

**Indirect Tax Laws**

**CA Final  
November, 2020**

**Solved Question Paper**

**By: CA Keval Mota**

**Question 1: -****14 MARKS**

Mr. Rishi, are registered supplier under GST in the State of Maharashtra, provides the following information for the month of January 2020:

| Sr. No. | Particulars   | Amount in Rs. |
|---------|---|---------------|
|         | <b>OUTWARD SUPPLY:</b>  |               |
| (i)     | Supplied computers (which were purchased from an unregistered supplier) without any consideration to his Brother-in-law in Ranchi (market value of supply was Rs. 62,000)                     | Nil           |
| (ii)    | Supplied a consignment of 10 Laptops to M/s. NK & Co. in the State of Maharashtra at the instruction of third person being M/s. ZX Computers of Tamil Nadu.                                   | 6,00,000      |
| (iii)   | Provided stock counting service to M/s. XY Impex registered with GST in the State of Gujarat, whereas the place where the stock counting was carried out was at the Godown located in Mumbai. | 80,000        |
| (iv)    | Provided renting service of his service apartment in Mumbai at a daily rent of Rs. 1500 for residential purposes.   | 30,000        |
| (v)     | Recovery agent services provided to M/s. Apex Finance Ltd., an NBFC located in Delhi.   | 2,00,000      |
| (vi)    | Advance received during the month for future intrastate supply.   | 9,00,000      |
|         | <b>INWARD SUPPLY:</b>   |               |
| (i)     | Imported computer accessories from Korea and the goods landed in Mumbai Port and reached at his registered premises on 31.01.2020.  | 5,00,000      |
| (ii)    | Availed GTA services from M/s. Speed Trans of Kolkata with regard to transport of traded goods where rate of CGST/SGST@2.5% each/IGST@5% was applicable.                                      | 1,00,000      |
| (iii)   | Apart from the above, received 15 invoices involving IGST of Rs. 1,00,000 during the current month.   |               |

Mr. Rishi provided the following additional information: -

- Turnover for the previous financial year was Rs. 21 Lakhs.
- He had availed services in an inter-state transaction with a taxable value of Rs. 4,00,000 and a tax rate of 18%. This transaction was liable to tax under reverse charge. Payment for the same to the supplier was not made till the current month (overdue for 181 days as at 01.01.2020). However, tax due under the said transaction was paid to Government and credit availed in the month of transaction itself.
- Out of the 15 invoices as per above, 12 invoices involving IGST OF Rs. 95,000 was uploaded by the suppliers in their GSTR-1 Return. All the invoices are eligible for claiming as ITC.
- He had sent goods valued Rs. 1,00,000 to his job worker in the state of Kerala, who further processed the said goods and made direct supply on 31.01.2020 from Kerala to a buyer in the State of Maharashtra.
- Out of advance received for future supply, Rs. 5,00,000 related to supply of goods and the rest related to service.
- Rate of CGST, SGST and IGST are 9%, 9% and 18% respectively for both inward and outward supply of goods and services. Same rate is also applicable for inward supplies received, except where otherwise provided.
- All the amount given are exclusive of taxes wherever applicable.

From the information given above, you are required to compute the net GST liability payable in cash (CGST, SGST or IGST as the case may be) for the month of January, 2020. Assessee wants to make the cash payment of GST under SGST head as far as possible.

Answer: -

**Computation of Net GST Liability (Read with Note 11)**

| Sr. No. | Tax   | Working Notes | IGST           | CGST          | SGST          | Total    |
|---------|---|---------------|----------------|---------------|---------------|----------|
| I       | <b>Output Tax Liability</b>   | 1             | 1,22,400       | 47,700        | 47,700        | -        |
|         | (-) Input Tax Credit [R. 88A r/w Section 49B of CGST Act]             | 2             | 1,90,000       | 2,500         | 2,500         |          |
|         | IGST  |               | (122,400)      | (47,700)      | (19,900)      | 1,90,000 |
|         | CGST  |               | -              | -             |               | -        |
|         | SGST  |               | -              |               | (2,500)       | 2,500    |
| II      | <b>Total Utilisation</b>  |               | <b>122,400</b> | <b>47,700</b> | <b>22,400</b> |          |
| III     | Liability to be discharged [I (-) II] (FCM)                           |               | 0              | 0             | 25,300        |          |
| IV      | Reverse Charge Mechanism liability<br>(to be discharged in Cash only) |               |                | 2,500         | 2,500         |          |
| V       | Cash Ledger Balances  |               |                |               |               |          |
| VI      | <b>Final Liability to be discharged in cash<br/>(III+V)</b>           |               | <b>0</b>       | <b>2,500</b>  | <b>27,800</b> |          |
| VII     | <b>Closing Balance</b>  |               | <b>0</b>       | <b>2,500</b>  | <b>0</b>      |          |

**WN 1: - Calculation of Output Tax Liability (other than RCM)**

| Particulars   | Note | Taxable Value | IGST           | CGST          | SGST          |
|---|------|---------------|----------------|---------------|---------------|
| Supplied computers (which were purchased from an unregistered supplier) without any consideration to his Brother-in-law in Ranchi (market value of supply was Rs. 62,000) | 1    | Nil           | Nil            | Nil           | Nil           |
| Supply of consignment of 10 Laptops to M/s. NK & Co. in the State of Maharashtra at the instruction of third person being M/s. ZX Computers of Tamil Nadu.                | 2    | 6,00,000      | 1,08,000       | -             | -             |
| Stock counting service to M/s. XY Impex registered with GST in the State of Gujarat.  | 3    | 80,000        | 14,400         | -             | -             |
| Renting service of his service apartment in Mumbai at a daily rent of Rs. 1500 for residential purposes.  | 4    | 30,000        | -              | 2,700         | 2,700         |
| Recovery agent services provided to M/s. Apex Finance Ltd., an NBFC located in Delhi.   | 5    | Nil           | Nil            | Nil           | Nil           |
| Advance received during the month for future intrastate supply.   | 6    | 4,00,000      |                | 36,000        | 36,000        |
| Sale of Goods from Place of business of Job-worker  | 7    | 1,00,000      |                | 9,000         | 9,000         |
| <b>Total</b>  |      |               | <b>122,400</b> | <b>47,700</b> | <b>47,700</b> |

**WN 2: - Computation of Eligible ITC**

| Particulars   | IGST            | CGST         | SGST         |
|---|-----------------|--------------|--------------|
| Imported computer accessories from Korea and the goods landed in Mumbai Port and reached at his registered premises on 31.01.2020. [Rs. 5,00,000 x 18%] | 90,000          | -            | -            |
| GTA services from M/s. Speed Trans of Kolkata [1,00,000 x 2.5%]   | -               | 2,500        | 2,500        |
| Reversal on Account of non-payment within 180 days (Note 8)   | -               | -            | -            |
| Other ITC (Note 9)  | 1,00,000        |              |              |
| <b>Total Eligible Credit</b>  | <b>1,90,000</b> | <b>2,500</b> | <b>2,500</b> |

