregate turnover up to ` 1.5 crores in the preceding financial year or current financial year to 13th of the month succeeding the end of quarter. Such date is applicable for the quarters ending December 2020 and March 2021.

3. Effective 01.01.2021, for monthly filers, auto-generation of liability from own GSTR-1 and ITC from suppliers' GSTR-1s through the newly developed facility in GSTR-2B. For quarterly filers, this facility would be effective from 01.04.2021. To ensure such auto generation of ITC and liability in GSTR 3B, GSTR-1 shall be filed mandatorily before filing GSTR-3B effective 01.04.2021.

4. GSTR-1 and GSTR-3B return filing system to be extended till 31.03.2021 and the GST laws to be amended to make GSTR-1 and GSTR-3B return filing system as the default return filing system.

(1) The details of outward supplies pertaining to the month of October will be required to be furnished on or before 10th November and GSTR-1 for October cannot be filed between 11th November to 15th November.

2) Mr. XY makes intra-State taxable supplies for ` 10,000 and ` 50,000 to Mr. AB, a registered person and ` 1,00,000 to Mr. DE, an unregistered person. He also makes inter-State taxable supplies for ` 2,60,000 and ` 45,000 to Mr. RS, a registered person and ` 1,50,000 to Mr. OP, an unregistered person. Mr. XY will report invoice-wise details of intra-State supplies made to Mr. AB and inter-State supplies made to Mr. RS, in GSTR-1 to be filed by him.

3) For the month of October, the taxpayer can upload invoices from 1st October to 10th November. In case of late filing of GSTR-1, invoices can be uploaded after 15th November.

4) The turnovers of Yellow Lemon Pvt. Ltd., Red Pepper Pvt. Ltd. and Blue Berry Pvt. Ltd. in the previous financial year are ` 1.5 crore, ` 4.8 crore and ` 5 crore respectively. While Yellow Lemon Pvt. Ltd. is not required to upload HSN code of the goods sold, Red Pepper Pvt. Ltd. and Blue Berry Pvt. Ltd. have to upload 2 digits of HSN code of goods sold by them.

5) The turnovers of Yellow Lemon Pvt. Ltd., Red Pepper Pvt. Ltd. and Blue Berry Pvt. Ltd. in the previous financial year are ` 1.5 crore, ` 4.8 crore and ` 6 crore respectively. While Yellow Lemon Pvt. Ltd. and Red Pepper Pvt. Ltd. will be required to upload 4 digits of HSN code of the goods sold to registered persons, uploading of 4 digits HSN code will be optional for the two companies when the goods are sold to unregistered persons. Blue Berry Pvt. Ltd. will have to upload 6 digits of HSN code of goods sold by it. This will be the position from 01.04.2021.

6) A supplier discovers a mistake in details of the invoice furnished in GSTR-1 for the month of August, in October. He can rectify the said mistake in the GSTR-1 for the month of October.

7) An entity has furnished the annual return for the previous financial year on 15th August in the current financial year. An error is discovered in respect of a transaction pertaining to the month of November of the previous financial year. The entity has filed the returns for the month of September of the current financial year on 20th October. In this case, the rectification of the error pertaining to the transaction in the month of November of the previous financial year cannot be rectified beyond 15th August in the current financial year.

QUESTIONS

1. Which type of taxpayers need to file annual return under section 44? Enumerate.
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.

2. Is an annual return under section 44 and a final return one and the same? Explain
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.

3. Do input service distributors (ISDs) need to file separate statement of outward supplies with their return? Discuss.
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

4. Is it compulsory for a taxpayer to file return by himself? Explain.
ANSWER:
No. A registered taxpayer can also get his return filed through a Goods and Services Tax Practitioner.

5. Mr. Anand Kumar, a regular taxpayer, filed GSTR-1 for the month of August before the due date. Later, in the month of February next year, he discovers error in the GSTR-1 of the month of August already filed and wants to revise it.
You are required to advise him on the future course of action in this scenario.
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 the month of August cannot revise it. However, he should rectify said error in the GSTR-1 filed for the month of February and should pay the tax and interest, if any, in case there is short payment, in the return to be furnished for February. 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, 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

AMENDMENTS MADE VIDE THE FINANCE (NO. 2) ACT, 2019

The Finance (No. 2) Act, 2019 has come into force from 01.08.2019. However, the amendments made in section 39 of the CGST Act vide the Finance (No. 2) Act, 2019 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till the time this Study Material is being released for printing. Therefore, the applicability or otherwise of such amendment for May 2021 and/or November 2021 examinations shall be announced y the ICAI only after such notification is issued by the Central Government.

In the table given below, the existing provisions[5] of section 39 are compared with the provisions as amended by the Finance (No. 2) Act, 2019.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the amended provisions given hereunder in place of the related provisions discussed in the Chapter.

Section No.	Existing provisions	Provisions as amended by the Finance (No. 2) Act, 2019	Remarks
39	**Sub-section (1)** Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof.	**Sub-section (1)** Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, **and within such time, as may be prescribed:** **Provided that the Government may, on the recommendations of the Council, notify certain class of registered persons who shall furnish a return for every quarter or part thereof, subject to such conditions and restrictions as may be specified therein.**	Under the existing provisions, composition taxpayers as well as registered persons paying tax under Notification No. 2/2019 CT (R) dated 07.03.2019 are required to file annual return and make quarterly payment of taxes in terms of Notification No. 21/2019 CT dated 23.04.2019 issued under section 148 read with rule 62 of CGST Rules. Such provisions are now being incorporated in the CGST Act vide the amendment being proposed by the Finance (No. 2) Act, 2019 in section 39. Section 39 of the CGST Act is being amended so as to allow the composition taxpayers (which includes tax payers paying tax under Notification No. 2/2019 CT (R) dated

			07.03.2019 by virtue of amendment being made in section 10 of the CGST Act vide the Finance (No. 2) Act, 2019) to furnish return for the financial year along with quarterly payment of taxes. Further, other specified taxpayers may be given the option for quarterly or monthly furnishing of returns and payment of taxes under the proposed new return system.
	Sub-section (2) A registered person paying tax under the provisions of section 10 shall, for each quarter or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable and tax paid within eighteen days after the end of such quarter.	**Sub-section (2)** A registered person paying tax under the provisions of section 10, shall, for each **financial year** or part thereof, furnish a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, tax paid **and such other particulars in such form and manner, and within such time, as may be prescribed.**	
	Sub-section (7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return:	**Sub-section (7)** Every registered person who is required to furnish a return under sub-section (1), **other than the person referred to in the proviso thereto**, or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return: **Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, the tax due taking into account inward and outward supplies of goods or services or both,**	

		input tax credit availed, tax payable and such other particulars during a month, in such form and manner, and within such time, as may be prescribed: **Provided further that every registered person furnishing return under sub-section (2) shall pay to the Government the tax due taking into account turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, and such other particulars during a quarter, in such form and manner, and within such time, as may be prescribed.**	

CHAPTER-14 IMPORT AND EXPORT UNDER GST

EXAMPLES

1) Download of an e-book online for a payment would amount to receipt of OIDAR services by the consumer.

2) ABC Ltd. India has received an order for supply of services amounting to $ 500,000/- to a US based client. ABC Ltd. India is unable to supply the entire services from India and asks XYZ Ltd. Mexico (who is not merely an establishment of a distinct person viz. ABC Ltd. India, in accordance with the Explanation 1 in section 8 of the IGST Act) to supply a part of the services (say 40% of the total contract value). ABC Ltd. India shall be the exporter of services for the entire value if the invoice for the entire amount is raised by ABC Ltd. India. The services provided by XYZ Ltd. Mexico to the US based client shall be import of services by ABC Ltd. India and it would be liable to pay IGST on the same under reverse charge and also be eligible to take ITC of the IGST so paid. Further, if the provisions contained in section 2(6) of the IGST Act are not fulfilled with respect to the realization of convertible foreign exchange, say only 60% of the consideration is received in India and the remaining amount is directly paid by the US based client to XYZ Ltd. Mexico, even in such a scenario, 100% of the total contract value shall be taken as consideration for the export of services by ABC Ltd. India provided IGST on import of services has been paid on the part of services provided by XYZ Ltd Mexico directly to the US based client and RBI (by general instruction or by specific approval) has allowed that a part of the consideration for such exports can be retained outside India. In other words, in such cases, the export benefit will be available for the total realization of convertible foreign exchange by ABC Ltd. India and XYZ Ltd. Mexico.

QUESTIONS

1. Briefly discuss how exports are 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.

2. Explain how imports are 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 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.

3. Describe how exports are 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.

4. Is it necessary to execute a bond for effecting zero rated supplies? Elucidate.

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.

5. 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.

6. 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.

7. 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.

8. 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 receiving OIDAR service for personal consumption, Mr. Amar Kant is a non-taxable online recipient in terms of section 2(16).
Services received from a provider of service located in a non- taxable territory by an individual in relation to any purpose other than commerce, industry or any other business or profession is exempt from IGST. However, such exemption is not available in case of OIDAR services [Notification No. 9/2017 IT (R) dated 28.06.2017].
Therefore, being an OIDAR service provided by a supplier located outside India and received by a non-taxable recipient, the same is liable to GST.
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.

9. '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.

10. 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)

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.

is neither treated as supply of goods nor supply of services in terms of paragraph 8(b) of Schedule III to the CGST Act.


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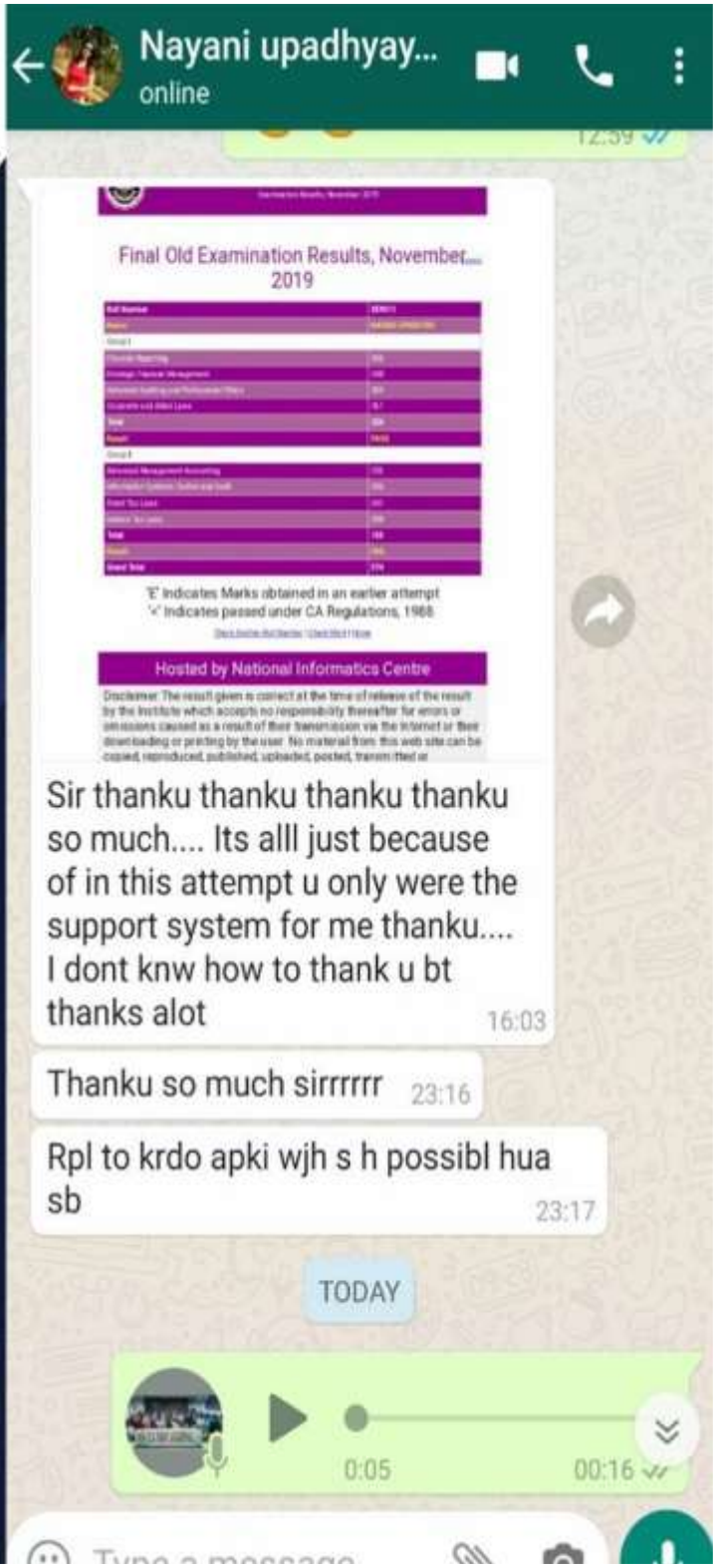
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CHAPTER-15 REFUNDS

EXAMPLES

1) M/s. ABC sends 100 units of specified goods out of India. The activity of sending/ taking such specified goods out of India is not a supply. No tax invoice is required to be issued in this case but the specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55. If 10 units of specified goods are sold abroad say after one month of sending/ taking out and another 50 units are sold say after two months of sending/ taking out, a tax invoice would be required to be issued for 10 units and 50 units, as the case may be, at the time of each of such sale in accordance with the provisions contained in section 12 and section 31 read with rule 46. If the remaining 40 units are not brought back within the stipulated period of six months from the date of removal, a tax invoice would be required to be issued for 40 units in accordance with the provisions contained in section 12 and section 31 read with rule 46. Further, M/s ABC may claim refund of accumulated input tax credit in accordance with the provisions contained in subsection (3) of section 54 read with sub-rule (4) of rule 89 in respect of zero-rated supply of 60 units.

QUESTIONS

1. Is there any time limit for sanctioning of refund under section 54?

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.

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, the provisional refund has to be given within 7 days from the date of acknowledgement of the claim of refund.

2. Discuss the provisions relating to refund of the amount of advance tax deposited by a casual taxable person under section 27(2).

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)].

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.

4. When is a deficiency memo issued in respect of a refund claim made under section 54?
ANSWER:
Rule 90(3) 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.

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.

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. Further, value of like goods domestically supplied by the similarly placed supplier is ` 6,00,000]	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 unutilised ITC shall not be allowed under section 54(3)(ii)	
(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 (Value of like goods domestically supplied by the similarly placed supplier is ` 5,00,000)	6,00,000

The ITC available for the above tax period is as follows:

S.No.	Particulars	(`)
(i)	On inputs	3,50,000
(ii)	On capital goods	1,20,000

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 (i)]	Nil
Domestic supplies of taxable product 'B' during the period [Note (ii)]	75,000
Supply of goods to Export Oriented Unit [Note (iii)]	Nil
Export of exempt supplies [Note (iv)]	75,000
Total refund claim admissible	**1,50,000**

Notes:

(i) 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), a registered person may claim refund, of any unutilised 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.

(ii) Refund of unutilised 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)].

Rule 89(5) 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 x 10,00,000/ ` 28,00,000 - ` 50,000 = ` 75,000
(iii) As per section 2(39), deemed exports means such supplies of goods as may be notified under section 147. 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)]. Therefore, since in the given case, the recipient is claiming ITC, Kailash Global (P) Ltd. (supplier of deemed exports) cannot claim refund of ITC.
(iv) Section 16(2) of the IGST Act, 2017 stipulates that subject to the provisions of section 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) 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:

$$\text{Refund Amount} = \frac{(\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services}) \times \text{Net ITC}}{\text{Adjusted Total Turnover}}$$

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 ii above.
Here, Turnover of zero rated supply of goods = ` 6,00,000 (Lower of ` 6,00,000 or 1.5 times of ` 5,00,000 i.e. 7,50,000 whichever is lower), Net ITC = ` 3,50,000 and Adjusted Total Turnover = ` 28,00,000 (as computed in point ii above)
Thus, maximum refund amount under rule 89(4) = ` 3,50,000 x ` 6,00,000/ ` 28,00,000 = ` 75,000.

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**
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) provided that Product B is notified as a product, in respect of which no refund of unutilised input tax credit shall be allowed under said section.
ANSWER:
Section 54(3)(ii) 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 unutilised ITC shall be allowed under section 54(3)(ii). Therefore, only Product A is eligible for refund under section 54(3)(ii).
Further, rule 89(5) stipulates that in the case of refund on account of inverted duty structure, refund of ITC shall be 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,-

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.

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)

8. With reference to section 54(3), mention the cases where refund of unutilised input tax credit is allowed.

ANSWER:

As per section 54(3), a registered person may claim refund of unutilised 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:

• the goods exported out of India are subjected to export duty;

• 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.

9. State few 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) provides that the refundable amount shall be paid to the applicant, instead of being credited to the Consumer Welfare Fund, if such amount is relatable to —

(a) refund of tax paid on export of goods and/or services or on inputs or input services used in making such exports;

(b) refund of unutilized ITC in case of zero-rated supplies made without payment of tax or accumulated ITC on account of inverted duty structure;

(c) 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;

(d) 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;

(e) 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

(f) the tax or interest borne by notified class of applicants.

10. Y Ltd. exported service valued at US $ 1,00,000. Supply of service was completed on 15th January. Payment for this service was received on 28th February. Refund claim was filed by Y Ltd. in respect of tax paid on inputs and inputs services for ` 6,00,000 on 31st March. The refund claim was sanctioned on 30th June. 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), 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. 28th February [Explanation to section 54].

As per section 56, 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 March, interest @ 6% p.a. is payable.

CHAPTER-16 JOB WORK

EXAMPLE 1) The principal is located in State A, the job worker in State B and the recipient in State C. In case the supply is made from the job worker's place of business / premises, the invoice (along with electronic way bill) will be issued by the supplier (principal) located in State A to the recipient located in State C. The said transaction will be an inter State supply. In case the recipient is also located in State A, it will be an intra State supply.

QUESTIONS

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.

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.

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.

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 Engineers. 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 Engineers. 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), 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.

5. Sudama Industries Ltd., registered in the State of Jammu & Kashmir, manufactures plastic pipes for other suppliers on job-work basis.

On 10th January, 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 delivery challan to Plasto Manufacturers on 20th October 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 20th October.

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), 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 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, processing or treatment 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 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 provides that the inputs, semi-finished goods or capital goods being sent for job work shall be sent under the cover of a delivery 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), 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 Manufacturers. 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).

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 28th January. 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 3rd December 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). 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**

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 10th April and were received by the job worker on 15th April. 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 Act 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), 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) 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 15th April (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 15th April 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)].

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.


