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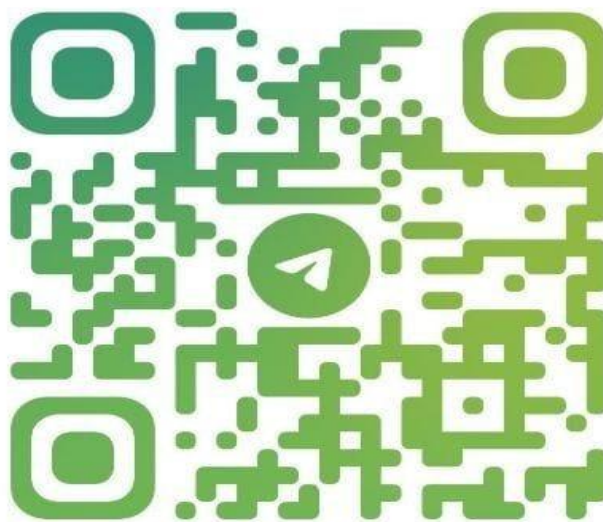
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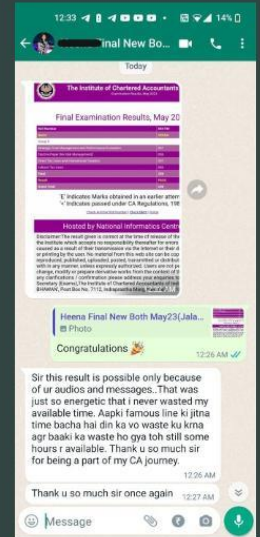
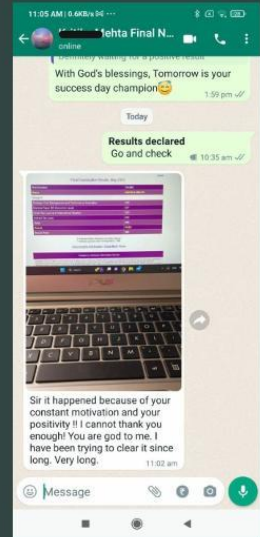
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Paper 5 – Indirect Tax Laws

Chapter 1 Supply Under GST

Attempts wise Distribution

Row Labels	Dec' 21	Jan' 22	Jul' 21	May' 18	Nov' 19	May' 19	May' 23	May' 23	Nov' 19	Nov' 20	Nov' 22
MCQ											
MTP			Q6			Q2, Q4, Q7		Q1	Q5	Q3	
QA											
MTP	Q9			Q3		Q4, Q5					Q1
PYP											Q7
RTP				Q2, Q8					Q6		

Section – A

MULTIPLE CHOICE QUESTIONS (MCQS)

1. Which of the following transactions does not qualify as supply under GST law?

- Disposal of car without consideration and the supplier has not claimed input tax credit on such car.
- A principal makes supplies to his agent who is also registered under GST and is situated within the same State and the invoice for further supply is issued by the agent in his name.
- Head Office makes a supply of services to its own branch outside the State.
- A person imports services without consideration for the purposes of his business from his elder son living outside India. **(2 Marks Mar'23)**

Ans: (a)

2. Where any agent supplies goods on behalf of his principal:

- Such agent shall be jointly and severally liable to pay the GST payable on such goods.
- The principal shall be jointly and severally liable to pay the GST payable on such goods.
- Both (a) and (b)
- None of the above. **(MTP 1 Mark Mar'19)**

Ans: (c)

3. Which of the following is not considered as a supply under the CGST Act, 2017?

- Importation of architectural services for ₹1,00,000/- for construction of residential property used for personal purposes from unrelated person.
- Importation of architectural services free of cost for construction of office used for business purposes from related person.
- Importation of architectural services free of cost for construction of office used for business purposes from unrelated person.
- Both (a) and (c) **(MTP 2 Marks Oct '20)**

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Ans: (c)

4. Mr. Manubhai and Mr. Anubhai are two brothers running a business of supplying lubricants located in the State of Gujarat in their company, M/s. Ambani Lubricants (P) Ltd. On death of their respected father, the two brothers have divided their business. However, they have signed an agreement that Mr. Anubhai will not enter into business of supplying lubricants similar to business done by M/s. Ambani Lubricants (P) Ltd. run by Mr. Manubhai, for which Mr. Manubhai will pay him ₹ 2.5 crores as a lump sum payment. State whether transaction entered through the above agreement constitutes supply under CGST Act, 2017 or not.

- (a) Yes, supply of goods by Mr. Manubhai.
- (b) Yes, supply of goods by Mr. Anubhai.
- (c) Yes, supply of services by Mr. Manubhai.
- (d) Yes, supply of services by Mr. Anubhai. **(MTP 2 Marks March '19)**

Ans:(d)

5. M/s. Jolly Electronics (P) Ltd., is an authorized dealer of M/s. GG Micro Ltd., located and registered in Lucknow, Uttar Pradesh. It has sold following items to Mr. Alla Rakha (a consumer):

Product	Amount (Rs.)
Refrigerator (500 litres) taxable @ 18%	40,000/-
Stabilizer for refrigerator taxable @ 12%	5,000/-
LED television (42 inches) taxable @ 12%	30,000/-
Split air conditioner (2 Tons) taxable @ 28%	35,000/-
Stabilizer for air conditioner taxable @12%.	5,000/-
Total value	1,15,000/-

M/s. Jolly Electronics (P) Ltd. has given a single invoice, indicating price of each item separately to Mr. Alla Rakha. Mr. Alla Rakha, has given a single cheque of Rs. 1,00,000/- for all the items as a composite discounted price. State the type of supply and the tax rate applicable on the same.

- (a) Composite supply; Highest tax rate applicable to split air conditioner, i.e. 28%
- (b) Mixed supply; Highest tax rate applicable to split air conditioner, i.e. 28%
- (c) Supply other than composite and mixed supply; Highest tax rate applicable to split air conditioner i.e. 28%
- (d) Supply other than composite and mixed supply; respective tax rate applicable to each item

(MTP 2 Marks Oct '19 & Oct'23)

Ans: (d)

6. What will be the rate of tax and nature of supply of a service if the same is not determinable at the time of receipt of advance?

- (a) 12%, inter-State supply
- (b) 12%, intra-State supply
- (c) 18%, inter-State supply
- (d) 18%, intra-State supply **(MTP 1 Mark Oct 21)**

Ans: (d)

7. M/s. Korelal Printon (P) Ltd., a registered person under GST in the State of Jammu & Kashmir, has been engaged in the business of offset printing and has

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been providing services to various book publishers. A publisher situated in the State of Himachal Pradesh, a registered person under GST, sent content of the books to be printed by M/s. Korelal Printon (P) Ltd., in PDF format. The publisher also sent paper worth Rs. 4.00 Lakh to the printer, free of cost for the purposes of printing its books on 10-Nov-2018. M/s. Korelal Printon (P) Ltd., raised an invoice of Rs. 1.50 Lakh against printing of books and returned the printed books through Challan to the publisher on 20-Feb-2019. The Proper Officer, intercepted the vehicle and claimed that M/s. Korelal Printon (P) Ltd., should have sent the invoice of Rs. 5.50 Lakh, i.e. including the value of free of cost paper supplied by the publisher.

You may suitably advice which one of the following is the correct option-

- The value of supply of paper for job work is to be included in the invoice in terms of section 15 of the CGST Act.
- The goods sent for job work, i.e. paper sent for printing is a composite supply
- M/s. Korelal Printon (P) Ltd., has entered into an agreement of printing books. Therefore, he is liable to pay tax on the gross value of Rs. 5.50 Lakh.
- M/s. Korelal Printon (P) Ltd., has entered into an agreement of printing books. Therefore, he is liable to pay tax on the net value of Rs. 1.50 Lakh.

(MTP 2 Marks Apr'19)

Question & Answer

Question 1

Mrs. Kajal, a registered supplier of Jaipur (Rajasthan), has made the following supplies in the month of January:

- Supply of a laptop along with the laptop bag to a customer of Mumbai for ₹ 55,000 (exclusive of GST).
- 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.
- 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.
- 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.
- 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 28.06.2017⁴⁶.

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%

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5.	Hair Comb	12%
6.	Event management service	5
7.	Service of renting of chairs and coolers	12%
8.	Transportation service	5%

(MTP 5 Marks Sep'22)

Answer 1

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 terms of section 8(a). Accordingly, rate of principal supply, i.e. laptop will be charged.]	18%
(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 [who is a related person] for his son's marriage. Thus, said services shall fall within the purview of Schedule I and shall be treated as supply even if made without consideration. 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), 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.

Question 2

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Power Engineering Pvt. Ltd., a registered supplier, is engaged in providing expert maintenance and repair services for large power plants that are in the nature of immovable property, situated all over India. The company has its Head Office at Bangalore, Karnataka and branch offices in other States. The work is done in the following manner.

- The company has self-contained mobile workshops, which are container trucks fitted out for carrying out the repairs. The trucks are equipped with items like repair equipments, consumables, tools, parts etc. to handle a wide variety of repair work.
- The truck is sent to the client location for carrying out the repair work. Depending upon the repairs to be done, the equipment, consumables, tools, parts etc. are used from the stock of such items carried in the truck.
- In some cases, a stand-alone machine is also sent to the client's premises in such truck for carrying out the repair work.
- The customer is billed after the completion of the repair work depending upon the nature of the work and the actual quantity of consumables, parts etc. used in the repair work.
- Sometimes the truck is sent to the company's own location in other State(s) from where it is further sent to client locations for repairs.

Work out the GST liability [CGST & SGST or IGST, as the case may be] of Power Engineering Pvt. Ltd., Bangalore on the basis of the facts as described, read with the following data for the month of November 20XX.

S. No.	Particulars	Rs.
A.	Truck sent to own location in Tamil Nadu (i) Value of items contained in the truck - Rs. 3,00,000 (ii) Value of truck - Rs. 25,00,000	
B.	Truck sent to a client location in Tamil Nadu for carrying out repairs. Stand- alone machine is also sent in the truck to client location for repairs (i) Value of items contained in the truck – Rs. 2,85,000 (ii) Value of stand-alone machine - Rs. 4,00,000 (iii) Value of truck - Rs. 20,00,000 (Billing for repairs to be done afterwards depending upon the actual items used)	
C.	Truck sent to a client location in Karnataka for carrying out repairs (i) Value of items contained in the truck - Rs. 1,06,000 (ii) Value of truck - Rs. 20,00,000 (Billing for repairs to be done afterwards depending upon the actual items used)	
D.	Invoices raised for repair work carried out in Tamil Nadu [including the invoice for repair work done in 'B'] -	70,00,000
E.	Invoices raised for repair work carried out in Karnataka [including the invoice for repair work done in 'C']	12,00,000

Also, specify the document(s), if any, which need to be issued by Power Engineering Pvt. Ltd., Bangalore for the above transactions.

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All the given amounts are exclusive of GST, wherever applicable. Assume the rates of taxes to be as under:

Items used for repairs		
CGST – 6%	SGST – 6%	IGST – 12%
Container truck, Stand-alone machines		
CGST – 2.5%	SGST – 2.5%	IGST – 5%
Works contract for repairs and maintenance of immovable property		
CGST – 9%	SGST – 9%	IGST – 18%

You are required to make suitable assumptions, wherever necessary.

(MTP 14 Marks Oct '19, RTP May '18)

Answer 2

Computation of GST Liability of Power Engineering Pvt. Ltd., Bangalore for the month of November 20XX

S. No.	Particulars	Rs.
A.	Items sent in container truck to own location in Tamil Nadu - IGST @ 12% [Note 1]	36,000
	Container truck sent to own location in Tamil Nadu [Note 2]	-
B.	Stand-alone machine sent in container truck to client location in Tamil Nadu, for carrying out repairs [Note 3]	-
	Container truck sent to client location in Tamil Nadu [Note 3]	-
	Items sent in container truck to client location in Tamil Nadu, for carrying out repairs [Note 4]	-
C.	Container truck sent to client location in Karnataka [Note 3]	-
	Items sent in container truck to client location in Karnataka, for carrying out repairs [Note 4]	-
D.	Invoices raised for repair work carried out in Tamil Nadu: IGST @ 18% [Note 5 and Note 6]	12,60,000
E.	Invoices raised for repair work carried out in Karnataka: CGST 9% + SGST 9% [Note 5 and Note 7]	2,16,000
Total GST liability		15,12,000

Notes:

- (1) Movement of goods without any consideration to a 'distinct person' as specified in section 25(4) of the CGST Act, 2017 is deemed to be a supply in terms of Schedule I of the said Act. The purchase value is taken as taxable value, being the open market value in terms of rule 28(a) of the CGST Rules 2017. (However, if the regional office is eligible to take full input tax credit, any value may be declared in the tax invoice and that will be taken to be the open market value in terms of the second proviso to the same rule.)

In the given case-

- the location of the supplier is in Bangalore (Karnataka); and
- the place of supply of items contained in the truck is the location of such goods

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at the time at which the movement of goods terminates for delivery to the recipient i.e., Tamil Nadu in terms of section 10(1)(a) of the IGST Act, 2017.

Therefore, the given supply of items is an inter-State supply as the location of the supplier and the place of supply are in two different States [Section 7(1)(a) of IGST Act, 2017]. Thus, the supply is leviable to IGST in terms of section 5(1) of the IGST Act, 2017.

Since the activity is a supply, a tax invoice is to be issued by Power Engineering Pvt. Ltd. in terms of section 31(1)(a) of the CGST Act, 2017 for sending the items to its own location in Tamil Nadu.

- (2) As per section 25(4) of the CGST Act, 2017, a person who has obtained more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as 'distinct persons'. Schedule I to the CGST Act, 2017 specifies situations where activities are to be treated as supply even if made without consideration. Supply of goods and/or services between 'distinct persons' as specified in section 25 of the CGST Act, 2017, when made in the course or furtherance of business is one such activity included in Schedule I under para 2.

However, in view of the GST Council's recommendation, it has been clarified that the inter-State movement of various modes of conveyance between 'distinct persons' as specified in section 25(4), not involving further supply of such conveyance, including trucks carrying goods or passengers or both; or for repairs and maintenance, may be treated 'neither as a supply of goods nor supply of service' and therefore, will not be leviable to IGST. Applicable CGST/SGST/IGST, however, shall be leviable on repairs and maintenance done for such conveyance [Circular No. 1/1/2017 IGST dated 07.07.2017].

Since the activity is not a supply, tax invoice is not required to be issued by Power Engineering Pvt. Ltd. However, a delivery challan is to be issued by the company in terms of rule 55(1)(c) of CGST Rules, 2017 for sending the truck to its own location in Tamil Nadu.

- (3) Supply of goods without consideration is deemed to be a supply *inter alia* when the goods are supplied to a 'distinct person'. However, in this case, stand-alone machine and container truck are moved to client location and not between 'distinct persons'. Hence, the same will fall outside the scope of definition of supply and will not be leviable to GST. Here again, a delivery challan is to be issued in terms of rule 55(1)(c) of CGST Rules, 2017 for sending the stand-alone machines and container truck to client location.
- (4) As per section 2(119) of the CGST Act, 2017, 'works contract' means a contract for, inter alia, repair, maintenance of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

In this case, the supplier provides maintenance and repair services for power plants that are in the nature of immovable property and uses consumables and parts, wherever necessary, for the repairs. Hence, the contract is that of a works contract.

Further, as per section 2(30) of the CGST Act, 2017, a works contract is a 'composite supply' as it consists of taxable supplies of both goods and services which are naturally bundled and supplied in conjunction with each other. The composite supply of works contract is treated as supply of service in terms of para 6(a) of Schedule II to the CGST Act, 2017.

The items used in relation to the repair and maintenance work could be consumables

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or could be identifiable items/parts. In either case, the transfer of property in goods is incidental to a composite supply of works contract service. Thus, the value of the items actually used in the repairs will be included in the invoice raised for the service and will be charged to tax at that point of time.

Here again, a delivery challan is to be issued in terms of rule 55(1)(c) of CGST Rules, 2017 for sending the items for carrying out the repairs.

- (5) The activity is a composite supply of works contract, which is treated as supply of service. As per section 8(a) of the CGST Act, 2017, a composite supply is treated as a supply of the principal supply involved therein and charged to tax accordingly. Since the activity is a supply of service, a tax invoice is to be issued by Power Engineering Pvt. Ltd. in terms of section 31(2) of the CGST Act, 2017.
- (6) In the given case-
- the location of the supplier is in Bangalore (Karnataka); and
 - the place of supply of works contract services relating to the power plant (immovable property) is the location at which the immovable property is located i.e., Tamil Nadu in terms of section 12(3)(a) of the IGST Act, 2017.
- Therefore, the given supply is an inter-State supply as the location of the supplier and the place of supply 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.
- (7) In the given case, the location of the supplier and the place of supply of works contract services are within the same State. Therefore, the given supply is an intra-State supply in terms of section 8(1) of IGST Act, 2017 and thus, chargeable to CGST and SGST.

Question 3

Agrawal Carriers is a Goods Transport Agency (GTA) engaged in transportation of goods by road. As per the general business practice, Agrawal Carriers also provides intermediary and ancillary services like loading/unloading, packing/unpacking, transshipment and temporary warehousing, in relation to transportation of goods by road. With reference to the provisions of GST law, analyze whether such services are to be treated as part of the GTA service, being a composite supply, or as separate supplies. (MTP 5 Marks Mar'18)

Answer 3

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

The GTA provides various intermediary and ancillary services, such as, loading/unloading, packing/unpacking, transshipment and temporary warehousing, which are provided in the course of transport of goods by road. These services are not provided as independent services but as ancillary to the principal service namely, transportation of goods by road. The invoice issued by the GTA for providing the said service includes the value of intermediary and ancillary services.

In view of this, if any intermediary and ancillary service is provided in relation to transportation of goods by road, and charges, if any, for such services are included in

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the invoice issued by the GTA, such service would form part of the GTA service, being a composite supply, and would not be treated as a separate supply. However, if such incidental services are provided as separate services and charged separately, whether in the same invoice or separate invoices, they shall be treated as separate supplies.

Question 4

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:

- Annual maintenance services for excavators;
 - Health insurance for operators of the excavators;
 - Scientific and technical consultancy for soil testing and seismic evaluation.
- For a given month, the receipts (exclusive of GST) of M/s XYZ are as follows:**
- Hire charges for excavators - Rs. 18,00,000
 - Service charges for supply of manpower for operation of the excavator - Rs. 20,000
 - Service charges for soil testing and seismic evaluation at three sites - Rs. 2,50,000
- The GST paid during the said month on services received by M/s XYZ is as follows:**
- Annual maintenance for excavators - Rs. 1,00,000
 - Health insurance for excavator operators - Rs. 11,000
 - Scientific and technical consultancy for soil testing and seismic evaluation - Rs. 1,00,000
- Compute the net GST payable by M/s XYZ for the given month. Assume the rates of GST to be as under:**

Hiring out of excavators – 12%

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

Note: - Opening balance of input tax credit of GST is nil.

(MTP 14 Marks May'20, Apr'21, MTP 8 Marks Apr'18, MTP 10 Marks Apr'19)

Answer 4

Computation of net GST payable by M/s XYZ

Particulars	GST payable (Rs.)
Gross GST liability [Refer Working Note 1 below]	2,63,400
Less: Input tax credit [Refer Working Note 2 below]	2,00,000
Net GST liability	63,400

Working Notes

(1) Computation of gross GST liability

Particulars	Value received (Rs.)	Rate of GST	GST payable (Rs.)

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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) of the CGST Act, 2017 wherein the principal supply is the hiring out of the excavator. As per section 8(a) of the CGST Act, 2017, the composite supply is treated as the supply of the principal supply. Therefore, the supply of manpower for operation of the excavators will also be taxed at the rate applicable for hiring out of the excavator (principal supply), which is 12%.
- (ii) Soil testing and seismic evaluation services being independent of the hiring out of excavator will be taxed at the rate applicable to them, which is 18%.