Notes: -

- In the light of provisions contained in Section 7 of CGST Act, read with Schedule I to CGST Act, any activity would be in the ambit of supply if it is made for a consideration by a person in the course or furtherance of business. Further as per schedule I to CGST Act, Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business without consideration shall be treated as supply. As per section 2(49) of CGST Act, 2017; brother-in-law does not fall in purview of family, thereby it is not a relative. In the instant case, since the transaction is without consideration, and does not fall in schedule I to CGST Act, accordingly shall not be treated as supply.
- As per section 10(1)(b) of IGST Act, where the goods are delivered by the supplier (**Mr. Rishi, Maharashtra**) to a recipient (**M/s. NK & Co., Maharashtra**) or any other person on the direction of a third person (**Mr. ZX, Tamil Nadu**), 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 i.e., **ZX Computers of Tamil Nadu**. Since, location of supplier (Maharashtra) & Place of supply (Tamil Nadu) are in different state, the transaction is an Inter state supply (Section 7 of IGST Act) and would be exigible to IGST.
- The place of supply of services provided to M/s. XY Impex registered with GST in the State of Gujarat is determined in accordance with Section 12(2) of IGST Act. As per said provisions, if supply is made to a registered person the place of supply shall be the location of such person (not where the goods are located). Since, location of supplier (Maharashtra) & Place of supply (Gujarat) are in different state, the transaction is an Inter-state supply (Section 7 of IGST Act) and would be exigible to IGST.
- Service Apartment is a well-furnished home available for stay purposes. The supply of services by a hotel, inns, guest houses, clubs or campsite or any other commercial place, by whatever name called, for residential purposes would be exempted if the value of supply of a unit of accommodation is below Rs. 1,000 per day or equivalent, as per entry no. 14 of the Notification No. 12/2017 - Central Tax (Rate) dated 28.06.2017. If it exceeds Rs. 1,000.00 per day then the services become taxable. Since, in the instant case since daily rent of Rs. 1,500/-, it would be fully taxable. The service provided cannot be termed as renting of residential dwelling.

As per section 12(3) of IGST Act, 2017; the place of supply would be location at which the immovable property. Since, location of supplier (Maharashtra) & Place of supply (Maharashtra) are in same state, the transaction is an Intra-state supply (Section 8 of IGST Act) and would be exigible to CGST & SGST.

5. As per Notification 13/2017 - CTR dated 28<sup>th</sup> June, 2017; recovery agent Services to a banking company or a financial institution or a NBFC located in taxable territory is taxable under reverse charge mechanism.
6. As per section 13 of CGST Act, 2017; the time of supply of services would be date of issue of invoice or receipt of payment whichever is earlier, accordingly it is taxable. Further, as per notification 66/2017 - CT dated 15<sup>th</sup> November, 2017; advance received for supply of goods is not taxable. The taxability of same would arise when invoice would be issued. In the instant case, out of advance received of Rs. 9,00,000/- only Rs. 4,00,000/- received for supply of service would be taxable on receipt basis.
7. As per Circular No.38/12/2018 & r/w Circular 88/07/2019, A registered person may supply goods directly from job-worker's place of business (PoB) to recipient in India, if such POB is shown as additional PoB. It shall be deemed that principal has supplied such goods & discharged by supplier itself. [S. 143(1)(b) of CGST Act]. In the instant case, goods are supplied by Job-worker from his own premises, thus it is deemed that principal has sold the said goods. As per section 10(1)(a) of IGST Act, 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.

Since, location of supplier (Maharashtra) & Place of supply (Maharashtra) are in same state, the transaction is an Intra-state supply (Section 8 of IGST Act) and would be exigible to CGST & SGST. The value of supply is assumed to be Rs. 1,00,000/- in absence of further information.

8. As per Rule 37 of CGST Rules, 2017 read with Section 16 of CGST Act, a registered person, who has availed of ITC on any inward supply of goods or services or both, but fails to make payment to the supplier within 180 days from the date of issue of invoice shall furnish the details of such supply and the amount of ITC proportionate to such unpaid amount, availed of, in Form GSTR-3B in succeeding month after expiry of 180 days. However, payment to supplier whose supplies are taxable under reverse charge is one of the exception to the same. Thus, no amount shall be liable for reversal.
9. As per Rule 36(4) of CGST Rules, Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 10 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.

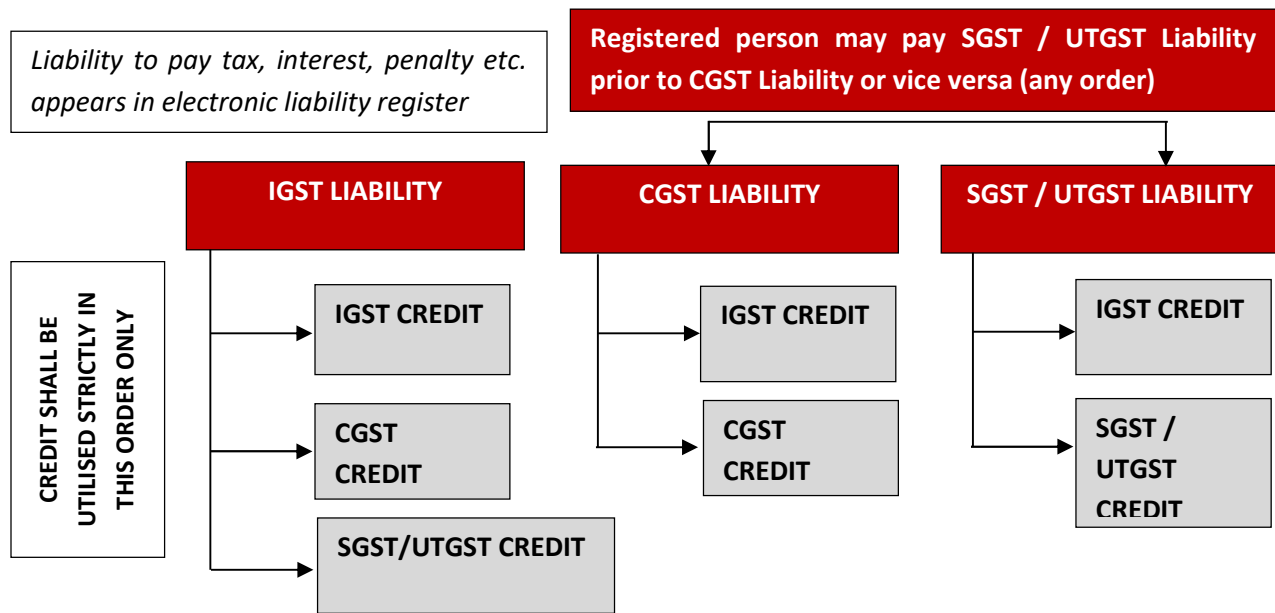
In the instant case, suppliers of [Eligible Credit] of Rs. 95,000 have filed their GSTR - 1, Thus, eligible ITC would be as follows: -

Eligible Credit + 10% of Eligible Credit, restricted to actual credit.

Accordingly,  $95,000 + 10\% \text{ of } 95,000 = 1,04,500$  restricted to Rs. 1,00,000 would be available as ITC.

10. The restriction of availment of ITC is imposed only in respect of those invoices / debit notes, details of which are required to be uploaded by the supplier u/s 37(1) of CGST Act, 2017 and which have not yet uploaded (Basically B2B Sales Invoices). Therefore, taxpayers may avail full ITC in respect of IGST paid on import, documents issued under RCM, credit received from ISD etc. which are not to be uploaded by supplier, provided that eligibility conditions for availment of ITC are met in respect of the same. (Circular No. 123/42/2019- GST dated 11th November, 2019.)

11. As per Section 49, Section 49A and Section 49B read with Rule 88A, order of utilization is as follows: -



It is assumed that the registered person sets off its CGST liability prior to SGST liability.