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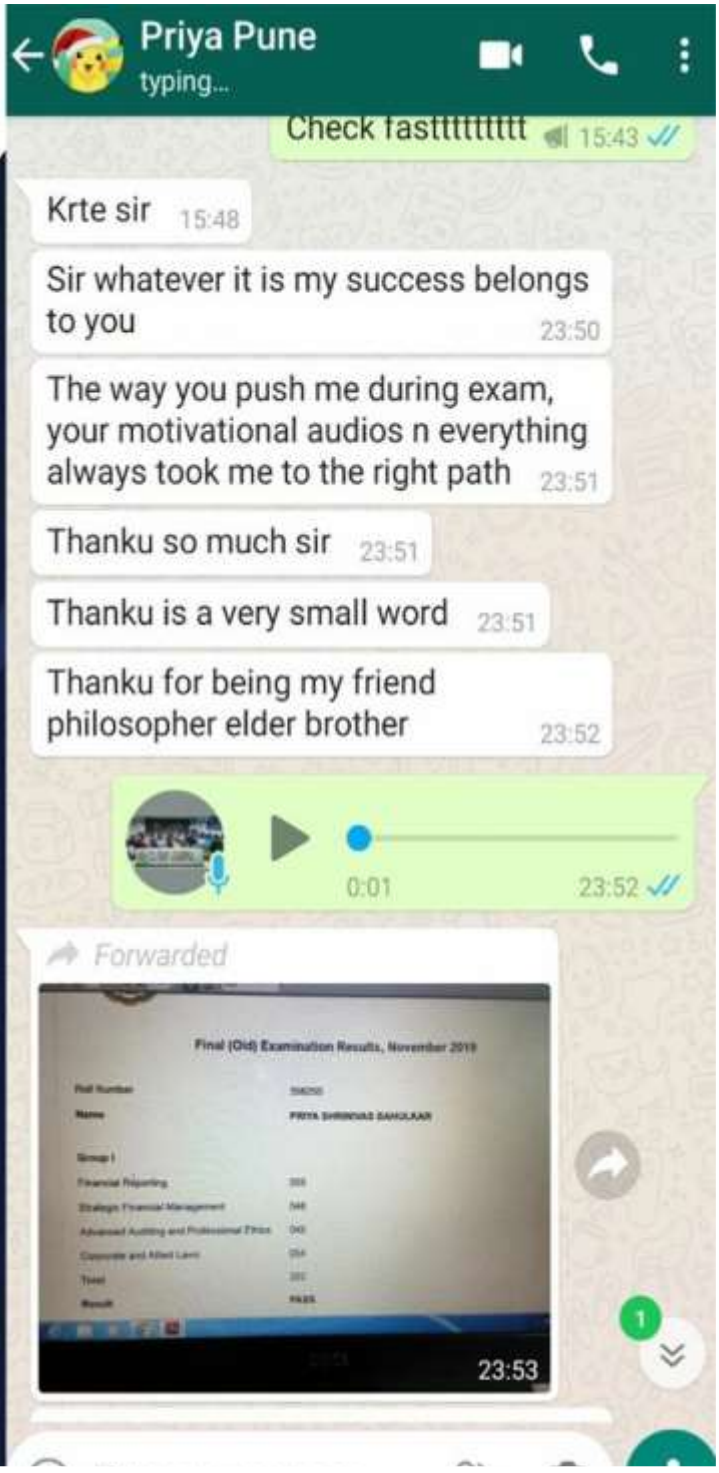
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CHAPTER-17 ASSESSMENT AND AUDIT

EXAMPLES

1. Let's assume that the due date of filing of Annual Return for F/Y 2017-18 is 31.12.2018. If a person defaults in filing of return for any tax period falling in F/Y 2017-18, period of 5 years shall be reckoned from the due date of filing of Annual Return for F/Y 2017-18 i.e. 31.12.2018. Accordingly, best judgment assessment can be made by Proper Officer on or before 31.12.2023.

2. Let's assume that the due date of filing of Annual Return for F/Y 2018-19 is 31.12.2019. If the liability of a person to take registration arises at any time in the F/Y 2018-19 for the reason that his turnover crosses the prescribed threshold limit, period of 5 years shall be reckoned from the due date of filing of Annual Return for F/Y 2018-19 i.e. 31.12.2019. Accordingly, best judgment assessment can be made by proper officer on or before 31.12.2024.

3. When tax evaded 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.

Illustration 1

ABC Limited is a supplier of medical equipment to various hospitals. While supplying the equipment ABC Limited is not sure about the rate of IGST applicable on such supplies, i.e. 18% or 28%. You are required to advise ABC Ltd. in this situation.

Answer

In such an event, ABC Limited can move an application for provisional assessment for seeking permission to discharge the tax liability provisionally @ 18% upon the submission of bond and security and subject to finalization of the assessment.

Upon finalization of the assessment, ABC Limited would be liable to pay the differential tax liability along with applicable interest if it is found that the applicable rate was 28% whereas ABC Limited paid the tax @ 18% pursuant to the order passed initially on its application for seeking provisional assessment.

QUESTIONS

1. Is summary assessment order to be necessarily passed against the registered person?

ANSWER:

No. In certain cases, like when goods are under transportation or are stored in a warehouse, and the registered person in respect of such goods cannot be ascertained, the person in charge of such goods shall be deemed to be the registered person and will be assessed to tax.

2. Whether principal of natural justice is must to be followed before passing assessment order against the unregistered person?

ANSWER:

Yes, principal of natural justice is must to be followed before passing assessment order against an unregistered person seeking to impose any financial burden on him.

3. How many types of audit are prescribed under GST Act. Briefly explain each one of them.

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 (Section 65 of the CGST Act)

(c) **Special Audit:** If at any stage of scrutiny, inquiry, investigations or any other proceedings, if the department is of the opinion that the value has not been correctly declared or credit availed is not with in the normal limits, the department may direct special audit by Chartered Accountant or Cost Accountant, nominated by the department. (Section 66 of the CGST Act)

4. 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

(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.
or for payment of late fee under section 47 of the CGST Act, 2017 shall continue.

5. 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.

6. 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 of returns 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 of returns under section 61 of the CGST Act, 2017 of a registered person, the proper officer may:
(i) conduct audit of the registered person; or
(ii) direct the registered person to get his records including books of account examined and audited by a Chartered Accountant or a Cost Accountantnominated for this purpose by the Commissioner; or.
(iii) exercise the powers of inspection, search and seizure with respect to the registered person, or
(iv) proceed to determine the tax and other dues of the registered person under Sections 73 or 74 of the Act

7. 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

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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.

8. Kulbhushan & Sons has entered into a contract to supply a consignment 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 12thJanuary, 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 the goods on 25thJanuary thereafter paying the tax on provisional basis in respect of said consignment on 19thFebruary.
Consequent to the final assessment order passed by the Assistant Commissioner of Central Tax on 21stMarch, a tax of ` 1,80,000 becomes due on the consignment.
Kulbhushan & Sons pays the tax due on 9thApril. Determine the interest payable, if any, by Kulbhushan & Sons in the above case. Assuming all the other facts remaining the same, if consequent to the final assessment order passed on 21stMarch, a tax of ` 4,20,000 becomes refundable on the consignment, refund of which is applied by Kulbhushan & Sons on 9thApril and tax was refunded to it on 05thJune, determine the interest receivable, if any, by Kulbhushan & Sons in the given 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 25thJanuary under provisional assessment is 20thFebruary.
In view of the provisions of section 60(4), in the given case, Kulbhushan & Sonsis liable to pay following interest in respect of the consignment of goods supplied:
= ` 1,80,000 × 18% × 48/365
= ` 4,261 (rounded off)
If, in the given case, it is assumed that consequent to the final assessment order passed on 21stMarch, a tax of ` 4,20,000 becomes refundable to Kulbhushan & Sons, answer would be as follows:
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 (05thJune) within 60 days from the date of receipt of application of refund (09thApril), interest is not payable to Kulbhushan& Sons on tax refunded.

CHAPTER-17 ASSESSMENT AND AUDIT

QUESTIONS

1. Is summary assessment order to be necessarily passed against the registered person?

ANSWER:

No. In certain cases, like when goods are under transportation or are stored in a warehouse, and the registered person in respect of such goods cannot be ascertained, the person in charge of such goods shall be deemed to be the registered person and will be assessed to tax.

2. Whether principal of natural justice is must to be followed before passing assessment order against the unregistered person?

ANSWER:

Yes, principal of natural justice is must to be followed before passing assessment order against an unregistered person seeking to impose any financial burden on him.

3. How many types of audit are prescribed under GST Act. Briefly explain each one of them.

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)

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ANSWER:

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(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.

or for payment of late fee under section 47 of the CGST Act, 2017 shall continue.

5. 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.

6. 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 of returns 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 of returns under section 61 of the CGST Act, 2017 of a registered person, the proper officer may:

(i) conduct audit of the registered person; or

(ii) direct the registered person to get his records including books of account examined and audited by a Chartered Accountant or a Cost Accountantnominated for this purpose by the Commissioner; or.

(iii) exercise the powers of inspection, search and seizure with respect to the registered person, or

(iv) proceed to determine the tax and other dues of the registered person under Sections 73 or 74 of the Act.

CHAPTER-18 INSPECTION, SEARCH, SEIZURE AND ARREST

QUESTIONS

1. Explain the situation in which access to business premises is allowed under section 71. Also, list the records which are to be produced during access to business premises.

ANSWER:

During the course of any proceeding 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.

(vi) any other relevant record.

2. Explain the safeguards provided under section 69 to a person who is placed under arrest.

ANSWER:

Section 69 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).

3. Who can order for carrying out 'inspection' and under what circumstances?
ANSWER:
As per section 67, inspection can be carried out by an officer of CGST/SGST 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 the person concerned has done one of the following:
i. suppressed any transaction of supply;
ii. suppressed stock of goods in hand;
iii. claimed excess input tax credit;
iv. contravened any provision of the CGST Act to evade tax;
v. a transporter or an owner/operator of a warehouse/godown/any other place 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.

4. Who can order for search and seizure under the provisions of the 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. Such authorization can be given only where the Joint Commissioner/an officer above his rank has reasons to believe that any goods liable to confiscation or any documents or books or things relevant for any proceedings are hidden in any place. The Joint Commissioner/an officer above his rank can himself search and seize such goods, documents or books or things.

5. Describe the powers that can be exercised by an officer during a 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 or things (relevant for any proceedings under the CGST Act) from the premises searched. 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.

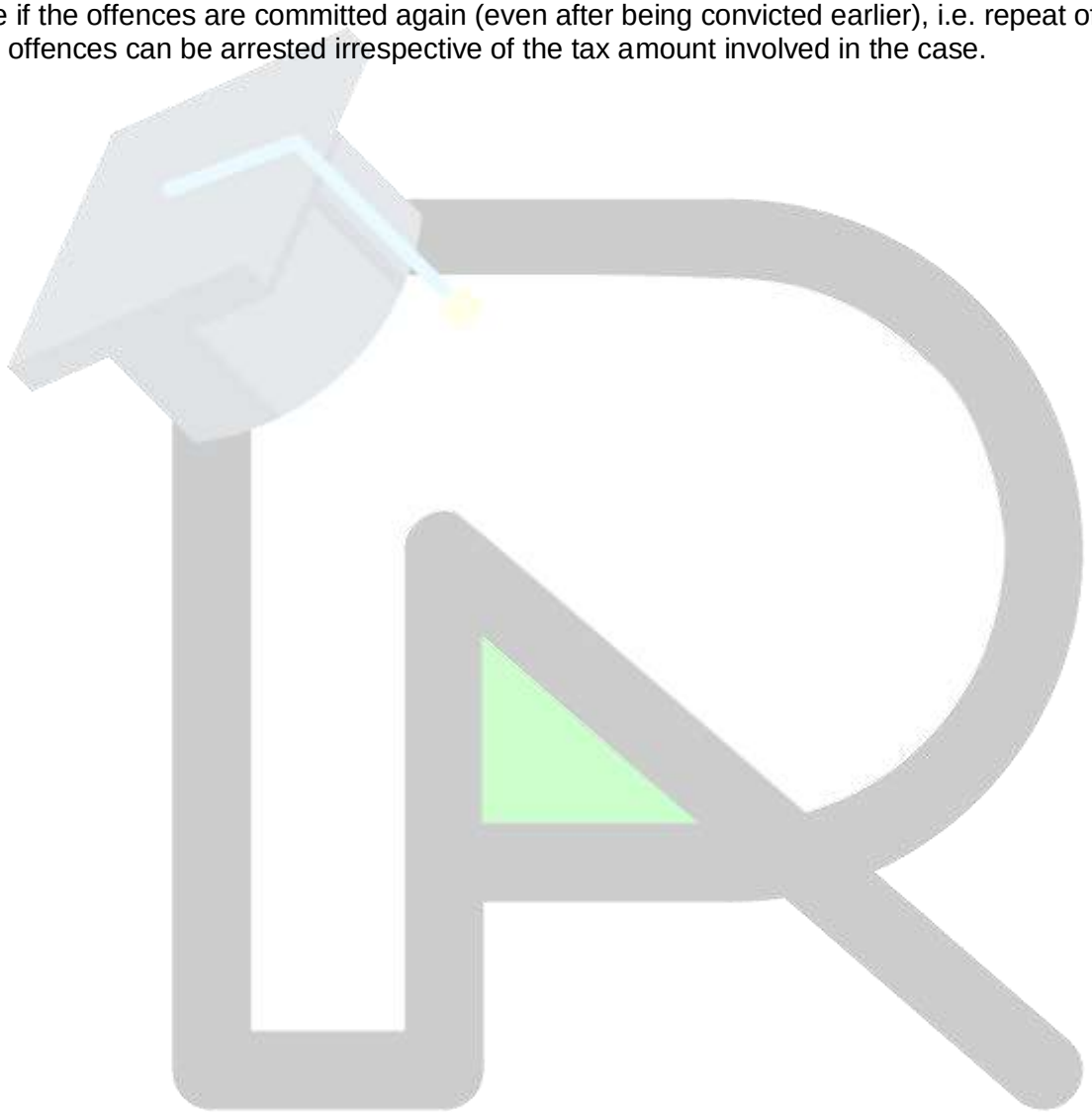
6. Discuss the responsibilities of the person to whom summons has been issued.
ANSWER:
A person who is issued summon is legally bound to attend either in person or by an authorized representative and he is bound to state the truth before the officer who has issued the summon upon any subject which is the subject matter of examination and to produce such documents and other things as may be required.

7. Explain the meaning of 'arrest'.
ANSWER:
The term 'arrest' has not been defined in the CGST 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.

8. State the circumstances when the proper officer can authorize 'arrest' of any person under the CGST Act.

ANSWER:

The Commissioner of CGST can authorize a CGST officer to arrest a person if he has reasons to believe that the person has committed an offence attracting a punishment prescribed under section 132(1) (a), (b), (c), (d) or section 132(2). This essentially means that a person can be arrested only where the tax evasion is more than ` 2 crore and the offences are specified offences namely, making supply without any invoice; issue of invoice without any supply; amount collected as tax but not paid to the Government beyond a period of 3 months and taking input tax credit without receiving goods and services. However, the monetary limit shall not be applicable if the offences are committed again (even after being convicted earlier), i.e. repeat offender of the specified offences can be arrested irrespective of the tax amount involved in the case.



CHAPTER-19 DEMANDS AND RECOVERY

EXAMPLES

1) Ram Associates, a registered person, pays IGST on a transaction treating the same as inter-State supply by mistake, though it was an intra-state supply. In this case, Ram Associates has to pay CGST and SGST/UTGST, without any interest. He can thereafter claim refund of IGST which was erroneously paid.

QUESTIONS

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.

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.

2. Discuss briefly the time limit for issue of show cause notice as contained under sections 73 and 74.

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.

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 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)].

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)].

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].

6. Enlist the circumstances for which a show cause notice can be issued by the proper officer under section 73. 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, 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 wilful 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 utilised 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), the due date of filing annual return for a financial year is 31st day of December following the end of such financial year.

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 make it mandatory on Subharti Enterprises to pay amount collected from other person representing tax under this Act, to the Government.

Section 76 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.

8. Rajul Associates has been issued a show cause notice (SCN) on 31.12.2021 under section 73(1) on account of short payment of tax during the period between 01.07.2017 and 31.12.2017. It has been given an opportunity of personal hearing on 15.01.2022.
Advice Rajul Associates as to what should be the written submissions in the reply to the show cause notice issued to it.
ANSWER:
The written submissions in reply to SCN issued to Rajul Associates are as follows:
i. The show cause notice (SCN) issued for normal period of limitation under section 73(1) is not sustainable.
ii. The SCN under section 73(1) can be issued at least 3 months prior to the time limit specified for issuance of order under section 73(10). The adjudication order under section 73(10) 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 ison or before the 31st day of December following the end of such financial year [Section 44]. Thus, SCN under section 73(1) 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).

9. Everest Technologies Private Limited has been issued a show cause notice (SCN) on 31.01.2021 under section 73(1) 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) can be issued at least 3 months prior to the time limit specified for issuance of order under section 73(10) [Section 73(2)]. The adjudication order under section 73(10) 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]. Thus, SCN under section 73(1) 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.

10. Anant & Co. self-assessed its tax liability as ` 90,000 for the month of April, but failed to make the payment. Subsequently the Department initiated penal proceedings against Anant & Co. for recovery of penalty under section 73 for failure to pay GST and issued show cause notice on 10th August which was received by Anant & Co. on 14th August. Anant & Co. deposited the tax along with interest on 25th August 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. Explain the relevant provisions in brief.

ANSWER:

Due date for payment of tax for the month of April is 20th May.

As per section 73, 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, Anant & Co. has not paid the self-assessed tax within 30 days of due date [i.e. 20th May], 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 Anant & Co. is correct, but the amount of penalty of ` 45,000 is not correct.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Result declared
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Sir CA Neha Gupta it is...
16:12
Only with ur blessings and guidance Sir..... Ty Soo much
16:13
Wowwwww
16:17

CHAPTER- 20 LIABILITY TO PAY IN CERTAIN CASES

QUESTIONS

1. Avataar Industries, a registered person under GST, has sold whole of its business to Rolex Manufacturers. 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.

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.

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.

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.

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.

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.

6. Discuss the liability to pay tax in case of an amalgamation/merger, under section 87.

ANSWER:

Section 87 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.

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).

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.

8. With reference to the provisions of CGST Act, 2017, explain the liability of partners of firm to pay tax?

ANSWER;

Section 90 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.

9. Explain the provisions relating to liability for GST in case of company in liquidation (section 88).

ANSWER:

The provisions relating to liability for GST in case of company in liquidation provided under section 88 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.

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].

CHAPTER-21 OFFENCES AND PENALTIES

QUESTIONS

1. What are 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

(iv) Not paying any amount collected as tax for a period exceeding three months;
(v) Not paying tax collected in contravention of the CGST/SGST Act for a period exceeding 3 months;
(vi) Non deduction or lower deduction of tax deducted at source or not depositing tax deducted at source under section 51;
(vii) Non collection or lower collection of or non-payment of tax collectible at source under section 52;
(viii) Availing/utilizing input tax credit without actual receipt of goods and/or services;
(ix) Availing/distributing ITC by an Input Service Distributor in violation of Section 20;
(x) Fraudulently obtains any refund of tax;
(xi) Suppressing turnover;

Offences having nexus with records and related information

(xii) Falsification/ substitution of financial records or furnishing of fake accounts/ documents or furnishing false information/ return with intent to evade payment of tax;
(xiii) 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;

(xiv) 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;
(xv) Tampering/ destroying any material evidence/ documents;
(xvi) Obstructing or preventing any official in discharge of his duty;

Offences having nexus with Registration

(xvii) Failure to register despite being liable to pay tax;
(xviii) Furnishing false information regarding registration particulars either at the time of applying for registration or subsequently

Offences having nexus with Supply/Transport of goods

(xix) Transporting goods without prescribed documents;
(xx) Supplying/ transporting/ storing any goods liable to confiscation;
(xxi) Disposing of/ tampering with goods detained/ seized/ attached under the Act.

2. What is the quantum of penalty for an offence mentioned under section 122(1) and section 122(2)?
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 willful 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.

3. Is there any penalty prescribed for a person other than the taxable person under section 122?
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.

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 (i) ` 10,000/- or (ii) 100% of tax evaded.

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.

6. 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 less.

7. Examine the implications as regards the bailability and quantum of punishment on prosecution, in respect of the following cases pertaining to the month of December 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.

8. 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 excluding 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

9. 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

10. 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/ utilised 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/ utilisation 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.