(2) Computation of input tax credit available for set off

Particulars	GST paid (Rs.)	ITC available (Rs.)
Annual maintenance services for excavators [Refer Note 1]	1,00,000	1,00,000
Health insurance for excavator operators [Refer Note 2]	11,000	-
Scientific and technical consultancy [Refer Note 1]	1,00,000	<u>1,00,000</u>
Total input tax credit available		2,00,000

Notes:

- (i) Excavators are special purpose vehicles whose credit is not restricted under section 17(5)(a), therefore, ITC on annual maintenance service for excavators shall be allowed in terms of section 17(5)(ab). Further, section 17(5)(d) of the CGST Act, 2017 blocks credit on goods and/or services received by a taxable person for construction of an immovable property on his own account. Here, though the excavators are used for building projects, the same are not used by M/s XYZ on its own account for construction of immovable property; instead they are used for outward taxable supply of hiring out of machinery. Therefore, the annual maintenance service for the excavators does not get covered by the bar under section 17 of the CGST Act, 2017 and the credit thereon will be available. The same applies for scientific & technical consultancy for construction projects because in this case also, the service is used for providing the outward taxable supply of soil testing and seismic evaluation service and not for construction of immovable property.
- (ii) Section 17(5)(b)(i) of the CGST Act, 2017 allows input tax credit on health insurance only where an inward supply of such services is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply or where it is obligatory for an employer to provide the same to its employees under any law for the time being in force. In the given case, it is assumed that it is not obligatory for employer to provide

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health insurance to its employees under any law for the time being in force, therefore the credit thereon will not be allowed.

Question 5

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 taxable products. The firm also provides taxable consultancy services. Mr. Rajesh Surana has provided the consultancy service to his brother - Mr. Akhilesh Surana (located in USA) without any consideration. The products manufactured by Mr. Akhilesh are similar to the ones manufactured by Mr. Rajesh Surana. Mr. Surana charges Rs. 3,00,000 for providing similar consultancy services to other independent customers located in USA. Compute the GST liability, if any, in the given case assuming the rate of CGST, SGST and IGST to be 9%, 9% and 18% respectively.
(MTP 4 Marks, Apr'19)

Answer 5

Consultancy service to Mr. Akhilesh Surana (located in USA) has been provided without any consideration. Activity without consideration is not a supply in terms of section 7(1)(a) of the CGST Act, 2017. However, Schedule I to the CGST Act, 2017 enlists the activities to be treated as supply even if made without consideration. Accordingly, Para 2. of Schedule I treats 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 as a supply even if made without consideration. However, a brother who is not dependent on the person supplying the service, does not come within the purview of term family as defined under section 2(49) of the CGST Act, 2017 and hence, is not a related person. Therefore, the export of service to an independent brother without any consideration will not fall under para 2. of the Schedule I to CGST Act, 2017. Hence, the activity is not a supply and is thus, not liable to any tax.

Question 6

“Diligent Force” a professional training institute gets its training material of “Aptitude Quotient” printed from “Durga printing House” a printing press. The content of the material is provided by the Diligent Force who owns the usage rights of the same while the physical inputs including paper used for printing belong to the Durga Printing House. Ascertain whether supply of training material by the Durga Printing House constitutes supply of goods or supply of services. (RTP Nov'19, MTP 5 Marks Mar'18)

Answer 6

Circular No. 11/11/2017 GST dated 20.10.2017 has clarified that supply of books printed with contents supplied by the recipient of such printed goods, is composite supply and the question, whether such supplies constitute supply of goods or services would be determined on the basis of what constitutes the principal supply. Principal supply has been defined in section 2(90) of the CGST Act as supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

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In the case of printing of books where content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore, such supplies would constitute supply of service. Thus, in view of the above-mentioned provisions, the supply of training material by the Durga Printing House would constitute supply of services.

Question 7

XYZ Consultancy, registered in Bangalore, supplies technical consultancy services to its clients. It has been providing technical services to BA Ltd., Mumbai since past two years. Consideration is settled by BA Ltd. assignment wise. BA Ltd. paid ₹ 37 lakh to XYZ Consultancy on 10th January, 2022 for XYZ Consultancy agreeing not to provide similar technical services to any other business entity in India or abroad for a period of 8 years. XYZ Consultancy is of the view that ₹ 37 lakh is not chargeable to GST.

You are required to examine whether the view taken by XYZ Consultancy is valid in law. Calculate GST liability of XYZ Consultancy, in case you feel that GST is chargeable. Round off the tax amount if due in accordance with law. The technical services provided by XYZ Consultancy is otherwise chargeable to IGST at the rate of 18% and XYZ have been discharging the GST liability on consultancy charges. It may be noted that BA Ltd. is not ready to pay any further amount to XYZ Consultancy in addition to the amount already agreed. (PYP 4 Marks Nov'22)

Answer 7

In the given case, XYZ Consultancy is providing the service of agreeing to the obligation to refrain from an act to BA Ltd. against a consideration of ₹ 37 lakh [Schedule II read with Circular No. 178/10/2022 GST dated 03.08.2022]. Therefore, the same is liable to tax under GST law. Thus, view taken by XYZ Consultancy is incorrect. Since the place of supply of said services is the location of the recipient, viz. Mumbai and supplier is located in Bangalore, said services are inter-State supplies liable to tax @ 18%¹⁰.

GST liability (IGST) of XYZ Consultancy is:
 = ₹ 37,00,000¹¹ × 18/118
 = ₹ 5,64,407 (rounded off)

¹⁰ Rate of tax applicable on service of agreeing to the obligation to refrain from an act.

¹¹ Since GST has not been separately collected for the supply, consideration has been assumed to be inclusive of tax.

Question 8

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

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transaction between Krishnadev and Christiano under GST in India. (RTP May'18 & Nov'19)

Answer 8

The transaction between Krishnadev and Christiano is in the nature of merchant trading. As per Schedule III, 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 be treated neither as supply of goods nor as supply of services under GST. Therefore, the transaction between Krishnadev and Christiano shall not be treated as supply and is thus not leviable to GST.

Question 9

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. (MTP 4 Marks Nov'21)

Answer 9

As per Schedule III, 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 be treated neither as supply of goods nor as supply of services 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.

Section - B

Question 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 services is 18% whereas the rate of GST applicable on supply of goods is 12%.

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Answer 1

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%.

Question 2

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, 2017.

Answer 2

As per section 7(1)(c) read with Schedule I of the CGST Act, 2017, 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.

Question 3

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

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- 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 3

Computation of GST payable by Shivaji Pvt. Ltd.

Particulars	Value of supply (₹)	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%.

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Question 4

Mr. Kanjilal Adani is an oil exploration & production contractor and is registered under GST in the State of Gujarat. He entered into a Production Sharing Contract (PSC) with Government of Gujarat wherein he gets a license to explore, exploit and sell the petroleum crude and/or natural gas from the Government in Aliabet Oilfield in lieu of royalty and a share in profit petroleum.

In the month of June, Mr. Kanjilal Adani explored the petroleum reserves at Aliabet Oilfield. He got a portion of the petroleum silt (non-taxable under GST) worth ₹ 3,00,000 as part of compensation. This petroleum silt is part of cost petroleum as per the contract entered with the Government.

Examine the taxability of the petroleum silt received by Mr. Kanjilal Adani under the GST law.

Answer 4

Compensation is received by Mr. Kanjilal Adani in the form of petroleum silt which, as per the contract with the Government of Gujarat, is part of cost petroleum.

As per Circular No. 32/06/2018 GST dated 12.02.2018, the cost petroleum is not a consideration received by the oil exploration & production contractors for the services provided to Government under a Production Sharing Contract (PSC) and thus not taxable per se. The reason for the same is that the contractors carry exploration and production of petroleum for themselves and not as a service to Government. They had acquired the right to explore, exploit and sell petroleum in lieu of royalty and a share in profit petroleum.

Consequently, the cost petroleum received by Mr. Kanjilal Adani is not taxable under GST.

Question 5

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 5

Yes, Angad Private Ltd.'s view is correct. In terms of section 7(2) read with Schedule III of the CGST Act, 2017, 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. Infact, in the given case, the incentive is part of the salary and is directly linked to the sales target. Therefore, the services provided in course or in relation to employment by the employees for which incentives are 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 its employees.

Question 6

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XYZ Consultancy, registered in Bangalore, supplies technical consultancy services to its clients. It has been providing technical services to BA Ltd., Mumbai since past 2 years. Consideration is settled by BA Ltd. assignment-wise. BA Ltd. paid ₹ 37 lakh to XYZ Consultancy on 10th January for XYZ Consultancy agreeing not to provide similar technical services to any other business entity in India or abroad for a period of next 8 years. XYZ Consultancy is of the view that ₹ 37 lakh is not chargeable to tax under GST law.

You are required to examine whether the view taken by XYZ Consultancy is valid in law. It may be noted that BA Ltd. is not ready to pay any further amount to XYZ Consultancy in addition to the amount already agreed.

Answer 6

In the given case, XYZ Consultancy is providing the service of agreeing to the obligation to refrain from an act to BA Ltd. against a consideration of ₹ 37 lakh [Schedule II read with Circular No. 178/10/2022 GST dated 03.08.2022]. Therefore, the same is liable to tax under GST law. Thus, view taken by XYZ Consultancy is incorrect.

Question 7

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 7

As per section 7(1)(c) read with Schedule I, 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 qualify as supply under GST even though no consideration has been charged for the same.

Question 8

Rob Shareholding Ltd., an approved intermediary, has entered into an agreement 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 8

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

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of securities for commission or fee are also taxable separately [Circular No. 119/38/2019 GST dated 11.10.2019].

Question 9

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 9

The transaction between Krishnadev and Christiano is in the nature of merchant trading. As per Schedule III, 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 be treated neither as supply of goods nor as supply of services under GST. Therefore, the transaction between Krishnadev and Christiano shall not be treated as supply and is thus not leviable to GST.

Question 10

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 10

As per Schedule III, 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 be treated neither as supply of goods nor as supply of services under GST. Thus, the sale of goods by Mohandas International to Radhakrishnan Export House in high seas shall not be liable to GST.

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

Question 11

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.

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Moreover, Mr. Serene has agreed to pay a monthly rent of ₹ 1,00,000 to Mr. Happy (unregistered under GST) from June.

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

Answer 11

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 to an unregistered person is exempt [Entry 12 of Notification No. 12/2017 CT (R) dated 28.06.201747], grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both to an unregistered person is exempt. Consequently, monthly rent ₹ 1,00,000 received by Mr. Happy from Mr. Serene is exempt.

Question 12

(a) Rudraksh Kapoor, owner of Rudraksh Publishing House, Ghaziabad, U.P., donated some money to 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.

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

Answer 12

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

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(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, in the given case, the way the name of Rudraksh Kapoor is displayed on the door of the room constructed in the school run by Divyaprakash Charitable Trust, it is only an expression of gratitude and public recognition of Rudraksh's act of philanthropy and is not aimed at advertising or promoting his business.

There is no reference/mention of his publishing house which otherwise would have got advertised.

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

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

Question 13

Mrs. Kajal, a registered supplier of Jaipur (Rajasthan), has made the following supplies in the month of January:

- (vi) **Supply of a laptop along with the laptop bag to a customer of Mumbai for ₹ 55,000 (exclusive of GST).**
- (vii) **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.**
- (viii) **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.**
- (ix) **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.**
- (x) **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**

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services provided by her are exempt vide Notification No. 12/2017 CT (R) dated 28.06.201746.

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%

Answer 13

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 terms of section 8(a). Accordingly, rate of principal supply, i.e. laptop will be charged.]	18%
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%
(viii)	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
(ix)	Event management services provided free of cost to her brother [who is a related person] for his son's marriage. Thus, said services shall fall within the purview of Schedule I and shall be treated as supply even if made without consideration. Since it is an individual supply, it	5%

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	will be taxed at the rate applicable on said service.	
(x)	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), 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.

Question 14

Chandragupta Maurya is an artist who makes contemporary paintings. He is registered in the State of Kolkata. Chandragupta Maurya appoints Dhruv Kumar to auction his painting in Maharashtra. Dhruv Kumar arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder. The invoice for the supply of the painting is issued by Dhruv Kumar on the behalf of Chandragupta Maurya but in his own name and the painting is delivered to the successful bidder.

Examine whether Dhruv Kumar can be considered as an agent of Chandragupta Maurya under Para 3 of Schedule I of the CGST Act, 2017.

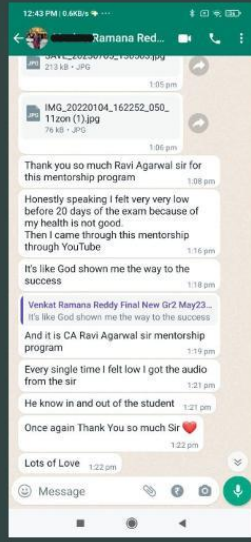
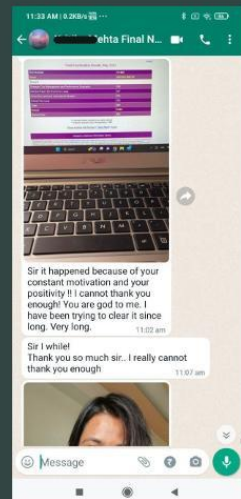
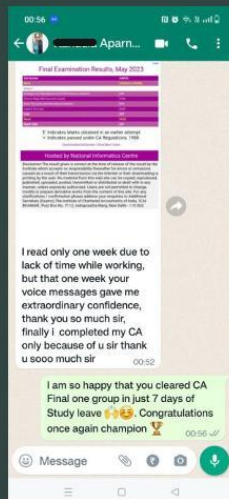
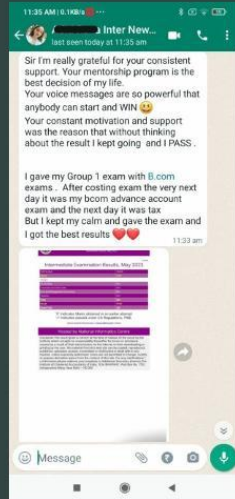
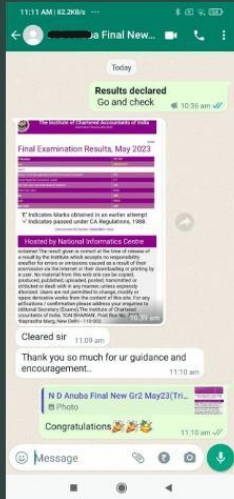
Answer 14

An activity/transaction qualifies as supply under GST only if it is undertaken for a consideration and is in course/furtherance of business. However, supply of goods by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal is considered as supply even if made without consideration provided the invoice for further supply is issued by the agent in his own name [Section 7(1)(c) read with Para 3 of Schedule I of the CGST Act, 2017].

Circular No. 57/31/2018 GST dated 04.09.2018 provides that where the invoice for further supply of goods is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of Para 3 of Schedule I. In the given case, Dhruv Kumar is not merely providing auctioneering services to Chandragupta Maurya, but is also supplying the painting on behalf of Chandragupta Maurya to the successful bidder and has the authority to transfer the title of the painting on behalf of Chandragupta Maurya. Dhruv Kumar issued the invoice in his own name for supply of the painting on the behalf of Chandragupta Maurya. Thus, Dhruv Kumar can be considered as an agent of Chandragupta Maurya under Para 3 of Schedule I.

Paper 5 – Indirect Tax Laws

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Paper 5 – Indirect Tax Laws

Chapter 2 Charge Of GST

Attempts wise Distribution

Row Labels	Dec '21	Jan' 22	Jul' 21	May' 18	Nov' 18	May' 19	May '22	May '23	Nov' 18	Nov '19	Nov '20	Nov '23
MCQ												
MTP			Q4, Q4			Q1, Q3, Q8, Q1, Q3, Q8		Q9, Q9		Q2, Q2		Q5, Q5
RTP						Q6, Q6	Q7, Q7					
QA												
MTP	Q4, Q5											Q2
PYP			Q6, Q2, Q3	Q10				Q11		Q9		
RTP				Q3		Q14			Q1, Q16	Q15	Q7, Q8	

SECTION – A MULTIPLE CHOICE QUESTIONS (MCQ'S)

1. Which of the following legal services does not fall under reverse charge mechanism provisions as contained under section 9(3) of the CGST Act, 2017-
- Representation services provided by an individual advocate
 - Representation services provided by a senior advocate
 - Representation services provided by a firm of advocates
 - Legal services provided by an advocate to an unregistered individual
- (MTP 1 Mark Mar'19)

Ans: (d)

2. M/s. Shahrukh Beedi Company (P) Ltd., is a manufacturer of cigarettes. It has been registered under GST in the State of West Bengal. The turnover of the company from the period April, 2018 to March, 2019 is Rs. 90,00,000/-. The Excise duty paid on the cigarettes removed is Rs. 10,00,000/-. CGST and SGST paid on the cigarettes is Rs. 18,00,000/-.

The company also recovered actual freight of Rs. 5,00,000/- on the supply of cigarettes so made during the financial year 2018-19, and also charged CGST/SGST thereon. The company paid RCM @ 5% while availing the services of GTA of

Paper 5 – Indirect Tax Laws

Rs. 5,00,000/- . Compute the aggregate turnover of M/s. Shahrukh Beedi Company (P) Ltd.,

- (a) Rs. 90,00,000/-
- (b) Rs. 1,00,00,000/-
- (c) Rs. 1,18,00,000/-
- (d) Rs. 1,05,00,000/- **(MTP 2 Marks Oct '19)**

Ans: (d)

3. Mr. Khan, engaged in trading of ice-cream (not containing cocoa) in Jammu & Kashmir within the same State itself. Turnover of his firm in preceding financial year is Rs. 80,00,000. State the composition turnover limit for the State of Jammu and Kashmir and whether he is eligible to opt for Composition Scheme or not, under GST.

- (a) Rs. 75,00,000/-: Yes
- (b) Rs. 75,00,000/-: No
- (c) Rs. 1,00,00,000/-: Yes
- (d) Rs. 80,00,000/-: Yes **(MTP 1 Marks Apr'19)**

Ans: (c)

As per amendment a manufacturer of ice-cream (not containing cocoa) cannot opt for composition scheme and since here Mr. Khan is a trader he will be eligible for composition scheme. Hence answer remains unchanged.

4. Rajkamal Cooperative Housing Society, registered under GST charges Rs. 21,000 as a general maintenance charge for the quarter April, 2020 to June, 2020 from Jaimin Sinha holding Flat No. 101. Jaimin Sinha forgot to pay the maintenance charges on time, resulting into levy of interest. The total amount charged from him was Rs.24,000 (Rs. 21,000+ Rs. 3,000 for interest).

Whether Jaimin Sinha is liable to pay GST, if yes on what amount?

- (a) Yes, Rs.21,000
- (b) Yes, Rs.24,000
- (c) Yes, Rs.1,500
- (d) No, not liable to pay GST. **(MTP 1 Mark Mar'21)**

Ans: (b)

5. Chilly Bells Private Limited, registered under GST in Chennai, Tamil Nadu, provided following outward supplies in the current year:

Particulars	Amount (₹)	
	Taxable	Exempt
Intra-State supplies	40,00,000	15,00,000
Inter-State supplies (zero-rated supplies)	30,00,000	10,00,000
Supply of goods procured from China directly from China to UK without such goods entering into India	20,00,000	-
Supply of goods imported from UK, in high seas, to a local vendor by way of endorsement of documents of title to the goods before clearance for home consumption	5,50,000	6,00,000

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Compute the aggregate turnover of Chilly Bells Private Limited under GST law for the current year.