Question 2: -

5 MARKS

(a) M/s All-in-One, a partnership concern and a registered supplier under GST, is engaged in providing various services under one roof. The concern provides the following information pertaining to supply made/input services availed by it during the month of March 2020: -

| Sr. No. | Particulars   | Amount in Rs. |
|---------|---|---------------|
| (i)     | Provided Direct Selling Agent service to Y Bank Ltd.  | 4,00,000      |
| (ii)    | Provided security services to ABCP. Ltd. a registered Person under GST                          | 60,000        |
| (iii)   | Provided security services to PSR Trust, an unregistered Person under GST                       | 1,00,000      |
| (iv)    | Provided renting of motor vehicle to Amaze Tours Ltd. and supply value included cost of fuel    | 75,000        |
| (v)     | Provided renting of motor vehicle to Priti & Co, CA Firm and supply value included cost of fuel | 40,000        |
| (vi)    | Availed representational service from PB and Co, a Law Firm towards a Consumer Court case       | 70,000        |

Determine the GST liability of M/s. All-in-One for the month of March, 2020 by giving necessary explanations for treatment of various items. Rate of tax for both inward and outward supply is CGST/SGST@9% each except renting a vehicle, for which CGST/SGST @ 2.5% each is applicable. M/s All-in-One commenced its business from February, 2020. All the supplies are intra-state only.

Answer: -

## Computation of Net GST Liability

| Sr. No. | Tax   | Working Notes | IGST | CGST    | SGST    | Total |
|---------|---|---------------|------|---------|---------|-------|
| I       | Output Tax Liability  | 1             | 0    | 46,000  | 46,000  | -     |
|         | (-) Input Tax Credit<br>[R. 88A r/w Section 49B of CGST Act]          | 1             |      | 6,300   | 6,300   |       |
|         | IGST  |               | -    | -       | -       | -     |
|         | CGST  |               | -    | (6,300) |         | -     |
|         | SGST  |               | -    |         | (6,300) | -     |
| II      | Total Utilisation   |               | 0    | 6,300   | 6,300   |       |
| III     | Liability to be discharged [I (-) II] (FCM)                           |               | 0    | 39,700  | 39,700  |       |
| IV      | Reverse Charge Mechanism liability<br>(to be discharged in Cash only) |               |      | 6,300   | 6,300   |       |
| V       | Final Liability to be discharged in cash<br>(III+V)                   |               | 0    | 46,000  | 46,000  |       |

## WN 1 - Computation of Liability for the month of March, 2020

| Sr. No.                 | Particulars  | Taxable Value | IGST | CGST                                | SGST                                |
|-------------------------|--|---------------|------|-------------------------------------|-------------------------------------|
| <b>OUTWARD SUPPLIES</b> |  |               |      |                                     |                                     |
| (i)                     | Provided Direct Selling Agent service to Y Bank Ltd.<br><i>(Services by Individual DSAs other than a body corporate, partnership or limited liability partnership firm to a banking company or a non-banking financial company, located in the taxable territory shall be taxable under RCM.)</i><br>Since, All-in-One is a partnership firm the service would not be taxable under RCM. It shall be taxable under <b>Forward Charge Mechanism (FCM)</b> | 4,00,000      | -    | 36,000                              | 36,000                              |
| (ii)                    | Provided security services to ABCP. Ltd. a registered Person under GST<br><i>(Services by Any person other than a body corporate to A registered person, located in the taxable territory shall be taxable under RCM.)</i><br>Since, All-in-One is other than body corporate and recipient is registered under GST, the said service would be <b>taxable under RCM.</b>  | 60,000        |      | (Recipient would pay tax under RCM) | (Recipient would pay tax under RCM) |
| (iii)                   | Provided security services to PSR Trust, an unregistered Person under GST<br><i>(Services by Any person other than a body corporate to A registered person, located in the</i>   | 1,00,000      |      | 9,000                               | 9,000                               |

| Sr. No.  | Particulars  | Taxable Value | IGST | CGST                                | SGST                                |
|--|--|---------------|------|-------------------------------------|-------------------------------------|
|  | <p><i>taxable territory shall be taxable under RCM.)</i></p> <p>Since, All-in-One is other than body corporate and recipient is unregistered under GST, <b>the said service would be taxable under FCM as no exemption is available in this regard.</b></p>  |               |      |                                     |                                     |
| (iv)   | <p>Provided renting of motor vehicle to Amaze Tours Ltd. and supply value included cost of fuel</p> <p><i>Services of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided by Any person, other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging central tax at the rate of 6 per cent to the service Recipient to a body Corporate shall be taxable under RCM.</i></p> <p>Since, All-in-One is other than body corporate and recipient is body corporate, <b>the said service would be taxable under RCM.</b></p>                  | 75,000        |      | (Recipient would pay tax under RCM) | (Recipient would pay tax under RCM) |
| (v)  | <p>Provided renting of motor vehicle to Priti &amp; Co, CA Firm and supply value included cost of fuel.</p> <p><i>Services of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided by Any person, other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging central tax at the rate of 6 per cent to the service Recipient to a body Corporate shall be taxable under RCM.</i></p> <p>Since, All-in-One is other than body corporate and recipient is also other than body corporate, the said service would be taxable under FCM.</p> | 40,000        | -    | 1,000                               | 1,000                               |
| <b>Total Outward Supplies (Other than RCM)</b> |  |               |      | <b>46,000</b>                       | <b>46,000</b>                       |
| <b>INWARD SUPPLIES</b>                         |  |               |      |                                     |                                     |
| (vi)   | <p>Availed representational service from PB and Co, a Law Firm towards a Consumer Court case As per NN 12/2017 - CTR service 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</p>   | 70,000        | -    | 6,300                               | 6,300                               |



| Sr. No.      | Particulars   | Taxable Value | IGST | CGST         | SGST         |
|--------------|---|---------------|------|--------------|--------------|
|              | preceding financial year as makes it eligible for exemption from registration under CGST Act, 2017 are exempt.<br><br>Since, M/s. All-in-One is registered under GST; Tax shall be discharged under reverse charge mechanism. |               |      |              |              |
| <b>Total</b> |   |               |      | <b>6,300</b> | <b>6,300</b> |

**(b) M/s Global Travels is providing money changer and air travel agent services to various clients. From the information provided below, you are required to calculate the value of taxable supply for the month of March 2002:**

- (i) It had converted US 6,000 into Singapore Dollar 9,000. RBI reference rate at that time was Rs. 72 per US and for Singapore Dollar, it was Rs. 52.
- (ii) It had booked domestic ticket value of Rs. 7,00,000 and International ticket value of Rs. 15,00,000/-

**Additional information:**

The concern has not opted to value the money change under Rule 32(2)(b) of CGST Rules. Basic Air Fare component under both domestic and international ticket value is 70% and 60% respectively. **(4 MARKS)**

**Answer: -**

**(i) Money Changing Business**

As per Rule 32(2)(a) of CGST Rules, 2017, the value of supply in case where both the currency are foreign currencies shall be lower of 1% of both foreign currencies converted to Indian rupees i.e. lower of

- (a) 1% of (Rs.72 per USD \* 6,000 USD) = 1% of Rs. 4,32,000 = Rs. 4,320/-  
 (b) 1% of (Rs.52 per SGD \* 9000 SGD) = 1% of Rs. 4,68,000 = Rs. 4,680/-

Thus, value of supply shall be Rs. 4,320/-

**(ii) Air Travel Agent Business**

As per Rule 32(3) of CGST Rules, 2017 the value of the supply of services in relation to booking of tickets for travel by air provided by an air travel agent is

- (a) 5% of the basic fare in the case of domestic bookings, and  
 (b) 10% of the basic fare in the case of international bookings.