11. 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:

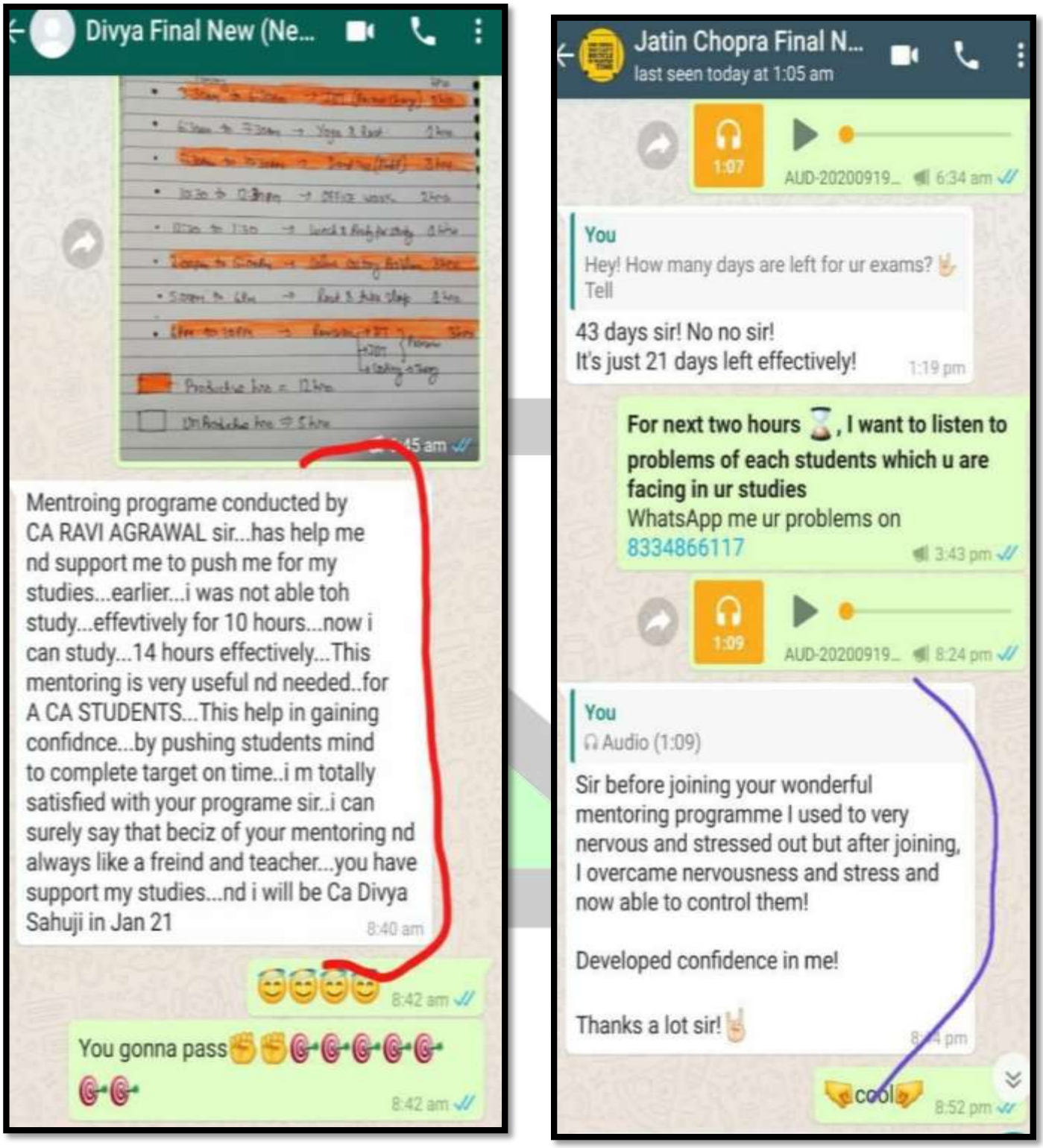
Section 137 of the CGST Act, 2017 stipulates that where an offence under the GST law is committed by a taxable person being a trust, the managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
Further, where it is proved that 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.

AMENDMENTS MADE VIDE THE FINANCE ACT, 2020

The Finance Act, 2020 has become effective from 27.03.2020. However, most of the amendments made in the CGST Act and the IGST Act vide the Finance Act, 2020 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till the time this Study Material is being released for printing. Therefore, the applicability or otherwise of such amendments for May 2021 and/or November 2021 examinations shall be announced by the ICAI only after such notification is issued by the Central Government.
In the table given below, the existing provisions[2] relating to section 122 and 132 are compared with the provisions as amended by the Finance Act, 2020.
Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the provisions given hereunder in place of the related provisions discussed in the Chapter.

Existing provisions	Provisions as amended by the Finance Act, 2020	Remarks
	New sub-section (1A) inserted to section 122 Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on	Penal provisions have now been prescribed for the actual perpetrators who used to retain the benefit of the transaction conducted by someone else. Prior to this amendment, the penal provisions were for a person who commits an offence but the amended provision has expanded the scope to include a person who causes to commit and retains the benefits arising out of any of the following offences:- (i) Supply of any goods or services or both without issue of any invoice or issue of an incorrect or false invoice with regard to any such supply. (ii) Issue of any invoice or bill without supply of goods or

		services or both in violation of the provisions of this Act or the rules made thereunder. (vii) Takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder. (ix) Takes or distributes input tax credit in contravention of section 20, or the rules made thereunder.
Sub-section (1) of Section 132 Whoever commits any of the following offences, namely-	**Sub-section (1) of Section 132** **Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely-**	Prosecution provisions have now been prescribed for the actual perpetrators who used to retain the benefit of the transaction conducted by someone else. Prior to this amendment, the prosecution provisions were for a person who commits an offence but the amended provision has expanded the scope to include a person who causes to commit and retains the benefits arising out of any of the specified offences.
Sub-section (1) of Section 132 – Clause (c) **(c)** avails input tax credit using such invoice or bill referred to in clause (b)	**Sub-section (1) of Section 132 – Clause (c)** (c) avails input tax credit using the invoice or bill referred to in clause (b) **or fraudulently avails input tax credit without any invoice or bill**	The Finance Act, 2020 has amended clause (e) by removing "fraudulently avails input tax credit" and amended clause (c) by inserting "fraudulently avails input tax credit without any invoice or bill" As a result of this amendment, if a person fraudulently avails input tax credit without any invoice or bill and where the amount exceeds Rs. 5 crore, the offence will be cognizable and non-bailable.
Sub-section (1) of Section 132 – Clause (e) **(e) evades tax, fraudulently avails input tax credit or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);**	**Sub-section (1) of Section 132 – Clause (e)** (e) evades tax or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);	


Divya Final New (Ne...
Mentroing programe conducted by CA RAVI AGRAWAL sir...has help me nd support me to push me for my studies...earlier...i was not able toh study...effevtively for 10 hours...now i can study...14 hours effectively...This mentoring is very useful nd needed..for A CA STUDENTS...This help in gaining confidnce...by pushing students mind to complete target on time..i m totally satisfied with your programe sir..i can surely say that beciz of your mentoring nd always like a freind and teacher...you have support my studies...nd i will be Ca Divya Sahuji in Jan 21
8:40 am
8:42 am
You gonna pass
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last seen today at 1:05 am
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AUD-20200919...
6:34 am
You
Hey! How many days are left for ur exams?
Tell
43 days sir! No no sir!
It's just 21 days left effectively!
1:19 pm
For next two hours , I want to listen to problems of each students which u are facing in ur studies
WhatsApp me ur problems on
8334866117
3:43 pm
1:09
AUD-20200919...
8:24 pm
You
Audio (1:09)
Sir before joining your wonderful mentoring programme I used to very nervous and stressed out but after joining, I overcame nervousness and stress and now able to control them!
Developed confidence in me!
Thanks a lot sir!
cool
8:52 pm

CHAPTER-22 APPEALS AND REVISION

EXAMPLES

1) The adjudicating authority issued the adjudication order on 23rd September and the same is communicated to the taxpayer on 28th September. The relevant date for computing the period of 3 months (for filing the appeal to AA) is 28th September (date of communication of order) and not 23rd September.

2) The appeal is filed and provisional acknowledgement issued on 10th September. The taxpayer submits the certified copy of the order sought to be appealed against on 15th September (within 7 days). The date of filing appeal is 10th September.

3) The appeal is filed and provisional acknowledgement issued on 10th September. The taxpayer submits the certified copy of the order sought to be appealed against on 25th September (after seven days). The date of filing appeal is 25th September.

4) The adjudicating authority passed the order on 23rd January (communicated same day to the Commissioner). The Commissioner directs his subordinate officer to file a review application with the AA till 23rd June (within 6 months from the date of communication of order). However, the application could be filed only on 3rd July. The AA can condone the delay in filing of appeal upto 23rd July (up to 1 month) if it is satisfied that there was sufficient cause for such delay.

(5) The adjudicating authority passed the order on 23rd January 2020 and it was communicated to the taxpayer on the same day. The taxpayer filed the appeal against the order with the AA on 16th February 2020. The AA should decide the appeal by 16th February 2021, where it is possible to do so.

6) The adjudicating authority passed the order on 23rd January 2020 and it was communicated to the taxpayer on the same day. The taxpayer filed the appeal against the order with the AA on 16th February 2020. The appeal proceedings before the AA are stayed by an order of a Court for the period between 1st May 2020 and 30th June 2020. The period of 61 days during which the stay was in operation will be excluded for computing the period of 1 year within which the AA should decide the appeal. Thus, the AA can pass the order by 18th April 2021.

7) A taxpayer is served with an adjudication order on 25th May 2020. The RA can revise the order during the period between 26th November 2020 (after expiry of 6 months) and 25th May 2023.

(8) ABC Pvt. Ltd. manufactures product 'P' and 'Q'. The company avails benefit of exemption notification in respect of product 'P' and pays tax on product 'Q' @ 12%. Show cause notice was issued to the company alleging that product 'P' was not eligible for exemption and product 'Q' was liable to tax @ 18%. The adjudicating authority concluded that the rate of tax in respect of product 'Q' was correct but the exemption on product 'P' was being availed wrongly. Consequently, an order confirming demand of ` 10 lakh was passed by the adjudicating authority on 15th January 2020. The company filed an appeal against the order before the AA on 16th February 2020. The AA passed the order in favour of the company in respect of product 'P' on 31st October 2020. The RA can pass the revised order in respect of tax rate on product 'Q' before 31st October 2021 (1 year from the date of order passed by the AA) or 15th January 2023 (3 years from the date of adjudication order), whichever is later. Thus, the RA can pass the revised order by 15th January 2023.

9) The adjudicating authority passed the order on 23rd January 2020 and it was communicated to the taxpayer on the same day. The RA calls for the records of the proceedings on 1st August 2020 (after expiry of 6 months) and started examining the same. The revision order to be passed by the RA is stayed by an order of the High Court for the period between 1st September 2020 and 31st October 2020. The period of 61 days during which the stay was in operation will be excluded for computing the period of 3 years within which the RA should pass the revision order. Thus, the RA can pass the order by 25th March 2023.

10) ABC Pvt. Ltd. received a show cause notice demanding tax of ` 10 lakh, penalty of ` 10 lakh and interest of ` 2 lakh. The adjudicating authority passed the order confirming the entire demand. While ABC Pvt. Ltd. admits the tax liability of ` 5 lakh and interest of ` 50,000, it wishes to file an appeal to litigate the balance demand amount. The amount of pre-deposit to be made by ABC Pvt. Ltd. for filing the appeal to the AA is computed as under (i) Full amount of tax, interest and penalty as admitted by the company, i.e. ` 5.5 lakh
(ii) 10% of the tax in dispute, i.e. ` 50,000 (10% of ` 5 lakh) Therefore, total pre-deposit to be made by the company is ` 6 lakh. On payment of such pre-deposit, the recovery proceedings for the balance amount of ` 16 lakh will get stayed.

11) ABC Pvt. Ltd. received a show cause notice demanding IGST of ` 600 crore, penalty of ` 100 crore and interest of ` 10 crore. The adjudicating authority passed the order confirming the entire demand. While ABC Pvt. Ltd. admits the tax liability, penalty and interest of ` 50 crore, ` 10 crore and ` 1 crore respectively, it wishes to file an appeal to litigate the balance demand amount. The amount of pre-deposit to be made by ABC Pvt. Ltd. for filing the appeal to the AA is computed as under
(i) Full amount of tax, interest and penalty as admitted by the company, i.e. ` 61 crore
(ii) 10% of the tax in dispute, i.e. ` 55 crore (10% of ` 550 crore) subject to a maximum of ` 50 crore
Therefore, total pre-deposit to be made by the company is ` 61 crore (total liability admitted by the company) plus ` 50 crore, i.e. ` 111 crore. On payment of such pre-deposit, the recovery proceedings for the balance amount of ` 599 crore will get stayed.

12) ABC Pvt. Ltd. received an adjudication order demanding CGST and SGST of ` 200 crore each. ABC Pvt. Ltd. filed an appeal to AA contesting the entire demand. The amount of pre-deposit made by the company for

filing the appeal to the AA is ` 20 crore [10% of ` 200 crore (tax in dispute)]. Equivalent amount has been paid for SGST too. Thus, a total of ` 40 crore has been paid by the company as pre-deposit for filing the appeal to the AA. The AA heard the appeal and decided in favour of the department confirming the entire demand. The company filed an appeal to the Appellate Tribunal. The amount of pre-deposit made by the company for filing the appeal before the Tribunal is ` 40 crore [20% of ` 200 crore (tax in dispute)]. Equivalent amount has been paid for SGST too. Thus, a total of ` 80 crore has been paid by the company as pre-deposit for filing the appeal to the Appellate Tribunal.

(13) ABC Pvt. Ltd. wishes to file an appeal with the Appellate Tribunal against an order of the AA demanding IGST of ` 1200 crore. The company admits the liability of ` 100 crore but wishes to litigate the balance demand amount and thus, files an appeal with the Appellate Tribunal. The amount of pre-deposit to be made by ABC Pvt. Ltd. for filing the appeal to the Appellate Tribunal is computed as under
(i) Full amount of tax, interest and penalty as admitted by the company, i.e. ` 100 crore
(ii) 10% of the tax in dispute, i.e. ` 110 crore (10% of ` 1100 crore) subject to a maximum of ` 100 crore
Therefore, total pre-deposit to be made by the company is ` 100 crore (total liability admitted by the company) plus ` 100 crore, i.e. ` 200 crore.

QUESTIONS

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).

2. Describe the provisions relating to Departmental appeal to Appellate Authority under section 107.

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.

3. With reference to sections 107(6) and 112(8), specify the amount of mandatory pre-deposit which should be made along with every appeal made 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.
Section 112(8) lays down that no appeal can be filed before the Appellate Tribunal, unless the appellant deposits[2]
(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, in relation to which appeal has been filed.
The above limits are applicable for the pre-deposits to be made under the CGST Act. Equal amount of pre-deposit is payable under the respective SGST Act as well.
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.

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 authorised under the CGST Act for revision of decision or orders referred to in section 108.
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 3 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

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.

6. In an order dated 20th August issued to GH (P) Ltd., the Joint Commissioner of CGST has confirmed IGST demand of ` 280 crore. The company is disputing the entire demand of IGST and wants to know the amount of pre-deposit it has to make under the IGST Act 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, determine the amount of pre-deposit to be made by the company for filing the said appeal.

ANSWER;

Section 107(6) read with section 20 of the IGST Act 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 ` 50 crore. Thus, the amount of pre-deposit for filing an appeal with Appellate Authority cannot exceed ` 50 crore (for tax in dispute) where IGST demand is involved 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) ` 50 crore,
whichever is less.
= ` 28 crore.
Further, section 112(8) 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 ` 100 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) ` 100 crores,
whichever is less.
= ` 56 crores.

7. With reference to the provisions of section 121, specify the orders against which no appeals can be filed.

ANSWER:

As per section 121, 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; or
(d) an order passed under section 80 (payment of tax in instalments).

8. 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), an appeal against orders passed by the State Bench or Area Benches of the Tribunal would lie 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 would lie 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.

9. Pursuant to audit conducted by the tax authorities under section 65, 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. In the absence of a satisfactory reply from Home Furnishers, Joint Commissioner of Central Tax passed an adjudication order dated 20th August (received by Home Furnishers on 22nd August) confirming a tax demand of ` 50,00,000 (i.e., CGST 25,00,000 and SGST 25,00,000) and imposing a penalty of equal amount under section 122.

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)]. 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)]. Thus, Home Furnishers can file the appeal to Appellate Authority on or before 22nd November. 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 to ensure that a proper officer under the CGST Act is also treated as the proper officer under the SGST/UTGST Act and vice versa. Thus, a proper officer can issue orders with respect to both, the CGST as well as the SGST/UTGST laws. GST law also 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 (CGST Act). Accordingly, if any order is passed by the proper officer under a SGST Act, any appeal/ review/ revision/ rectification against the said order will lie only with the proper officer under that SGST Act. 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) 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*.
*Equivalent amount is required to be deposited with respect to SGST liability.
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 (i.e. ` CGST 2,50,000 and SGST ` 2,50,000).

10. With reference to the provisions of section 120, list the cases in which appeal is not to be filed and also specify other relevant provisions in this respect.
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.

11. XY Company received an adjudication order passed by the Assistant Commissioner of Central Tax on 1st November under section 73 wherein it was decided as follows:

CGST+SGST due	**` 6,00,000**
Interest	**@ 18% p.a. for number of delayed days**
Penalty	**` 60,000**

The taxpayer filed an appeal before the Appellate Authority on 26th November.
Determine the amount of pre-deposit to be made by the company for filing the appeal.
Whether your answer would be different if the taxpayer appeals only against part of the demanded amount say ` 4,00,000 and admits the balance liability of tax amounting to ` 2,00,000 and proportionate penalty arising from the said order?
ANSWER:
Section 107(6) 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 ` 25 crore, in relation to which the appeal has been filed.
*Equivalent amount is required to be deposited with respect to SGST liability.
Thus, in Case-I, XY Company has to make a pre-deposit of 10% of ` 6,00,000, which is ` 60,000 (i.e. CGST ` 30,000 and SGST ` 30,000) assuming that XY Company disagrees with the entire tax demanded.
However, when XY Company admits the liability of only ` 2,00,000 (CGST + SGST) and disputes the balance tax demanded of ` 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.

CHAPTER-23 ADVANCE RULING

QUESTIONS

1. Which are the questions for which advance ruling can be sought?
ANSWER:
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 provisions of the GST Act(s);
(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 under the Act;
(f) whether applicant is required to be registered under the Act;
(g) whether any particular thing done by the applicant with respect to any goods or services amounts to or results in a supply of goods or services, within the meaning of that term.

2. What is the objective of having a mechanism of Advance Ruling?
ANSWER;
The broad objective for setting up such an authority is to:
(i) provide certainty in tax liability in advance in relation to an activity being undertaken or proposed to beundertaken by the applicant;
(ii) helps taxpayer in financial planning and making new investments
(iii) attract Foreign Direct Investment (FDI);
(iv) reduce litigation;
(v) pronounce ruling expeditiously in transparent and inexpensive manner

3. To whom will the Advance Ruling be applicable?
ANSWER:
The advance rulings are given in personem and not in rem, that is, not to the whole world and therefore, rulings cannot apply to other similar cases. Section 103 provides that an advance ruling pronounced by AAR or AAAR shall be binding only on the applicant who sought it in respect of any matter referred to in section 97(2) and on the jurisdictional tax authority of the applicant. This clearly means that an advance ruling is not applicable to similarly placed taxable persons in the State. It is only limited to the person who has applied for an advance ruling.

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, in section 103(2), it is provided that advance ruling shall be binding till the period when the law, facts or circumstances supporting the original advance ruling have changed. Thus, a ruling shall continue to be in force so long as the transaction continues and so long as there is no change in law, facts or circumstances.

5. Can an advance ruling given be nullified?

ANSWER;

Section 104(1) provides that an advance ruling shall be held to be ab initio void if the AAR or AAAR finds that the advance ruling was obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts. In such a situation, all the provisions of the GST Act(s) shall apply to the applicant as if such advance ruling had never been made (but excluding the period when advance ruling was given and up to the period when the order declaring it to be void is issued). An order declaring advance ruling to be void can be passed only after hearing the applicant.

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:
(i) 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?
(ii) 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?
(iii) The tax advisor is of the view that the order of Authority for Advance Ruling (AAR) is final and is not appealable. Whether the tax advisor's view is correct?
(iv) 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)]. Therefore, it is not mandatory for a person seeking advance ruling to be registered.

(ii) Section 103(2) 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.

(iii) No, the tax advisor's view is not correct. As per section 100, 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.

(iv) Section 103 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.

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.

ANSWER:

The procedure to be followed by the Authority for Advance Ruling (AAR) on receipt of the application for advance ruling under section 98 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.
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.

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.

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.

9. Discuss briefly provisions of CGST Act, 2017 regarding questions for which advance ruling can be sought.

ANSWER:

As per section 97(2), 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.