- ₹ 95,00,000
 - ₹ 1,26,50,000
 - ₹ 1,20,50,000
 - ₹ 1,15,00,000
- (MTP 2 Marks Sep '23)**

Ans: (a)

6. Which of the following persons can opt for the composition scheme?

- Registered person whose aggregate turnover in the preceding financial year did not exceed ₹ 75 lakh.**
 - Registered person whose aggregate turnover in the preceding financial year did not exceed ₹ 1 crore.**
 - A person engaged in business of pan masala, tobacco and manufactured tobacco substitutes.**
 - A person engaged in the business of ice cream, other edible ice, whether or not containing cocoa.**
 - A person engaged exclusively in providing restaurant service.**
 - A person engaged exclusively in supply of medicines.**
 - 1, 2, 3, 5
 - 1, 2, 5, 6
 - 2, 3, 4, 5
 - 3, 4, 5, 6
- (RTP May '19)**

Ans: (b)

7. Kquality Bells Private Limited, registered under GST in Chennai, Tamil Nadu, provided following outward supplies in the current year:

Particulars	Amount (₹)	
	Taxable	Exempt
Intra-State supplies	40,00,00 0	15,00,00 0
Inter-State supplies (zero-rated supplies)	30,00,00 0	10,00,00 0
Supply of goods procured from China directly from China to UK without such goods entering into India	20,00,00 0	-
Supply of goods imported from UK, in high seas, to a local vendor by way of endorsement of documents of title to the goods before clearance for home consumption	5,50,000	6,00,000

Compute the aggregate turnover of Kquality Bells Private Limited under GST law for the current year.

- ₹ 95,00,000
- ₹ 1,26,50,000

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- (c) ₹ 1,20,50,000
 (d) ₹ 1,15,00,000 (RTP May 22)

Ans: (a)

8. Mr. Palliwal Desai, a registered practicing Chartered Accountant, located in Jaipur, in the State of Rajasthan, is providing professional and consultancy services to its various clients from his firm.

He has taken some professional consultancy services from another establishment of its firm in UK. He has not paid any consideration for the same.

Such services would have been taxable @ 18% (9% under CGST + 9% under SGST and 18% under IGST), had they been received in India. Also, Mr. Palliwal Desai would have paid Rs. 4.00 Lakh, had he not received the said services from the UK establishment.

State the liability of Mr. Palliwal Desai, under CGST/ IGST Act, 2017, out of the following options-

- (a) Rs. 72,000/- as Integrated Tax
 (b) CGST Rs. 36,000/- & SGST Rs. 36,000/-, since POS is in India
 (c) Nil, since no foreign exchange was paid
 (d) Nil, since such services are exempt (MTP 2 Marks April '19)

Ans: (a)

9. Mrs. Reena is a consultant. She has provided the following details relating to services provided and received by her during the current financial year:

- 1. Supply of management consultancy services for ₹ 5,00,000 p.a.**
- 2. Supply of accounting services for ₹ 2,00,000 p.a.**
- 3. Immovable property rented out for residential purposes for ₹ 10,000 p.m.**
- 4. Management consultancy services provided to a hospital for ₹ 50,000 one time**
- 5. Services provided to a client outside India for ₹ 50,000 p.m.**
- 6. Services received from a lawyer for ₹ 1,00,000**

Note: Assume that amounts given above are exclusive of GST, wherever applicable.

What shall be her aggregate turnover for the current financial year under GST provided her aggregate turnover during previous financial year was ₹ 24 lakh?

- (a) ₹ 9,10,000
 (b) ₹ 15,70,000
 (c) ₹ 14,70,000
 (d) ₹ 8,20,000 (MTP 2 Marks Apr'23)

Ans: (c)

QUESTION AND ANSWER

Question 1

XYZ Ltd., New Delhi, manufactures biscuits under the brand name 'Tastypicks'. Biscuits are supplied to wholesalers and distributors located across India on FOR basis from the warehouse of the company located at New Delhi. The company uses multiple modes of transport for supplying the biscuits to its customers spread across the country. The transportation cost is shown as a line item in

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the invoice and is billed to the customers with a mark-up of 2% on total amount of freight paid (inclusive of taxes). Flour used for the production process is procured from vendors located in Madhya Pradesh on ex-factory basis. The company engages goods transport agencies (GTA) to transport the flour from the factories of the vendors to its factory located in New Delhi. The company has provided the following data relating to transportation of biscuits and flour in the month of April 20XX:

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

Based on the particulars given above, compute the GST payable on the amount paid for transportation by XYZ Ltd. when it avails the services of different transporters. (MTP 9 Marks Apr'19, RTP Nov'18)

Answer 1

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

Particulars	Freight [Rs.]	GST payable [Rs.]
Transportation of biscuits in a local mini van belonging to an individual [Only the transportation of goods by road by a GTA is liable to GST. Therefore, transportation of goods by road otherwise than by a GTA is exempt from GST – Notification No. 12/2017 CT (R) & 9/2017 IT (R) both dated 28.06.2017.]	54,000	Nil
Transportation of biscuits by Indian Railways	3,17,000	15,850
Transportation of biscuits by GTA [GST is payable by XYZ Ltd. under reverse charge in terms of section 5(3) of the IGST Act, 2017 read with Notification No. 10/2017 IT (R) dated 28.06.2017.]	3,00,000	15,000
Transportation of biscuits by GTA @ 12% [When the GTA pays tax @ 12%, tax is payable by the GTA under forward charge and not by the recipient under reverse charge - Notification No. 10/2017 IT (R) dated 28.06.2017.]	73,000	8,760

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Transportation of flour by GTA [Services provided by GTA by way of transport (in a goods carriage) of, inter alia, flour are exempt from GST vide Notification No. 9/2017 IT (R) dated 28.06.2017.]	55,000	Nil
Transportation of butter by GTA [Though services provided by GTA by way of transport (in a goods carriage) of, inter alia, milk is exempt from GST vide Notification No. 9/2017 IT (R) dated 28.06.2017, road transport of butter will not be exempted as butter is milk product and not milk. GST is payable by XYZ Ltd. under reverse charge in terms of section 5(3) of the IGST Act, 2017 read with Notification No. 10/2017 IT (R) dated 28.06.2017.]	35,000	1,750
Transportation of baking powder by GTA [Services provided by a GTA by way of transport in a goods carriage of goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed Rs. 1,500, are exempt from GST vide Notification No. 9/2017 IT (R) dated 28.06.2017.] (As per amendment the following exemption has been omitted from 18.07.2022)	1,500	Nil 75
Transportation of biscuits by GTA to sister concern [GST is payable by XYZ Ltd. under reverse charge in terms of section 5(3) of the IGST Act, 2017 read with Notification No. 10/2017 IT (R) dated 28.06.2017.]	40,000	2,000
Total tax payable by XYZ Ltd. on availing services of different transporters		43,360 43,435

Question 2

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, Bengaluru, Karnataka or Manipur branch. Further, it believes that the determination of aggregate turnover is not required for the purpose of obtaining registration but is required for determining

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the eligibility for composition levy.

Determine the aggregate turnover of Rajesh Dynamics. You are also required to review the technical veracity of the arguments of Rajesh Dynamics. (MTP 5 Marks Oct '23)

Answer 2

Computation of aggregate turnover of Rajesh Dynamics:

Particulars	₹
Supply of petrol at Chennai, Tamil Nadu [Being a non-taxable supply, it is an exempt supply and thus, includible in aggregate turnover vide section 2(6) of the CGST Act 2017]	18,00,000
Value of inward supplies on which tax is payable on reverse charge basis	Nil
Supply of transformer oil at Chennai, Tamil Nadu	2,00,000
Value of branch transfer from Chennai, Tamil Nadu to Bengaluru, Karnataka without payment of consideration [Being a taxable supply, it is includible in aggregate turnover]	1,50,000
Value of taxable supplies of Manipur Branch	11,50,000
Aggregate turnover	33,00,000

Rajesh Dynamics is not liable to be registered in Chennai, Tamil Nadu, if his aggregate turnover in a financial year does not exceed ₹ 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) of the CGST Act 2017 [Notification No.10/2019- CT dated. 07.03.2019].

Rajesh Dynamics' argument that it is not liable to registration since the threshold exemption of ₹ 40 lakh is not being crossed either at Chennai, Tamil Nadu, Bengaluru, Karnataka or Manipur is not correct as firstly, the aggregate turnover to be considered in its case is ₹ 10 lakh and not ₹ 40 lakh and secondly, the same is computed on all India basis and not State-wise.

Apart from this, 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.

Last but not the least, Rajesh Dynamics is compulsorily required to register under section 24 of the CGST Act 2017 irrespective of the turnover limit as it is liable to pay tax on inward supplies under reverse charge and it also makes inter-State taxable supply.

Question 3

Bansal and Chandiook is a partnership firm of Chartered Accountants in Jaipur (Rajasthan). The firm specializes in bank audits providing services to banks across India. It has an annual turnover of ₹ 110 lakh in the preceding financial year.

With reference to the provisions of the CGST Act, 2017, examine whether the firm can opt for the composition scheme. Will your answer change, if-

(a) the turnover of the firm is ₹ 90 lakhs?

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- (b) **Bansal and Chandiook is not a partnership firm of Chartered Accountants but a partnership firm providing support services to restaurants like booking tables, advertisement etc.? (RTP May'18)**

Answer 3

As per section 10(1) of the CGST Act, 2017, a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1 crore (*as per amendment 1.5 crore*), may opt to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not exceeding,—

- 1% of the turnover in State/ Union territory in case of a manufacturer,
- 5% of the turnover in State/ Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II (restaurant services), and
- 1% of the turnover in State/ Union territory in case of other suppliers.

Further, sub-section (2) of section 10 lays down that the registered person shall be eligible to opt for composition levy if:—

- he is not engaged in the supply of services other than restaurant services;
- he is not engaged in making any supply of goods *or services (as per amendment)* which are not leviable to tax under CGST Act; 2017
- he is not engaged in making any inter-State outward supplies of goods *or services (as per amendment)*;
- he is not engaged in making any supply of goods *or services (as per amendment)* through an electronic commerce operator who is required to collect tax at source under section 52; and
- he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council.

As per amendment a new sub-section (2A) is being inserted in section 10 of the CGST Act to bring in an alternative composition scheme for supplier of services or mixed suppliers (not eligible for the earlier composition scheme) having an annual turnover in preceding financial year up to ₹ 50 lakhs.

Basis above provisions, a firm of Chartered Accountants, being a supplier of professional services (other than restaurant services) *is eligible to apply for composition scheme under section 10(2A) if it meets all the considerations Since it does not meet the Turnover criteria*, therefore, it has to discharge its tax liability under regular provisions at the applicable rates.

- The answer will not change even if the turnover of the firm had been ₹ 90 lakh since the ineligibility of the firm to opt for composition scheme is not linked with the turnover of the firm, but with the nature of the services supplied by the firm. *As per amendment the answer will not change because the firm does not meet the turnover criteria.*

Therefore, since even with turnover of ₹ 90 lakh the ineligibility in respect of nature of services supplied by firm exists i.e., the firm provides professional services and not restaurant services; it will not be eligible for composition scheme. *Under section 10(2A) for supplier of services or mixed suppliers (not eligible for the earlier composition scheme) having an annual turnover in preceding financial year up to ₹ 50 lakhs are eligible for composition scheme.*

- The answer will not change even if the firm is providing support services to restaurants as only the supplier providing restaurant services *per se* are eligible for composition scheme. *Under section 10(2A) for supplier of services or mixed suppliers (not eligible for the earlier composition scheme) having an annual*

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turnover in preceding financial year up to Rs. 50 lakhs are eligible for composition scheme.

Question 4

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 from 1st April, 2023. It has furnished the following details for the quarter ended on 30th June, 2023.

S. No.	Items	₹
(i)	Taxable turnover of goods within the State	15,00,000
(ii)	Exempted turnover of goods (exempted by way of notification) 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, 2023 in following independent situations:

- (i) M/s Heeralal and Sons is a manufacturer
 - (ii) M/s Heeralal and Sons is a trader
- (MTP 5 Marks Oct'21, PYP 3 Marks Nov'18)**

Answer 4

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:

$$1\% \text{ of } ₹ 32,00,000 [₹ 15,00,000 + 17,00,000]$$

$$= ₹ 32,000 \text{ [CGST} = ₹ 16,000 \text{ and SGST} = ₹ 16,000]$$

(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:

$$= 1\% \text{ of } ₹ 15,00,000$$

$$= ₹ 15,000 \text{ [CGST} = ₹ 7,500 \text{ and SGST} = ₹ 7,500]$$

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

Some examinees failed to appreciate that amount payable under composition scheme in case of trader is specified percentage of the turnover of taxable supplies of goods in the State instead of turnover in the State.

Question 5

M/s All-in-One, a partnership concern and a registered supplier under GST, is engaged in providing various services under one roof. It is engaged in paying tax under regular scheme under GST law. The concern provides the following

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information pertaining to supply made/input services availed by it during the month of March:

	Particulars	₹
i.	Provided Direct Selling Agent service to Y Bank Ltd.	4,00,000
ii.	Provided security services (by way of supply of security personnel) to ABC P. Ltd., a registered person under GST	60,000
iii.	Provided security services (by way of supply of security personnel) to PSR Trust, an unregistered person under GST	1,00,000
iv.	Provided renting of motor vehicle for transportation of passengers to Amaze Tours Ltd. and value of supply included cost of fuel	75,000
v.	Provided renting of motor vehicle for transportation of passengers to Priti & Co., CA firm and value of supply 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 by giving necessary explanations for treatment of various items. Rates of GST 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. All the supplies are intra-State only. Ignore the provisions relating to input tax credit. (PYP 5 Marks Nov'20)

Answer 5

GST liability of M/s All-in-One

	Particulars	Value (₹)	CGST Payable (₹)	SGST Payable (₹)
B. GST liability on outward supply				
i.	Direct selling agent service to Y Bank Ltd. [Tax is payable under forward charge since the supplier of such service is a partnership firm and not an individual.]	40,00,000	36,000 [4,00,000 x 9%]	36,000 [4,00,000 x 9%]
ii.	Security services to ABC P. Ltd., a registered person [Tax is payable under reverse charge by the recipient since security services are provided by a non-body corporate to a registered person.]	-		

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iii.	Security services to PSR Trust, an unregistered person [Tax is payable under forward charge since security services are provided by a non-body corporate to an unregistered person.]	1,00,000	9,000 [1,00,000 x 9%]	9,000 [1,00,000 x 9%]
iv.	Renting of motor vehicle to Amaze Tours Ltd. where value included cost of fuel (Tax is payable under reverse charge by recipient since such services are provided by a non-body corporate to a body corporate and GST Payable @5%)	-		
v.	Renting of motor vehicle to Priti & Co., CA firm, where supply value included cost fuel (Tax is Payable under forward charge since such services are provided by a non-body corporate to a non-body corporate.)	40,000	1,000 [40,000 x 2.5%]	1,000 [40,000 x 2.5%]
			46,000	46,000
C. GST liability on inward supplies under reverse charge				
vi.	Availed representational service from PB and Co, a law firm [Legal services provided by a partnership firm of advocates/individual advocate other than a senior advocate 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, are exempt from GST. Since M/s All-in-One started its business in February, its turnover in the preceding financial year is zero making it eligible for exemption from registration in the preceding financial year and hence, the legal services provided to it are exempt from GST.]	70,000	-	-
	GST liability on inward supplies under reverse charge		-	-

Question 6

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Mr. Yash, doing business in the State of Kerala, commenced his business in the month of April and provides the following further information.

- (i) **His intra-State turnover for the first two quarters was as follows: April - June - ₹ 20 lakh**
July - September - ₹ 100 lakh
- (ii) **In each of the quarters, exempt supply made by him was 25% of the total turnover for the said quarter.**
- (iii) **Since the product supplied by him was eligible for composition scheme, he opted for registration under composition scheme with effect from 1st July.**

You are required to compute the tax payable by Mr. Yash under GST law from the above information:

- (i) **If he is a manufacturer**
- (ii) **If he is a trader. (PYP 5 Marks Jul'21)**

Answer 6

As per section 10 read with rule 7, a registered person opting for composition levy for goods pays tax at the rates mentioned below during the current FY, in lieu of the tax payable by him under regular scheme:

Manufacturers, other than manufacturers of notified goods	1% ($\frac{1}{2}\%$ CGST+ $\frac{1}{2}\%$ SGST/UTGST) of the turnover in the State/ Union territory
Trader	1% ($\frac{1}{2}\%$ CGST+ $\frac{1}{2}\%$ SGST/UTGST) of turnover of taxable supplies of goods & services in the State/ Union territory

Turnover prior to getting registered will not be considered for determining the turnover in a State/Union Territory.

- (i) If Mr. Yash is a manufacturer

$$\text{CGST} = ₹ 100 \text{ lakh} \times 0.5\% = ₹ 50,000 \quad \text{SGST} = ₹ 100 \text{ lakh} \times 0.5\% = ₹ 50,000$$

- (ii) If Mr. Yash is a trader

$$\text{CGST} = ₹ 75 \text{ lakh (as 25\% of turnover is exempt)} \times 0.5\% = ₹ 37,500 \quad \text{SGST} = ₹ 75 \text{ lakh (as 25\% of turnover is exempt)} \times 0.5\% = ₹ 37,500$$

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

- (ii) Some examinees computed the tax payable by Mr Yash (being a trader) under composition scheme on the total turnover instead of turnover of taxable supplies. Few examinees were not conversant with the rates of tax for computing the tax payable under composition levy.

Question 7

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Varun & Arun Associates started a partnership firm of architects in Bhopal (Madhya Pradesh) on 1st April of the current financial year. The firm provides architectural services in Madhya Pradesh only. It provided the following details of its turnover during the current financial year:

April – June ₹ 20 lakh

July – Sept ₹ 30 lakh

Oct – Dec ₹ 20 lakh

The firm has obtained the registration under section 22 with effect from 1st July and opts to pay tax under composition scheme. Determine the tax liability of Varun & Arun Associates for the quarters: April – June, Jul-Sept and Oct-Dec.

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

(RTP Nov'20)

Answer 7

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 exclusively 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 financial year 2021-22. Therefore, its aggregate turnover in the financial year 2021-22 is Nil. Consequently, it is eligible to avail the benefit of composition scheme under section 10(2A) of the CGST Act in the financial year 2022-23. 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 10(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

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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.

Question 8

Examine whether the suppliers are eligible for composition levy under section 10 in the following independent cases in the beginning of financial year 2023-24.

- (a) **Technology Enterprises, registered in Jalandhar, Punjab, is engaged in manufacturing and supplying computer systems. Its aggregate turnover in the financial year 2022-23 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 Punjab in the financial year 2023-24.**
- (b) **M/s. Siddharth & Sons, registered in Delhi, owns a restaurant 'Tasty Foods' with a turnover of ₹ 112 lakh in the financial year 2022-23. In view of the growing customer demand, it will also start intra-State trading of juices in Delhi from financial year 2023-24.**
- (c) **Sitaram Associates, registered in Sikkim, is engaged in running a restaurant chain 'Veg Kitchen' in the State. It has a turnover of ₹ 73 lakh in the financial year 2022-23. In the financial year 2023-24, 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 from financial year 2023-24.**
- (d) **Deepti Services Ltd., registered in Uttarakhand, is exclusively providing intra-State hair styling services. It has turnover of ₹ 34 lakh in the financial year 2022-23.**

Will your answer be different, if Deepti Services Ltd. also start intra- State supply of beauty products along with providing hair styling services in the financial year 2023-24?. (RTP Nov'20)

Answer 8

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 to pay tax under composition levy:

- (i) Manufacturers,
- (ii) Persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II (restaurant services), and
- (iii) Any other suppliers 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

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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 or services.

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 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 in financial year 2023-24 as its aggregate turnover is less than ₹ 1.5 crore in the financial year 2022-23 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 financial year 2023-24.

(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 from the financial year 2023-24.

(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 in the financial year 2023-24.

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.