**Computation of GST Liability in respect of Air Travel Agent Business**

| Particulars                   | Domestic Bookings | International Bookings |
|-------------------------------|-------------------|------------------------|
| Value of Ticket               | 7,00,000          | 15,00,000              |
| % of Basic Fare               | 70%               | 60%                    |
| Basic Fare                    | 4,90,000          | 9,00,000               |
| Percentage as Value of Supply | 5%                | 10%                    |
| <b>Value of Supply</b>        | <b>24,500</b>     | <b>90,000</b>          |

(c) M/s Detox Ltd. wants to import customized machine to be used in its business. M/s Detox Limited provides the following further details: (5 MARKS)

| Sr. No. | Particulars  | Amount                                  |
|---------|--|---|
| (1)     | Cost of the Machine  | USD 15,000                              |
| (2)     | Charges paid to Canalising Agent in India  | Rs. 25,000                              |
| (3)     | Freight Charges (Air)  | USD 1,500                               |
| (4)     | Insurance Charges  | USD 250                                 |
| (5)     | Basic Customs Duty   | 10% on 12.06.2020 and 15% on 15.06.2020 |
| (6)     | Social Welfare surcharge   | 10%                                     |
| (7)     | Integrated GST   | 12%                                     |
| (8)     | Date of Bill of Entry – 12.06.2020, Rate notified by CBIC Rs. 75 per USD, Rate Notified by RBI – Rs. 76 per USD        |   |
| (9)     | Date of arrival of aircraft – 15/06/2020, Rate Notified by CBIC – Rs. 77 per USD, Rate Notified by RBI – Rs 78 per USD |   |

You are required to compute the customs duty and integrated tax payable by M/s Detox Ltd. on above import.

**Computation of Assessable Value & Customs Duty**

| Particulars   | Amount (Rs.)        |
|---|---------------------|
| Cost of the machine [15,000 x RS. 75/USD] (Note 2)  | 11,25,000           |
| Charges paid to Canalising Agent in India (Note 3)  | 25,000              |
| <b>FOB value</b>  | <b>11,50,000</b>    |
| Add: Freight (Note 4)   | 1,12,500            |
| Add: Insurance (actual) [250 USD X 75] (Note 2)   | 18,750              |
| <b>CIF / Assessable Value</b>   | <b>12,81,250.00</b> |
| Add: Basic customs duty @ 15% (Note 1)  | 1,92,187.50         |
| Add: Social Welfare Surcharge @ 10% of BCD  | <b>19,218.75</b>    |
| Sub-total   | <b>14,92,656.25</b> |
| Integrated tax u/s 3(7) of the Customs Tariff Act @ 12% of Rs 14,92,656.25<br>(Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge) | <b>1,79,118.75</b>  |
| <b>Total Customs Duty (including IGST)</b>  | <b>3,90,525</b>     |

Notes: -

- 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.

2. 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].
3. 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)]
4. 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. Thus, Air freight would be 20% of Customs FOB i.e.  $11,50,000 \times 20\% = 2,30,000$  or  $USD 1,500 \times 75 = 1,12,500$  whichever is lower.

**Question 3: -****(5 MARKS)**

(a) M/s Housefull Convention Hall is in the business of letting out its halls for functions. It provides you with the following information for determining the amount of refund out of advance received based on time of supply for one of its clients.

| Sr. No. | Particulars  | Date  | Amount in Rs. |
|---------|--|---|---------------|
| (1)     | Advance paid at the time of booking the hall for a function from 1 <sup>st</sup> to 3 <sup>rd</sup> Nov. 2019                                | 16/07/2019  | 1,00,000      |
| (2)     | Additional deposit paid  | 18/08/2019  | 2,00,000      |
| (3)     | Function is held as scheduled  | 1 <sup>st</sup> Nov. to 3 <sup>rd</sup> Nov. 2019 |               |
| (4)     | Invoice is issued (Taxable value)  | 25/11/2019  | 2,50,000      |
| (5)     | Consider that there is a change in the rate of tax on 15 <sup>th</sup> October, 2019 from (CGST 2.5% and SGST 2.5%) to (CGST 9% and SGST 9%) |   |               |
| (6)     | What would be the amount of refund payable to the Client?  |   |               |

Answer: -

The time of supply of services shall be the earliest of the following dates, namely: -

**If the invoice is issued within the period prescribed under Section 31(2) of CGST Act: -**

- a) the date of issue of invoice by the supplier or
- b) date of recording the payment in the books of account of the supplier
- c) date of crediting of payment in the supplier's bank account whichever is earlier.

As per section 31(2) of the CGST Act, 2017 read with rule 47 of CGST Rules, 2017 a tax invoice is to be issued within 30 days of supply of service (45 days in case of supplier being bank, financial institution, NBFC & Insurance company).

| Dr.        |  |          | Client's Account |                   |          | Cr |  |  |
|------------|--|----------|------------------|-------------------|----------|----|--|--|
| Date       | Particulars                                      | Amount   | Date             | Particulars       | Amount   |    |  |  |
| 25.11.2019 | To Sales   | 2,95,000 | 16.07.2019       | By Bank (Advance) | 1,00,000 |    |  |  |
| 25.11.2019 | To Bank (Advance Refunded)<br>(Balancing figure) | 5,000*   | 18.08.2019       | By Bank (Advance) | 2,00,000 |    |  |  |
|            |  |          |                  |                   |          |    |  |  |
|            |  | 3,00,000 |                  |                   | 3,00,000 |    |  |  |

Notes: -

1. As per section 14 of CGST Act, in case the goods or services or both have been supplied after the change in rate of tax and where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax, the time of supply shall be the date of issue of invoice. Thus, the applicable Tax rate on such supply is 18%. Accordingly invoice amount would be Rs. 2,50,000 + 18% = 2,95,000/-

**(b) M/s. Joinder Drills of Australia exports rough rock cutting diamonds to M/s Ankit Enterprises of India, a registered supplier in the state of Haryana. M/s Ankit Enterprises is expected to process them into tools and export the same to the supplier in Australia. The Process does not involve any sophisticated process other than cutting polishing and finishing. M/s Ankit Enterprises requests M/s Joinder Drills for use of such tools for his business in India for 3 months, which is agreed to by the supplier. He then exports it to the Australian supplier, invoicing it for Rs. 12,00,000 for processing it into the required tool.**

**M/s Ankit Enterprises is of the assumption that it is an export transaction and therefore entitled to treat it as a zero-rated supply and decides that no tax is payable under LUT although the rate applicable to such services for domestic supplies is CGST 9%, SGST 9% and IGST 18%.**

**State the provisions relating to the above supply of service and explain whether the stand taken by M/s Ankit Enterprises is correct and also determine the tax, if applicable, as the goods are now moving out of Haryana. (4 MARKS)**

Answer: -

As per Circular No. 103/22/2019-GST dated 28th June, 2019, place of supply in case of performance-based services is to be determined as per the provisions contained in Section 13(3)(a) of the IGST Act and generally the place of services is where the services are actually performed, except where services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process.

In case of cutting and polishing activity on unpolished diamonds which are temporarily imported into India are not put to any use in India, the place of supply would be determined as per the provisions contained in Section 13(2) of IGST [as these services are an exception to Section 13(3)(a)].

In the instant case, M/s. Joinder Drills of Australia exports rough rock cutting diamonds to M/s Ankit Enterprises of India, a registered supplier in the state of Haryana. M/s Ankit Enterprises is expected to process them into tools and export the same to the supplier in Australia. The Process involve cutting polishing and finishing. M/s Ankit Enterprises requests M/s Joinder Drills for use of such tools for his business in India for 3 months, which is agreed to by the supplier. Thus, the same are being put to use in India. Since, goods are exported after being put to use in India (for 3 months), the place of supply would be determined as per section 13(3)(a) of CGST Act, i.e. Place of performance.