AMENDMENTS MADE VIDE THE FINANCE (NO. 2) ACT, 2019

The Finance (No. 2) Act, 2019 has come into force from 01.08.2019. However, the amendments made in the advance ruling provisions of the CGST Act vide the Finance (No. 2) Act, 2019 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till the time this Study Material is being released for printing. Therefore, the applicability or otherwise of such amendment for May 2021 and/or November 2021 examinations shall be announced by the ICAI only after such notification is issued by the Central Government.

In the table given below, the relevant existing provisions[1] of the advance ruling are compared with the provisions as amended by the Finance (No. 2) Act, 2019.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the amended provisions given hereunder in place of the related provisions discussed in the Chapter.

Existing provisions	**Provisions as amended by the Finance (No. 2) Act, 2019**	**Remarks**
Section 95(a) "advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;	**Section 95(a)** "advance ruling" means a decision provided by the Authority or the Appellate Authority **or the National Appellate Authority** to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 **or of section 101C**, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;	New clause (f) is being inserted in section 95 of the CGST Act to define the "National Appellate Authority for Advance Ruling". Definition of advance ruling is being amended to provide that the decision given by the
New clause (f) in section 95		National Appellate Authority will also be an advance ruling.
National Appellate Authority" means the National Appellate Authority for Advance Ruling referred to in section 101A.		
New section 101A: Constitution of National Appellate Authority for Advance Ruling		New sections 101A, 101B and 101C are being

(1) The Government shall, on the recommendations of the Council, by notification, constitute, with effect from such date as may be specified therein, an Authority known as the National Appellate Authority for Advance Ruling for hearing appeals made under section 101B. **(2) The National Appellate Authority shall consist of -** **(i) the President, who has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than five years;** **(ii) a Technical Member (Centre) who is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A; (iii) a Technical Member (State) who is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the Additional Commissioner of State tax with at least three years of experience in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation.** **(3) The President of the National Appellate Authority shall be appointed by the Government after consultation with the Chief Justice of India or his nominee :** **Provided that in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the senior most Member of the National Appellate Authority shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office :** **Provided further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member of the National Appellate Authority shall discharge the functions of the President until the date on which the President resumes his duties.** **(4) The Technical Member (Centre) and Technical Member (State) of the National Appellate Authority shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.** **(5) No appointment of the Members of the National Appellate Authority shall be invalid merely by the reason of any vacancy or defect in the constitution of the Selection Committee.** **(6) Before appointing any person as the President or Members of the National Appellate Authority, the Government shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.**	inserted in the CGST Act so as to provide for constitution, qualification, appointment, tenure, conditions of services of the National Appellate Authority for Advance Ruling; to provide for procedures to be followed for hearing appeals against conflicting advance rulings pronounced on the same question by the Appellate Authorities of two or more States or Union territories in case of distinct persons; and to provide that the National Appellate Authority shall pass order within a period of ninety days from the date of filing of the appeal respectively.

(7) The salary, allowances and other terms and conditions of service of the President and the Members of the National Appellate Authority shall be such as may be prescribed : **Provided that neither salary and allowances nor other terms and conditions of service of the President or Members of the National Appellate Authority shall be varied to their disadvantage after their appointment.** **(8) The President of the National Appellate Authority shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of seventy years, whichever is earlier and shall also be eligible for reappointment.**	
(9) The Technical Member (Centre) or Technical Member (State) of the National Appellate Authority shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall also be eligible for reappointment. **(10) The President or any Member may, by notice in writing under his hand addressed to the Government, resign from his office :** **Provided that the President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Government, or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.** **(11) The Government may, after consultation with the Chief Justice of India, remove from the office such President or Member, who -** **(a) has been adjudged an insolvent; or** **(b) has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or** **(c) has become physically or mentally incapable of acting as such President or Member; or** **(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member; or** **(e) has so abused his position as to render his continuance in office prejudicial to the public interest :** **Provided that the President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.** **(12) Without prejudice to the provisions of sub-section (11), the President and Technical Members of the National Appellate Authority shall not be removed from their office except by an order made by the Government on the** **ground of proven misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Government and such**	

President or Member had been given an opportunity of being heard. **(13) The Government, with the concurrence of the Chief Justice of India, may suspend from office, the President or Technical Members of the National Appellate Authority in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (12).** **(14) Subject to the provisions of article 220 of the Constitution, the President or Members of the National Appellate Authority, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Appellate Authority where he was the President or, as the case may be, a Member.**	
New section 101B: Appeal to National Appellate Authority	
(1) Where, in respect of the questions referred to in sub-section (2) of section 97, conflicting Advance Rulings are given by the Appellate Authorities of two or more States or Union territories or both under sub-section (1) or sub-section (3) of section 101, any officer authorised by the Commissioner or an applicant, being distinct person referred to in section 25 aggrieved by such advance ruling, may prefer an appeal to National Appellate Authority : **Provided that the officer shall be from the States in which such advance rulings have been given.** **(2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the applicants, concerned officers and jurisdictional officers :** **Provided that the officer authorised by the Commissioner may file appeal within a period of ninety days from the date on which the ruling sought to be appealed against is communicated to the concerned officer or the jurisdictional officer :** **Provided further that the National Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, or as the case may be, ninety days, allow such appeal to be presented within a further period not exceeding thirty days.** **Explanation. - For removal of doubts, it is clarified that the period of thirty days or as the case may be, ninety days shall be counted from the date of communication of the last of the conflicting rulings sought to be appealed against.** **(3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.**	

New section 101C: Order of National Appellate Authority		
(1) The National Appellate Authority may, after giving an opportunity of being heard to the applicant, the officer authorised by the Commissioner, all Principal Chief Commissioners, Chief Commissioners of Central tax and Chief Commissioner and Commissioner of State tax of all States and Chief Commissioner and Commissioner of Union territory tax of all Union territories, pass such order as it thinks fit, confirming or modifying the rulings appealed against. **(2) If the members of the National Appellate Authority differ in opinion on any point, it shall be decided according to the opinion of the majority.** **(3) The order referred to in sub-section (1) shall be passed as far as possible within a period of ninety days from the date of filing of the appeal under section 101B.** **(4) A copy of the Advance Ruling pronounced by the National Appellate Authority shall be duly signed by the Members and certified in such manner as may be prescribed and shall be sent to the applicant, the officer authorised by the Commissioner, the Board, the Chief Commissioner and Commissioner of State tax of all States and Chief Commissioner and Commissioner of Union territory tax of all Union territories and to the Authority or Appellate Authority, as the case may be, after such pronouncement.**		
Section 102 The Authority or the Appellate Authority may amend any order passed by it under section 98 or section 101, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant within a period of six months from the date of the order:	**Section 102** The Authority or the Appellate Authority **or the National Appellate Authority** may amend any order passed by it under section 98 or section 101 **or section 101C, respectively,** so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority **or the National Appellate Authority** on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant, **appellant, the Authority or the Appellate Authority** within a period of six months from the date of the order:	Section 102 of the CGST Act is being amended so as to allow the National Appellate Authority to amend any order passed by it so as to rectify any error apparent on the face of the record, within a period of six months from the date of the order, except under certain specified circumstances.

<table>
<tr><td colspan="2">New sub-section (1A) of section 103</td><td></td></tr>
<tr><td colspan="2">(1A) The Advance Ruling pronounced by the National Appellate Authority under this Chapter shall be binding on -
(a) the applicants, being distinct persons, who had sought the ruling under sub-section (1) of section 101B and all registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961 (43 of 1961);
(b) the concerned officers and the jurisdictional officers in respect of the applicants referred to in clause (a) and the registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961.</td><td rowspan="2">Section 103 of the CGST Act is being amended so as to provide that the advance ruling pronounced by the National Appellate Authority shall be binding, unless there is a change in law or facts, on the applicants, being distinct person and all registered persons having the same Permanent Account Number and on the concerned officers or the jurisdictional officers in respect of the said applicants and the registered persons having the same Permanent Account Number.</td></tr>
<tr><td>Section 103(2)
The advance ruling referred to in sub-section (1) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.</td><td>Section 103(2)
The advance ruling referred to in sub-section (1) and sub-section (1A) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.</td></tr>
<tr><td>Section 104(1)
Where the Authority or the Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:</td><td>Section 104(1)
Where the Authority or the Appellate Authority or the National Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 or under section 101C has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:</td><td>Section 104 of the CGST Act is being amended so as to provide that advance ruling pronounced by the National Appellate Authority shall be void where the ruling has been obtained by fraud or suppression of material facts or misrepresentation of facts.</td></tr>
<tr><td>Section 105: Powers of Authority and Appellate Authority</td><td>Section 105: Powers of Authority, Appellate Authority and National Appellate Authority</td><td>Section 105 of the CGST Act is being amended so as to provide that the National Appellate Authority shall have all the powers of a civil court under the</td></tr>
</table>

(1) The Authority or the Appellate Authority shall, for the purpose of exercising its powers regarding— (a) discovery and inspection; (b) enforcing the attendance of any person and examining him on oath; (c) issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908. (2) The Authority or the Appellate Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code. **Section 106:** Procedure of Authority and Appellate Authority. The Authority or the Appellate Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure	(1) The Authority or the Appellate Authority **or the National Appellate Authority** shall, for the purpose of exercising its powers regarding— (a) discovery and inspection; (b) enforcing the attendance of any person and examining him on oath; (c) issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908. (2) The Authority or the Appellate Authority **or the National Appellate Authority** shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code. **Section 106: Procedure of Authority, Appellate Authority and National Appellate Authority.** The Authority or the Appellate Authority **or the National Appellate Authority** shall, subject to the provisions of this Chapter, have power to regulate its own procedure.	Code of Civil Procedure, 1908 for the purpose of exercising its powers under the Act. Section 106 of the CGST Act is being amended so as to provide that the National Appellate Authority shall have power to regulate its own procedure.

CHAPTER-24 MISCELLANEOUS PROVISIONS

EXAMPLE 1) An IT professional's assistance may be sought where the officer is of the view that information pertaining to a taxable person stored on a computer system does not reveal correct details.

QUESTIONS

1. Briefly explain how the GST compliance rating score is determined.
ANSWER:
As per section 149(2), the GST compliance rating is determined on a scale of ten on the basis of prescribed parameters.

2. When shall the power to collect statistics be exercised under GST laws? Explain.
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.

3. When shall the particulars relating to any proceedings or prosecution be published under GST laws? Discuss the relevant provisions.
ANSWER;
When the Commissioner/authorised 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)].

4. Explain the provisions relating to rectification of errors apparent on the face of record under section 161.
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 made 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.

5. Write a short note on Anti-profiteering measure.

ANSWER;

As per section 171, 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.

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]

7. 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.

8. 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.

9. 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.

10. '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.

CUSTOMS & FTP

CHAPTER-1 LEVY OF AND EXEMPTIONS FROM CUSTOMS DUTY

EXAMPLES

(1) Bill of entry is presented on 1st January, 2020 the vessel arrives on 3rd January, 2020. In this situation, relevant date for determination of the rate of import duty is 3rd January, 2020 because though for procedural purposes, the Bill of Entry was filed on 1st January, 2020 for the purpose of determining the rate of duty and tariff valuation of such goods, Bill of Entry will be deemed to have been filed on 3rd January, 2020.

(2) Ethyl Alcohol which is not denatured attracts a higher rate of customs duty as it can be used for industrial as well as human consumption purposes. Whereas, denatured ethyl alcohol can only be used for industrial purposes and hence attracts lower rate of duty. Assuming undenatured ethyl alcohol is imported, but is to be used by the importer for industrial purposes only, then importer may make a request for denaturing of Ethyl Alcohol. Certain very bitter chemicals can be added to denature the spirits as per Rules and once they are denatured, they attract the lower rate of duty.

Illustration 1

A machine was originally imported from Japan at ` 250 lakh in July on payment of all duties of customs. The said machine was exported (sent-back) to supplier for repairs in December 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 ` 6 lakh) would have been ` 9 lakh. Actual insurance and freight charges (to and from) were ` 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:
(a) goods must be re-imported within 3 years, extendable by further 2 years, after their exportation;
(b) exported goods and the re-imported goods must be the same;
(c) 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	₹
Value of goods re-imported after exports [₹ 9 lakh (including cost of materials) + ₹ 3 lakh]	12,00,000
Add: Basic customs duty @ 10% **(A)**	1,20,000
Add: Social Welfare Surcharge @ 10% on ₹ 1,20,000 **(B)**	12,000
Value for computing integrated tax	13,32,000
Integrated tax @ 12% (₹ 13,32,000 x 12%) - **(C)**	1,59,840
Customs duty and integrated tax payable [(A) +(B)+ (C)]	**2,91,840**

Illustration 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.

Illustration 3
An importer imported consignment of goods chargeable to duty @ 40% ad valorem. The vessel arrived on 31st May 2020. A bill of entry for warehousing the goods was presented on 2nd June 2020 and the goods were duly warehoused. In the meantime, an exemption notification was issued on 15th October 2020 reducing the effective customs duty to 25% ad valorem.

Thereafter, the importer filed a bill of entry for home consumption on 20th October 2020 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 20th October 2020 (the date on which the bill of entry for home consumption is presented) and thus, the relevant rate of duty will be 25%.

Illustration 4

If the value of goods is ` 10,000 and after damage the value is ` 2,000 then duty payable on ` 10,000/- should be appropriately reduced to 20% (proportion of 2000 to 10000).

Illustration 5

Peerless Scraps, imported during August, by sea, a consignment of metal scrap weighing 6,000 M.T. (metric tons) 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.

QUESTIONS

1. 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.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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, ` 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.

7. 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.

8. 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

9. 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:
(i) the re-importation is for repairs only
(ii) the time limit is 3 years. In case of Nepal, such time-limit is 10 years.
(iii) the goods must be re-exported after repairs
(iv) the time limit for export is 6 months (extendable to one year).
[Notification No. 158/95 Cus. dated 14.11.1995 as amended vide Notification No. 60/2018 Cus dated 11.09.2018]

10. 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 pay 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.

11. Discuss the provisions relating to denaturing or mutilation of goods.
ANSWER:
Section 24 of the Customs Act, 1962 empowers 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, then 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. Denaturing of Spirit Rules, 1972 specify procedure for denaturing spirit.

12. 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)].

13. Briefly explain the following with reference to the provisions of the Customs Act, 1962:
(i) Indian customs waters
(ii) India
ANSWER:
Indian customs waters [Section 2(28)] 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 includes the territorial waters of India **[Section 2(27)]**.

14. Distinguish between Indian territorial waters and Indian custom waters.
ANSWER:
Meaning and significance of territorial waters of India As per Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, 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 [Section 2(28)] 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.

15. Write a brief note on the constitutional provisions governing the levy of customs duties.

ANSWER:

Article 265 of the Constitution provides that "No tax shall be levied or collected except by authority of law". 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 provides:

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 a State. 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 the Union to frame laws 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 a 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 a 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.

Article 286 of the Constitution provides for restrictions as to imposition of tax on certain supply of goods or services or both. The said Article provides as follows-

No law of a State shall impose, or authorise the imposition of, a tax on the supply of goods or services or both, where such supply takes place-

(a) outside the State; or

(b) in the course of the import of the goods or services or both into, or export of the goods or services or both out of, territory of India.

Further, the said Article provides that Parliament may by law formulate principles for determining when a supply becomes, import of export.

Thus, the power to levy customs duties on import/export, as well as the power to legislate the principles to determine whether a transaction qualifies as import/export, lies solely with the Union, i.e. the Parliament of India.

16. Examine the validity of the following statements:

(a) A beneficial owner of imported goods is a person on whose behalf the goods are being imported.

(b) Customs area does not include a warehouse.

(c) Customs station includes international courier terminal.

ANSWER:

(a) The statement is valid. Section 2(3A) defines beneficial owner to mean any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported.

(b) The statement is not valid. The definition of customs area includes within its ambit a warehouse too. The customs area is defined to mean 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.
(c) The statement is valid. International courier terminal and foreign post office are included within the scope of customs station as defined under section 2(13) of the Customs Act, 1962.
As per the amended section 2(13), a customs station means any customs port, customs airport, international courier terminal, foreign post office or land customs station.

17. 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.
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] x ` 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.

SIGNIFICANT SELECT CASES

1. In case of import of crude oil, whether customs duty is payable on the basis of the quantity of oil shown in the bill of lading or on the actual quantity received into shore tanks in India?
Mangalore Refinery & Petrochemicals Ltd v. CCus. 2015 (323) ELT 433 (SC)

Facts of the Case: The assessee imported crude oil. On account of ocean loss, the quantity of crude oil shown in the bill of lading was higher than the actual quantity received into the shore tanks in India. The assessee paid the customs duty on the actual quantity received into the shore tanks.

Point of Dispute: The Department contended that the quantity of crude oil mentioned in the various bills of lading should be the basis for payment of duty, and not the quantity actually received into the shore tanks in India. This was stated on the basis that duty was levied on an ad valorem basis and not on a specific rate. The assessee contended that it makes no difference as to whether the basis for customs duty is at a specific rate or is ad valorem, inasmuch as the quantity of goods at the time of import alone is to be looked at.

Tribunal's Observations: The Tribunal accepted the Department's contentions on the basis of the following reasons:
(i) Duty ought to be levied on the total payment made by the assessee irrespective of the quantity received.
(ii) An ad valorem duty would necessarily lead to this result but duty levied at the specific rate would not. The quantity of goods to be considered in the latter case will only be the quantity of crude oil received in the shore tank.
(iii) Section 14 of the Customs Act, 1962 kicks in when the duty is on an ad valorem basis and sections 13 and 23 of the Act do not stand in the way because it is not the question of demanding duty on goods not received, but it is the demand of duty on the transaction value. In spite of the "ocean loss", the assessee has to make payment on the basis of the bill of lading quantity.

Supreme Court's Observations: The assessee raised the issue before the Supreme Court. The Apex Court noted the following:
(i) The levy of customs duty under section 12 of the Act is only on goods imported into India. Goods are said to be imported into India when they are brought into India from a place outside India. Unless such goods are brought into India, the act of importation which triggers the levy does not take place.

(ii) If the goods are pilfered after they are unloaded or lost or destroyed at any time before clearance for home consumption or deposit in a warehouse, the importer is not liable to pay the duty leviable on such goods. This is for the reason that the import of goods does not take place until they become part of the land mass of India and until the act of importation is complete which under sections 13 and 23 happen only after an order for clearance for home consumption is made and/or an order permitting the deposit of goods in a warehouse is made.

(iii) Under section 23(2), the owner of the imported goods may also at any time before such orders have been made relinquish his title to the goods and shall not be liable to pay any duty thereon. In short, he may abandon the said goods even after they have physically landed at any port in India but before any of the aforesaid orders have been made. This again is for the good reason that the act of importation gets complete when goods are in the hands of the importer after they have been cleared either for home consumption or for deposit in a warehouse.

(iv) Further, as per section 47 of the Customs Act, the importer has to pay import duty only on goods that are entered for home consumption. Obviously, the quantity of goods imported will be the quantity of goods at the time they are entered for home consumption.
The Supreme Court stated that Tribunal's reasoning for concluding that the bill of lading quantity alone should be considered for the purpose of valuing the imported goods is incorrect in law. The Apex Court examined each of the reasons given by the Tribunal as under:

(i) The Tribunal lost sight of the fact that a levy in the context of import duty can only be on imported goods, that is, on goods brought into India from a place outside of India. Till that is done, there is no charge to tax.
(ii) The taxable event in the case of imported goods is "import". The taxable event in the case of a purchase tax is the purchase of goods.
The quantity of goods stated in a bill of lading would perhaps reflect the quantity of goods in the purchase transaction between the parties, but would not reflect the quantity of goods at the time and place of importation. A bill of lading quantity, therefore, could only be validly looked at in the case of a purchase tax but not in the case of an import duty.
(iii) The Tribunal wholly lost sight of sections 13 and 23 of the Act. Where goods which are imported are lost, pilfered or destroyed, no import duty is leviable thereon until they are out of customs and come into the hands of the importer. It is clear, therefore, that it is only at this stage that the quantity of the goods imported is to be looked at for the purposes of valuation.
(iv) The basis of the judgment of the Tribunal is on a complete misreading of section 14 of the Customs Act. First and foremost, the said section is a section which affords the measure for the levy of customs duty which is to be found in section 12 of the said Act. Even when the measure talks of value of imported goods, it does so at the time and place of importation, which again is lost sight of by the Tribunal.