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- (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 financial year 2022-23 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 financial year 2021-22 does not exceed ₹ 50 lakh, Deepti Services Ltd. is entitled to avail benefit of composition scheme under section 10(2A) in the financial year 2023-24.

Further, the answer will remain the same even if Deepti Services Ltd. also start supplying beauty products alongwith providing hair styling services in the financial year 2023-24 since it fulfils the conditions laid down for availing the benefit of composition scheme under section 10(2A). It can avail the benefit of composition scheme under section 10(2A) till the time its aggregate turnover in the financial year 2023-24 doesn't exceed ₹ 50 lakh.

Question 9

Mr. Rajbeer, a registered person at Delhi, is in the business of selling goods relating to interior decoration under the firm name M/s. Rajbeer & Sons. He has opted for composition scheme for the Financial Year (FY) 2018-19.

His turnover for FY 2022-23 is ₹ 80 lakh and is expected to achieve ₹ 130 lakh in FY 2023-24. Discuss whether M/s Rajbeer & Sons can still enjoy the benefits of composition scheme in FY 2023-24.

His son Karan wants to start business of providing services relating to interior decoration, after completing post-graduation course in interior decoration under same firm name M/s Rajbeer & Sons with effect from 01.04.2023 and wants to enjoy the benefits of composition scheme under GST.

Advise Mr. Rajbeer and his son Karan. (PYP 5 Marks Nov '19)

Answer 9

As per section 10 of the CGST Act, 2017, a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5 crore in a State/UT may opt for composition scheme, provided he is, inter alia, engaged in supply of goods and/or restaurant service.

However, a person who opts for composition scheme is permitted to supply services other than restaurant service of value not exceeding 10% of turnover in a State/UT in the preceding financial year or ₹ 5 lakh, whichever is higher.

In the given case, M/s. Rajbeer & Sons⁷, engaged in business of selling goods relating to interior decoration, is eligible for composition scheme in FY 2023-24 since its aggregate turnover in preceding FY (viz. ₹ 80 lakh) does not exceed ₹ 1.5 crore.

If Karan wishes to start the business of providing services relating to interior decoration under the same firm name M/s Rajbeer & Sons, the sole proprietorship needs to be first converted into a partnership firm. Further, new GST registration under the new PAN is

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required to be obtained.

As per amendment a new sub-section (2A) is being inserted in section 10 of the CGST Act to bring in an alternative composition scheme for supplier of services or mixed suppliers (not eligible for the earlier composition scheme) having an annual turnover in preceding financial year up to Rs. 50,00,000.

In such a case, the firm can provide services relating to interior decoration up to a value of ₹ 5 lakh (10% of zero turnover of last year or ₹ 5 lakh, whichever is higher) to continue enjoying the benefit of composition scheme in FY 2019-20. *They cannot claim benefit under sub section (2A) as their turnover is already over the prescribed limit of Rs. 50,00,000.*

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

Large number of examinees did not bring out the legal provisions of composition scheme permitting marginal supply of services [other than restaurant services] for a specified value along with the supply of goods and/or restaurant service, as the case may be.

Question 10

Prem is running a consulting firm and also a fancy store, registered under the same PAN number. Turnover of the fancy store is ₹ 65,00,000 and receipt of consultancy firm is ₹ 10,00,000 in the preceding financial year. You are required to provide answers with supporting explanatory note for each answer to the following questions:

- (i) **Is Prem eligible for composition scheme under CGST Act?**
- (ii) **Whether it is possible for Prem to opt for composition scheme only for fancy store?**
- (iii) **If Prem is running a restaurant with turnover of ₹ 65,00,000 instead of consultancy firm as well as a fancy store, would he be eligible for composition scheme? (PYP 3 Marks May '18)**

Answer 10

- (i) No, Prem is not eligible for composition scheme as he is providing services as a consulting firm. Section 10(2)(a) of the CGST Act, 2017 provides that a registered person cannot opt for composition scheme if he is engaged in the supply of services other than restaurant services. *As per amendment a new sub-section (2A) is being inserted in section 10 of the CGST Act to bring in an alternative composition scheme for supplier of services or mixed suppliers (not eligible for the earlier composition scheme) having an annual turnover in preceding financial year up to ₹ 50 lakhs Hence Prem is not eligible for the composition scheme as he exceeds the turnover of ₹ 50 lakhs .*
- (ii) No, it is not possible for Prem to opt for composition scheme only for fancy store. All the registrations under the same PAN have to opt for composition scheme in terms of proviso to section 10(2) of the CGST Act, 2017. Since the supply of consultancy service is ineligible for composition scheme, supply of goods in fancy store too becomes ineligible for composition scheme. *As per amendment a new sub-section (2A) is being inserted in section 10 of the CGST Act to bring in an alternative composition scheme for supplier of services or mixed suppliers (not eligible for the earlier composition scheme) having an annual turnover in preceding financial year up to ₹ 50 lakhs. Hence Prem is not eligible for the composition scheme as he exceeds*

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the turnover of ₹ 50 lakhs .

- (iii) No, Prem is not eligible for composition scheme if he is running a restaurant with turnover of ₹ 65,00,000 instead of consultancy firm as well as fancy store. Section 10(1) of the CGST Act, 2017 read with Notification No. 46/2017 CT dated 13.10.2017 provides that an eligible registered person whose aggregate turnover in the preceding financial year did not exceed ₹ 1 crore **(As per amendment Rs. 1.5 crore)** may opt to pay tax under composition levy. Therefore, even though Prem provides restaurant service, which is an eligible service for composition levy, since his aggregate turnover [₹ 65 lakh for fancy store + ₹ 65 lakh for restaurant service] in the preceding financial year exceeds ₹ 1 crore, Prem is not eligible for composition levy. **Yes, Prem is eligible for composition scheme as the turnover limit has been increased.**

Question 11

Mr. X, a trader dealing exclusively in supply of goods and paying tax under normal scheme (also eligible for composition scheme), submit the following details for coming financial year 2023-24. You are required to determine which scheme will be more beneficial to him and whether Mr. X should opt for composition scheme. Estimated data for coming financial year 2023-24 are as follows:

Particular	Amount (₹)
Inward supplies of goods from registered suppliers (amount exclusive of GST and goods chargeable to normal rate of GST @12%)	70,00,000
Outward supplies of goods to unregistered customers (sale price of goods inclusive of GST) - Normal Rate of GST is @12%	90,00,000

Other information is as given below:

- Inherent nature expenses ₹ 4,50,000 per year under both the schemes.
- Books of account maintenance cost under normal scheme ₹ 2,00,000 yearly whereas under composition scheme it will be ₹ 75,000 yearly.
- Return filing expenses under normal scheme ₹ 48,000 yearly whereas under composition scheme it will be ₹ 12,000 yearly. (PYP 4 Marks May'23)

Answer 11

Particulars	Composition scheme (₹)	Regular scheme (₹)
Tax payable under GST law	80,357.14 [₹ 80,35,714.291 × 1%]	9,64,285.71 [₹ 80,35,714.29 × 12%]
Less: ITC on inward supplies	A person opting for composition scheme is not entitled to any ITC.	8,40,000 [₹ 70,00,000 × 12%]
Net amount payable under GST law	80,357.14	1,24,285.71
Add: Inherent expenses	4,50,000	4,50,000

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Add: Books of accounts maintenance cost	75,000	2,00,000
Add: Return filing expenses	12,000	48,000
Add: Cost of inward supplies	78,40,000	78,40,000
Total cost involved	84,57,357.14	86,62,285.71

Thus, it can be concluded that Mr. X should opt for composition scheme for FY 2023-24 as it is more beneficial for him. by ₹ 2,04,928.562

Note - Outward supplies excluding GST/ Turnover in State = ₹ 80,35,714.29 (₹ 90,00,000 × 100/112)

Question 12

XYZ Ltd. has obtained a loan from a foreign bank. The company does not have an account with the foreign bank from whom it has taken the loan. Whether RCM liability under GST laws should be discharged in this regard for import of services received in relation to the loan? Provide relevant legal provisions in support of your answer. (PYP 4 Marks Jul'21)

Answer 12

Yes. RCM liability needs to be discharged on such services.

The place of supply of services supplied by a banking company in case where either supplier or recipient is located outside India is location of supplier provided said services are supplied to an account holder, otherwise the place of supply is the location of the recipient.

Accordingly, in the given case, the place of supply is the location of recipient – XYZ Ltd., i.e., India.

Since the supplier is outside India and recipient and place of supply are in India, said service qualifies as import of services which in turn, is considered as inter-State supply.

Question 13

In the month of April 20XX, Z started supply of goods in his proprietary firm and also set up a one-man company named Z Ltd. He needs your assistance to work out his aggregate turnover for the purpose of GST registration. The turnover details up to the month of July, 20XX are as under:

S.No.	Particulars of supplies	Amount (₹ in lakh)
i.	Supplies of taxable goods of his firm	31.50
ii.	Supplies of taxable goods to a 100% EOU of his firm	1.50
iii.	Exports of taxable goods of his firm	2.60
iv.	Exempt supplies of his firm	2.40

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v.	Supplies of non-taxable goods of his firm	3.00
vi.	Supplies of taxable goods by the one-man company set up in his name	2.70
vii.	Value of supplies on which Z is liable to pay tax under reverse charge mechanism (RCM)	0.80

Note: All his supplies are intra-State except export. (PYP 5 Marks Jul'21)

Answer 13

Computation of aggregate turnover of proprietary firm of Z	
Particulars	₹ (in lakh)⁴
Supplies of taxable goods [Taxable supplies are included in aggregate turnover.]	31.50
Supplies of taxable goods to a 100% EOU [Deemed exports being taxable supplies are included in aggregate turnover.]	1.50
Exports of taxable goods [Included in aggregate turnover.]	2.60
Exempt supplies [Included in aggregate turnover.]	2.40
Supplies of non-taxable goods [Exempt supplies are included in aggregate turnover. Exempt supplies include non-taxable supplies also.]	3.00
Supplies of taxable goods by one-man company set up in Z's name [Not included as one person company is a separate entity with separate PAN.]	-
Value of supplies on which Z is liable to pay tax under RCM [Value of inward supplies on which tax is payable on reverse charge basis are excluded from the aggregate turnover.]	-
Aggregate turnover of proprietorship firm of Z	41.00
Computation of aggregate turnover of Z Ltd. - one man company of Z	
Supplies of taxable goods by one-man company set up in Z's name [Taxable supplies are included in aggregate turnover.]	2.70
Aggregate turnover of Z Ltd.	2.70

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

Some examinees computed the tax payable by Mr. Yash (being a trader) under composition scheme on the total turnover instead of turnover of taxable supplies. Few examinees were not conversant with the rates of tax for computing the tax payable under composition levy.

Question 14

B & D Company, a partnership firm, in Nagpur, Maharashtra is a wholesaler of a taxable product 'P' and an exempt product 'Q'. The firm supplies these products only in the eastern part of Maharashtra. All the procurements (both goods and services) of the firm are from the suppliers registered under regular scheme in the State of Maharashtra. The firm pays tax under composition scheme.

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

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Particulars	Turnover for the quarter ended 30.06.20XX (₹)	Turnover for the quarter ended 30.09.20XX (₹)
'P'	40,00,000	30,00,000
'Q'	14,65,000	13,00,000

Particulars	Stock as on 30.06.20XX (₹)	Stock as on 30.09.20XX (₹)	Stock as on 31.10.20XX (₹)
'P'	25,00,000	10,00,000	3,60,000
'Q'	10,00,000	2,00,000	1,20,000

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

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

Bill No.	Date	Value of products (exclusive of taxes)		
		'P' (₹)	'Q' (₹)	Total (₹)
2306	01.10.20XX	1,00,000	3,000	1,03,000
2307	01.10.20XX	31,250	2,000	33,250
2308	02.10.20XX	43,750	15,000	58,750
2309	03.10.20XX	35,000	10,000	45,000
2310	05.10.20XX	1,00,000	-	1,00,000
2311	06.10.20XX	94,000	6,000	1,00,000
2312	06.10.20XX	-	17,000	17,000
2313	08.10.20XX	50,000	6,000	56,000
2314	09.10.20XX	60,000	9,000	69,000
2315	.....	.....	.....	.....
.....

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

S. No.	Particulars	(₹)
(i)	Freight paid to Goods Transport Agency during the period April 20XX – October 20XX. Assume equal amount of freight is paid each month on the 10 th day of each month. Also, assume that the goods for which the freight is paid on 10 th day of the month are transported between 11 th to	1,40,000

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	20th day of the month.	
(ii)	Special packing charges paid to a Packing Company, having expertise in such specialized packing, during the period January 20XX – October 20XX. The packing charges are paid for the goods which are transported between 11th to 20th day of the month (as mentioned in point (i) above). The goods are packed on 10th day and then transported from 11th day onwards. Assume equal amount of packing charges are paid each month on the 9th day of each month.	3,00,000

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

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

Note: Make suitable assumptions wherever required. Rate of CGST and SGST on service of transportation of goods by GTA is 2.5% each. Stock is valued at cost price. (RTP May'19)

Answer 14

As per section 10(3) of the CGST Act, 2017 read with *Notification No. 8/2017 CT dated 27.06.2017* 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 crore (*as per amendment Rs 1.5 cr*) [₹ 75 lakh in case of Special Category States except Uttarakhand and Jammu and Kashmir].

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

In the given case, the firm is registered under the composition scheme in the State of Maharashtra. The aggregate turnover of the firm exceeds ₹ 1 crore (*as per amendment Rs 1.5 cr*) on 03.10.20XX [aggregate of both taxable and exempt turnover from 01.04.20XX to 03.10.20XX, i.e. ₹ 1,00,05,000 (₹ 97,65,000 + ₹ 1,03,000 + ₹ 33,250 + ₹ 58,750 + ₹ 45,000)]

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

Thus, the firm will have to pay tax under regular scheme (Section 9 of the CGST Act, 2017) from 03.10.20XX. (*will continue paying under composition scheme as the turnover limit is increased*)

Output tax liability of B & D Company under composition scheme

During the period when the firm pays tax under composition scheme, i.e. from

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

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

Particulars	Quarter ended 30.06.20XX (₹)	Quarter ended 30.09.20XX (₹)	Quarter ended 31.12.20XX (₹)
Turnover of 'P' (Taxable supplies)	40,00,000	30,00,000	1,75,000 [1,00,000 + 31,250 + 43,750]
CGST @ 0.5% [A1]	20,000	15,000	875
SGST @ 0.5% [B1]	20,000	15,000	875
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 (20,000) [Paid on 10 th day for goods transported between 11 th to 20 th day of the month, so the same will be assessed under regular scheme] [[1,40,000/7] x 1]
CGST @ 2.5% [A2]	1,500	1,500	- (500)
SGST @ 2.5% [B2]	1,500	1,500	- (500)
Total CGST [A1 + A2]	21,500	16,500	875 (1375)
Total SGST [B1 + B2]	21,500	16,500	875 (1375)
Total CGST liability for the period from 01.04.20XX to 02.10.20XX		38,875 [21,500 + 16,500 + 875] 43,875 [21,500 + 16,500 + 1375]	
Total SGST liability for the period from 01.04.20XX to 02.10.20XX		38,875 [21,500 + 16,500 + 875] 43,875 [21,500 + 16,500 + 1375]	

Question 15

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

- M/s Devlok, a registered dealer, is dealing in intra-State trading of electronic appliances in Jaipur (Rajasthan). It has turnover of ₹ 130 lakh in the preceding financial year. In the current financial year, it has also started providing repairing services of electronic appliances.**
- M/s Narayan & Sons, a registered dealer, is running a "Khana Khazana" Restaurant near City Palace in Jaipur. It has turnover of ₹ 140 lakh in the preceding financial year. In the current financial year, it has also started dealing in intra-State trading of beverages in Jaipur (Rajasthan).**
- M/s Indra & bro, a registered dealer, is providing restaurant services in**

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Uttarakhand. It has turnover of ₹ 70 lakh in the preceding financial year. It has started providing intra-State interior designing services in the current financial year and discontinued rendering restaurant services.

- (d) **M/s Him Naresh, a registered dealer, is exclusively providing intra-state architect services in Uttarakhand. It has turnover of ₹ 40 lakh in the preceding financial year. (RTP Nov'19)**

Answer 15

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

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

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

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

As per amendment a new sub-section (2A) is being inserted in section 10 of the CGST Act to bring in an alternative composition scheme for supplier of services or mixed suppliers (not eligible for the earlier composition scheme) having an annual turnover in preceding financial year up to ₹ 50 lakhs.

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

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

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

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under composition scheme.

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

- (c) The turnover limit for composition scheme in case of Uttarakhand is ₹ 75 lakh. Further, a registered person who is exclusively engaged in supplying services other than restaurant services are not eligible for composition scheme. **(As per amendment Thus, . Under section 10(2A) for supplier of services or mixed suppliers (not eligible for the earlier composition scheme) having an annual turnover in preceding financial year up to ₹ 50 lakhs are eligible for composition scheme.)**

M/s Indra & bro **cannot** opt for composition scheme because it does not meet the turnover criteria.

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

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

- (d) An exclusive service provider can opt for the composition scheme only if he is engaged in supply of restaurant services. The composition scheme permits supply of marginal services for a specified value, but only when the same are supplied along with goods and/or restaurant service. **(As per amendment Thus, . Under section 10(2A) for supplier of services or mixed suppliers (not eligible for the earlier composition scheme) having an annual turnover in preceding financial year up to ₹ 50 lakhs are eligible for composition scheme.)**

Since M/s Him Naresh is exclusively engaged in supply of services other than restaurant services, it **is** eligible for composition scheme **under section 10(2A)** and its turnover in the preceding year is less than ₹ 75 lakh, the eligible turnover limit for Uttarakhand. However, since M/s Him Naresh is not eligible to opt for composition scheme, its aggregate turnover in the preceding financial year does not exceed ₹ 50 lakh and it is exclusively engaged in supply of services other than restaurant services, M/s Him Naresh is entitled to avail benefit of concessional payment of tax under Notification No. 2/2019 CT (R) dated 07.03.2019. **(He is eligible for composition scheme and it matches the turnover criteria)**

Question 16

Shubhlaxmi Foods is engaged in supplying restaurant service in Maharashtra. In the preceding financial year, it has a turnover of ₹ 90 lakh from the restaurant service and ₹ 10 lakh from the supply of farm labour in said State. Further, it has also earned a bank interest of ₹ 10 lakh from the fixed deposits. Shubhlaxmi Foods wishes to opt for composition scheme in the current year. You are required to advise Shubhlaxmi Foods on the same. Would your answer be different if Shubhlaxmi Foods is engaged in milling of paddy into rice on job work basis instead of supply of farm labour and the turnover from the said activity is ₹ 9 lakh? (RTP Nov '18)

Answer 16

As per section 10(1) of the CGST Act, 2017, a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1 crore, **(as per amendment**

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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 restriction on service provider not to be engaged in any service other than restaurant service for being eligible for composition levy has been relaxed vide *Order No. 01/2017 CT dated 13.10.2017*. The said order clarifies that:

- (i) if a person supplies goods and/or services referred to in clause (b) of paragraph 6 of Schedule II of the said Act (restaurant service) and also supplies any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, the said person shall not be ineligible for the composition scheme under section 10 of the CGST Act, 2017 subject to the fulfilment of all other conditions specified therein.
- (ii) in computing his aggregate turnover in order to determine his eligibility for composition scheme, value of supply of any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account.

In the given case, the two other services provided by Shubhlaxmi Foods apart from the restaurant service, viz. the services of supply of farm labour and services by way of extending deposits where the consideration is represented by way of interest, are exempt from GST vide *Notification No. 12/2017 CT (R) dated 28.06.2017*.

Thus, in view of the aforementioned order, since other services supplied by Shubhlaxmi Foods apart from restaurant service are exempt services, Shubhlaxmi Foods is not ineligible for the composition scheme.