As the place of performance of service on that goods is India i.e. Haryana, the place of supply would be Haryana. Further, as per section 2(6) of IGST Act, one of the condition for being treated as export of service is that, place of supply shall be outside India. Thus, in this case it would not be treated as export of service and would be liable to tax.

**(c) M/s PCB Limited has imported printed circuit boards for sale in India from Country X, which are liable for anti-dumping duty. You are provided with the following details.**

- (i) Country X does not sell these goods in its Domestic market; However, it exports the same printed circuit boards at USD 200 per piece to another third country.**
- (ii) The printed circuit board is sold in domestic Industry @ USD 175 per piece**
- (iii) PCB Limited has imported the printed circuit boards at USD 100 per piece.**
- (iv) Landed value of the printed circuit boards is USD 125 per piece.**

**Compute the Anti-dumping duty payable by M/s PCB Limited for 1,000 pieces of printed circuit boards it has imported during the year assuming conversion rate @ Rs. 75 per USD. (5 MARKS)**

**Answer: -**

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.

Computation of anti-dumping duty: Anti-dumping duty is:

- (i) Margin of dumping or,
- (ii) Injury margin whichever is lower.

**(i) Margin of Dumping = Normal Value (-) Export Price**

**Normal Value:** - means comparable price, in the ordinary course of trade, for the like article when destined for consumption in the exporting country or territory as determined in accordance with the rules.

When there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either: -

**(i) Comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made; or**

**(ii) The cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made.**

**In the instant case, normal value would be USD 200.**

**Export price:** in relation to an article, means the price of an article exported from the exporting country or territory.

**In the instant case, export price would be USD 100 (as Import price of PCB Limited would be export price for Country X Supplier)**

**Calculation of Margin of Dumping:** - 200 (-) 100 = 100 USD

### **(ii) INJURY MARGIN**

Injury margin is the margin adequate to remove the injury to the domestic industry. It is the difference between the Fair Selling Price [Non-Injurious Price (NIP)] due to the Domestic Industry and the Landed Value of the dumped imports.

In the instant case Fair Selling price is USD 175 and Landed Value is USD 125, thus,

= FSP (-) Landed Value

= 175 (-) 125

= 50

### **ANTI DUMPING DUTY IS**

(i) Margin of dumping i.e 100 USD or,

(ii) Injury margin i.e. 50 USD

whichever is lower.

Hence, 50 USD is Anti-dumping duty on each article.

Total Anti-dumping duty (in INR) = 50 USD X 1000 Articles x Rs. 75

= 37,50,000/-

### **Question 4: -**

**5 MARKS**

**(a) Input Service Distributor (ISD) of a company is registered separately in the State of Kerala and is distributing Input Tax Credit (ITC) to other units in the Company. Following details are furnished for a particular month, and you are required to help the ISD department in distributing the ITC to other units that are carrying on manufacturing. Supplying goods and services to customers.**

| Sr. No. | Particulars   | Amount in Lakhs |
|---------|---|-----------------|
|         | <b>Turnover in the relevant month of each of the units :</b>  |                 |
| (1)     | Mumbai (Maharashtra)  | 12.00           |
| (2)     | Bangalore (Karnataka)   | 60.00           |
| (3)     | Hyderabad (Andhra Pradesh)  | 36.00           |
| (4)     | Trivandrum (Kerala)   | 72.00           |
| (5)     | Total ITC available during the month with the ISD (includes CGST/SGST & IGST) on account of supplies received during the month. | 48.00           |
| (6)     | From the above, ITC exclusive to Bangalore unit, available as IGST credit.  | 12.00           |

| Sr. No. | Particulars  | Amount in Lakhs |
|---------|--|-----------------|
| (7)     | From the above, ITC exclusive to Trivandrum and Hyderabad units (CGST and SGST of Rs. 3.00 lakhs each).  | 6.00            |
| (8)     | Rest of the credits available is allocable as common credit to all the units and is received from local suppliers in Kerala.   | -               |
| (9)     | Basic value of a Debit Note received, during the month, in respect of a previous supply, with rate of tax @ 12% IGST being charged and shown separately.                               | 50.00           |
| (10)    | Total value in the Credit Note received, during the month, applicable exclusively to Kerala unit, taxed at the rate of CGST 9% and SGST 9%, which is charged and indicated separately. | 118.00          |

Also make your comments regarding the amount of ITC in Credit Notes, it exceeds the ITC from Invoices and Debit Note in a particular month for all or any of the units.

Answer: -

**(A) Proportionate distribution of credit to more than one recipient/all the recipients**

As per section 20 of CGST Act, 2017 read with Rule 39 of CGST Rules,

1. The credit can be distributed to the recipients of credit against a document containing such details as prescribed in Rule 54 of CGST Rules, 2017.
2. The amount of the credit distributed shall not exceed the amount of credit available for distribution;
3. The credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient (having the same Permanent Account Number as that of the Input Service Distributor)
4. The credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which ARE OPERATIONAL in the current year, during the said relevant period.
5. The credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are OPERATIONAL in the current year, during the said relevant period.
6. "Turnover in Relevant period" means the following: -Turnover for preceding year; If above is not available then the last quarter for which details of such turnover of all the recipients are available, If above is also not available previous to the month during which credit is to be distributed.

**Formula for distribution of credit**

$$C1 = (t1 \div T) \times C$$

where,

"C" is the credit to be distributed,

"t1" is the turnover of the recipient during the relevant period, and

“T” is the aggregate of the turnover, during the relevant period, of all recipients to whom the input service is attributable

**(C) Distribution of taxes**

- ITC of CGST, SGST/UTGST in respect of recipient located in the same State/Union Territory is distributed as CGST and SGST/UTGST respectively.
- 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).
- ITC on account of IGST is distributed as IGST.

*Note: Section 20 provides that credit of integrated tax be distributed as “integrated tax or central tax”. However, rule 39 of CGST Rules provides that “input tax credit on account of integrated tax shall be distributed as input tax credit of integrated tax to every recipient.” However, settled position of law is rules cannot override act.*

In the instant case, the ratio comes to 12:60:36:72 i.e. 1:5:3:6

**In view of aforementioned legal provisions, the following is the distribution of credit.**

| Particulars                        | Mumbai (Maharashtra) |          |          | Bangalore (Karnataka) |          |          | Hyderabad (Andhra Pradesh) |          |          | Kerala      |             |             |
|------------------------------------|----------------------|----------|----------|-----------------------|----------|----------|----------------------------|----------|----------|-------------|-------------|-------------|
|                                    | IGST                 | CGST     | SGST     | IGST                  | CGST     | SGST     | IGST                       | CGST     | SGST     | IGST        | CGST        | SGST        |
| Note 1                             | -                    | -        | -        | +12.00                | -        | -        | -                          | -        | -        | -           | -           | -           |
| Note 2                             | -                    | -        | -        | -                     | -        | -        | +3.00                      | -        | -        | -           | +1.50       | +1.50       |
| Note 3                             | +2.00                | -        | -        | +10.00                | -        | -        | +6.00                      | -        | -        | -           | +6.00       | +6.00       |
| Note 4                             | +0.40                | -        | -        | +2.00                 | -        | -        | +1.20                      | -        | -        | +2.40       | -           | -           |
| Note 5                             | (1.20)               | -        | -        | (6.00)                | -        | -        | (3.60)                     | -        | -        | -           | (3.60)      | (3.60)      |
| <b>Net ITC after apportionment</b> | <b>1.20</b>          | <b>-</b> | <b>-</b> | <b>18.00</b>          | <b>-</b> | <b>-</b> | <b>6.60</b>                | <b>-</b> | <b>-</b> | <b>2.40</b> | <b>3.90</b> | <b>3.90</b> |