(v) The Tribunal's reasoning that somehow when customs duty is ad valorem the basis for arriving at the quantity of goods imported changes, is wholly unsustainable. Whether customs duty is at a specific rate or is ad valorem does not make the least difference to the statutory scheme. Customs duty whether at a specific rate or ad valorem is not leviable on goods that are pilfered, lost or destroyed until a bill of entry for home consumption is made or an order to warehouse the goods is made. This is for the reason that the import is not complete until what has been stated above has happened.
Supreme Court's Decision: The Supreme Court set aside the Tribunal's judgment and declared that the quantity of crude oil actually received into a shore tank in a port in India should be the basis for payment of customs duty.

2. Are the clearance of goods from DTA to Special Economic Zone chargeable to export duty under the SEZ Act, 2005 or the Customs Act, 1962?

Tirupati Udyog Ltd. v. UOI 2011 (272) ELT 209 (AP)[maintained by SC]

High Court's Observations and Decision: The High Court, on the basis of the following observations, inferred that the clearance of goods from DTA to Special Economic Zone is not liable to export duty either under the SEZ Act, 2005 or under the Customs Act, 1962:-

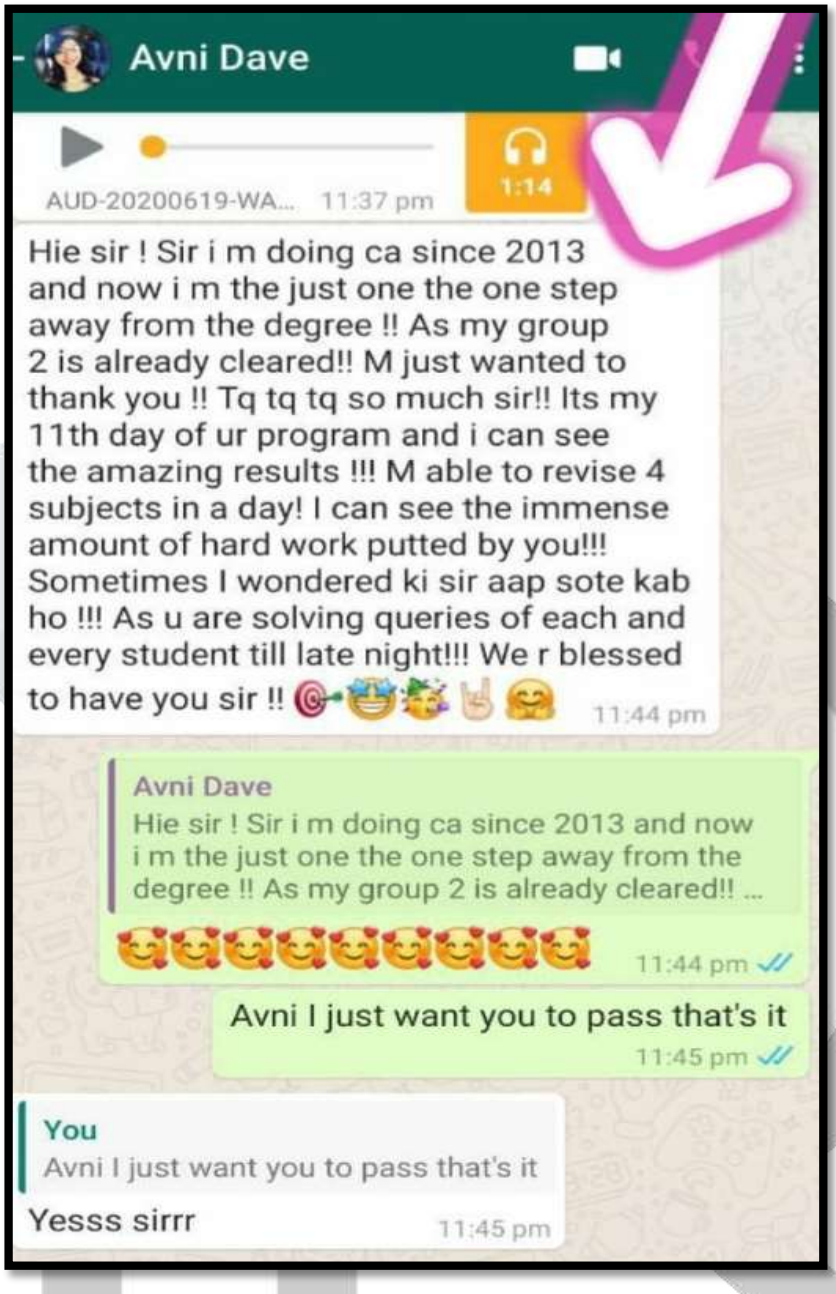
• A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all.

• SEZ Act does not contain any provision for levy and collection of export duty for goods supplied by a DTA unit to a Unit in a Special Economic Zone for its authorised operations. In the absence of a 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 by implication.

• With regard to the Customs Act, 1962, a conjoint reading of section 12(1) with sections 2(18), 2(23) and 2(27) of the Customs Act, 1962 makes it clear 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, section 12(1) of the Customs Act 1962 (which is the charging section for levy of customs duty) is not attracted for supplies made by a DTA unit to a unit located within the Special Economic Zone.

Notes:

1. Chapter X-A of the Customs Act, 1962, inserted by the Finance Act 2002, contained special provisions relating to Special Economic Zones. However, with effect from 11-5-2007, Chapter X-A, in its entirety, was repealed by the Finance Act, 2007. Consequently, Chapter X-A of the Customs Act is considered as a law which never existed for the purposes of actions initiated after its repeal and thus, the provisions contained in this chapter are no longer applicable.
2. Karnataka High Court in case of CCE v. Biocon Ltd. 2011 (267) ELT 28 has also taken a similar view as elucidated in the aforesaid judgment



CHAPTER-2 TYPES OF DUTY

EXAMPLES

1 Generally, in summer season, the production of milk becomes low as compared with other seasons. If the available milk is not able to meet the requirements of the people, the Government may impose or enhance the duty on exports of milk powder or stop the exportsof milk powder.

Illustration 1

Write a short note on the applicability of safeguard measures under the Customs Tariff Act, 1975 on articles imported by EOU/SEZ unit and cleared as such into domestic tariff area (DTA).

Answer

Section 8B of Customs Tariff Act, 1975, provides for levy of safeguard measures on articles imported by an 100% EOU/unit in a SEZ that are cleared as such into DTA. In such cases, safeguard measures shall be applied on that portion of the article so cleared as was leviable when it was imported into India.

Illustration 2

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.

(i) 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.

(ii) 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.

(iii) 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.

Illustration 3

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 Organisation 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.

QUESTIONS

1. 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).

2. 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.

3. When shall the safeguard measures under section 8B of the Customs Tariff Act, 1975 be not imposed? Discuss briefly.

ANSWER:

The safeguard measures 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 originating from more than one developing country, so long as the aggregate of imports from developing countries each with less than 3% import share taken together does not exceed 9% of the total imports of that article into India;

(iii) Articles imported by a 100% EOU or units in a Special Economic Zone unless it 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 measures shall be applied on that portion of the article so cleared or so used as was leviable when it was imported into India.

4. 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.

5. 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 the 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.

6. 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 26thOctober, 2019 to 25th October, 2020 (both days inclusive)	**` 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(`)
Assessable value of sodium nitrite imported	30,00,000
Add: Basic custom duty @ 10% (` 30,00,000 × 10%)	3,00,000
Safeguard duty @ 30% on `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(2) of the Customs Tariff Act, 1975)]	9,00,000
Social welfare surcharge @ 10% x `3,00,000	30,000
Total	42,30,000
Integrated tax (`42,30,000 × 12%) [Note]	5,07,600
Total customs duty payable (`3,00,000 +`9,00,000+ `30,000+ `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.

7. 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.

Levied by Central Government: The protective duties are levied by the Central Government upon the recommendation made to it by the Tariff Commission and upon it being satisfied that circumstances exist which render it necessary to take immediate action to provide protection to any industry established in India [Section 6].

Duration of protective duties: The protective duty shall be effective only upto and inclusive of the date if any, specified in the First Schedule [Section 7(1)].

Power of Central Government to alter such duties: The Central Government may reduce or increase the duty by notification in the Official Gazette.

However, such duty shall be altered only if it is satisfied, after such inquiry as it thinks necessary, that such duty has become ineffective or excessive for the purpose of securing the protection intended to be afforded by it to a similar article manufactured in India [Section 7(2)].

In case of increase in duty, approval of Parliament required: If there is any increase in the duty as specified above, then the Central Government is required to place such notification in the Parliament for its approval. Every notification insofar as it relates to increase of such duty, shall be laid before each House of Parliament if it is sitting as soon as may be after the issue of the notification, and if it is not sitting within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People. If the Parliament recommends any change in the notification, then the notification shall have effect subject to such changes. However, anything done pursuant to the notification before the recommendation by the Parliament shall be valid [Section 7(3)].

POWER OF CENTRAL GOVERNMENT TO APPLY SAFEGUARD MEASURES [SECTION 8B OF THE CUSTOMS TARIFF ACT]

Circumstances in which safeguard measures can be imposed: Central Government after conducting enquiry can impose the safeguard measures if it is satisfied that,

(a) Any article is imported into India in increased quantities; and

(b) Such increased importation is causing or threatening to cause serious injury to domestic industry.

Duration of safeguard measures: The measures imposed under this section shall be in force for a period of 4 years from the date of its imposition.

Extension of period: The Central Government may extend the period of such imposition from the date of first imposition provided it is of the opinion that:-

(a) Domestic industry has taken measures to adjust to such injury or as the case may be to such threat and

(b) It is necessary that the safeguard measures should continue to be imposed.

However, the total period of levy of safeguard measures is restricted to 10 years.

Applicability of all machinery provisions of the Customs Act, 1962: The provisions of the Customs Act, 1962 and the rules and regulations made there under, 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.

Exemptions from safeguard measures

(a) Articles from developing country: Articles originating from 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.

(b) Articles originating from more than one developing country: Articles originating from more than one developing country, so long as the aggregate of imports from developing countries each with less than 3% import share taken together does not exceed 9% of the total imports of that article into India.

(c) Imports by 100% EOU or units in a Special Economic Zone: Safeguard measures shall not apply to articles imported by a 100% EOU/SEZ unit unless -

(i) specifically made applicable; or

(ii) the article imported is either cleared as such into DTA or used in the manufacture of any goods that are cleared into DTA and in such cases safeguard measures shall be applied on that portion of the article so cleared or so used as was leviable when it was imported into India.
Provisional Assessment
(a) The Central Government is also empowered to impose provisional safeguard measures.
(b) This provisional safeguard measures may be imposed on the basis of preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry.
(c) The provisional safeguard measures shall be in force for a maximum period of 200 days from the date of its imposition.
(d) If upon final determination, the Central Government is of the opinion that the increased imports have not caused or threatened to cause serious injury to a domestic industry, the safeguard duty collected shall be refunded.

8. 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.
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. In Designated Authority vs Haldor Topsoe 2000 (120) ELT 11, the Supreme Court held that anti-dumping duty could be fixed with reference to prices in a territory and that European Union could also be a territory.

9. 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.

10. 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**

11. 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 ≤ 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 ≤ 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.

CHAPTER-3 CLASSIFICATION OF IMPORTED AND EXPORT GOODS

EXAMPLES

1. Relevance of one dash ["-"] , two dash ["--"] and three dash ["---"]

• the description of an article or group of articles under a 'heading' is preceded by "-". It denotes that the said article or group of articles shall be taken to be sub-classification of the article or group of article covered by the said heading.
• "--" denotes that that the said article or group of articles shall be taken to be sub-classification of the immediately preceding article/group of articles which has "-".
• " ---" or "----" denotes that the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-" or "—

Meaning of abbreviation "%" in relation to the rate of duty The abbreviation "%" in any column of the Schedule in relation to the rate of duty means that the duty shall be computed at the percentage specified on the value of the goods as defined in section 14 of the Customs Act. **(c) Standard rate of duty applicable if no preferential rate specified** In any entry, if no preferential rate of duty has been notified, the standard rate of duty shall be applicable. **(1)**The above general explanatory notes can be understood with the following example:-

Chapter No. 08 Edible fruit and nuts; peel of citrus fruit or melons

Chapter Notes:
1. This Chapter does not cover inedible nuts or fruits.

2. Chilled fruits and nuts are to be classified in the same headings as the corresponding fresh fruits and nuts.

3. Dried fruit or dried nuts of this Chapter may be partially rehydrated, or treated for the following purposes:
(a) for additional preservation or stabilisation (for example, by moderate heat treatment, sulphuring, the addition of sorbic acid or potassium sorbate);
(b) to improve or maintain their appearance (for example by the addition of vegetable oil or small quantities of glucose syrup), provided that they retain the character of dried fruit or dried nuts.

Tariff Item	Description of goods	Units	Rate of duty®	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
0801	Coconuts, brazil nuts and cashew nuts, fresh or dried, whether or not shelled or peeled			

	- *Coconuts:*			
0801 11 00	- - Desiccated	Kg.	70%	60%
0801 12	- - *In the inner shell (endocarp):*			
0801 12 10	- - - Fresh	Kg.	70%	60%
0801 12 20	- - - Dried	Kg.	70%	60%
0801 12 90	- - - Other	Kg.	70%	60%
0801 19	- - *Other:*			
0801 19 10	- - - Fresh	Kg.	70%	60%
0801 19 20	- - - Dried	Kg.	70%	60%
0801 19 90	- - - Other	Kg.	70%	60%
	- *Brazil nuts:*			
0801 21 00	- - In shell	Kg.	30%	20%
0801 22 00	- - Shelled	Kg.	30%	20%
	- *Cashew nuts:*			
0801 31 00	- - In shell	Kg.	30%	Free
0801 32	- - *Shelled:*			
0801 32 10	- - - Cashew kernel, broken	Kg.	70%	20%
0801 32 20	- - - Cashew kernel, whole	Kg.	70%	20%
0801 32 90	- - -Other	Kg.	70%	20%

In the above entry, following columns are there:-
Column (1): Tariff Item
Column (2): Description of goods
Column (3): Units
Column (4): Standard rate of duty
Column (5): Preferential rate of duty
(a) In the above entry, Coconuts, which is preceded by **"-"** is classification of the heading Coconuts, Brazil nuts and Cashew nuts, fresh or dried, whether or not Shelled or peeled.
"- -" is sub-classification of coconut which is preceded by "-".
(b) The second explanatory note states that the abbreviation **"%"** stands for specifying that the rate of duty is ad valorem. It means the duty shall be computed at the rates specified in the First Schedule on the value of the goods determined in accordance with section 14 of the Customs Act. In the above entry, the standard rates are 30% or as the case may be,70%.

(2) **Product:** Letter closing and sealing machine
Sub-heading 842230 00: Machinery for filling, closing, sealing or labeling bottles, cans, boxes, bags or other containers; machinery for capsuling bottles, jars, tubes and similar containers; machinery for aerating beverages.
Sub-heading 847230 00 inter alia covers machines for closing or sealing mails.
Both the headings appear to be relevant for the product in question. However, chapter note 2 to chapter 84 inter alia provides that Heading No. 8422 does not cover office machinery of Heading No. 8472. Therefore, the product in question will be classified under 847230 00.

(3) (a) Railway coaches removed without seats would still be railway coaches.
(b) A car without seats would still be classified as car.

(4) (a) The term coffee will include coffee mixed with chicory.
(b) Natural rubber will cover a mixture of natural and synthetic rubber

(5) **Product:** Lead pencil with an eraser at the back.
Classification: Though the above product is composite goods, the essential character is that it is a pencil and the attachment of eraser at the stub is only for the purpose of adding convenience to the user. Therefore, it shall be classified as a pencil and not as an eraser.

(6)Product: Plastic films used to filter or remove the glare of the sun light, pasted on car glass windows, window panes etc.
Classification: These goods do not find a specific entry in the tariff schedule. However, heading 392530 00 covers Builder's wares of plastic not elsewhere specified – shutters, blinds (including Venetian blinds)

and similar articles & parts thereof. Even though the product in question is not a builders ware, they are most akin to plastic blinds and hence it can be classified under 3925 30 00 heading.

(7) Leather cases, which are normally supplied along with the goods, however costly they may be, need not be treated separately for the purpose of classification.

(8) Gas cylinders are meant for repetitive use and therefore cannot be classifiable along with gas.

Illustration 1
Briefly explain "standard unit of quantity" with reference to the First Schedule to the Customs Tariff Act, 1975.
Answer
Standard Unit of Quantity is a unit of measure. It has been prescribed in column 3 of the First Schedule to the Customs Tariff for each tariff item to facilitate the collection, comparison and analysis of trade statistics. The unit of measure is indicated by abbreviations. Some abbreviations are cc-cubic centimeter, cm-centimetre(s), g-gram(s), mt-metric tonne.

Illustration 2
Write a brief note on rule 1 of the Rules of Interpretation of the First Schedule to Customs Tariff Act, 1975.
Answer
Rule 1 of the general rules for interpretation states that the titles of sections, chapters and sub-chapters in the First Schedule to the Customs Tariff Act, 1975 are provided for ease of reference only. For legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and provided such headings or chapter notes do not otherwise require, according to the rule 2 to 6. Thus, the tiles of sections, chapters and sub-chapters cannot be used to determine classification of a product.

Illustration3
Your client manufactures Almond Milk which is an almond based drink.
The manufacturing process of almond milk is as follows:
- **Selection of high quality California almonds;**
- **Blanching of almonds, roasting, and grinding into a paste**
- **Almond paste is blended with other ingredients like RO water, salt, vitamins and minerals.**
- **Sterlization of mixture by ultra-high temperature processing**
- **Homogenization**
- **Packaging in a septic package**

As per the Rate Notification for goods issued under GST, following entries are relevant:

Rate:12%

Entry 41 – 2009 - Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter

Entry 48 – 2202 9920 – Fruit pulp or fruit juice based drinks

Entry 50 – 2202 9930 – Beverages containing milk

Rate: 18%

Entry 24A – 2202 9100 or 2202 99 90 - Other non-alcoholic beverages other than tender coconut water

Your client is confused with the correct classification of Almond Milk under GST. He has approached you for your opinion so as to enable him to discharge the tax correctly.

Following additional information may be relevant:

As per First Schedule to the Customs Tariff Act, 1975, the following entries of Chapter 20, 22 and 8 are relevant:

Chapter 20 - Preparations of vegetables, fruit, nuts or other parts of plants

Tariff Item		Description of goods
2009		Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter
	-	Juice of any other single fruit or vegetable :
2009 8100	--	Cranberry (Vaccinium macrocarpon, Vaccinium, Oxycoccos, Vaccinium vitis-idaea) juice
2009 89	--	Other
2009 89 10	---	Mango
2009 89 90	---	Other
2009 90 00	-	Mixtures of juices

Chapter 22 - Beverages, spirits and vinegar

Tariff Item		Description of goods
2202	-	Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured, section-iv 172 chapter-22 and other non-alcoholic beverages, not including fruit or vegetable juices of heading 2009
2202 10 10	---	Aerated Waters
2202 10 20	---	Lemonade
2202 10 90	---	Other
-		Other
2202 91 00	--	Other Non-alcoholic Beer
2202 99	--	Other
2202 99 10	---	Soya milk drinks, whether or not sweetened or flavored
2202 99 20	---	Fruit pulp or fruit juice based drink
2202 99 30	---	Beverages containing milk
2202 99 90	---	Other

Chapter 8 - Edible fruit and nuts; peel of citrus fruit or melons

Tariff Item		Description of goods
0802		Other nuts, fresh or dried, whether or not shelled or peeled
-		Almonds:
0802 11 00	--	In Shell
0802 12 00	--	Shelled

Further, explanatory notes to Chapter 20 specify that:

The fruit and vegetable juices of this heading are generally obtained by pressing fresh, healthy and ripe fruit or vegetables. This may be done (as in the case of citrus fruits) by means of "mechanical extractors" operating on the same principle as the household lemon-squeezer, or by pressing which may or may not be preceded either by crushing or grinding (for apples in particular) or by treatment with cold or hot water or with steam (e.g., tomatoes, black currants and certain vegetables such as carrots and celery).