Further, in computing his aggregate turnover in order to determine the eligibility of Shubhlaxmi Foods for composition scheme, value of supply of exempt services - supply of farm labour and bank interest shall not be taken into account. Thus, the aggregate turnover of Shubhlaxmi Foods is ₹ 90 lakh (turnover from restaurant services).

From the aforesaid discussion, it can be inferred that Shubhlaxmi Foods is eligible for composition scheme.

However, if Shubhlaxmi Foods is engaged in milling of paddy into rice instead of supply of farm labour, it will not be eligible for composition levy since as per *Order No. 01/2017 CT*, a person supplying restaurant services is eligible for composition levy only when other services provided by it are exempt services and milling of paddy into rice on job work basis is not an exempt service as clarified by *Circular No. 19/19/2017 GST dated 20.11.2017*.

SECTION -B

Question 1

Panini Private Limited, Jaipur, agrees to sponsor a sports event organized by Pink City Club in Jaipur. Panini Private Limited has paid an amount of ₹ 5,00,000 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 1

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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, GST on said services is payable by the recipient - Panini Private Limited, under reverse charge.

Question 2

Arpan Singhania is an executive director in Narayan Limited, Haryana. 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 GST in each of the supplies involved in the given case.

Answer 2

Sitting fee paid to director – As per reverse charge notification, tax on services supplied by a director of a company/ body corporate to the said company/ body corporate, located in the taxable territory, is payable under reverse charge. Hence, in the present case, the sitting fee amounting to ₹ 25,000, payable to Arpan Singhania by Narayan Limited, is liable to GST under reverse charge and thus, recipient of service - Narayan Limited – is liable to pay GST on the same.

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

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

Question 3

Mr. Rajbeer, a registered person at Delhi, is in the business of selling goods relating to interior decoration under the firm name M/s. Rajbeer & Sons. He has opted for composition scheme for the financial year 2021-22.

His turnover for current FY ₹ 80 lakh and is expected to achieve ₹ 130 lakh in financial year 2022-23. Discuss whether M/s Rajbeer & Sons can still enjoy the benefits of composition scheme in financial year 2022-23.

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His son Karan wants to start business of providing services relating to interior decoration, after completing post-graduation course in interior decoration under same firm name M/s Rajbeer & Sons with effect from 1st April of financial year 2022-23 and wants to enjoy the benefits of composition scheme under GST.

Advise Mr. Rajbeer and his son Karan.

Answer 3

As per section 10, a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5 crore in a State/UT may opt for composition scheme, provided he is, inter alia, engaged in supply of goods and/or restaurant service. However, a person who opts for composition scheme is permitted to supply services other than restaurant service of value not exceeding 10% of turnover in a State/UT in the preceding financial year or ₹ 5 lakh, whichever is higher.

In the given case, M/s. Rajbeer & Sons, engaged in business of selling goods relating to interior decoration, is eligible for composition scheme in the financial year 2022-23 since its aggregate turnover in financial year 2021-22 (viz. ₹ 80 lakh) does not exceed ₹ 1.5 crore.

If Karan wishes to start the business of providing services relating to interior decoration under the same firm name M/s Rajbeer & Sons, the sole proprietorship needs to be first converted into a partnership firm. Further, new GST registration under the new PAN is required to be obtained.

In such a case, the firm can provide services relating to interior decoration up to a value of ₹ 5 lakh (10% of zero turnover of last year or ₹ 5 lakh, whichever is higher) to continue enjoying the benefit of composition scheme in financial year 2022-23.

Question 4

Varun & Arun Associates started a partnership firm of architects in Bhopal (Madhya Pradesh) on 1st April of the current financial year. The firm provides architectural services in Madhya Pradesh only. It provided the following details of its turnover during the current financial year:

April – June ₹ 20 lakh

July – Sept ₹ 30 lakh

Oct – Dec ₹ 20 lakh

The firm has obtained the registration under section 22 with effect from 1st July and opts to pay tax under composition scheme. Determine the tax liability of Varun & Arun Associates for the quarters: April – June, Jul-Sept and Oct-Dec.

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

Answer 4

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 exclusively 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%

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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 financial year 2021-22. Therefore, its aggregate turnover in the financial year 2021-22 is Nil. Consequently, it is eligible to avail the benefit of composition scheme under section 10(2A) of the CGST Act in the financial year 2022-23. 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 10(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.

Question 5

Examine whether the suppliers are eligible for composition levy under section 10 in the following independent cases in the beginning of financial year 2022-23.

- (e) **Technology Enterprises, registered in Jalandhar, Punjab, is engaged in manufacturing and supplying computer systems. Its aggregate turnover in the financial year 2021-22 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 Punjab in the financial year 2022-23.**
- (f) **M/s. Siddharth & Sons, registered in Delhi, owns a restaurant 'Tasty Foods' with a turnover of ₹ 112 lakh in the financial year 2021-22. In view of the growing customer demand, it will also start intra-State trading of juices in Delhi from financial year 2022-23.**
- (g) **Sitaram Associates, registered in Sikkim, is engaged in running a restaurant chain 'Veg Kitchen' in the State. It has a turnover of ₹ 73 lakh in the financial year 2021-22. In the financial year 2022-23, 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 from financial year 2022-23.**
- (h) **Deepti Services Ltd., registered in Uttarakhand, is exclusively providing**

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intra-State hair styling services. It has turnover of ₹ 34 lakh in the financial year 2021-22.

Will your answer be different, if Deepti Services Ltd. also start intra- State supply of beauty products alongwith providing hair styling services in the financial year 2022-23?.

Answer 5

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 to pay tax under composition levy:

- (iv) Manufacturers,
- (v) Persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II (restaurant services), and
- (vi) Any other suppliers 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 or services.

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 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 in financial year 2022-23 as its aggregate turnover is less than ₹ 1.5 crore in the financial year 2021-22 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 financial year 2022-23.

- (b) In the given case: -

- (iv) 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.

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- (v) the supplier is engaged in providing restaurant service which is an eligible supply under said composition scheme.
- (vi) 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 from the financial year 2022-23.

- (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 in the financial year 2022-23.

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 financial year 2021-22 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 financial year 2021-22 does not exceed ₹ 50 lakh, Deepti Services Ltd. is entitled to avail benefit of composition scheme under section 10(2A) in the financial year 2022-23.

Further, the answer will remain the same even if Deepti Services Ltd. also start supplying beauty products alongwith providing hair styling services in the financial year 2022-23 since it fulfils the conditions laid down for availing the benefit of composition scheme under section 10(2A). It can avail the benefit of composition scheme under section 10(2A) till the time its aggregate turnover in the financial year 2022-23 doesn't exceed ₹ 50 lakh.

Question 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

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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):

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	67,000	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 20th day 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 wherein GTA has not opted to pay tax itself. Stock is valued at cost price.

Answer 6

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

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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 30 th June (₹)	Quarter ended 30 th September (₹)	Quarter ended 31 st 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 10 th day for goods transported between 11 th to 20 th day of the month, so the same will be assessed under regular scheme]
CGST @ 2.5% [A2]	1,500	1,500	-

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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]		

Question 7

Shubhlaxmi Foods is engaged in supplying restaurant service in Maharashtra. In the financial year 2021-22, 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 in said financial year. 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 financial year 2022-23.

Further, assuming that in the financial year 2022-23, 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 financial year 2022-23.

Answer 7

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 a State/Union Territory 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 financial year 2021-22 is ₹ 140 lakh (since bank interest of ₹ 20 lakh from the fixed deposits will not be taken into account for computing aggregate turnover). Resultantly,

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it is eligible to opt for composition scheme under sub-sections (1) and (2) of section 10 in the financial year 2022-23.

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 financial year 2022-23. 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 financial year 2022-23 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]

Question 8

Bansal and Chandiook started a partnership firm of Chartered Accountants in Jaipur (Rajasthan) on 1st April in the current financial year. 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 lakhs
Jul-Sep	20 lakhs

It crossed the threshold limit of ₹ 20 lakh on 1st August. Bansal and Chandiook wishes to opt to pay tax at concessional rate under section 10(2A). Examine whether the firm is eligible for this scheme in the current financial year? If yes, then determine the tax payable by it in quarters (i) Apr-Jun & (ii) Jul-Sep?

Answer 8

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 Chandiook 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 Chandiook has started the supply of services in the financial year 2022-23. Therefore, its aggregate turnover in the financial year 2021-22 is Nil. Consequently, it is eligible to avail the benefit of composition scheme under section 10(2A) of the CGST Act in the financial year 2022-23. It becomes liable to 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

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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

Question 9

Mr. Prem is running a restaurant in New Delhi. In the financial year 2021-22, it has an aggregate turnover of ₹ 120 lakh from the restaurant services. In the financial year 2022-23, 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 financial year 2022-23. You are required to advise him for same.

Answer 9

- 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 a State/Union Territory 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 financial year 2021-22 (i.e. it did not exceed ₹ 1.5 crore), he is eligible for composition scheme in the financial year 2022-23. Further, in the financial year 2022-23, 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.

Question 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 from 1st April, 2022. It has furnished the following details for the quarter ended on 30th June, 2022.

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S. No.	Items	₹
(iii)	Taxable turnover of goods within the State	15,00,000
(iv)	Exempted turnover of goods (exempted by way of notification) 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, 2022 in following independent situations:

(iii) M/s Heeralal and Sons is a manufacturer

(iv) M/s Heeralal and Sons is a trader

Answer 10

Computation of amount payable under composition scheme

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

Tax is to be paid @ 1% ($\frac{1}{2}\%$ CGST+ $\frac{1}{2}\%$ 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]

(iv) If M/s Heeralal and Sons is a trader:

Tax is to be paid @ 1% ($\frac{1}{2}\%$ CGST + $\frac{1}{2}\%$ SGST) of the turnover of taxable supplies of goods and services in the State as under:

= 1% of ₹ 15,00,000

= ₹ 15,000 [CGST = ₹ 7,500 and SGST = ₹ 7,500]

Question 11

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

	Particulars	₹
vii.	Provided Direct Selling Agent service to Y Bank Ltd.	4,00,000
viii.	Provided security services (by way of supply of security personnel) to ABC P. Ltd., a registered person under GST	60,000
ix.	Provided security services (by way of supply of security personnel) to PSR Trust, an unregistered person under GST	1,00,000

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x.	Provided renting of motor vehicle for transportation of passengers to Amaze Tours Ltd. and value of supply included cost of fuel	75,000
xi.	Provided renting of motor vehicle for transportation of passengers to Priti & Co., CA firm and value of supply included cost of fuel	40,000
xii.	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 by giving necessary explanations for treatment of various items. Rates of GST 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. All the supplies are intra-State only. Ignore the provisions relating to input tax credit.

Answer 11

GST liability of M/s All-in-One

	Particulars	Value (₹)	CGST Payable (₹)	SGST Payable (₹)
D. GST liability on outward supply				
vii.	Direct selling agent service to Y Bank Ltd. [Tax is payable under forward charge since the supplier of such service is a partnership firm and not an individual.]	40,00,000	36,000 [4,00,000 x 9%]	36,000 [4,00,000 x 9%]
viii.	Security services to ABC P. Ltd., a registered person [Tax is payable under reverse charge by the recipient since security services are provided by a non-body corporate to a registered person.]	-		
ix.	Security services to PSR Trust, an unregistered person [Tax is payable under forward charge since security services are provided by a non-body corporate to an unregistered person.]	1,00,000	9,000 [1,00,000 x 9%]	9,000 [1,00,000 x 9%]
x.	Renting of motor vehicle to Amaze Tours Ltd. where value included cost of fuel (Tax is payable under reverse charge by recipient since such services are provided by a non-body corporate to a body corporate and GST Payable @5%)	-		

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xi.	Renting of motor vehicle to Priti & Co., CA firm, where supply value included cost fuel (Tax is Payable under forward charge since such services are provided by a non-body corporate to a non-body corporate.)	40,000	1,000 [40,000 x 2.5%]	1,000 [40,000 x 2.5%]
			46,000	46,000
E. GST liability on inward supplies under reverse charge				
xii.	Availed representational service from PB and Co, a law firm [Legal services provided by a partnership firm of advocates/individual advocate other than a senior advocate 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, are exempt from GST. Since M/s All-in-One started its business in February, its turnover in the preceding financial year is zero making it eligible for exemption from registration in the preceding financial year and hence, the legal services provided to it are exempt from GST.]	70,000	-	-
	GST liability on inward supplies under reverse charge		-	-

Question 12

MN Ltd. has two registered places of business in the State of Haryana. Its aggregate turnover during the financial year 2021-22 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 financial year 2022-23 and wants to continue with registration under regular scheme and pay taxes at the normal rate for the other place of business. Both the places of business are having the same Permanent Account Number issued under the Income-tax Act, 1961. Can MN Ltd. do so? Explain with reason.

Answer 12

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.

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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.

Question 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 financial year 2021-22 is ₹ 70 lakh. It has opted for composition levy under sub-sections (1) and (2) of section 10 in the financial year 2022-23 and paid tax for the April – June quarter of financial year 2022- 23 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 13

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 or services.

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.

Question 14

Mr. Yash, doing business in the State of Kerala, commenced his business in the month of April and provides the following further information.

- (iv) **His intra-State turnover for the first two quarters was as follows: April - June - ₹ 20 lakh
July - September - ₹ 100 lakh**
- (v) **In each of the quarters, exempt supply made by him was 25% of the total turnover for the said quarter.**
- (vi) **Since the product supplied by him was eligible for composition scheme, he opted for registration under composition scheme with effect from 1st July.**

You are required to compute the tax payable by Mr. Yash under GST law from the above information:

Paper 5 – Indirect Tax Laws(iii) **If he is a manufacturer**(iv) **If he is a trader.****Answer 14**

As per section 10 read with rule 7, a registered person opting for composition levy for goods pays tax at the rates mentioned below during the current FY, in lieu of the tax payable by him under regular scheme:

Manufacturers, other than manufacturers of notified goods	1% (½% CGST+ ½% SGST/UTGST) of the turnover in the State/ Union territory
Trader	1% (½% CGST+ ½% SGST/UTGST) of turnover of taxable supplies of goods & services in the State/ Union territory

Turnover prior to getting registered will not be considered for determining the turnover in a State/Union Territory.

(iii) If Mr. Yash is a manufacturer

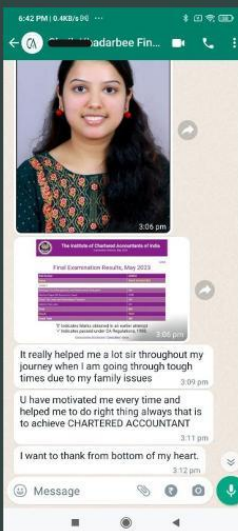
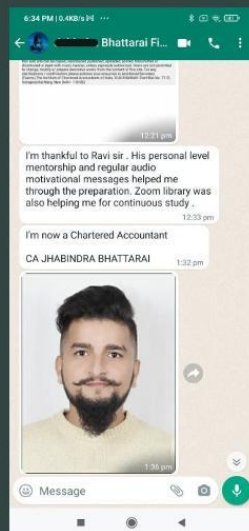
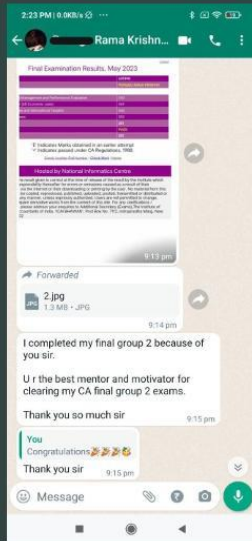
$$\text{CGST} = ₹ 100 \text{ lakh} \times 0.5\% = ₹ 50,000 \quad \text{SGST} = ₹ 100 \text{ lakh} \times 0.5\% = ₹ 50,000$$

(iv) If Mr. Yash is a trader

$$\text{CGST} = ₹ 75 \text{ lakh (as 25\% of turnover is exempt)} \times 0.5\% = ₹ 37,500 \quad \text{SGST} = ₹ 75 \text{ lakh (as 25\% of turnover is exempt)} \times 0.5\% = ₹ 37,500$$

Paper 5 – Indirect Tax Laws

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Paper 5 – Indirect Tax Laws

Chapter 3 Place of supply

Attempts wise Distribution

Row Labels	Dec' 21	Jan' 21	Jul' 21	May' 18	Nov' 18	May' 19	May' 22	May' 23	Nov' 19	Nov' 20	Nov' 22	Nov' 23
MCQ												
MTP						Q2, Q3			Q1			
RTP										Q4		
QA												
MTP	Q17		Q15	Q3, Q14			Q16	Q2	Q1	Q5		Q10
PYP	Q8	Q7								Q9	Q18	
RTP	Q20		Q19	Q13	Q11	Q4		Q6		Q21		Q12

SECTION –A

MULTIPLE CHOICE QUESTIONS (MCQ'S)

1. Aflatoon Spares (P) Ltd., located and registered in Haryana, supplied spare parts (FOB basis) to Mr. Laxmi Khurana, an unregistered person, located in Rajasthan. Mr. Laxmi Khurana booked the courier himself with Black Dart Courier (P) Ltd., registered in Delhi for delivery in Rajasthan. Black Dart Courier (P) Ltd. picked up the goods from Haryana and delivered the courier in Rajasthan while passing through the State of Uttar Pradesh.

Determine the place of supply of service provided by Black Dart Courier (P) Ltd. to Mr. Laxmi Khurana:

- Haryana
- Delhi
- Rajasthan
- Uttar Pradesh (MTP 1 Mark Oct '19)

Ans: (a)

2. Mr. Salman Khan, a resident of Mumbai, has booked a Videocon D2H connection at his other home in Delhi. His friend Shah Rukh Khan, is resident of Kerala, paid the charges for Salman's D2H connection in Delhi at the time of actual installation. Mr. Shah Rukh Khan went to Kolkatta after making the payment. Both Salman Khan and Shah Rukh Khan are not registered in GST.

Determine the place of supply of D2H service provided by Videocon to Mr. Salman Khan:

- Mumbai
- Kerala
- Delhi
- Kolkatta (MTP 2 Marks Apr'19)

Ans: (c)

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3. M/s Fair Engineering Consultants, located and registered under GST in Gurugram, Haryana, provided architectural services to Mahal India Ltd., located and registered under GST in Mumbai, Maharashtra, for its hotel to be constructed on land situated in Dubai. Determine the place of supply of architectural services provided by M/s Fair Engineering Consultants to Mahal India Ltd.:

- (a) Gurugram, Haryana
 - (b) Mumbai, Maharashtra
 - (c) Dubai
 - (d) Either Maharashtra or Dubai, at the option of the recipient
- (MTP 1 Mark Mar'22, MTP 2 Marks Mar'19)

Ans: (b)

4. Lucky Singh, a resident of Noida, U.P., went to Himachal Pradesh for a family vacation via Delhi-Chandigarh-Himachal Pradesh in his own car. After entering Chandigarh, his car broke down due to some technical issue. He called 'ONROADS' - an emergency roadside car assistance company (registered under GST in Delhi) to repair the car. The car was repaired by the staff of 'ONROADS'. The value of supply amounted to ₹ 50,000 (being labour charges ₹ 40,000 and spares ₹ 10,000). The bill was supposed to be generated online through the server, but due to some technical issue, it was not so generated.

Determine the place of supply in the given case.

- (a) Delhi
- (b) Chandigarh
- (c) Noida, U.P
- (d) Himachal Pradesh (RTP May '20)

Ans: (a)

QUESTION AND ANSWER

Question 1

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? (MTP 5 Marks Oct '19)

Answer 1

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

In the absence of a contract or agreement between the supplier and recipient of services in this regard, the proportionate value of services supplied in different States/Union territories (where the immovable property is located) is computed on the basis of the area of the immovable property lying in each State/ Union territories [Rule 4 of the IGST Rules].