Notes: -

| Note | Nature of ITC  | Remarks  | Mumbai | Bangalore | Hyderabad | Kerala                 |
|------|--|--|--------|-----------|-----------|------------------------|
| 1    | ITC exclusive to Bangalore unit, available as IGST credit. | To be distributed as IGST  |        | 12.00     |           |                        |
| 2    | ITC exclusive to Trivandrum and Hyderabad units            | For State of Trivandrum i.e. Kerala it would be distributed as CGST, SGST & for State of Hyderabad, it will be distributed as IGST |        |           | IGST 3.00 | CGST 1.50<br>SGST 1.50 |
| 3    | Balance Credit<br>(48 - 12 - 3 - 1.5 - 1.5)                | To be distributed in Ratio of Turnover i.e.<br>1 : 5 : 3 : 6   | 2.00   | 10.00     | 6.00      | CGST 6.00<br>SGST 6.00 |



| Note | Nature of ITC   | Remarks  | Mumbai | Bangalore | Hyderabad | Kerala                       |
|------|---|--|--------|-----------|-----------|------------------------------|
|      | = 30  | For State of Trivandrum i.e. Kerala it would be distributed as CGST, SGST & for other states it shall be distributed as IGST   |        |           |           |                              |
| 4    | Basic value of a Debit Note received, during the month, in respect of a previous supply, with rate of tax @ 12% IGST = $50 \times 12\%$ = 6 | To be distributed in Ratio of Turnover i.e. 1 : 5 : 3 : 6<br><br>For All States IGST shall be distributed as IGST  | +0.40  | +2.00     | +1.20     | +2.40                        |
| 5    | Total Value of Credit Note received as CGST SGST = $118/118\% \times 18\%$ = 18   | To be distributed in Ratio of Turnover i.e. 1 : 5 : 3 : 6<br><br>For State of Trivandrum i.e. Kerala it would be distributed as CGST, SGST & for other states it will be distributed as IGST | -1.20  | -6.00     | -3.60     | CGST = -3.60<br>SGST = -3.60 |

(b)

4 MARKS

(i) A Central Government department located at Uttar Pradesh is registered with the Commercial Tax department UP State for deducting GST. It enters into a contract with a Public Sector Undertaking (PSU), registered under GST in the State of Delhi, for supplying goods valued Rs. 3,50,000/- The PSU argues that no tax is deductible on this supply by the Central Government Department as it is located outside the State of Uttar Pradesh and therefore not liable to tax under CGST and SGST as it is a local levy and IGST tax deduction is not applicable if it is located in another State, other than the State in which the department is registered. You are required to comment on this.

(ii) Would there be any difference, if instead of the PSU if it was an entity in the private sector. Applicable tax rate for deduction is 1% CGST, 1% SGST and 2% IGST.

(iii) If the private sector entity undertakes works contract, for the above department in New Delhi. What would be the position of tax deduction when the contract value is Rs. 5,00,000/-

(iv) The disbursing officer has not paid the tax deducted in the month of February 2019, amounting to Rs. 2,00,000/- under CGST and 2,00,000 under SGST, to the Government's account on the relevant due date, but paid it on 14<sup>th</sup> May, 2019. Further, return for that month is also filed on that date and the certificate is also issued simultaneously. What are the consequences, on such failures, to the disbursing officer under the GST law?

**Answer: -**

As per Section 51 of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017, following persons are

required to deduct CGST @ 1% [Effective Tax 2% (1% CGST + 1% SGCT/ 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 Rs.2,50,000:

- (i) a department or establishment of the Central Government or State Government; or
- (ii) local authority; or
- (iii) Government agencies; or
- (iv) an authority or a board or any other body,-
  - (a) set up by an Act of Parliament or a State Legislature; or
  - (b) established by any Government, with 51% or more participation by way of equity or control, to carry out any faction; or
- (v) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860, or
- (vi) Public sector undertakings.

In view of aforementioned legal provisions, following is the taxability: -

| Sr. No.    | Particulars   | Total Contract Value | Tax Deductibility |      |      |
|------------|---|----------------------|-------------------|------|------|
|            |   |                      | IGST              | CGST | SGST |
| Case (i)   | PSU located at Delhi supplying goods to Central Government department located at Uttar Pradesh (Note 1)                   | 3,50,000             | -                 | -    | -    |
| Case (ii)  | Private Sector Entity located at Delhi supplying goods to Central Government department located at Uttar Pradesh (Note 2) | 3,50,000             | 7,000             |      |      |
| Case (iii) | Private sector entity undertakes works contract, for the above department in New Delhi. (Note 3)                          | 5,00,000             | -                 | -    | -    |

Notes: -

- (i) No TDS is deductible when supplies are between persons specified persons as mentioned in section 51. In the instant case, a department or establishment of the Central Government or State Government i.e. Uttar Pradesh; & PSU both are specified persons, **supply between them would not attract TDS.**

- (ii) Being an inter-State supply of goods by entity located in Delhi, to department of Uttar Pradesh is subject to IGST. The total value of taxable supply [excluding IGST] under the contract is Rs. 3,50,000/-. Since the total value of supply under the contract exceeds Rs.2,50,000, department of state government at Uttar Pradesh is required to deduct tax @ 2% of Rs. 3,50,000, i.e. Rs.7,000/-.
- (iii) 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 of registration of the recipient. Section 12(3) of the IGST Act, 2017, 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 works contract services shall be Delhi. Since the location of the supplier (Delhi) and the place of supply is Delhi and the State of registration of the recipient. **Department of Government of Uttar Pradesh is not liable to be deducted in the given case.**

**Case (iv): - Delayed Payment of Deducted TDS: -**

| Particulars                        | CGST                         | SGST                         |
|------------------------------------|------------------------------|------------------------------|
| TDS Deducted                       | 2,00,000                     | 2,00,000                     |
| Month of Deduction                 | February, 2019               | February, 2019               |
| Due date to deposit tax            | 10 <sup>th</sup> March, 2019 | 10 <sup>th</sup> March, 2019 |
| Actual Date of Depositing Tax      | 14 <sup>th</sup> May, 2019   | 14 <sup>th</sup> May, 2019   |
| Delay (in days)                    | 65 days                      | 65 days                      |
| Interest [2,00,000 x 18% x 65/365] | 6,411                        | 6,411                        |

**(c) Times Graphics Ltd. has imported a machine from its holding company in Japan on 12.01.2018 after paying customs duty of Rs. 15,00,000 for use in its factory and is re-exported on 10/10/2018. You are required to advise Times Graphics Limited regarding duty drawback that will be available to the Company, when it sends back the machinery to its holding company after completion of the project. (5 MARKS)**

Answer: -

**(i) Duty draw-back of 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 |
|---|--|
| <= 3 months   | 95%  |
| > 3m <= 6m  | 85%  |
| > 6m <= 9m  | 75%  |

| 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 |
|---|--|
| > 9m <= 12m   | 70%  |
| > 12m <= 15m  | 65%  |
| > 15m <= 18m  | 60%  |
| > 18m   | NIL  |

In the instant case, since goods are used from 12.01.2018 to 10.10.2018 which is more than 6 months but less than 9 months. Thus, it will fall in 75% slab.