Answer

The first step in the classification of Almond Milk is to determine if the same would fall under Chapter 20 or 22 of the First Schedule of Customs Tariff Act, 1975. On a plain reading of Heading of Chapter 20 along with Explanatory Notes, it emerges that Chapter 20 is applicable to juices of ripe fruits and vegetables. Therefore, it is important to determine if the "almond" qualifies to be a fruit or not.

While in common parlance, we refer 'almonds' as dry fruits, however if we analyze Chapter 8 of the First Schedule of Customs Tariff Act, 1975, it appears that 'almonds' are referred to as 'nuts' under sub-heading 0802.

Therefore, the 'almonds' do not classify as 'fruit' for the purpose of classification under the HSN system. Accordingly, the classification under Chapter 20 is completely ruled out.

Now, the 3 entries relevant under Chapter 22 are:

(a) 2202 99 20 – Fruit pulp or fruit juice based drink – As stated above, since almond is not a fruit but a nut for the purpose of classification, this entry is ruled out.

(b) 2202 99 30 – Beverages containing milk – Admittedly, as per the process specified above, the Almond Milk does not contain any milk. Therefore, this entry is also ruled out.

(c) 2202 9100 or 2202 99 90 - Other non-alcoholic beverages other than tender coconut water – The Almond milk will be classifiable under 2202 99 90 as Others.

Therefore, the Almond Milk will be chargeable to 18% GST.

This view is also supported by CBIC's Circular No. 113/32/2019 GST dated 11.10.2019 which states that:

"Almond Milk is made by pulverizing almonds in a blender with water and is then strained. As such almond milk neither constitutes any fruit pulp or fruit juice. Therefore, it is not classifiable under tariff item 2202 99 20.

Almond milk is classified under the residual entry in the tariff item 2202 99 90 and attract GST rate of 18%"

QUESTIONS

1. Briefly explain the provisions of rule 2(a) of Rules of Interpretation of the First Schedule to the Customs Tariff Act, 1975 on classification of incomplete/unfinished articles.

ANSWER:

The provisions of rule 2(a) of Rules of Interpretation of the First Schedule to the Customs Tariff Act, 1975 on classification of incomplete/unfinished articles are as under:-

If any particular heading refers to a finished/complete article, the incomplete/unfinished form of that article shall also be classified under the same heading provided the incomplete/unfinished goods have the essential characteristics of the finished goods.

Reference to an article will also include the article complete or finished (or failing to be classified as complete or finished) presented un-assembled or dis-assembled. The provisions of rule 2(a) of Rules of Interpretation of the First Schedule to the Customs Tariff Act, 1975 on classification of incomplete/unfinished articles are as under:-

If any particular heading refers to a finished/complete article, the incomplete/unfinished form of that article shall also be classified under the same heading provided the incomplete/unfinished goods have the essential characteristics of the finished goods.

Reference to an article will also include the article complete or finished (or failing to be classified as complete or finished) presented un-assembled or dis-assembled.

2. What is the purpose of including General Rules of Interpretation of First Schedule 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 General Rules for Interpretation of the First Schedule and three General Explanatory Notes. The six General 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.

3. 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:
(i) Industrial plant
(ii) Irrigation project
(iii) Power project
(iv) Mining project
(v) Oil & mineral exploration project
(vi) Other projects as notified by the Central Government

4. Explain rule 3 of the rules for Interpretation of the Customs Tariff.
ANSWER:
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
(i) The heading which provides the most specific description shall be preferred to headings providing a more general description.
(ii) 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.

5. Briefly explain the meaning of abbreviation "%" in relation to the rate of duty
ANSWER:
The abbreviation "%" in any column of the Schedule in relation to the rate of duty means that the duty shall be computed at the percentage specified on the value of the goods as defined in section 14 of the Customs Act.

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SIGNIFICANT SELECT CASES

1. Where a classification (under a Customs Tariff head) is recognized by the Government in a notification at any point of time, can the same be made applicable in a previous classification in the absence of any conscious modification in the Tariff?
Keihin Penalfa Ltd. v. Commissioner of Customs 2012 (278) ELT 578 (SC)
Facts of the Case: Department contended that 'Electronic Automatic Regulators' were classifiable under Chapter sub-heading 8543.89 whereas the assessee was of the view that the aforesaid goods were classifiable under Chapter sub-heading 9032.89. An exemption notification dated 1-3-2002 exempted the disputed goods by classifying them under chapter sub-heading 9032.89. The period of dispute, however, was prior to 01.03.2002.
Point of Dispute: The dispute was on classification of Electronic Automatic Regulators.
Supreme Court's Decision: The Apex Court observed that the Central Government had issued an exemption notification dated 1-3-2002 and in the said notification it had classified the Electronic Automatic Regulators under Chapter sub-heading 9032.89. Since the Revenue itself had classified the goods in dispute under Chapter sub-heading 9032.89 from 1-3-2002, the said classification needs to be accepted for the period prior to it.

2. Will the description of the goods as per the documents submitted along with the Shipping Bill be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test? (ii) Whether a separate notice is required to be issued for payment of interest which is mandatory and automatically applies for recovery of excess drawback?
M/s CPS Textiles P Ltd. v. Joint Secretary 2010 (255) ELT 228 (Mad.)
High Court's Decision: The High Court held that the description of the goods as per the documents submitted along with the Shipping Bill would be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test. The petitioner could not plead that the exported goods should be classified under different headings contrary to the description given in the invoice and the Shipping Bill which had been assessed and cleared for export.
Further, the Court, while interpreting section 75A(2) of the Customs Act, 1962, noted that when the claimant is liable to pay the excess amount of drawback, he is liable to pay interest as well. The section provides for payment of interest automatically along with excess drawback. No notice for the payment of interest need be issued separately as the payment of interest becomes automatic, once it is held that excess drawback has to be repaid.
The Headings cited in some of the case laws in this chapter may not co-relate with the Headings of the present Customs Tariff as these cases relate to an earlier point of time.

CHAPTER-4 VALUATION UNDER THE CUSTOMS ACT, 1962

Illustration 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.

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.

Illustration 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.

Illustration 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 10.04.2020. 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 15.04.2020. The machine arrived in India on 18.04.2020. 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.

Illustration 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 ` 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.

Illustration 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$. The banker realized the payment from importer at the exchange rate of ` 71 per dollar. Central Board of Indirect taxes and Customs notified the exchange rate as ` 70 per US$. 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]	` 70 per US $
Assessable value (` 70 x 4100 US $)	` **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].

Illustration 6

From the particulars given below, find out the assessable value of the imported goods under the Customs Act, 1962:

	US $
(i) Cost of the machine at the factory of the exporter	**10,000**
(ii) Transport charges from the factory of exporter to the port for shipment	**500**
(iii) Handling charges paid for loading the machine in the ship	**50**
(iv) Buying commission paid by the importer	**50**
(v) Freight charges from exporting country to India	**1,000**
(vi) Exchange rate to be considered: 1$ =	**` 70**
(vii) Actual insurance charges paid are not ascertainable	

Answer

Computation of assessable value of the imported goods

		US $
(i)	Cost of the machine at the factory	10,000.00
(ii)	Transport charges up to port	500.00
(iii)	Handling charges at the port	50.00
	FOB	10,550.00
(iv)	Freight charges up to India	1,000.00
(v)	Insurance charges @ 1.125% of FOB [Note 1]	118.69
	CIF	11,668.69

	`
CIF in Indian rupees @ ` 70/ per $	` 8,16,808.30
Assessable Value	` 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].

Illustration 7

Compute export duty from the following data:

(i) FOB price of goods: US $ 1,00,000.

(ii) Shipping bill presented electronically on 26.04.2020.

(iii) Proper officer passed order permitting clearance and loading of goods for export (Let Export Order) on 04.05.2020.

(iv) Rate of exchange and rate of export duty are as under:

	Rate of Exchange	Rate of Export Duty
On 26.04.2020	**1 US $ = ` 70**	**10%**
On 04.05.2020	**1 US $ = ` 72**	**8%**

(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 (`)
Value in Indian currency (US $ 1,00,000 x ` 70) [Note 2]	70,00,000
Export duty @ 8% [Note 3]	**5,60,000**

Notes:

1. 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.
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 the CBIC on the date of presentation of shipping bill of export.
3. 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.

Illustration 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:

S. No.	Quantity imported in metric tonnes	Unit price in US $ (CIF)
1.	20	260
2.	100	220
3.	500	200
4.	900	175
5.	400	180
6.	780	160

The rate of exchange on the relevant date was 1 US $ = ` 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:-

1. 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 x 160 = US $ 1,28,000

At the exchange rate of $ 1 = ` 70

CIF Value (in Rupees)	=	` 89,60,000
Assessable Value	=	` 89,60,000
10% of Ad Valorem duty on ` 89,60,000	=	` 8,96,000
Add: Social Welfare Surcharge @ 10% (rounded off)	=	` 89,600
Total custom duty payable =		**` 9,85,600**

Illustration 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**	**24.10.2020 (Rate BCD 10%; Exchange rate as notified by CBIC ` 100 per UK Pound)**
(vi)	**Date of arrival of aircraft**	**20.10.2020 (Rate of BCD 20%; Exchange rate as notified by CBIC ` 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
(`)	
Total in rupees @ ` 100 per pound [Note 2]	` 8,50,000.00
Add: Local agency commission [Note 1] (2% of 8000 UK pounds) = 160 UK pounds × ` 100	` 16,000.00
FOB value as per Customs	8,66,000.00
Add: Air freight (8,66,000 x 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 ` 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) (` 1,04,894.20+ ` 10,489.42+ ` 1,39,719.07)	**2,55,102**

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.

Illustration 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 25.04.2020. Basic customs duty on this date is 10% and exchange rate notified by the Central Board of Indirect taxes and Customs is US $ 1 = ` 65.
(iii) Date of entry inwards is 21.04.2020. Basic customs duty on this date is 20% and exchange rate notified by the Central Board of Indirect taxes and Customs is US $ 1 = ` 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	`
Assessable value ($ 10,100 x 65) [Note-1]	6,56,500.00
Add: Basic custom duty @ 10% [Note-2]	65,650.00
Add: Social Welfare Surcharge @ 10% on ` 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

Notes:
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.

Illustration 11
Assessable value of an item imported is ` 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	`
1.	Assessable Value	1,00,000
2.	Basic customs duty @ 10%	10,000
3.	Add: Social Welfare surcharge* @ 10% on ` 10,000	1000
4.	Sub-total	1,11,000
5.	Integrated tax @ 12% of ` 1,11,000	13,320
6.	Total customs duty and integrated tax payable [(2) + (3) + (5)]	24,320

*Social Welfare surcharge is presently exempt on IGST and GST compensation cess

Illustration 12

From the following particulars, calculate total customs duty and integrated tax payable:

(i) Date of presentation of bill of entry: 20.06.2020 [Rate of BCD 20%; Inter-bank exchange rate: ` 61.60 and rate notified by CBIC ` 70].

(ii) Date of arrival of aircraft in India: 30.06.2020 [Rate of BCD 10%; Inter-bank exchange rate: ` 61.80 and rate notified by CBIC ` 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
		`
Value @ ` 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` 1,38,306) **(c)** [Note 4]		16,596.72
Total duty and integrated tax (a +b + c) (rounded off)		**30,303**

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 notified by CBIC on the date of presentation of bill of entry would be the applicate 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.

Illustration 13

15,000 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:

Sl. No.	Particulars	Amount
1.	Freight paid (air) (in USD)	4,500
2.	Design & development charges paid in USA (in USD)	2,500
3.	Commission payable to an agent in India (in ₹)	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 08.09.2020 — 20% — ₹ 70 Date of arrival of aircraft — BCD — Exchange Rate in 30.09.2020 — 10% — ₹ 72 The inter-bank rate was 1 USD = ₹ 73	
5.	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]	` 70 per $
`	
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 (` 14,12,500 × 20%) [Note 2]	2,82,500.00
Add: Insurance (1.125% of ` 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% (`17,10,890.63× 10%) – rounded off [Note 4]	1,71,089
Add: Social Welfare surcharge @ 10% on ` 1,71,089 rounded off	17,109
Total	18,99,089
Integrated tax @ 12% (`18,99,089× 12%) [Rounded off] [Note 5]	2,27,890
Total customs duty and integrated tax payable (` 1,71,089 + ` 17,109 + ` 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.

Illustration 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 ` (notified by CBIC)
18.02.2020	10%	102
Date of arrival of aircraft	Basic custom duty	Exchange rate in ` (notified by CBIC)
15.02.2020	15%	98

Inter-bank rate 1 UK Pound = ` 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 ` 102 per £ [Note-5]	
`	
Value in rupees	5,61,000.00
Add: Commission payable to local agent [1% of FOB value] [Note-6] = (US $ 4,400 × ` 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 ` 56,548.80) [rounded off]	5,655.00
Customs duty payable [rounded off]	62,204.00

Notes:

1. 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.

2. 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)].

3. 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.

Illustration 15
F. Ltd. imported a machine from UK in May, 2020. 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 ` 20,000
(v) Date of bill of entry was 20.05.2020 and the rate of exchange notified by CBIC on this date was ` 99.00 per one pound. Rate of BCD was 7.5%.
(vi) Date of arrival of aircraft was 25.05.2020 and the rate of exchange notified by CBIC on this date was ` 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 ` 99 per £ [Note – 2]	
`	
Value in rupees	10,29,600.00
Add: Air freight [Restricted to 20% of ` 10,29,600 (customs FOB value)] [Note – 3]	2,05,920.00
Insurance @ 1.125% of ` 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% (` 12,47,103 × 10%) – rounded off (A)	1,24,710

Add: Social Welfare Surcharge (10% of ` 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.

QUESTIONS

1 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.

2. 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.
Note: The above is only applicable for levy of BCD and Social welfare surcharge. IGST is leviable as per Section 3(8A) of the Customs Tariff Act, 1975.

3. 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.

4. 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)].

5. 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'.

6. 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 ` 20,000	
(vi)	Insurance paid to the insurer in India	` 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: ` 98 per U.K. Pound.
(ii) CBIC had notified for purpose of section 14 of the Customs Act, 1962, exchange rate of ` 100 per U.K. Pound.

(iii) Importer paid ` 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 (`)
Value in Indian currency [£12,500 x `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].

7. 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.

8. 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.

9. Jagat Corporation Limited imported some goods from US. The details of the transaction are as follows:-

Authority	Rate of exchange
CBIC	1 US $=` 70
RBI	1 US $=` 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 `) =$1,50,000 × ` 70 (Note -1)	` 1,05,00,000.00
Add: Basic custom duty @ 10% (` 1,05,00,000 × 10%)	` 10,50,000.00
Add: Social Welfare surcharge [`10,50,000 × 10%]	` 1,05,000
Sub-total	1,16,55,000.00
Add: Integrated tax (` 1,16,55,000 × 18%) (Note-2)	` 20,97,900.00
Total custom duty and integrated tax payable (rounded off)	**` 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.

10. 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$. The banker realizes the payment from importer at the exchange rate of ` 61 per US$. Central Board of Indirect taxes and Customs notifies the exchange rate as ` 70 per US$ while rate of exchange notified by RBI is ` 72 per US$. ABC Industries Ltd. expends ` 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
X`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]	` 70 per US $
Assessable value = ` 70 x 5,400 US $	` 3,78,000
Add: Basic customs duty @ 10%	` 37,800
Add: Social Welfare Surcharge @ 10%	` 3,780
Sub-total	` 4,19,580
Integrated tax @ 12% of ` 4,19,580[Note 5]	` 50,349.60
Total customs duty and integrated tax payable [`37,800 + ` 3,780 + ` 50,349.60]	` 91,929.60
Total customs duty and integrated tax payable (rounded off)	` 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 ` 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.

11. Compute the total customs duty and integrated tax payable under Customs law on an imported machine, based on the following information:

(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**
		(`)
(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	**20.01.2020 (Rate BCD 20%; Exchange rate as notified by CBIC ` 70 per US $)**	
Date of entry inward	**25.03.2020 (Rate of BCD 10%; Exchange rate as notified by CBIC ` 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 @ ` 70/- per $ [Note 1]	14,59,500
Freight charges up to India [US $ 5,000 x ` 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 ` 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.

(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].

12. 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.

13. M/s Impex imported some consignment of goods on 01.06.2020. A bill of entry for warehousing of goods was presented on 05.06.2020 and the materials were duly warehoused. The goods were subject to duty @ 50% ad valorem. In the meanwhile, on 01.07.2020, 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 01.08.2020 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 01.08.2020 could be adopted for purpose of conversion of foreign currency into local currency?
ANSWER:
(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 01.08.2020, 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. 05.06.2020 and not the one prevalent on date of presentation of bill of entry for home consumption i.e., 01.08.2020, would be adopted.

14. Differentiate between deductive value and computed value.
ANSWER:
RULE 7 – 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).

RULE 8 – 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.

15. What is residual method of valuation? Discuss with reference to the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

ANSWER:

RULE 9 – 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.)]

16. 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:

RULE 10 – 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;

(e) 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 charted vessels, lighterage or barge charges.

17. 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:
Similar goods. The requirement that the similar goods should be imported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of rules 7 and 8 could be used.
Identical goods. The requirement that the identical goods should be imported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of rules 7 and 8 could be used.

18. 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:
(a) 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.
(b) 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.
(c) 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.

FOR EXPORT GOODS [SECTION 16]

The relevant date for export goods is determined as per section 16. However, the provisions do not apply to baggage and imports by post.

The provisions are as follows:

(a) In case of goods entered for export under Section 50 (irrespective of the mode of transport) – the relevant date is the date of the 'let export' order of the proper officer permitting export and loading of cargo on board under section 51.

(b) In case of any other goods – the relevant date is the date of payment of duty.

19. 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'

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	4,500 US $	

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)		2,000 US $
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%	8,610
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.

20. 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 transshipped 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 up to 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
Charges for design and engineering work undertaken for the machine in US [Note 2]	5,000
Buying commission [Note 3]	Nil
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]	Nil
CIF value	28,393.63
Add: Unloading and handling charges paid at the place of importation [Note 6]	Nil

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.

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.

21. ABC Industries Ltd. of Mumbai imported one machine through vessel from Japan, in the month of November, 2020. The following particulars are made available:

S. No.	Particulars	Amount in Japanese Yen (¥)
(i)	Cost upto port of exportation incurred by exporter	6,00,000
(ii)	Loading charges at port of exportation	25,000
(iii)	Freight charges from port of export to port of import in India.	1,00,000

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
(iii)	Actual landing charges paid at the place of importation.	15,000
(iv)	Actual insurance charges paid to the place of importation are not ascertainable.	-
(v)	Lighterage charges paid at the port of importation	20,000

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].

22. 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
(c) the cost or value of all other expenses under rule 10(2) of the said rules.

Computation of assessable value

Particulars	Amount ($)
Cost of materials	2,000
Add: Fabrication charges	1,000
Other chargeable expenses	400
Other indirect costs	250
Cost of the goods at Mr. Q's factory	3,650
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)	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]	1,000
Insurance charges	50
Assessable value	5,700
Assessable value in Indian Rupees (Exchange rate - ` 70 per $)	3,99,000

SIGNIFICANT SELECT CASES

1. Can the value of imported goods be increased if Department fails to provide to the importer, evidence of import of identical goods at higher prices?

Gira Enterprises v. CCus. 2014 (307) ELT 209 (SC)

Facts of the Case: The appellant imported some goods from China. On the basis of certain information obtained through a computer printout from the Customs House, Department alleged that during the period in question, large number of such goods were imported at a much higher price than the price declared by the appellant. Therefore, Department valued such goods on the basis of transaction value of identical goods as per erstwhile rule 5 [now rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007] and demanded the differential duty alongwith penalty and interest from the appellant. However, Department did not provide these printouts to the appellant.