Question 2

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Determine place of supply along with reasons in the following cases:

- (i) **Subroto, registered in Guwahati, has availed land-line services from BSNL. The telephone is installed in residential premises in Kolkata and the billing address is office of Subroto in Guwahati. (MTP 2 Marks Mar'23)**
- (ii) **Pilgaonkar, residing in Maharashtra, is travelling with Fly high Airlines' aircraft and is provided with movie-on-demand service for ₹ 100 as on-board entertainment during Delhi- Maharashtra leg of a Bangkok-Delhi- Maharashtra flight. (MTP 2 Marks Mar'23)**
- (iii) **Surpriya of Delhi purchased online tickets for Wonderland water park in Mumbai. (MTP 1 Mark Mar'23)**
- (iv) **Dushyant, an unregistered person of Orissa, sends a courier from New Delhi to his friend in Ahmedabad, Gujarat while he was on trip to New Delhi. (MTP 2 Marks Mar'23)**
- (v) **Sudhakar, a registered person in Ranchi, Jharkhand, buys shares from a broker in Patna on NSE, Mumbai. Determine the place of supply of brokerage service assuming that the location of the recipient of service is available in the records of the supplier of service. (MTP 2 Marks Mar'23)**

Answer 2

- (i) Kolkata. The place of supply of services by way of fixed telecommunication line is the location where the telecommunication line is installed for receipt of services.
- (ii) Bangkok. The place of supply of services on board an aircraft is the location of the first scheduled point of departure of that aircraft or flight for the journey
- (iii) Mumbai. The place of supply of services provided by way of admission to an amusement park is the place where the park is located.
- (iv) New Delhi. The place of supply of services by way of transportation of goods by courier to a person other than a registered person is the location at which such goods are handed over for their transportation.
- (v) Ranchi, (Jharkhand). The place of supply of stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services.

Question 3

Answer the following questions in the light of the place of supply provisions contained in the IGST Act, 2017:

- (1) **Quick deal Enterprises (Ahmednagar, Gujarat) opens a new branch office at Hissar, Haryana. It purchases a building for office from Ruhani Builders (Hissar) along with pre-installed office furniture and fixtures. Determine place of supply of the pre-installed office furniture and fixtures. (MTP 2 Marks Apr'18)**
- (2) **Supra Events, an event management company at New Delhi, organizes an award function for Chirag Diamond Merchants of Varanasi (registered in U.P.), at Mumbai. Determine place of supply of the service supplied by Supra Events. Will your answer be different, if the award function is organized at Mauritius instead of Mumbai? (MTP 3 Marks Apr'18)**

Answer 3

- (1) Section 10(1)(c) of the IGST Act stipulates that if the supply does not involve movement of goods, the place of supply is the location of goods at the time of delivery to the

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recipient. Since there is no movement of office furniture and fixtures in the given case, the place of supply of such goods is their location at the time of delivery to the recipient (Quick deal Enterprises) i.e., Hissar, Haryana.

- (2) Section 12(7) of the IGST Act stipulates that the place of supply of services provided by way of organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events is the location of recipient in a case where such service is provided to a registered person. In the given case, since the recipient (Chirag Diamond Merchants) is a registered person, the place of supply is the location of the recipient, i.e., Varanasi, U.P.

Further, the place of supply will not change even if the award function is organised at Mauritius instead of Mumbai as the location of recipient remains unchanged. Thus, in that case also, the place of supply is the location of the recipient, i.e., Varanasi, U.P.

Question 4 (Includes concepts of Exemption from GST)

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

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

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

Note: Rate of CGST and SGST is 9% each and IGST is 18%. All the amounts given above are exclusive of taxes, wherever applicable. (RTP May '19, MTP 5 Marks Sep'22,)

Answer 4

In the given situation, three supplies are involved:

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

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

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

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

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

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

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

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

Consideration for supply = ₹ 10,00,000

IGST @ 18% on value of supply = ₹ 10,00,000 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. 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.

Question 5

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

Discuss and comment on the above levy of tax and determine the tax liability of goods in the above circumstances. (MTP 5 Marks Oct '20)

Answer 5

The supply between Raman Row (Mumbai, Maharashtra) and Nero Enterprises (Kolkata, West Bengal) is a bill to ship to supply where the goods are delivered by the

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

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

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

Question 6

Alpha is a manufacturer and supplier of a machine in India. Gamma of USA helps Alpha in selling the machine by identifying client in USA, viz., Beta who wants to purchase this machine and helps in finalizing the contract of supply of machine by Alpha to Beta. Gamma charges Alpha for his services of locating Beta and helping in finalizing the sale of machine between Alpha and Beta, for which Gamma invoices Alpha and is paid by Alpha for the same. Determine the place of supply of the services provided by Gamma to Alpha. (RTP May'23)

Answer 6

As per section 13(8)(b) of the IGST Act, 2017, the place of supply of the intermediary services shall be the location of the supplier of services. 'Intermediary' has been defined in section 2(13) of the IGST Act, as 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.

Further, the concept of intermediary services has been clarified vide Circular No. 159/15/2021 GST dated 21.09.2021 as follows:

- (i) **Minimum of three parties and two distinct supplies:** There must be minimum of three parties, two principals transacting in the supply of goods or services or securities (the main supply) and one intermediary arranging or facilitating (the ancillary supply) the said main supply.
- (ii) Intermediary service provider to have the character of an agent, broker or any other similar person: Intermediary only arranges or facilitates the main supply and does not himself provide the main supply. Thus, the role of intermediary is only supportive.
- (iii) Does not include a person who supplies such goods or services or both or securities on his own account: It implies that in cases wherein the person supplies the main supply, either fully or partly, on principal-to-principal basis, the said supply cannot be covered under the scope of "intermediary".
- (iv) Sub-contracting for a service is not an intermediary service: Sub-contractor provides the main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly is not an intermediary.

In the backdrop of the above discussion, while Alpha and Beta are the two principals involved in the main supply of the machinery, Gamma, is facilitating the supply of

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machine between Alpha and Beta. In this arrangement, Gamma is providing the ancillary supply of arranging or facilitating the 'main supply' of machine between Alpha and Beta and therefore, Gamma is an intermediary and is providing intermediary service to Alpha. Resultantly, in terms of section 13(8)(b) of the IGST Act, 2017, the place of supply of the intermediary services provided by Gamma shall be the location of the supplier of services, viz. outside India (USA).

Question 7

Determine place of supply along with reasons in the following cases:

- (i) **Mr. X, an architect (Kolkata), provides interior decorator services to Mr. Y of New York (USA) in relation to his immovable property located in New Delhi.**
- (ii) **Mr. A (a Chartered Accountant registered in Kolkata) supplies services to his client in Bhubaneswar (registered in Bhubaneswar, Odisha).**
- (iii) **ABC Ltd. of Patna imported certain goods from XYZ Inc. of USA. The goods were imported through vessel and delivery of goods was taken at Kolkata, whereafter the movement terminates and the goods are stored.**
- (iv) **Mr. X, registered in Guwahati, has availed land-line services from BSNL. The telephone is installed in residential premises in Kolkata and the billing address is office of Mr. X in Guwahati.**
- (v) **Mr. X, residing in Chennai, is travelling with an Indian Airline aircraft and is provided with movie-on-demand service for ₹100 as on-board entertainment during Delhi-Chennai leg of a Bangkok-Delhi-Chennai flight.**
- (vi) **Mr. X of Kolkata purchased online tickets for Aquatica water park in Mumbai.**
- (vii) **Mr. Z, an unregistered person of Kolkata, sends a courier from New Delhi to his friend in Chennai, Tamil Nadu while he was on trip to New Delhi.**
- (viii) **Mr. X, a registered person in Ranchi, Jharkhand, buys shares from a broker in Patna on NSE, Mumbai. Determine the place of supply of brokerage service.**
- (ix) **XYZ Ltd., New Delhi entered into contract with an Indian airline for the supply of biscuit packets for further supply by airline to the passengers in Kolkata-Guwahati route. The biscuits were loaded on board in Lucknow.**

(PYP 9 Marks Jan'21)

Answer 7

- (i) New Delhi. In a case where location of the supplier or location of recipient of service is outside India, the place of supply of services supplied directly in relation to an immovable property including that of interior decorators is the place where the immovable property is located.
- (ii) Bhubaneswar, Odisha. The place of supply of services, except the specified services made to a registered person, is the location of such person.
- (iii) Patna. The place of supply of goods imported into India is the location of the importer.
- (iv) Kolkata. The place of supply of services by way of fixed telecommunication line is the location where the telecommunication line is installed for receipt of services.
- (v) Bangkok. The place of supply of services on board an aircraft is the location of the first scheduled point of departure of that aircraft or flight for the journey
- (vi) Mumbai. The place of supply of services provided by way of admission to an amusement park is the place where the park is located.
- (vii) New Delhi. The place of supply of services by way of transportation of goods by courier to a person other than a registered person is the location at which such goods are handed over for their transportation.
- (viii) Ranchi, (Jharkhand). The place of supply of stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services.²

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- (ix) Where the supply involves movement of goods, the place of supply of such goods is the location of the goods at the time at which the movement of goods terminates for delivery to the recipient. Therefore, the place of supply of biscuit packets sold by XYZ Ltd. to Indian Airlines is Lucknow³.

Further, where the goods are supplied on board an aircraft, the place of supply shall be the location at which such goods are taken on board. Thus, the place of supply of biscuit packets sold by Indian Airlines to the passengers in Kolkata-Guwahati route is Lucknow.

Question 8

Determine the place of supply in respect of the following independent instances under the provisions of IGST Act, 2017:

- (i) **Miss Poorva, an interior design consultant, having office at Chennai (Tamil Nadu), provided professional services to Mr. Nihil who resides in Dubai, for his two immovable properties under single contract, one property is outside India at Singapore and another at Surat (Gujarat).**
- (ii) **United Traders, having a registered place of business at Bengaluru (Karnataka), imported instruments used in COVID treatment from London (UK) through Vizag (Andhra Pradesh) Port.**

**Note: Your answer should also include relevant provisions of law.
(PYP 4 Marks Dec '21)**

Answer 8

- I. In a case where location of supplier or recipient of service is outside India, the place of supply of services of interior decorators provided directly in relation to an immovable property is the location of immovable property. Further, where such services are supplied at more than one location, including a location in the taxable territory, the place of supply of said services is the location of immovable property in the taxable territory. In view of the above provisions, place of supply of Miss. Poorva's (interior design consultant located in India) services provided to Mr. Nihil (recipient located outside India in Dubai) in respect of immovable properties, located in Surat (Gujarat) and in Singapore, is the location in taxable territory, i.e. Surat (Gujarat).
- II. The place of supply of goods imported into India is the location of the importer. Thus, in the given case, place of supply of instruments imported by United Traders is Bengaluru (Karnataka).

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

Few examinees lacked clarity on provisions pertaining to place of supply in respect of imports.

Question 9 (Includes concepts of Import & Export under GST)

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. It then exports it to the Australian supplier, invoicing it for ₹ 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, it is 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

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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.
(PYP 4 Marks Nov '20)

Answer 9

One of the conditions for a supply of service to qualify as export of service is that the place of supply of said service must be outside India.
The place of supply of services supplied in respect of the goods which are temporarily imported into India for any other treatment/process and are exported after such treatment/process without being put to any use in India, other than that which is required for such treatment/process, is the location of recipient of such service [Second proviso to section 13(3)(a) of the IGST Act, 2017].
In view of the above, in the given case, the place of supply of the services provided by M/s Ankit Enterprises is the place where the services are actually performed, i.e., in India as the tools to be exported have been used in India for 3 months before their export. Resultantly, the supply of services by M/s Ankit Enterprises do not qualify as export of service.
Since the recipient is outside India, the place of supply is governed by section 13 and hence, the supply is not an intra-State supply in terms of section 8(2) of the IGST Act, 2017⁸. Therefore, since the place of supply is in India and the supply is not an intra-State supply, the same is an inter-State supply [in terms of section 7(5)(c) of the IGST Act, 2017] of services and not of goods. Thus, the same is liable to IGST of ₹ 1,83,051 (₹ 12,00,000/118 x 18)⁹.

Question 10

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.
(MTP 5 Marks Sep'23)

Answer 10

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 default provision, 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

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in UK.

Question 11

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

Will your answer be different if the product launch party is organized at Dubai? (RTP Nov'18)

Answer 11

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 such person.

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

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

Question 12

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. (RTP Nov'23, Nov'19 & Nov'18)

Answer 12

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

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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.

Question 13

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? (MTP 5 Marks Apr'21, May'20, Oct'22, Oct'23, RTP May'18)

Answer 13

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.

Question 14

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.

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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? (MTP 5 Marks Apr'18 & Apr'23)

Answer 14

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.

Question 15

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?

(PYP 5 Mark May'18, MTP 5 Marks Mar'21, Oct'18, Oct'21)

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Answer 15

- (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 such person in terms of 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.

Question 16

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:

Explain the relevant provisions of law to support your conclusions.

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)

(MTP 4 Marks Apr'22, PYP 5 Marks May '18)

Answer 16

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

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supply will be the location of immovable property, i.e. Paris (France).

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

In case I, some examinees were not aware that the place of supply of services directly in relation to an immovable property located outside India, where service provider and service recipient are located in India is the location of the recipient in terms of section 12(3) of the IGST Act, 2017. Resultantly, they wrongly answered the place of supply to be the location of immovable property.

Question 17

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.

(MTP 5 Marks Nov'21, MTP 4 Marks Mar'22)

Answer 17

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.

Question 18

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.**

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**Will your answer be different if the wedding is to take place in Malaysia?
(PYP 5 Marks Nov'22, MTP 5 Marks Aug'18)**

Answer 18

- (i) When service by way of organization of an event is provided to a registered person, place of supply is the location of such person 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.

Question 19

Determine the place of supply in the following independent cases:-

Mr. Sahukaar (New Delhi) boards the New Delhi-Kota train at New Delhi. Mr. Sahukaar sells the goods taken on board by him (at New Delhi), in the train, at Jaipur during the journey.

- (i) **Vidhyut Pvt. Ltd. imports electric food processors from China for its Kitchen Store in Noida, Uttar Pradesh. Vidhyut Pvt. Ltd. is registered in Uttar Pradesh.**
- (ii) **Mr. Aatmaram, a manager in a Bank, is transferred from Bareilly, Uttar Pradesh to Bhopal, Madhya Pradesh. Mr. Aatmaram's family is stationed in Kanpur, Uttar Pradesh. He hires Gokul Carriers of Lucknow, Uttar Pradesh (registered in Uttar Pradesh), to transport his household goods from Kanpur to Bhopal.**
- (iii) **Bholunath, a resident of New Delhi, opens his saving account in New Delhi branch of Best Bank after undergoing the KYC process. He goes to Amritsar for some official work and withdraws money from Best Bank's ATM in Amritsar thereby crossing his limit of free ATM withdrawals.**
- (iv) **Mr. Chakmak, an architect (New Delhi), enters into a contract with Mr. Zeeshaan of New York to provide professional services in respect of immovable properties of Mr. Zeeshaan located in Pune and New York. (RTP May '21 & May'22)**

Answer 19

- (i) Section 10(1)(e) of the IGST Act, 2017 lays down that place of supply of goods supplied on board a conveyance like aircraft, train, vessel, or a motor vehicle, is the location where such goods have been taken on board. Thus, in the given case, the place of supply of the goods sold by Mr. Sahukaar is the location at which the goods are taken on board, i.e. New Delhi and not Jaipur where they have been sold.
- (ii) As per section 11(a) of the IGST Act 2017, if the goods have been imported in India, the place of supply of goods is the place where the importer is located. Thus, in the present case, the place of supply of the goods imported by Vidhyut Pvt. Ltd. is Noida, Uttar Pradesh.

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- (iii) As per section 12(8) of the IGST Act, 2017, the place of supply of services by way of transportation of goods, including by mail or courier provided to an unregistered person, is the location at which such goods are handed over for their transportation. Since in the given case, the recipient – Aatmaram – is an unregistered person, the place of supply is the location where goods are handed to Gokul Carriers over for their transportation, i.e. Kanpur.
- (iv) As per section 12(12) of the IGST Act, 2017, the place of supply of banking and other financial services, including stock broking services to any person is the location of the recipient of services in the records of the supplier of services. Thus, in the given case, the place of supply is the location of the recipient of services in the records of the supplier bank, i.e. New Delhi.
- (v) As per section 13(4) read with section 13(6) of the IGST Act, 2017, where services supplied directly in relation to an immovable property 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. Since in the given case, the immovable properties are located in more than one location including a location in the taxable territory, the place of supply of architect service is the location in the taxable territory, i.e. Pune.

Question 20

Dobriyal Technocrats Ltd., registered in Gurgaon, Haryana, is engaged in manufacturing heavy steel machinery. It enters into an agreement with Mindsharp Associates, registered in Delhi, for imparting motivational training to the top management of Dobriyal Technocrats Ltd. in a 5-day residential motivational training programme at an agreed consideration of ₹ 20,00,000. Mindsharp Associates books the conference hall alongwith the rooms of Hotel Chumchum, Neemrana (registered in Rajasthan) for the training programme, for a lump sum consideration of ₹ 12,00,000. You are required to determine the place of supply in respect of the supply(ies) involved in the given scenario. (RTP Nov '21)

Answer 20

In the given situation, two supplies are involved:

- (i) Services provided by Mindsharp Associates to Dobriyal Technocrats Ltd. by way of providing motivational training to its top management.
- (ii) Services provided by Hotel Chumchum to Mindsharp Associates by way of accommodation in said hotel for organizing the training programme.

The place of supply in respect of each of the above supplies is determined as under:

- (i) As per the provisions of section 12(5)(a) of the IGST Act, 2017, the place of supply of services provided in relation to training and performance appraisal to a registered person, shall be the location of such person. Therefore, the place of supply of services supplied by Mindsharp Associates to the registered recipient - Dobriyal Technocrats Ltd. by way of providing motivational training to its top management is the location of Dobriyal Technocrats Ltd., i.e. Gurgaon, Haryana.
- (ii) As per the provisions of section 12(3)(c) of the IGST Act, 2017, the place of supply of services, by way of accommodation in any immovable property for organizing,

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inter alia, any official/ business function including services provided in relation to such function at such property, shall be the location at which the immovable property is located. Therefore, the place of supply of services supplied by Hotel Chumchum to Mindsharp Associates by way of accommodation of conference hall alongwith the rooms of Hotel Chumchum for the training programme shall be the location of the Hotel Chumchum, i.e. Neemrana, Rajasthan.

Question 21

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

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

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

The other relevant information is given hereunder:

(RTP May '20)

MAY, 2020 Table

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

Table 2

States	Population as per latest census (in crores)
A	50
B	180
C	20
D	100
E	25

The applicable rate of tax is as under:

CGST	SGST	IGST
9%	9%	18%

Answer 21

As per section 12(14) of the IGST Act, 2017, the place of supply of advertisement

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services to the Central Government, a State Government, a statutory body or a local authority meant for the States or Union territories identified in the contract or agreement is taken as being in each of such States or Union territories (where the advertisement is broadcasted/ run /played/disseminated).

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

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

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

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

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

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

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

States	Population as per latest census (in crores)	Population ratio in the States 'B' & 'C' and 'D' & 'E'	Proportionate value of advertisement services in the States 'A', 'B', 'C', 'D' & 'E'
A	50		₹ 2,50,000

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B	180	B:C = 180:20 = 9:1	$\text{₹ } 5,00,000 \times 9/10 = \text{₹ } 4,50,000$
C	20		$\text{₹ } 5,00,000 \times 1/10 = \text{₹ } 50,000$
D	100	D: E = 100:25 = 4:1	$\text{₹ } 2,50,000 \times 4/5 = \text{₹ } 2,00,000$
E	25		$\text{₹ } 2,50,000 \times 1/5 = \text{₹ } 50,000$

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

Computation of GST liability of 'Moon Plus'

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

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

SECTION B

Question 1

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 1

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 default provision, 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.