Total duty drawback available = Customs Duty Paid X 75%  
= 15,00,000 x 75%  
= 11,25,000

**Question 5.****(5 MARKS)**

**(a) M/s Fly-by-Night, tour operators availed input tax credit in respect of certain transactions where no such supplier was existent or from a person not doing any business from the registered place of business.**

**Jurisdictional Deputy Commissioner of GST wants to restrict the utilization of the credit by the M/s Fly-by-Night. You have been approached by M/s Fly-by-Night to give your advice on the following question raised by it.**

- (i) Is it possible for the department to restrict the utilization of credit which is already availed?**  
**(ii) If yes, under what circumstances this can be done by the Department?**

Answer: -

As per Rule 86A of CGST Rules, 2017; an officer not below the rank of an Assistant Commissioner may not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount ITC available in the electronic credit ledger if he has reason to believe that ITC available in the electronic credit ledger has been availed in fraudulent manner

A person would be treated ITC as fraudulent manner in below cases: -

- (i) Availed ITC on basis of invoice or debit note issued by regd. person who has not conducted any business from any place for which registration has been obtained or without receipt of goods or services.
- (ii) The credit of ITC has been availed on the basis of tax invoices or debit notes or any other prescribed document in respect of which has not been paid to the Government by supplier.
- (iii) The person who has availed ITC does not conduct any business from any place for which registration has been obtained.
- (iv) Registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other prescribed documents.

In the instant case, M/s Fly-by-Night, tour operators availed input tax credit in respect of certain transactions where no such supplier was existent or from a person not doing any business from the registered place of business. Thus, ITC availed by Fly-by-Night is a fraudulent ITC and such restriction is permissible.

The organisational structure and hierarchy of officers under GST is as below: -

- 1) Commissioner of State Tax - Head of the Department.
- 2) Special Commissioner of State Tax.
- 3) Special Inspector General of Police (Vigilance)
- 4) Additional Commissioner of State Tax
- 5) Joint Commissioner of State Tax.
- 6) Deputy Commissioner of State Tax.
- 7) Assistant. Commissioner of State Tax.
- 8) State Tax Officer.
- 9) State Tax Inspector, clerk and other staff.

(Organisational structure is not required for exam purpose).

Since Deputy Commissioner of State Tax is not below rank of assistant commissioner, he can restrict the ITC availed.

**(b) Mr. Jagjevan has filed the GSTR Form 3B return after the due date prescribed for filing it. The Adjudicating Authority is of the opinion that penalty has to be levied under section 73 (9) & (11) of the CGST Act, 2017 and has decided to pass an order for levying penalty of 10% of the tax or Rs. 10,000 whichever is higher, on the grounds that amount collected as tax has not been paid within a period of 30 days from the due date of payment of tax. Discuss the decision of the Adjudication Authority as to its correctness or otherwise.**

**Also, discuss the law of limitation period for issuing the show cause notice and passing the adjudication order under section 73 of the CGST Act, 2017. (4 MARKS)**

**Answer: -**

In light of provisions contained in section 73(11) of CGST Act, 2017 read with circular 76/50/2018 - GST, the provisions of section 73(11) of the CGST Act can be invoked only when the provisions of section 73 are invoked. The provisions of section 73 of the CGST Act are generally not invoked in case of delayed filing of the return in FORM GSTR-3B because tax along with applicable interest has already been paid but after the due date for payment of such tax. It is accordingly clarified by Circular No. 76/50/2018-GST that penalty under the provisions of section 73(11) of the CGST Act is not payable in such cases. General penalty u/s 125 will be levied which is Rs. 25,000/- (CGST) + Rs. 25,000/- (SGST).

In the instant case, Mr. Jagjevan has filed the GSTR Form 3B return after the due date prescribed for filing it. The Adjudicating Authority is of the opinion that penalty has to be levied under section 73 (9) & (11) of the CGST Act, 2017 and has decided to pass an order for levying penalty of 10% of the tax or Rs. 10,000 whichever is higher, on the grounds that amount collected as tax has not been paid within a period of 30 days from the due date of payment of tax.

The contention of adjudicating authority is invalid in law, penalty cannot be levied in accordance with section 73 of CGST Act, however, a general penalty of Rs. 25,000 (CGST), 25,000 (SGST) would be levied.

**Period of Limitation to issue show cause notice in case of section 73 of CGST Act:** - Time limit to issue SCN is 2 years 9 months from due date of furnishing annual return to which tax evasion relates or from date of erroneous refund relates

**Period of Limitation to complete assessment in case of section 73 of CGST Act:** - Time limit to complete assessment is 3 years from due date of furnishing annual return to which tax evasion relates or from date of erroneous refund relates.

**(c) List out the conditions for eligibility for duty credit scrip entitlement under Service Exports from India Scheme (SEIS) and determine whether the following cases are eligible for benefit under SEIS.**

- (i) Mr. Raj has received USD 12,500 as consideration for services provided, during the year. He has also paid USD 3,000 towards services received from abroad. He has also received USD 4,000 towards employment rendered abroad during the year.
- (ii) M/s. Services Ltd. has received the USD 16,000 as foreign exchange during the year towards share capital.
- (iii) Mrs. Anita has received USD 15,000 as consideration for services provided, during the year.

Assume that except for in case (iii) above, others have an active IEC.

(5 MARKS)

Answer: -

As per FTP 2015-20, in order to be eligible for duty scrip entitlement Service providers also required to satisfy below conditions for obtaining the benefits under SEIS.

1. Service provider must be located in India.
2. He must hold IEC number.
3. If he is both i.e., manufacturer as well as service provider then the net foreign exchange earned by him shall be considered for services only.
4. Net Foreign Exchange: -

In case applicant is a company, LLP or a partnership firm, Minimum of \$15,000 net free foreign exchange earnings shall be there in the previous financial year to apply for the application to get rewarded.

In case applicant is an individual or sole proprietor, Minimum \$10,000 net free foreign exchange earnings shall be there in the previous financial year to apply for the application to get rewarded.

Net Foreign Exchange = Gross Earnings of Foreign Exchange (minus) Total payment/expenses/remittances of Foreign Exchange by the Service provider, relating to services in the Financial year.

#### Ineligible Categories Under SEIS

Ineligible categories has been specified under Para 3.09 of FTP, the same can be enumerated herein below -

Foreign exchange remittances/sources of earnings:

- Equity or debt participation;
- Receipts of repayment of loans;

- Donations;
- any other inflow of foreign exchange, unrelated to rendering of services,

In view of aforementioned provisions,

(i) Mr. Raj has received USD 12,500 as consideration for services provided, during the year. He has also paid USD 3,000 towards services received from abroad. Thus, Net foreign exchange is USD 9,500. Accordingly, he is ineligible for SEIS. The receipt of USD 4,000 towards employment rendered abroad during the year shall not be considered as the service is provided when he was outside India.

(ii) M/s. Services Ltd. has received the USD 16,000 as foreign exchange during the year towards share capital. However, the said receipt is in ineligible criteria for determination of NFE. Thus, M/s. Services is ineligible for SEIS.

(iii) Mrs. Anita has received USD 15,000 as consideration for services provided, during the year. One of the condition to avail SEIS is that applicant shall have IEC. Since, Mrs. Anita does not have valid IEC, she cannot claim benefit of SEIS.

**Question 6: -**

**(5 MARKS)**

**(a) Mr. Mahendran is aggrieved by the order of the Revisional Authority (RA) and wants to make an appeal to the First Appellate Authority. While commenting on the decision of Mr. Mahendran, you are also required to state the powers of the Revisional Authority to revise the orders passed by the subordinate officers under section 108 of the CGST Act, 2017.**

**What is the time period for the Revisional Authority to exercise the power of revision?**

**Answer: -**

Revisional Authority (RA) has the power to undertake the revision of orders passed by its subordinate officers. RA on his own motion or upon the information received by him on request of SGST / UTGST Commissioner may examine the Records of any proceedings under the CGST Act. Records here refer to records of proceedings available at the time of examination by RA.