The appellant 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 printout which formed the basis of such demand had not been supplied to them. Resultantly, the appellant had no means of knowing as to whether any imports of comparable nature were made at the relevant point of time.

Supreme Court's Observations: Supreme Court observed that since Revenue did not supply the copy of 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.

Supreme Court's Decision: 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 it should have been given reasonable opportunity to establish that the import transactions were not comparable. Thus, in the given case, the value of imported goods could not be enhanced on the basis of value of identical goods as Department was not able to provide evidence of import of identical goods at higher prices.

Note: This case establishes the principle that the onus to prove that identical goods have been imported at a price higher than the value of the goods declared by the importer, lies with the Department.

CHAPTER-5 IMPORTATION, EXPORTATION AND TRANSPORTATION OF GOODS

Illustration 1

M/s Pipli Imports Ltd. imported certain goods, which were unloaded in the customs area on 01.10.2020. When order for clearance was passed by proper officer on 05.10.2020, 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.

Illustration2

Mr. Krishna Bhansali, has imported some garments from Paris. He is unable to make self-assessment under section 17(1) of the Customs Act, 1962because 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.

Illustration 3

Moris Lal has imported goods from Germany and is finally re-assessed u/s 18(2) of the Customs Act, 1962 for two such consignments. Particulars are as follows:

Date of provisional assessment	**12th December, 2019**
Date of final re-assessment	**2nd February, 2020**
Duty demand for 1st consignment	**` 1,80,000**
Refund for the 2nd consignment	**` 4,20,000**
Date of refund made by the department	**28th April, 2020**
Date of payment of duty demanded	**5th February, 2020**

Determine the interest payable and receivable, if any, by Moris Lal on the final re-assessment of the two consignments, with suitable notes thereon.

Answer

As per section 18(3) of the Customs Act, 1962, an importer is liable to pay interest at the rate of 15% p.a. (Notification No. 33/2016-Cus. (NT) dated 01.03.2016), on any amount payable consequent to the re-assessment order from the first day of the month in which the duty is provisionally assessed till the date of payment.

Therefore, in the given case, Moris Lal is liable to pay following interest in respect of 1st consignment:

= ` 1,80,000 × 15% × 67/365

= ` 4,956 (rounded off)

If any amount refundable consequent to the re-assessment order is not refunded within 3 months from date of re-assessment of duty, interest is payable to importer on unrefunded amount at the specified rate till the date of refund of such amount in terms of section 18(4) of the Customs Act, 1962.

Since in the given case, refund has been made (28.04.2020) within 3 months from the date of re-assessment of duty (02.02.2020), interest is not payable to Moris Lal on duty refunded in respect of 2nd consignment.

Illustration 4

Mr. Sujoy, an Indian entrepreneur, went to London to explore new business opportunities on 01.04.2019. 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 15.04.2020:

(a) used personal effects worth`80,000,

(b) 2 music systems each worth `50,000,

(c) the jewellery brought by Mr. Sujoy worth `48,000 [20 grams] and the jewellery brought by his wife worth`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 `50,000ifthese 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 `50,000 per passenger. Thus, duty liability of Mr. Sujoy and his wife is nil for the used personal effects worth `80,000 and 2 music systems each worth `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 ` 50,000
Lady Passenger	Jewellery upto a weight of 40 grams with a value cap of ` 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 `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 `50,000 allowed under rule 3.

Illustration 5

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 ` 80,000, used personal effects valued at` 90,000 and a personal computer for` 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-
(i) Used personal effects and travel souvenirs without any value limit.
(ii) Articles [other than certain specified articles] upto 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.
(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 baggageis 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 ` 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 ` 52,000 – `50,000 = `2,000.
Effective rate of duty for baggage =38.5% [including social welfare surcharge @ 10%]
Therefore, total customs duty = `770

Illustration 6

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.

Illustration7
State the difference between transit and transhipment 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.

QUESTIONS

Note: The rates of duties, wherever mentioned in the illustrations/questions/examples 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.

1. 'Queen Marry', is 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 are as follows.
24.05.2020 Vessel entered the Indian territorial waters.
25.05.2020 Import manifest was delivered to the customs authorities
27.05.2020 XML Ltd filed bill of entry for the goods
29.05.2020 Entry inwards granted to the vessel
The rate of customs duty on the goods was increased from 8% to 10% on 28.05.2020.
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.

2. 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.

3. 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 [Sub-section 3].

Subject to sub-section (5), if any refundable amount referred to in clause (a) of sub-section (2) is not refunded under that sub-section within three months from the date of assessment of duty finally or re-assessment of duty, as the case may be, there shall be paid an interest on such unrefunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount[Sub-section 4].

The refund of duty and interest thereon is subject to the principle of unjust enrichment. (Refer Chapter 7: Refund of Customs Duty for detailed provisions in this regard) 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].

4 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. 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

5. Discuss the provisions regarding transit of goods and transhipment 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 (power to prohibit import or export of goods), 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 transhipment, a bill of transhipment shall be presented to the proper officer in the prescribed form. 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 transhipment instead of a bill of transhipment shall be presented to the proper officer in the prescribed form.

(2) Subject to the provisions of sections 11 (power to prohibit import or export of goods), 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 transhipment 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 transhipment:-

(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 transhipment 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.

6. 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 (b) of sub-section (1)] i.e., household effects, gifts, souvenirs etc.;
(c) 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.

7. 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.

8. 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:
Vessel / aircraft must call or land only at a notified customs port or airport, unless otherwise permitted, and except in an emergency.
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 provision will operate as a presumption against the person-in-charge of conveyance or beneficial owner to have an intention to illegally import goods into India. So, entry of (or attempt to enter) any goods originating from outside India into any place other than customs airport or customs seaport, is barred.

9. 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. 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)].
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.
In sum, for loading of goods for export, the following requirements are to be fulfilled:
(i) 'Entry outwards' to be granted under section 39 (in case of vessel).
(ii) 'Shipping bill/Bill of export/Bill of Transhipment' under section 50.
(iii) 'Let-export' order under section 51.
(iv) 'Boat note' under section 35 in case the vessel is anchored away from the wharf and the goods are carried in a boat to the vessel.

10. 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:
Authorised economic operators and those importers who are paying ` 10,000 or more per bill of entry. They will pay through ICEGATE. **MANDATORY ELECTRONIC PAYMENT OF DUTY**
The Central Government has notified the following classes of importers who have to pay customs duty electronically, namely:-
(i) Importers registered under Authorized Economic Operator;
(ii) Importers paying customs duty of `10,000or more per bill of entry
The Board has set up a dedicated payment gateway called, 'ICEGATE' through which the payments are to be made.
The importer need not produce any proof of payment for the clearance of goods in case of e-payment.

Note: Integrated Declaration

11. 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 ` 50,000 for a gentlemen passenger
- Jewellery upto a weight of 40 grams with a value cap of ` 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 ` 50,000 and his wife would be allowed duty free jewellery upto a weight of 40 grams with a value cap of `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 `1,00,000 (`50,000 per person) as part of free baggage allowance.

12. Can the customs audit cover a person who is not an exporter or importer?

Answer:

Yes, persons dealing with the goods can also be audited.

CUSTOMS AUDIT [SECTION 99A]

In supersession of On-site Post Clearance Audit at Premises of Importer and Exporter Regulations, 2011, Government has notified Customs Audit Regulations, 2018. For this reason, a separate section 99A is introduced authorizing the proper officer to audit the assessment that has already been conducted at the time of customs clearance. Such audit is permitted to the carried out swiftly either at the premises of the auditee or at the office of the proper officer.

It may be noted that 'auditee' is defined in this section to include not only the principal (importer or exporter) but also persons concerning themselves dealing with goods attracting section 12 of Customs Act.

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"

Salient feature of this audit procedure are as follows:

(i) Auditee is to preserve records for conduct of this audit for a period of five years

(ii) Risk based assessment will identify persons to be audited

(iii) Audit will be conducted at the premises of the auditee by the authorized officers who will intimate fifteen days in advance of their schedule visit

(iv) Based on the findings, auditee may accept the liabilities and voluntarily discharge the duty, interest and penalty, as applicable

(v) Assistance of experts can be availed for conducting this audit such as CA, CWA or IT professionals with permission of Principal Commissioner/ Commissioner of Customs

(vi) Contravention of these Regulations attracts penalty of ` 50,000

13. A fishing trawler is operating 10 nautical miles from the baseline. Is it entitled to duty-free stores?
Answer;

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.

14. What are the circumstances under which assessment is done provisionally under section 18?
Answer;
PROVISIONAL ASSESSMENT OF DUTY [SECTION 18]
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.
In any of the above cases, the proper officer may direct that the duty leviable on such goods be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed as the case may be, and the duty provisionally assessed[Sub-section(1)].

15. State the provisions of transhipment 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 transhipment, a bill of transhipment shall be presented to the proper officer in the prescribed form. 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 transhipment instead of a bill of transhipment shall be presented to the proper officer in the prescribed form.
(2) Subject to the provisions of sections 11 (power to prohibit import or export of goods), 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 transhipment 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 transhipment:-
(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 transhipment 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.

16. 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 (Section 23), 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.

17. Write short notes on:
(a) Export general manifest
(b) Boat note (or restriction on goods being water borne)

Answer;

(a) 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.

Section 41(1) of the Customs Act, 1962 provides that the person-in-charge of a conveyance carrying export goods or imported goods or any other person as may be specified by the Central Government, by notification, shall, before departure of the conveyance from a Customs station, deliver to the proper officer in the case of a vessel or aircraft, a departure manifest or an export manifest by presenting electronically, and in the case of a vehicle, an export report, in such form and manner as may be prescribed and in case, such person-in-charge or other person fails to deliver the departure manifest or export manifest or the export report or any part thereof within such time, and the proper officer is satisfied that there is no sufficient cause for such delay, such person-in-charge or other person shall be liable to pay penalty not exceeding fifty thousand rupees.

(b) 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.

18. 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.

19. What is the permissible time limit with respect to the following- :
(i) for filing a bill of entry
(ii) for paying the assessed duty
(iii) for delivery of arrival manifest or import manifest/report and departure manifest or export manifest/report

Answer:

(i) 30 days prior to arrival, & not later than the day after the day of arrival. 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.

(ii) **Time limit for payment of import duty:** The importer shall pay the import duty—

(a) on the date of presentation of the bill of entry in the case of self-assessment; or

(b) within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment; or

(c) in the case of deferred payment, from such due date as may be specified by rules made in this behalf, and if he fails to pay the duty either in full or in part within the time so specified, he shall pay interest on the duty not paid or short-paid till the date of its payment.

The rate of interest shall be not below 10% and not exceeding 36% per annum and shall be fixed by the central government. However, the interest may be waived by the CBIC in public interest. [Section 47(2)]

(iii)

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

20. State in brief the provisions of the Customs Act, 1962 relating to filing of "Arrival manifest or import manifest/ Report".

Answer:

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

21. 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.

REGULATIONS IN RESPECT OF BAGGAGE [SECTION 81]

Since the provisions in respect of baggage are a complete code by themselves, it is desirable to supplement detailed procedures wherever necessary with the rule making powers. Section 81 therefore provides that the Board may make regulations in the following matters:

(a) providing for the manner of declaring the contents of any baggage;

(b) providing for the custody, examination, assessment to duty and clearance of baggage;

(c) providing for transit or transhipment of baggage from one customs station to another or to a place outside India.

Baggage declaration form: In exercise of these powers, the form of the baggage declaration has been prescribed and standardized. Transit or transhipment of baggage from one customs station to another becomes a necessity for convenient clearance of unaccompanied baggage.

In the Customs Baggage Declaration Regulations, 2013, the baggage declaration will have to be filed only by those passengers who come to India and carry dutiable or prohibited goods or have anything to declare.

Note: CBIC vide Circular No. 08/2016 Cus. dated 08.03.2016 has clarified that the domestic passengers who board international flights in the domestic leg are not required to file the Customs Baggage Declaration Form.

22. 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]

Filing of Import Bill of Entry is not required for goods intended for transit or transhipment.

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 detailed provisions in this regard.

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 transhipment. 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 clearance of warehoused goods 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 Bill of Entry shall be supported with invoice and such other documents as may be prescribed.
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.
Importer unable to furnish details: If for any reason the importer is unable to furnish these details, he may request the customs officials to examine the goods in his presence to enable him to ascertain the necessary details for making a proper declaration in the bill of entry. Alternatively, he can seek permission to deposit the goods in a public bonded warehouse appointed under section 57 pending receipt of the necessary information and the supporting documents under section 49. This is also called **warehousing without warehousing**.
Such goods shall not be deemed to be warehoused goods for the purpose of the Act and accordingly warehousing provisions shall not apply to such goods.
Bill of entry shall include all the goods mentioned in the bill of lading or other similar document.
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.

23. 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].

24. State the procedure for clearance of goods imported by post.
Answer;

Procedure for goods imported or to be exported by postor courier [Section 84]
This section empowers the Board to make regulations providing
(a) the form and manner in which an entry may be made in respect of goods imported or to be exported by post or courier
(b) the examination, assessment to duty, and clearance of goods imported or to be exported by post or courier
(c) the transhipment or transit or goods imported by post or courier from one Customs station to another or to a place outside India.

25. Briefly explain the following with reference to the provisions of the Customs Act, 1962:
(i) Bill of export
:-
Bill of export [Section 2(5)]: means a bill of export referred to in section 50to be filed when goods are exported vialand route.

(ii) 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.

(iii) Imported goods

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.

(iv) Entry

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.

(v) Prohibited goods

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.

(vi) Customs port

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.

(vii) Goods

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.

(viii) Stores

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.

(ix) Conveyance

Conveyance [Section 2(9)]: includes a vessel, an aircraft and a vehicle.

(x) Dutiable goods

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.

(xi) Customs area

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.

(xii) Adjudicating Authority

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.

(xiii) Foreign going vessel or aircraft

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.

(xiv) Assessment

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.

26. With reference to the facility, 'Clear first-Pay later' extended to importers under the customs law, answer the following questions:
(i) What is the objective of the facility?
(ii) Who is eligible to avail this scheme?
(iii) What are the due dates for payment of duty under this facility?
(iv) What are the circumstances when the deferred payment facility will not be available?

Answer;

(i) 'Clear first-Pay later' i.e., deferred duty payment is a mechanism for delinking duty payment and customs clearance. The aim is to have a seamless wharf to warehouse transit in order to facilitate just-in-time manufacturing.
(ii) Central Government has permitted importers certified under Authorized Economic Operator programme as AEO (Tier-Two) and AEO (Tier-Three) to make deferred payment of import duty (eligible importers).
As a part of the ease of doing business focus of the Government of India, the CBEC has rolled out the AEO (Authorized Economic Operator) programme.
It is a trade facilitation move wherein benefits are extended to the entities who have demonstrated strong internal control systems and willingness to comply with the laws administered by the CBEC.
(iii) The due dates for payment of deferred duty are –

S. No.	Goods corresponding to bill of entry returned for payment from	Due date of payment of duty, inclusive of the period (excluding holidays) as mentioned in section 47(2)
1.	1st day to 15th day of any month	16th day of that month
2.	16th day till the last day of any month other than March	1st day of the following month
3.	16th day till the 31st day of March	31st March

(iv) If there is default in payment of duty by due date more than once in three consecutive months, the facility of deferred payment will not be allowed unless the duty with interest has been paid in full.
The benefit of deferred payment of duty will not be available in respect of the goods which have not been assessed or not declared by the importer in the bill of entry.

27. 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

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

(i) travel souvenirs; and

(ii) 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.

28 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.

29. Laxmi Company imported goods valued at ` 10,00,000 vide a Bill of Entry presented before the proper officer on 15thDecember, 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 ` 2,00,000 on the same date. Laxmi Company wants to voluntarily pay duty of ` 1,50,000 on 20th January, 2020.
(1) Can Laxmi Company provisionally pay the duty and what are the conditions which are to be complied before such payment is made?
(2) 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 x 15% x 51/365] + [` 50,000 x 15% x 62/365]
= ` 3,144 + ` 1,274
= ` 4,418

30. 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-
(i) Used personal effects and travel souvenirs without any value limit.
(ii) Articles [other than certain specified articles] up to a value of ` 50,000 carried as accompanied baggage [General duty free baggage allowance].
(iii) 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) is exempt from whole of the customs duty [Notification No. 11/2004 Cus. dated 08.01.2004].
(3) (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.
(iii) Effective rate of duty for baggage =38.50% [including Social Welfare Surcharge]
(iv) Therefore, total customs duty = ` 3,080.

31. Mrs. X, an Indian resident who was on a visit to China, returned after months. She was carrying with her the following items:

(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

CHAPTER-6 DUTY DRAWBACK

EXAMPLES

1 Section 74 is resorted to where there is an excess shipment or wrong shipment or goods have been imported for the purpose of participating in an exhibition and sent back etc.

Illustration 1

Spatial Wireless Pvt. Ltd. imported five mainframe computer systems from Flexsonics Computers, USA on 31.01.2020 paying customs duty of ` 30.45 lakhs. The computers worked for some time but in June 2020 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 2020 itself. However, since no solution was found, the Management of Spatial Wireless Pvt. Ltd re-shipped/returned the goods to Flexsonics Computers, USA on 31.12.2020.

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.

Illustration 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 `50,000 on 30.07.2020. However, the amount was received on 28.10.2020. You are required to calculate the amount of interest payable to Mr.

A on the amount of duty drawback claimed. Rate of interest allowed on delay in payment of refund is 6% p.a.

(2) Mr. X was erroneously refunded a sum of ` 20,000 in excess of actual drawback on 20.06.2020. A demand for recovery of the same was issued by the Department on 28.08.2020. Mr. X returned the erroneous refund to the Department on 20.10.2020. You are required to calculate the amount of interest chargeable from Mr. X.

Provide brief reasons for your answer. Interest rate applicable @ 15% under Section 28AA of Customs Act, 1962

Answer

(1) Computation of interest payable to Mr. A on duty drawback claimed

Particulars	**(`)**
Duty drawback claimed	50,000
No. of days of delay [31.08.2020 to 28.10.2020]	59 days
Rate of interest	6%
Quantum of interest (rounded off) [` 50,000 x 59/365 x 6/100]	**485**

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	` 20,000
No. of days of delay [21.06.2020 to 20.10.2020]	122 days
Rate of interest	15%
Quantum of interest (rounded off) [` 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].

Illustration 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` 2,00,000. Rate of duty drawback on such export is ` 30 per kg. Market price of goods is` 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 ` 50,000, which is less than the amount of duty drawback, i.e. 2,000 kgs x ` 30 = ` 60,000. Hence, no drawback shall be allowed.

QUESTIONS

1. 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)	**Raghuveer exports manufactured goods having FOB value of ` 86,000.** **Rate of duty drawback on FOB value of exports** **Market value of the export product**	**40%** **` 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 x 65% = ` 9,10,000

(b) Amount of duty drawback = ` 86,000 x 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

2. 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 x 122/365 x 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].

3. 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:

(a) goods (apparels) are identified to the satisfaction of the proper officer as the goods which were imported and

(b) the goods are entered for export within 2 years [period extendible on sufficient cause being shown] from the date of payment of duty on import.

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 ` 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.

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

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:
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.

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)].

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 8of 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 9of Customs and Central Excise Duties Drawback Rules, 2017provides 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.

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, 2017inter 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.

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, 2017were 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, 2017inter 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.)].

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% ofsuch duty is re-paid as drawback.
(iii) Yes, duty drawback is allowed when wearing apparels are re-exportedwithout being used. However, Notification No. 19/65 Cus dated06.02.1965 as amended provides that if wearing apparels have beenused after their importation into India, drawback of import duty paidthereon shall not be allowed when they are exported out of India.

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.

13. 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

14. 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 x 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.

CHAPTER-7 REFUND

EXAMPLES

(1) The importer has imported an article, which has been valued at `1000/-. The customs duty on this article comes to `250/-. Now the importer adds his profit margin of say `250/- and sells the article for `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".