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

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

Question 2

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 2

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 such person.

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.

Question 3

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 3

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

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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.

Question 4

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 gross GST liability 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 4

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.

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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 registered person, 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.

Question 5

Paper 5 – Indirect Tax Laws

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 5

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,—

- (f) the supplier of service is located in India;
- (g) the recipient of service is located outside India;
- (h) the place of supply of service is outside India;
- (i) 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
- (j) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.

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

Question 6

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.

Paper 5 – Indirect Tax Laws

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 6

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,–

- (f) the supplier of service is located in India;
- (g) the recipient of service is located outside India;
- (h) the place of supply of service is outside India;
- (i) 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
- (j) 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.

Question 7

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.

(iv) Determine the place of supply of services provided by Sun Ltd.

(v) What would be your answer if the product launch takes place in Bangkok?

(vi) What would be your answer if Mr. Murthy is a registered person and product launch takes place in-

(a) Bengaluru

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(b) Bangkok?

Answer 7

- (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 [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.

- (iv) However, if product launch takes place outside India [Bangkok], the place of supply will be the location of recipient, i.e. Pune, Maharashtra.
- (v) When service by way of organization of an event is provided to a registered person, place of supply is the location of such person in terms of 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.

Question 8

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:

Explain the relevant provisions of law to support your conclusions.

Case	Location of Mr. Mahendra Goyal	Location of Mr. Harish Jain	Property situated at
III.	Delhi	Maharashtra	New York (USA)
IV.	Delhi	New York	Paris (France)

Answer 8

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

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property.

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

Question 9

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:

- d) the place of supply;**
- e) the nature of supply:- whether inter-State or intra-State and**
- f) whether CGST/SGST or IGST would be applicable in this case.**

Answer 9

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.

Question 10

Determine the place of supply for the following independent cases:

- (iii) 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.**
- (iv) 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?

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Answer 10

- (ii) When service by way of organization of an event is provided to a registered person, place of supply is the location of such person 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.

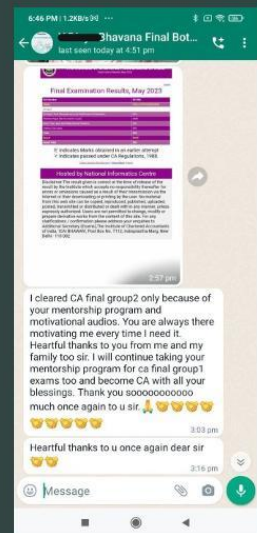
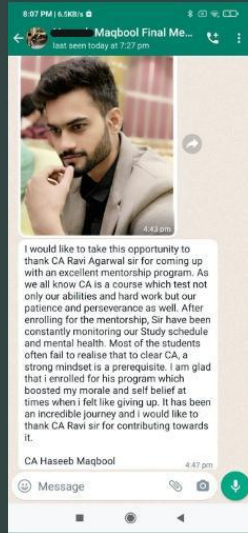
Since, in the given case, the service recipient [Dr. Kelvin] is unregistered and event is held in India, place of supply is the location where the event is actually held, i.e. Mumbai, Maharashtra.

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 4 Exemptions From GST

Attempts wise Distribution

Row Labels	Dec' 21	Jan' 22	Jul' 21	May' 18	Nov' 18	May' 19	May' 22	May' 23	Nov' 19	Nov' 20	Nov' 22	Nov' 23
MCQ												
MTP	Q3						Q4		Q2	Q6		
RTP								Q1	Q5	Q8	Q7	
QA												
MTP						Q7	Q17, Q18			Q19	Q9	Q4, Q5
PYP	Q1						Q16	Q3	Q15			
RTP			Q8		Q2			Q12, Q14	Q6	Q10	Q11	Q13

SECTION A MULTIPLE CHOICE QUESTIONS (MCQ'S)

1. Which of the following activity is taxable under GST?

- (i) Supply of food by a hospital to patients (not admitted) or their attendants or visitors.
- (ii) Transportation of passengers by non-air-conditioned railways
- (iii) Services by a brand ambassador by way of folk dance performance where consideration charged is Rs. 1,40,000.
- (iv) Transportation of agriculture produce by air from one place to another place in India
- (v) Services by way of loading, unloading, packing, storage or warehousing of rice
- (vi) Service provided by GTA where consideration charged for transportation of goods for a single carriage is Rs. 900

- (a) (i), (v), (vi)
- (b) (iii), (iv), (v)
- (c) (i), (iii), (iv)
- (d) (iv), (v) (MTP 2 Marks Oct'19, Mar'19, RTP May'23)

Ans: (c)

2. State which of the following statement is correct:

- (i) Services by any artist by way of performance in folk or classical art forms of music, dance, or theatre as a brand ambassador if the consideration charged for such performance is not more than Rs. 150,000/- is exempt.
- (ii) Services of life insurance business under Life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having minimum amount of cover of Rs. 2,00,000/- is exempt
- (iii) Service by an acquiring bank, to any person in relation to settlement of an amount upto Rs. 2,500/- in a single transaction transacted through credit card, debit card, charge card or other payment card service is exempt.

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(iv) **Services provided by a goods transport agency by way of transport in a goods carriage of, goods, where gross amount charged for the transportation of goods on a consignment transported in a single carriage is Rs. 2250/-, is exempt.**

Your options are-

- (a) (i)
- (b) (ii), (iii)
- (c) (ii), (iii), (iv)
- (d) None of the above **(MTP 2 Marks Oct '19, Apr'22, Apr'19)**

Ans: (d)

3. Mr. Happy Singh is a resident of Chandigarh. The marriage of his daughter, Khushi Kaur, has been finalized with Mr. Lovely Singh, a NRI settled in Canada. The marriage is scheduled on 14th February in Chandigarh. Mr. Happy Singh wants to send 5,000 marriage invitation cards to all his relatives and friends to attend the marriage. He has to send the invitation by speed post. He is not sure about the taxability of speed post services under GST regime. He seeks your help in determining the applicability of GST on speed post. Choose the correct option.

- (a) GST payable
- (b) Non-taxable
- (c) Exempt
- (d) None of the above **(MTP 2 Marks Nov'21)**

Ans: (a)

4. Drishti Public School (DPS) situated in Bilaspur in the State of Chhattisgarh has planned to celebrate its sports day in Bilaspur Stadium located at a distance of 20 km from the school precincts on 15th April. DPS has invited quotes from various suppliers for arranging tent, security and catering for students and teachers. The price has to be quoted including all applicable taxes.

X & Co., a supplier providing the services required above, is not sure of the GST impact on the above transactions. It seeks your help to determine whether GST is applicable on all the above services or not, so that it can quote the competitive price accordingly.

- (a) Tent, security and catering services: All taxable
- (b) Tent, security and catering services: All exempt
- (c) Tent and security services: Taxable; Catering services: exempt
- (d) Tent: Taxable; Security and catering services: exempt **(MTP 2 Marks Mar'22)**

Ans: (c)

5. Mr. Khiladi Kumar, is the Managing Director of Khiladi Equipments (P) Ltd. The Company has offices and factories in Mumbai and is registered under GST. Mr. Khiladi Kumar, has decided to send food grains and other relief materials worth ₹ 50,00,000/- and ₹ 20,00,000 respectively through railway and airways to the cyclone hit victims in Kerala in the month of November, 20XX. The Company has contacted Super Airlines and Indian Railways to transport the materials from Mumbai to Kerala and price for the same has been determined as ₹10,00,000/- by air and ₹50,000/- by railways, excluding taxes. Mr. Khiladi Kumar, seeks your help to determine what amount of GST is to be paid to Super Airlines and Indian Railways if applicable GST rate is 18%.

- (a) Super Airlines: ₹ 1,80,000/-; Indian Railways: NIL
- (b) Super Airlines: ₹ 1,80,000/-; Indian Railways: ₹ 9,000
- (c) Super Airlines: Nil; Indian Railways: ₹ 9,000/-
- (d) Super Airlines: Nil; Indian Railways: Nil **(RTP Nov '19)**

Ans: (a)

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6. Which of the following statements is true?

1. Services provided by Government ITIs to individual trainees are exempt from GST.
2. Services provided by the State Governments and private service providers by way of transportation of patients in ambulance are exempt from GST.
3. Services of renting of shops in a hospital are exempt from GST being health care services.
4. Services provided by Police to PSUs are taxable.
 - (a) 1, 2 & 4.
 - (b) 2, 3 & 4.
 - (c) 3 & 4.
 - (d) 1, 2, 3 & 4. (MTP 2 Marks May '20, Apr'21)

Ans: (a)

7. Nivedita Foundation, a charitable trust registered under section 12AB of the Income-tax Act, 1961, owns and manages a newly constructed Dharamshala "GOVINDAM" in the precincts of a temple in Haridwar. GOVINDAM has 50 rooms, a huge party lawn and other amenities. Nivedita Foundation has received following receipts during the period from April to September:

1. Rent of ₹ 25,00,000 from renting of rooms @ ₹ 1,000/- per day.
2. Rent of ₹ 9,00,000 from renting of party lawns for marriage and social functions @ ₹ 9,000/- per day.
3. Donations of ₹ 20,00,000 (including one donation of ₹ 15,00,000/- received with specific direction to advertise the business activity of the donor).

You are required to determine the value of taxable supply of GOVINDAM during the period from April to September: (RTP Nov'22)

- (a) ₹ 55,00,000
- (b) ₹ 50,00,000
- (c) ₹ 25,00,000
- (d) ₹ 40,00,000

Ans: (d)

8. Shree Ram Seva Trust is a charitable institution registered under section 12AA of the Income-tax Act, 1961. It has organized a skill development programme relating to persons over the age of 65 years residing in a well-planned city, in the month of April. It has received following amounts under the programme:

Particulars	Amount (₹)
Subscription fees for the programme	50,000
Sponsorship fees	1,00,000
Consideration for supply of goods	3,00,000

Besides, the trust has received the donations of ₹ 2,00,000 in April. Hanuman, accountant of Shree Ram Seva Trust, is not able to determine the taxability of the above amounts received under GST law. He seeks your expertise in determining the same.

Determine the value of taxable supply of Shree Ram Seva Trust, for the month of April.

Paper 5 – Indirect Tax Laws

- (a) Nil
 (b) ₹ 6,50,000
 (c) ₹ 6,00,000
 (d) ₹ 4,50,000 (May '20)

Ans: (d)

QUESTIONS AND ANSWERS

Question 1

A2X Services Limited, registered under GST, is engaged in providing various services to various educational institutions. The company provides the following information in respect of services provided during the month of April:

S. No	Description of services provided
i.	Transportation of students & staff of 'Shiksha University', a Deemed University
ii.	Catering services provided to 'Rank CBSE School'
iii.	Security personnel services provided to 'Win CBSE School', for its annual sports day held at SAI Sports Complex owned by Government of India
iv.	Supply of online periodical science journal to 'Merit CBSE School' for its higher secondary students
v.	Services, in relation to placement of students, to 'SKILL', a government recognized vocational training college

Comment on the taxability or otherwise of the above transactions under GST law. State the correct legal provisions for the same. (PYP 5 Marks Dec'21)

Answer 1

S. no	Particulars	Taxability
I.	Transportation of students and staff of deemed university [Taxable since transportation services provided to an educational institution are exempt only if such institution provides pre-school education or education up to higher secondary school or equivalent.]	Taxable
II.	Catering services provided to "Rank CBSE School" [Catering services provided to an educational institution providing pre-school education or education up to higher secondary school or equivalent are exempt.]	Exempt
III.	Security services to "Win CBSE School" for its annual sports day held at SAI Sports complex [Security services provided to an educational institution providing pre-school education or education up to higher secondary school are exempt provided such services are performed in the premises of such institution. However, in this case, security services are being provided outside the school campus, and hence the same are taxable.]	Taxable
IV.	Supply of online periodical science journal to school for its higher secondary students	Taxable

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	[Taxable since educational institutions providing service by way of pre-school education and education up to higher secondary school or equivalent are not eligible for exemption in respect of supply of online educational journals.]	
V.	Services in relation to placement of students, to Government recognized vocational training college [Taxable since only services related to admission and conducting exams are exempt for vocational educational institutions.]	Taxable

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

In few cases, the taxability or otherwise for various services was not adequately corroborated by proper explanation.

Question 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.

(RTP Nov'18)

Answer 2

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

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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.

Question 3

Explain in brief whether the below mentioned independent cases of supply of services provided are exempt or taxable under GST law, providing very brief reasoning:

- (i) **Himalayan Wanderers Campsite, a registered entity under GST, has fixed up various tents in Shimla, for lodging purposes being offered to tourists and trekkers. The details of tents rented by Himalayan Wanderers Campsite on 8th December is as under:**

No. of tents rented	Amount of rent charged per tent per day	Nature of occupancy
10	₹ 600	Single
15	₹ 1000	Double

- (ii) **Fables Infotech LLP, a limited liability partnership firm having registered place of business in Hyderabad under GST, entered into a contract with Neeta Services for providing air-conditioned mini vans for 1 year for transportation of its female employees working in night shifts to be picked up from designated spots every day at 9.00 p.m. except weekends and dropped to the office. The same female employees were again picked up from office at 6.30 a.m. every morning except weekends and dropped back at the same spots from where they were picked up.**
- (iii) **HumTum Services Limited, registered under GST, provided catering services to Baljatan Anganwadi, an educational institute providing pre-school education amounting to ₹ 2,50,000 in the month of February.**
- (iv) **50 women from different cities pursuing diploma in management courses, participated in the 'Leadership Program' designed especially for women for a duration of 9 months by IIM, Bangalore (a certificate as to their participation was awarded to each one of them after the completion of the programme).**
- (v) **Mr. Ashok rented his residential flat to his friend Dr. Kishore, who is not registered under GST for use as his medical clinic at a monthly rent of ₹ 15000.(PYP 5 Marks May'23)**

Answer 3

- i. Taxable:** Since there is no specific exemption with respect to services provided by a campsite for lodging purposes, services provided by Himalayan Wanderers Campsite are liable to GST.
- ii. Taxable:** Service of transport of passengers provided by Neeta Services are liable to GST since such services are being provided in a contract carriage which is air-conditioned.
- iii. Exempt:** Since catering services provided to an educational institution providing pre-school education are exempt from GST, HumTum Services Limited is not liable

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to pay GST.

- iv. **Taxable:** Since short duration programs provided by IIMs are not any qualification recognized by law, GST is payable in the given case.
- v. **Taxable:** Since residential dwelling is rented for use other than residence, GST is payable on the same.

Question 4

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	13,00,000
Fee received from students of a competitive exam training academy run by Vividh Pvt. Ltd.	5,40,000
4 buses each with a seating capacity of 72 passengers given on hire to State Transport Undertaking	6,00,000
Rent paid to Local Municipal Corporation for premises taken on rent for competitive exam training academy	2,50,000
Goods transport services received from a registered GTA which has opted to pay tax itself @ 12%	1,80,000

Compute gross GST liability including tax payable under reverse charge (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. (MTP 9 Marks Oct'23)

Answer 4

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.]	13,00,000	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	5,40,000	97,200

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qualification.]		
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 has opted to pay 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

Question 5

M/s A2Z, a proprietary firm registered under GST, is engaged in providing various services under one roof. The firm provides the following information pertaining to supplies made/input services availed by it during the month of March:

S. No.	Particulars	Amount (₹)
1.	Amount collected for loading, unloading, packing and warehousing of potato chips	15,000
2.	Fees paid for yoga camp conducted by a charitable trust registered under section 12AB of the Income-tax Act, 1961 for employees of the firm	20,000
3.	Interest received on fixed deposits with APNA Bank by the firm	30,000
4.	Professional services provided to foreign diplomatic mission located in India	50,000
5.	Recovery agent services provided to ABC Finance Ltd. - an NBFC located in Delhi	1,00,000
6.	Security services (by way of supply of security personnel) provided to XYZ Ltd. - a registered person under GST	80,000
7.	Receipts from running an educational institution (a Senior Secondary School) for services provided to its students (including receipts for providing residential dwelling service of ₹ 18,20,000 by the institution to the students)	35,00,000
8.	Supply value including cost of fuel for provision of renting of motor vehicle for transportation of	88,000

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passengers' service to NPS Ltd.

Determine the GST liability (inclusive of liability for the supplies received also) of M/s A2Z for the month of March with necessary explanation for treatment of each item. Rate of tax for both inward and outward supply is CGST and SGST @ 9% each except for the service of renting a vehicle for transportation of passengers for which CGST and SGST @ 2.5% each is applicable. All the supplies are intra-State only. All amounts given hereunder are exclusive of GST. (PYP 9 Marks May'22, MTP 9 Marks Sep'23)

Answer 5

Computation of GST liability of M/s A2Z for the month of March:

S. No.	Particulars	CGST (₹)	SGST (₹)
1	Loading, unloading, packing and warehousing of potato chips [Loading, unloading, packing and warehousing of agricultural produce is exempt. However, potato chips are not an agricultural produce.]	1,350 [15,000 × 9%]	1,350 [15,000 × 9%]
2	Fees paid for yoga camp [Services provided by a charitable trust registered under section 12AB of the Income-tax Act by way of advancement of yoga are exempt.]	-	-
3	Interest received on fixed deposits [Services of extending fixed deposits in so far as the consideration is represented by way of interest are exempt.]	-	-
4	Professional services provided to foreign diplomatic mission located in India [Not specifically exempt.]	4,500 [50,000 × 9%]	4,500 [50,000 × 9%]
5	Recovery agent services provided to ABC Finance Ltd., an NBFC [Since such services are being provided to an NBFC, tax on the same is payable by recipient - ABC Finance Ltd. - under reverse charge (RCM).75]	-	-
6	Security services provided to XYZ Ltd., a registered person [Since such services are being provided by a non-body corporate to a registered person, tax on the same is payable by recipient - XYZ Ltd. - under reverse charge (RCM) 76.]	-	-
7	Receipts from running an educational institution (including receipts for residential dwelling service) [Services provided by an educational institution and services by way of renting of residential dwelling for use as residence are exempt.]	-	-
8	Renting of motor vehicle service [Since services of renting of motor vehicle including cost of fuel with tax payable @ 2.5% CGST/SGST is	-	-

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	being provided by a non-body corporate to a body corporate, tax on the same is payable by recipient – NPS Ltd. – under RCM77.]		
	Total GST liability	5,850	5,850

Question 6

‘Sarvshiksha Trust’ is a charitable trust registered under section 12AA of the Income-tax Act, 1961. The trust is registered under GST in the State of Uttar Pradesh. The trust runs the following educational institutions:

- (i) ‘Kaypee 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 approved by The All India Council for Technical Education (AICTE).
- (ii) ‘Nanhi Mutthi’, a pre-school in Lucknow.
- (i) ‘Bright Minds’, a coaching institute in Kanpur. The Institute provides coaching for Institute of Banking Personnel Selection (IBPS) Probationary Officers Exam.
- (ii) ‘Gyan Vaibhav’ a higher secondary school affiliated to CBSE Board. The trust provides the following details relating to the goods and services received by the various institutions run by it during the period April 20XX to September 20XX:

Table 1

S. No.	Particulars	KIT	Nanhi Mutthi	Bright Minds	Gyan Vaibhav
		(₹)	(₹)	(₹)	(₹)
(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)	Courier services for sending the admit cards for the examination, to the students	50,000			
(iv)	Honorarium to paper setters and examiners (not on the rolls of the Institution)	5,00,000			
(v)	Rent for exam centers taken on rent like schools etc, for conducting examination	8,00,000		1,00,000	
(vi)	Subscription for online educational journals [Nanhi Mutthi has taken the subscription for online periodicals on child development and experiential	4,00,000	80,000	2,20,000	2,40,000

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	learning]				
(vii)	Hire charges for buses used to transport students and faculty from their residence to college and back	4,80,00 0	5,50,00 0	1,30,00 0	7,50,000
(viii)	Catering services for running a canteen in the campus for students (Catering services for KIT include a sum of ₹ 60,000 for catering at a student event organised in a banquet hall outside the campus)	3,20,00 0	2,60,00 0	1,80,00 0	5,00,000
(ix)	Security and housekeeping services for the institution(s) (Security and housekeeping services for Gyan Vaibhav include a sum of ₹ 80,000 payable for security and housekeeping at the student event organised in a banquet hall outside the campus)	6,00,00 0	4,00,00 0	3,75,00 0	4,65,000

The trust further provides the following details relating to the output services provided to the students by the various institutions run by it during the period April 20XX to September 20XX:

Table 2

S. No.	Particulars	KIT	Nanhi Mutthi	Bright Minds	Gyan Vaibhav
		(₹)	(₹)	(₹)	(₹)
(i)	Tuition fee	35,00,00 0	15,00,00 0	20,00,00 0	25,00,00 0
(ii)	Transport fee charged from students	5,00,000	6,00,000	1,30,000	8,50,000
(iii)	Charges for food supplied in canteen (located in the premises of the Institutions) The canteen facility being provided by Bright Minds is not compulsory and is open	4,60,000		2,40,000	6,10,000

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	<p>to general public as well. However, canteen facility being provided by KIT and Gyan Vaibhav is only for students and staff of such educational institutions.</p>			
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With the help of the above details –

- (i) **determine the amount of GST payable, if any, on goods and services received during April 20XX- September 20XX by the various educational institutions run by the ‘Sarvshiksha Trust’;**
- (ii) **compute net GST liability of the ‘Sarvshiksha Trust’ payable from the Electronic Cash Ledger, for the period April 20XX to September 20XX.**
All the amounts given above are exclusive of taxes, wherever applicable.