Revisional Authority is equivalent level at Appellate Authority Level, thus order passed by AA cannot be revised by RA. Accordingly, the order of RA can be appealed before GST Appellate Tribunal, HC, & SC and not to AA.

#### **POWERS OF REVISIONAL AUTHORITY**

RA can revise order passed by subordinate which in his view are –

- Erroneous – Prejudicial to the interest of revenue
- Illegal / Improper
- Officer has not taken into account material facts available at the time of issuance of said order.

In the instant case, Mr. Mahendran is aggrieved by the order of the Revisional Authority (RA) and wants to make an appeal to the First Appellate Authority. However, he shall appeal the same before GSTAT instead of First Appellate authority, as, revisional authority is treated as equivalent to first appellate authority.

**Time period for revisional authority to exercise the powers of revision: -**

The Revisional Authority may pass an order on any point which has not been raised & decided in an appeal, referred to hereinabove, within 1 year from the date of order passed in such appeal or within 3 years from the date of such order sought to be revised, whichever is later

**OR**

**(a) Who are the members of the GST Council? Enumerate any two recommendations that can be made by the GST Council.**

**Answer: -**

**Members of GST Council:** - GST Council is framed to make recommendations to union and state on various aspects of GST such as which taxes to be levied/which taxes shall be subsumed, threshold limit for registrations and many other matters.

Constitution: - (Constituted on 12<sup>th</sup> September, 2016)

1. Union finance minister – Chair person
2. The Union Minister of State in charge of Revenue or Finance – Member
3. the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government.  
– Members

**Matters on which Recommendations are made:** - The matters on which the GST Council may make recommendations under Article 279A of the Constitution of India are as under: -

- (i) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in GST;
- (ii) the goods and services that may be subjected to, or exempted from GST;
- (iii) model GST Laws, principles of levy, apportionment of GST levied on supplies in the course of inter-State trade or commerce and the principles governing the place of supply;
- (iv) the threshold limit of turnover below which goods and services may be exempted from GST;
- (v) the rates including floor rates with bands of GST;
- (vi) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;
- (vii) special provision with respect to Special Category States
- (viii) the date on which the GST be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.
- (ix) any other matter relating to the GST, as the Council may decide.

**(b) Decide with reason whether the Registration is required under CGST Act, 2017 in the following independent cases: -** **(4 MARKS)**



- (i) A Casual taxable person (CTP) has provided inter-state supply of notified Products being Textiles had printing amounting to Rs. 19.25 Lakhs during the month of January, 2020. Those products were made by craftsmen by both hand and machines equally. CTP had obtained PAN AND generated e-way bill for supply.**
- (ii) Mr. Bantu of Delhi doing trading business across India and his intra-state turnover details are as below.**
- (1) Taxable supplies made from Delhi – Rs. 18 Lakhs.**
  - (2) Exempt supplies made from Andhra Pradesh – Rs. 10 Lakhs.**
  - (3) Both taxable and Exempt supplies made from Tamil Nadu Rs. 5,00,000 and Rs. 6,00,000 respectively.**

Answer: -

(i) As per provision of Section 23 of CGST Act, 2017, Casual Taxable Persons making taxable supplies of Handicraft goods are not required to take registration provided that their aggregate turnover is not exceeding Rs.20 lakhs / Rs.10 lakhs (as the case may be) in a FY, such person obtains PAN and generates E-Way Bill and such person has availed the benefit of NN 3/2018 – IT. (NN 56/2018 – CT).

As per Notification 56/2018 - CT, the goods shall be treated as handicraft goods when made by the craftsmen predominantly by hand even though some machinery may also be used in the process. However, in the instant case, there is equal usage of machinery & hand accordingly, these goods cannot be treated as handicraft goods. Hence, the exemption for registration is not available.

Moreover, as per section 24 of CGST Act, the casual taxable person has to take compulsory registration under GST.

(ii) As per Section 22 of the CGST Act, 2017 read with Section 23 of CGST Act, 2017 & Notification No. 10/2019-CT, 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 specified threshold limit.

The specified threshold limit for a person making exclusive intra-state taxable supplies of goods is as under:

- (i) Rs.10 lakh for the States of Tripura, Manipur, Nagaland and Mizoram.
- (ii) Rs.20 lakh for the States of Puducherry, Telangana, Arunachal Pradesh, Meghalaya, Sikkim and Uttarakhand.
- (iii) Rs.40 lakh for rest of India.

Further, aggregate turnover, includes all taxable supplies as well as exempt supplies other than GST & Cess component, inward supplies liable to reverse charge. It is to be noted that, a supplier shall be registered only in the states where taxable supplies are made, meaning thereby, if exclusive exempt supplies are undertaken in a particular state or union territory, no registration shall be obtained in such state.

In the instant case since, Mr. Bantu is not supplying in any of special category states, threshold limit of Rs. 10,00,000 is not applicable.

Further, Mr. Bantu is not engaged in supplying goods from Puducherry, Telangana, Arunachal Pradesh, Meghalaya, Sikkim and Uttarakhand, thus, limit of Rs. 20,00,000/- is not applicable.

Thus, Mr. Bantu engaged in exclusive supply of goods, would be eligible to enjoy threshold limit of Rs. 40,00,000.

**Calculation of Aggregate Turnover:** - (Taxable supplies made from Delhi) Rs. 18 Lakhs + (Exempt supplies made from Andhra Pradesh) Rs. 10 Lakhs + Taxable supplies made from Tamil Nadu Rs. 5,00,000 + Exempt Supplies of Rs. 6,00,000 from Tamil Nadu.

= 39,00,000/-

Hence, Mr. Bantu is not liable to obtain registration.

**(c) Mr. X has imported some items from abroad. Since he was unable to make a self-assessment, he has sought for provisional assessment pending technical testing on 29/04/2020. The technical report was received on 05/05/2020. Discuss about the time limit available to the officer for finalizing the provisional assessment as per law and guide Mr. X as of when his provisional assessment will be finalized. (5 MARKS)**

Answer: -

As per section 18 of Customs Act, 1962, The proper officer shall finalize the provisional assessment within 2 months of receipt of: -

- (a) an intimation from the importer or the exporter or his authorised representative or Customs Broker under sub regulation (7) of regulation 4; or
- (b) a chemical or other test report, where the provisional assessment was ordered for that reason; or**
- (c) an enquiry or investigation or verification report, where the provisional assessment was ordered for that reason.

However, where the documents or information required to be furnished by the importer or the exporter or requisitioned by the proper officer are made available intermittently, the time period of 2 months shall be reckoned from the date of last intimation referred to in clause (a) above.

Further, where the documents or information required to be furnished by the importer or exporter, as the case may be, or requisitioned by the proper officer are not made available or made partly available and no further extension of time has been allowed under sub-regulations (3), (4) or (5) of regulation 4, as the case may be, the proper officer shall proceed to finalise the provisional assessment within 2 months of the expiry of the time allowed for submission of the said documents or information.

- (d) The Commissioner of Customs concerned may allow, for reasons to be recorded in writing, a further time period of 3 months in case the proper officer is not able to finalise the provisional assessment within the period of 2 months as specified in sub-regulation (1) above.

Thus, the officer is required to finalise the provisional assessment by 4<sup>th</sup> July, 2020 (i.e. 2 months from receipt of chemical or other test report)