Illustration 1

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.

QUESTIONS

1. 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.

2. 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.

3. 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 finalisation 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.

4. 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.

5. 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.

6. 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 ` 100.

7. Explain the doctrine of unjust enrichment with respect to refund of duty.

ANSWER:

Customs duty is a levy under Indirect taxation, which implies that the incidence of the customs duty paid is generally passed on to the buyer of the goods.

When an importer imports goods, he has to pay the customs duty on such goods. Similarly, an exporter in case of export goods, if the same are subject to export duty, the exporter pays the export duty. This duty is recovered from the buyer when the goods are sold by the importer or exporter, as the case may be. In other words, the incidence or burden of duty is passed on to the buyer, from whom the importer or exporter collects the customs duty paid. Subsequently, if the importer or exporter makes a claim for refund of duty paid (due to excess payment) and receives the refund from the Government, he would be called to have enriched himself as he collected the duty from his customer also and also as refund from the Government. Such enrichment is referred to as 'unjust enrichment'.

Accordingly, the doctrine of 'unjust enrichment' implies that no person should enrich himself at the cost of others.

Therefore, wherever there is excess payment of duty, the refund is to be given only to the person who has borne the burden of such duty along with interest, if any. When the person who applies for refund is not the person who has borne the burden of duty, the refund is paid into a fund called 'Consumer Welfare Fund'.

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.

8. 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 ` 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 ` 8 lakhs on the ground that the differential amount should be ` 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 ` 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.

9. 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 ` 1,150 per unit. The customs duty on this article has been assessed ` 250 per unit. He adds his profit margin ` 350 per unit and sells the article for ` 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 ` 50,000 (200 X 250). Is the bar of unjust enrichment attracted?

ANSWER:

Mr. N's invoices show that he collected duty of ` 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.

10. 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

11. Explain whether refund of import duty is allowed in case of perishable goods?

ANSWER;

Refund is not allowed in case of perishable goods and goods which have exceeded their shelf life or their recommended storage-before-use period in terms of section 26A(3) of the Customs Act, 1962.
However, the Board may, by notification in the Official Gazette, specify any other condition subject to which the refund may be allowed under section 26A(4) of the Customs Act, 1962

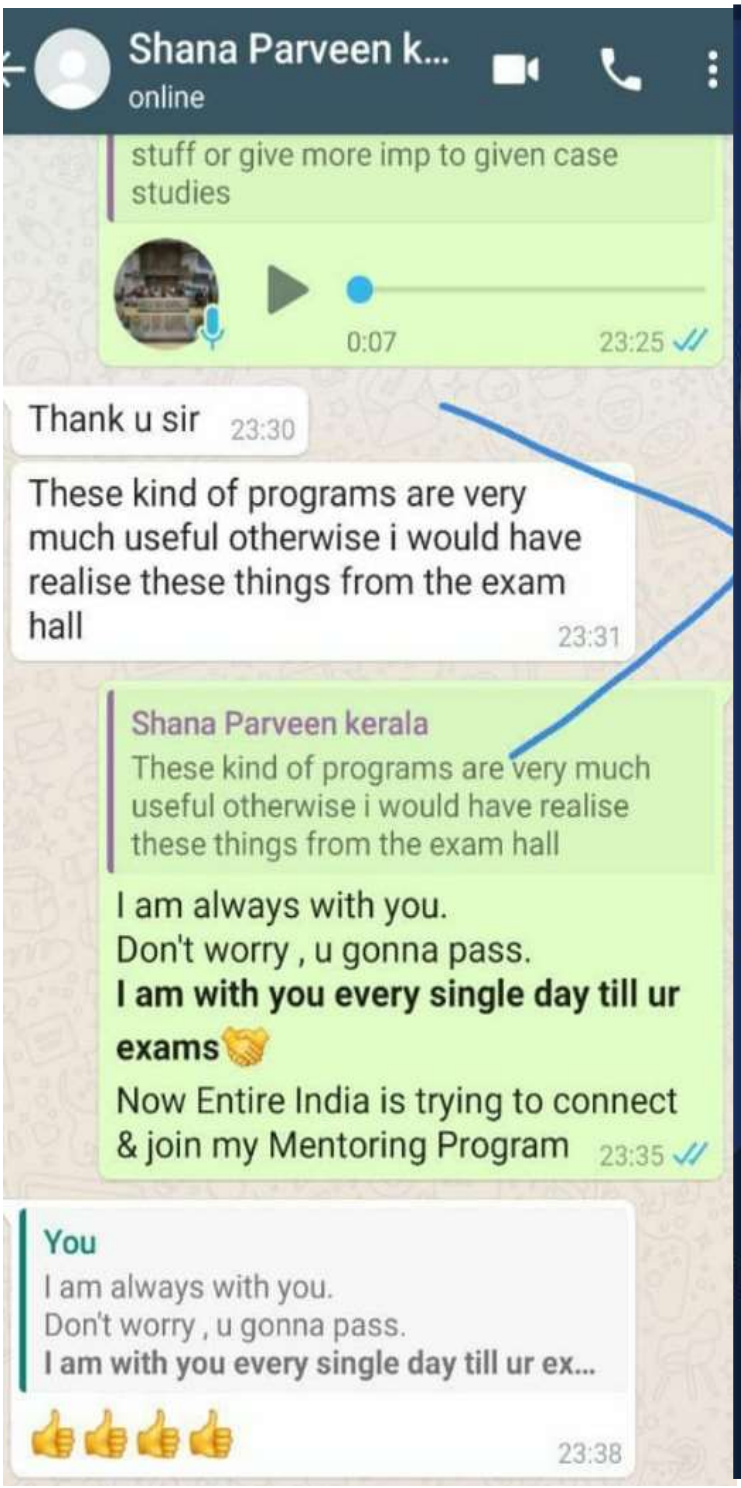
12. Briefly explain whether interest is paid to the applicant in case of delayed refund by Customs Authorities? If yes, also explain the period for computation of interest?

ANSWER:

Yes, interest is to be paid to the applicant in case any duty ordered to be refunded to an applicant is not refunded within 3 months from the date of receipt of application for refund. The government is permitted to fix such interest between 5% and 30%.
Currently, the rate of interest is 6% vide Notification No. 75/2003-Cus (NT) dated 12.09.2003.
The interest is to be paid for the period beginning from the date immediately after the expiry of 3 months from the date of receipt of such application, till the date of refund of such duty. For the purpose of payment of interest, the application is deemed to have been received on the date on which a complete application, as acknowledged by the proper officer of Customs, has been made.

SIGNIFICANT SELECT CASES

1. Is limitation period of one year applicable for claiming the refund of amount paid on account of wrong classification of the imported goods?
Parimal Ray v. CCus. 2015 (318) ELT 379 (Cal.)
Facts of the Case: The petitioners imported tunnel boring machines which were otherwise fully exempt from customs duty. However, owing to erroneous classification of such machines, they paid large amount of customs duty.
After expiry of more than 3 years, the petitioners filed a writ petition claiming the refund of the amount so paid. The said refund claim was rejected on the ground that the petitioners failed to make a proper application of refund under section 27 of the Customs Act, 1962 within the stipulated period of 1 year of payment of duty.
High Court's Observations and Decision: The High Court observed that the provisions of section 27 apply only when there is over payment of duty or interest under the Customs Act, 1962. When the petitioners' case is that tunnel boring machines imported by it were not exigible to any duty, any sum paid into the exchequer by them was not duty or excess duty but simply money paid into the Government account. The Government could not have claimed or appropriated any part of this as duty or interest. **Therefore, there was no question of refund of any duty by the Government. The money received by Government could more appropriately be called money paid by mistake by one person to another, which the other person is under obligation to repay under section 72 of the Indian Contract Act, 1872.**
A person to whom money has been paid by mistake by another person becomes at common law a trustee for that other person with an obligation to repay the sum received. This is the equitable principle on which section 72 of the Contract Act, 1872 has been enacted. Therefore, the person who is entitled to the money is the beneficiary or cesti qui trust*. **When the said amount was paid by mistake by the petitioner to the Government of India, the latter instantly became a trustee to repay that amount to the petitioner.** The obligation was a continuing obligation. When a wrong is continuing there is no limitation for instituting a suit complaining about it.
The High Court, therefore, allowed the writ application and directed the respondents (Department) to refund the said sum to the petitioner.
Notes:
(i) The principle enunciated in this case is that law of limitation under Customs Act is applicable to duty or interest paid under that Act. However, any sum paid to the exchequer by mistake is not duty or excess duty but is simply money paid to the account of Government. Therefore, limitation of one year applicable to refunds of customs duty will not apply to refunds of amount paid to the Government by mistake. The High Court elaborated that under the Limitation Act, 1963, money paid by mistake can be recovered up to three years from the time the plaintiff discovers the mistake or could have discovered the same with reasonable diligence.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CHAPTER-8 FOREIGN TRADE POLICY

Illustration 1

CD Corporation, a merchant exporter, procured order of goods from a customer in USA. It approached AB Corporation, a manufacturer, for execution of the said order. The shipping bills relating to the consignment bear the name of CD Corporation. Bank Realization Certificate, export order and invoice are also in the name of CD Corporation. Comment whether AB Corporation would be deemed as the exporter under FTP.

Answer

The given scenario is a case of third-party exports.
Third-party exports means exports made by an exporter or manufacturer on behalf of another exporter(s). The conditions for being allowed as third-party exports under FTP are:
(i) Export documents such as shipping bills shall indicate name of both manufacturing exporter/manufacturer and third party exporter(s).
(ii) BRC, export order and invoice should be in the name of third party exporter.
In the above case, though BRC, export order and invoice are in the name of CD Corporation (third party exporter), the shipping bill does not have the name of AB Corporation (manufacturer). Therefore, AB Corporation will not be treated as the exporter in this case[1]

[1] However, AB Corporation can supply goods without payment of GST under bond of Merchant Exporter.

Illustration 2

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 isUSD 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 3,000has 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:-
(a) Service provider must be located in India.
(b) It must provide only notified services in specified manner.
(c) It must have an active IEC at the time of rendering such services for which rewards are claimed.

(d) 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:
(i) Mr. Aniket is not eligible for SEIS Scheme as his net foreign exchange earnings are less than USD 10,000 (minimum limit for individuals).
(ii) 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).
(iii) 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.

Illustration 3
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

Illustration 4

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 ` 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 organisations 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 x 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 ` 11,50,000 to attain 15% VA.

(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. Details about duty paid material must be mentioned in the application for Advance Authorization. In such case, All Industry Brand Rates may not be applicable. The manufacturer has to get specific brand rate fixed from Commissioner for these exported goods.

Illustration 5

Discuss the key 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.

Key differences between DFIA and Advance Authorisation schemes are as follows -

(i) 'Advance Authorisation' is not transferable. DFIA is transferable after export obligation is fulfilled.

(ii) Advance Authorisation scheme requires 15% value addition, while in case of DFIA, minimum 20% value addition is required.

(iii) Advance Authorisation 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].Advance Authorisation 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.

(v) IGST has been exempted on imports under Advance Authorisation scheme upto **31.03.2021**,but there is no such exemption available if imports are under DFIA scheme.

Illustration 6

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 unit. 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 Authorisation/permission in terms of quantity or value or both, as may be prescribed/specified by Regional or competent authority. Exports to SEZ unit will be considered for discharge of export obligation of EPCG Authorization, irrespective of currency, however, payment must be received from the Foreign Currency Account.

The authorisation 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 to be fulfilled in 6 years.

However, import of capital goods is subject to 'Actual User' condition till export obligation is completed. Only after completion of export obligation, 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.

QUESTIONS

1. 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 sh1.ould 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.

2. 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) x 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 x 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.

3. 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
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
Supplies made from DTA units to SEZ units [Ineligible for MEIS]	Nil
Total amount eligible for MEIS reward	17,95,000
MEIS reward @ 7%	1,25,650

4. 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

5. 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, AayatNiryat Forms (b) Classification of any item in ITC(HS).

6. 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.

7. 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.
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.

8. 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.

9.State in brief policy for import of samples.

ANSWER:

No authorisation is required for import of bona fide technical and trade samples. These are importable freely. Samples upto ` 3,00,000 can be imported by all exporters without duty.
Authorisation for import of samples is required only in case of vegetable seeds, bees and new drugs. Samples of tea upto ` 2,000 (CIF) per consignment will be allowed without authorization.

10.State salient aspects of Advance authorisation for annual requirements to exporters.

ANSWER:

Annual Advance authorisation 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 Authorisation 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 ` 1 crore, whichever is higher.

11.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, importing the inputs utilize the duty credit scrip for payment of entire customs duty, social welfare surcharge and IGST?
(iii)An exporter was issued duty credit scrip dated 15.07.2020. 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 ` 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 on imports or even domestic procurements.
(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 `5,00,000 per consignment are eligible for MEIS.

12.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 realised 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.

13.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.

14.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 andservices (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 yearsfrom 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, bywhich time unit should have commenced production. Its validity maybe extended further up to 2 years by competent authority. However,proposals for extension beyond four years shall be considered inexceptional circumstances, on a case to case basis by BoA.

(iii)No. Though an EOU is permitted to import duty free second handcapital goods, without any age limit, it cannot import capital goodsthat are prohibited items of import in the ITC(HS).

15.List some supplies which are 'deemed exports' for purpose of benefits under Foreign Trade Policy 2015-2020.

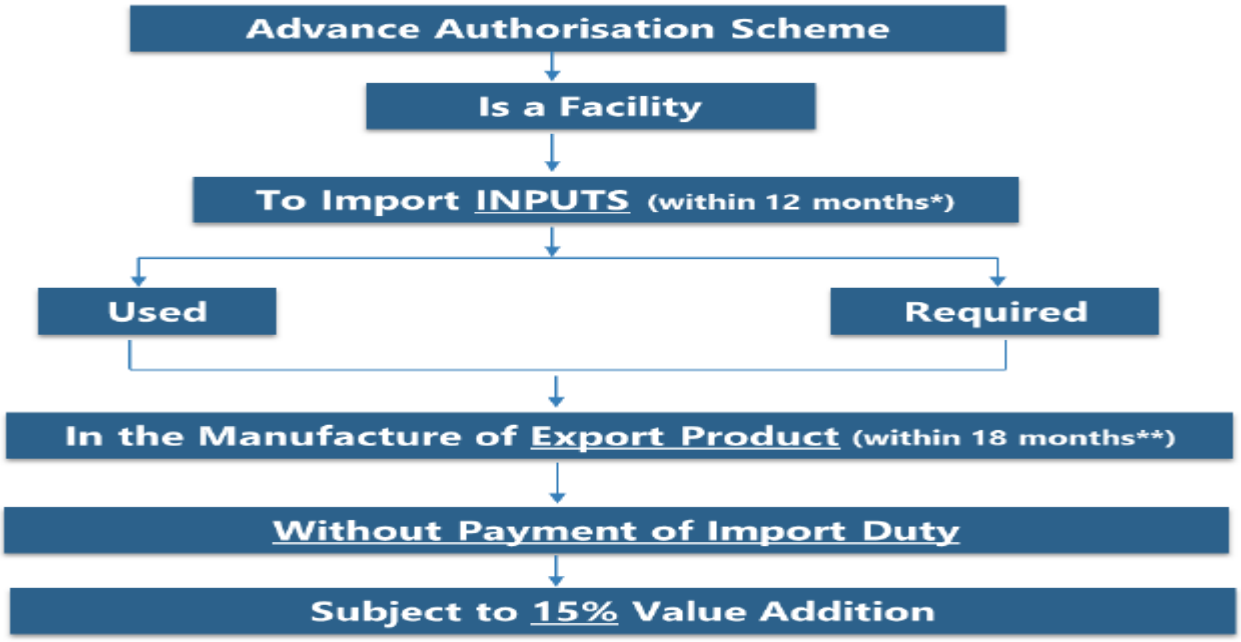
ANSWER:

As per FTP 2015-2020, following are treated as deemed exports:

♦Supplies against Advance Authorisation/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

16 What are the key features of Advance Authorization Scheme? Enlist the items which can be and which cannot be imported against Advance Authorization.

ANSWER:



*12 months from date of issue of advance authorisation, unless otherwise specifically provided or for deemed exports which may be co-terminus with the project duration **18 months from date of issue of advance authorisation, unless otherwise specifically provided

♦ Under advance authorization scheme,
INPUTS which are physically used/
incorporated in the export product can be imported without payment of customs duty. IGST and GST Compensation Cess have been exempted upto **31.03.2021** on imports under Advance Authorisation for physical exports (including exports to SEZ units) or deemed exports like supply of goods against Advance Authorisation, capital goods against EPCG, supply of goods to EOU/STP/EHTP etc.

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.

17.Discuss the benefits granted under FTP to Status Holders.
ANSWER:
Privileges of Status Holders: 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.

(c) Exemption from compulsory negotiation of documents through banks. The remittance/ receipts, however, would continue to be received through banking channels.

(d) Exemption from furnishing of Bank Guarantee in Schemes under FTP.

(e) Two Star Export Houses and above are permitted to establish export warehouses.

(f) Manufacturers who are also status holders (Three Star/Four Star/Five Star) will be enabled to self-certify their manufactured goods (as per their IEM/IL/LOI) as originating from India with a view to qualify for preferential treatment under different preferential trading agreements (PTA), Free Trade Agreements (FTAs),

Comprehensive Economic Cooperation Agreements (CECA) and Comprehensive Economic Partnership Agreements (CEPA).

(g) 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 a certain annual limit specified for each sector separately.

18. 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.

* Authorisation shall be valid for import for 18 months from the date of issue of authorisation.

 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.

 Export proceeds shall be realized in freely convertible currency except for deemed exports supplies under Chapter 7.Export to SEZ Units shall be taken into account for discharge of export obligation provided payment is realised from Foreign Currency Account of the SEZ unit. Export to SEZ Developers / Co-developers can also be taken into account for discharge of export obligation even if payment is realised in Indian Rupees.

Eligible capital goods:

- Capital Goods including capital goods in CKD/SKD condition
- Computer systems and software which are a part of the Capital Goods being imported
- Spares, moulds, dies, jigs, fixtures, tools & refractories
- Catalysts for initial charge plus one subsequent charge
- Capital goods for Project Imports notified by CBIC.

19. 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) 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) ❖ 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)

❖ Such units may be set up for manufacture of goods, including repair, re-making, reconditioning, re-engineering, rendering of services, development of software, agriculture.

❖ Trading units are not covered under these schemes.

❖ Only projects having a minimum investment of ` 1 crore in plant & machinery shall be considered for establishment as EOUs. However, this shall not apply to units in EHTP/ STP/ BTP, EOUs in Handicrafts/ Agriculture/ Floriculture/ Aquaculture/ Animal Husbandry/ Information Technology Services, Brass Hardware and Handmade jewellery sectors. Board of Approvals(BoA) may also allow establishment of EOUs with a lower investment criteria.

(v) **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.

20. 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.

CATEGORIES OF SUPPLIES CONSIDERED AS 'DEEMED EXPORT'

Supply by manufacturer	Supply by main/sub-contractors(s)
Supply of goods against Advance Authorisation/Advance Authorisation for Annual Requirement/ DFIA	Supply of goods to projects or turnkey contracts financed by multilateral or bilateral agencies/Funds notified by Department of Economic Affairs (DEA), under International Competitive Bidding.
Supply of goods to units located in EOU/ STP/BTP/EHTP	Supply of goods to any project where import is permitted at zero customs duty as per customs Notification No. 50/2017-Customs dated 30.6.2017, provided supply is made against International Competitive Bidding.
Supply of capital goods against EPCG authorisation	Supply of goods to mega power projects against International Competitive Bidding (even if customs duty on imports made by such project is not zero). The ICB procedures should be followed. Supplier is eligible for benefits as specified. International Competitive Bidding (ICB) is not mandatory for mega power projects if requisite quantum of power has been tied up through tariff based competitive bidding or if project has been awarded through tariff based competitive bidding.
	Supply to goods to UN or international organisations for their official use or supplied to projects financed by them.
	Supply of goods to nuclear projects through competitive bidding (need not be international competitive bidding).