Notes:

- (i) **Rate of GST on catering service is 5%. No ITC has been availed on inputs and input services used in the supply of catering service. Assume that while providing the catering service in the canteen, the educational institutions have not used any inputs and input services except the catering service (mentioned at Sl. No. VIII of Table 1) availed from third parties.**
- (ii) **Rate of GST on goods is 12%. Rate of GST on printing services is 12% and on other services is 18%.**
- (iii) **Except catering service, wherever relevant, all the conditions necessary for availing the ITC have been complied with. (MTP 10 Marks, Mar’19, RTP Nov ’19)**

Answer 6

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

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

- (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 recognized 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 point (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 are 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.

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In the given case, all the engineering courses including the distance learning post graduate engineering programme run by KIT are approved by 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, Nanhi Mutthi and Gyan Vaibhav, being a pre-school and a higher secondary school respectively are also educational institutions in terms of the exemption notification. However, Bright Minds, being a coaching centre, training candidates to secure a banking job, is not an educational institution in terms of the exemption notification. Hence, none of the select services (mentioned above) will be exempt when provided to Bright Minds.

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

Particulars	KIT	Nanhi Mutthi	Bright Minds	Gyan Vaibhav
	(₹)	(₹)	(₹)	(₹)
Printing services for printing the question papers (paper and content are provided by the Institutions)	Exempt		18,000 [1,50,000 x 12%]	Exempt
Paper procured for Printing the question papers – [Supply of select	51,600 [4,30,000 x 12%]		30,960 [2,58,000 x 12%]	41,280 [3,44,000 x 12%]
Services to educational Institutions is exempt and not supply of goods to Such educational institutions]				
Courier services for sending the admit cards for the examination, to the students	Exempt			
Honorarium to paper setters and examiners (not on the rolls of the educational institution)	Exempt			
Rent for exam centers taken on rent like schools etc, for conducting examination	Exempt		18,000 [1,00,000 x 18%]	
Subscription for Online educational journals	Exempt	14,400	39,600	4,320
[Nanhi Mutthi has taken the subscription for online periodicals on child development		[80,000 x 18%]	[2,20,000 x 18%]	[2,40,000 x 18%]

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and experiential learning]				
Hire charges for buses used to transport students and faculty from their residence to college and back	86,400 [4,80,000 x 18%]	Exempt	23,400 [1,30,000 x 18%]	Exempt
Catering services for running a canteen in the campus for students	16,000 [3,20,000 x 5%]	Exempt	9,000 [1,80,000 x 5%]	Exempt
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				
Security and housekeeping services for the institution(s)	1,08,000 [6,00,000 x 18%]	Exempt	67,500 [3,75,000 x 18%]	14,400 [80,000 x 18%]
Security and housekeeping service provided to pre-school and the higher secondary school for the student event organized in a banquet hall will be taxable as only the security and housekeeping service provided within the premises of the pre- school and the higher secondary school are exempt.				
Total GST payable on goods and services received by the educational institutions	2,62,000	14,400	2,06,460	60,000

- (ii) (1) Sl. No. 1 of Notification No. 12/2017 CT (R) dated 28.06.2017 exempts services provided by an entity registered under section 12AA of the Income-tax Act, 1961 by way of charitable activities. Here, “charitable activities” means activities relating to *inter alia* advancement of educational programmes or skill development relating to,-
- abandoned, orphaned or homeless children;
 - physically or mentally abused and traumatized persons;
 - prisoners; or

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(D) persons over the age of 65 years residing in a rural area;

In the given case, though Sarvshiksha Trust is registered under section 12AA of the Income-tax Act, 1961, none of the educational institutions run by it are providing services by way of charitable activities. As is seen from the relevant extract of the definition of the charitable activities given above, only when the education is provided relating to the persons mentioned therein, it becomes charitable activity under GST laws. However, in the given case, education is not provided to any specific group or category of persons as specified above, but to all the categories of children/candidates approaching the college/pre-school/coaching institute/higher secondary school. Therefore, the education services provided by the Sarvshiksha Trust is not exempt under Sl. No. 1 of the exemption notification.

- (2) Sl. No. 66 of Notification No. 12/2017 CT(R) dated 28.06.2017 also exempts services provided by an educational institution to its students, faculty and staff. All the educational institutions run by the Sarvshiksha Trust except Bright Minds are educational institutions in terms of the exemption notification (as explained under point (i) above). Therefore, the education services, transport services and catering services provided by KIT, Nanhi Mutthi, and Gyan Vaibhav to its students will all be exempt from GST under Sl. No. 66 of the exemption notification. Thus, only the educational services provided by Bright Minds will be liable to GST @ 18%. The catering services provided by Bright Minds will be liable to GST @ 5%.
- (3) No input tax credit (ITC) will be availed on inputs and input services used in providing exempt education services, i.e. education services by KIT, Nanhi Mutthi, and Gyan Vaibhav. Only Bright Minds will be entitled to avail ITC on inputs and input services used in providing taxable education services. However, as per the information given in the question, while providing the catering service, Bright Minds has not availed any ITC of catering service received by it from third parties.
- (4) Since there are no common inputs and input services being used for providing taxable and exempt services, the need for reversal of ITC attributable to exempt supplies will not arise.

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

Particulars	Bright Minds
	(₹)
Tuition fee	20,00,000
Transport fee charged from students	1,30,000
Value of output supply taxable @ 18%	21,30,000
GST liability @ 18% [A]	3,83,400
Value of output supply taxable @ 5% [Charges for food]	2,40,000
GST liability @ 5% [B]	12,000
Total GST liability [A]+[B]	3,95,400
Less: ITC [Total tax payable by Bright Minds on the service received by it as computed in point (i) above less the tax payable on catering charges (₹ 2,06,460 - ₹ 9,000)]	<u>1,97,460</u>
Net GST payable from Electronic Cash Ledger	1,97,940

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Question 7

Rahul Agri Millers Ltd., located in Haryana, is engaged in customs milling of paddy into rice. It does not pay GST on the same as it is of the view that the process of milling of paddy into rice is exempt under GST since is an intermediate production process in relation to cultivation of plants. However, Department demands tax on said activity contending that it is not eligible for said exemption. You are required to determine the veracity of the Department's contention. (MTP 4 Marks Mar'19)

Answer 7

Yes, the contention of the Department is correct. As per Notification No. 12/2017 CT (R) dated 28.06.2017, carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce is exempt under GST.

Milling of paddy is not an intermediate production process in relation to cultivation of plants. It is a process carried out after the process of cultivation is over and paddy has been harvested. Further, processing of paddy into rice is not usually carried out by cultivators, but by rice millers. Milling of paddy into rice also changes its essential characteristics.

Therefore, milling of paddy into rice cannot be considered as an intermediate production process in relation to cultivation of plants for food, fibre or other similar products or agricultural produce. In view of the above, it is clarified by CBIC that milling of paddy into rice is not eligible for exemption under said notification. Thus, GST is payable on the said activity.

Question 8

Parikshit Ltd., engaged in providing a bouquet of services, is registered under GST law. It furnishes the following information for the month of March in relation to various services provided by it: (RTP May '21)

Particulars	₹
Fees from prospective employers for campus interview in its college	5,20,00 0
Five buses each with seating capacity of 40 passengers given on hire to State Transport Undertaking	6,50,00 0
Receipts of 'Shiny', a commercial coaching institute providing coaching in the field of commerce (a certificate was awarded to each trainee after completion of the training)	1,82,00 0
Interest received on fixed deposits of the company with Dhanvarsha Bank	6,50,00 0
Receipts from running a Boarding School (including receipts for providing residential dwelling service of ₹ 18,20,000)	39,00,0 00
Receipts of 'Sikshit Samudai' - an Industrial Training Institute (ITI) affiliated to the National Council for Vocational Training	

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(NCVT). Courses run by said ITI are in designated trades	2,60,000
Receipts of 'Pratibha Institute', an institute registered with Directorate General of Employment and Training (DGET), Union Ministry of Labour and Employment, running a Modular Employable Skill Course (MESC) approved by the National Council for Vocational Training (NCVT)	1,30,000
Professional services provided to foreign diplomatic mission located in India	1,04,000

Compute the GST payable by Parikshit Ltd. assuming that all the above receipts are exclusive of GST wherever applicable and the rate of GST applicable on all the supplies is 18%.

Answer 8

Computation of GST payable by Parikshit Ltd. for the month of March

Particulars	Value (₹)	GST @ 18% (₹)
Fees from prospective employers for campus interview in its college [Taxable since such services are not specifically exempt]	5,20,000	93,600
Five buses each with seating capacity of 40 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 vide <i>Notification No. 12/2017 CT(R) dated 28.06.2017</i> (hereinafter referred to as exemption notification).]	Nil	Nil
Receipts of Shiny- a coaching institute [Services provided by an educational institution to its students, faculty and staff are exempt vide exemption notification. However, coaching institute is not an educational institution.]	1,82,000	32,760
Interest received on fixed deposits of the company with Dhanvarsha Bank [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 vide exemption notification.]	Nil	Nil
Receipts from Boarding School including receipts for residential dwelling service [Services provided by an educational institution to its students, faculty and staff are exempt vide exemption notification.]	Nil	Nil

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notification. Boarding School providing education up to higher secondary school or equivalent is an educational institution since it provides composite supply of education service coupled with other services like providing dwelling units for residence and food wherein the principal supply is supply of education service.]		
Receipts of Sikshit Samudai [Services provided by an educational institution to its students, faculty and staff are exempt vide exemption notification. Sikshit Samudai is an educational institution running approved vocational education course.]	Nil	Nil
Receipts of 'Pratibha Institute' running Modular Employable Skill Course [Services provided by an educational institution to its students, faculty and staff are exempt vide exemption notification. Pratibha Institute is an educational institution running approved vocational education course.]	Nil	Nil
Professional services provided to foreign diplomatic mission located in India [While services provided by a foreign diplomatic mission located in India are exempt from GST vide exemption notification, no such exemption is available to the services provided to such mission.]	1,04,000	18,720
GST payable	8,06,000	1,45,080

Question 9

Lilawanti Hospital, Mumbai is a multi-specialty hospital located in the heart of the Mumbai city. It has its own restaurant – Govindam Foods - which supplies food to its in-patients (patients admitted in the hospital) as per the advice of the doctor/nutritionist. Govindam Foods 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. Lilawanti 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 Lilawanti Hospital. (MTP 4 Marks Sep'22)

Answer 9

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 Govindam Foods to in-patients as advised by doctors/nutritionists while other supplies of food by it to patients (not admitted) or their attendants/visitors are taxable.

Question 10 (Includes concepts of Supply under GST, Payment of Tax, ITC and Charge of GST)

Pethalal has obtained registration in the current financial year in Uttar Pradesh.

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His turnover in the preceding financial year was ₹ 19,90,000. He has received the following amounts in respect of the activities undertaken by him in the month of September:

S. No.	Particulars	Amount (₹)
(i)	Funeral services	8,80,000
(ii)	Services of warehousing of jaggery	50,000
(iii)	Electrically operated buses given on hire to Municipal Corporation	5,00,000
(iv)	Service provided to recognized sports body as commentator	2,00,000
(v)	Commission received as an insurance agent from insurance company	65,000
(vi)	Commission received as business facilitator for the services provided to the urban branch of a nationalized bank with respect to savings bank accounts	15,000
(vii)	Security services (supply of security personnel) provided to Damodar Engineering College (DEC)* [registered under GST] for the security of the college premises *All the engineering courses run by DEC are recognised by the law [The All India Council for Technical Education (AICTE)]	28,000

Further, he has received following services in the month of September:

S. No.	Particulars	Amount (₹)
(a)	Freight paid to unregistered goods transport agency for his business activities relating to serial number (i) above	1,00,000
(b)	Legal advice received from M/s Kanoon Associates, a partnership firm, seeking advice in relation to a tax dispute of the business	50,000

All the transactions stated above are intra-State transactions and amounts given are exclusive of GST, wherever applicable. You are required to calculate net GST payable by Pethalal for the month of September. There was no opening balance of input tax credit. Rate of CGST and SGST is 9% each for all the outward supplies made by Pethalal. (RTP May '20)

Answer 10

Computation of net GST payable by Pethalal

Particulars	Amount (₹)	CGST (₹)	SGST (₹)
<u>Supplies on which Pethalal is liable to pay GST under forward charge</u>			
Funeral services [Note 1]	8,80,000	=50,000 x 9%=4,500	=50,000 x 9%=4,500
Services of warehousing of jaggery [Note 2]	50,000		
Services by way of giving on hire electrically operated buses to Municipality [Note 3]	5,00,000		

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Service provided to recognized sports body as commentator [Note 4]	2,00,000	= 2,00,000 × 9% = 18,000	= 2,00,000 × 9% = 18,000
Commission received as an insurance agent from insurance company [Note 5]	65,000		
Commission received as business facilitator for the services provided to the urban branch of a nationalised bank with respect to savings bank accounts [Note 6]	15,000		
Security services (supply of security personnel) provided to DEC for the security of the college premises [Note 7]	28,000		
Value of taxable supply	2,00,000		
Total tax liability on outward supplies (A)		18,000	18,000
<u>Supplies on which Pethalal is liable to pay GST under reverse charge</u>			
Services received from GTA [Note 8]	1,00,000	= 1,00,000 × 2.5% = 2,500	= 1,00,000 × 2.5% = 2,500
Legal services received [Note 9]	50,000		
Value of taxable supply	1,00,000		
Total tax liability on inward supplies under reverse charge (B) - payable in cash [Note 10]		2,500	2,500
ITC available on input services [Note 8]		Nil	Nil
Net GST payable (A) + (B)		20,500 25,000	20,500 25,000

Notes:

- Funeral services being covered in entry 4 of Schedule III to the CGST Act, 2017 are not a supply and thus, are outside the ambit of GST.
- Services by way of storage/ warehousing of, *inter alia*, jaggery are exempt from GST vide Exemption *Notification No. 12/2017 CT(R) dated 28.06.2017* (hereinafter referred to as exemption notification). Thus, services of warehousing of jaggery are exempt. **(As per amendment in the notification dated 18.07.2022 warehousing of jaggery has been removed from the exemption list and is now taxable)**
- Services by way of giving on hire to a local authority, an Electrically operated vehicle (EOV) meant to carry more than 12 passengers are exempt vide exemption notification. Buses are EOVs meant to carry more than 12 passengers. Hence, services of giving electrically operated buses on hire to Municipal Corporation are exempt from GST.
- Services provided to a recognized sports body by an individual only as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body are exempt from GST vide exemption notification. Thus, service provided as commentator is liable to GST.
- Though commission for providing insurance agent's services to any person carrying on insurance business is liable to GST, the tax payable thereon is to be paid by the recipient of service i.e., insurance company, under reverse charge in terms of *Notification No. 13/2017 CT(R) dated 28.06.2017* (hereinafter referred to as reverse charge notification). Thus, Pethalal will not be liable to pay GST on such commission.
- Services provided by a business facilitator to a banking company with respect to accounts in its rural area branch are exempt from GST vide exemption notification.

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Thus, services provided by him in respect of urban area branch of the bank will be taxable. However, the tax payable thereon is to be paid by the recipient of service i.e., banking company, under reverse charge in terms of reverse charge notification. Hence, Pethalal will not be liable to pay GST on commission received for said services.

- (7) Services provided to an educational institution, by way of security services performed in such educational institution are exempt from GST only when said services are provided to an institution providing services by way of pre-school education and education up to higher secondary school or equivalent, vide exemption notification. Thus, in the given case, security services provided to DEC are not exempt. Further, the tax on security services (supply of security personnel) provided by any person other than a body corporate to a registered person is payable by the recipient of service under reverse charge in terms of reverse charge notification. Hence, Pethalal will not be liable to pay GST in the given case.
- (8) GST on services provided by a GTA (not paying tax @ 12%) to, *inter alia*, a registered person is payable by the recipient of service i.e., the registered person, under reverse charge in terms of reverse charge notification. Since in the given case, GTA is unregistered, Pethalal is liable to pay tax under reverse charge @ 5% (CGST @ 2.5% and SGST @ 2.5%). Further, since said input services are being exclusively used for effecting non-taxable supplies [funeral services], input tax credit of the GST paid on the same will not be available.
- (9) Legal services provided by a partnership firm of advocates to a business entity (with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017) are exempt from GST vide exemption notification. Since the aggregate turnover of Pethalal did not exceed ₹ 20 lakh [the applicable threshold limit for registration for Pethalal being a supplier of services] in the preceding FY, legal services received by him are exempt from GST.
- (10) As per section 49(4) of the CGST Act, 2017, amount available in the electronic credit ledger may be used for making payment towards output tax. However, tax payable under reverse charge is not an output tax in terms of section 2(82) of the CGST Act, 2017. Therefore, tax payable under reverse charge cannot be set off against the input tax credit and thus, will have to be paid in cash.
- (11) Since all the transactions given hereunder are intra-State, CGST and SGST are payable in terms of section 9(1) of the CGST Act, 2017

Question 11

Super Lever Limited is engaged in manufacturing of taxable electronic goods. Its two manufacturing units are located in Mumbai and Nagpur and both the units are registered under GST in the State of Maharashtra. The company has another manufacturing unit in Bangalore, registered under GST in the State of Karnataka and a retail showroom located in Ahmedabad, registered under GST in the State of Gujarat.

The company has provided the following details of the activities/transactions undertaken in a tax period:

S.No	Particulars	Mumbai unit(₹)	Nagpur unit(₹)
(i)	Sale of taxable goods	12,50,000	13,50,000
(ii)	Interest received on fixed deposits with a nationalized bank		1,08,000

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(iii)	Sale of securities [Such securities were purchased for ₹ 2,75,000]	4,50,000	
(iv)	Sale of agricultural land in the vicinity of the manufacturing plant [Stamp duty was paid on ₹ 1,85,00,000]		1,85,00,000
(v)	Sale of old factory building which was not used anymore [Stamp duty was paid on ₹ 75,00,000]	90,00,000	
(vi)	Transfer of actionable claims (other than lottery, betting and gambling)		2,00,000

With the help of above information, you are required to determine the value of exempt supply provided by Nagpur unit and Mumbai unit. Will your answer be different if the value of exempt supply provided by Nagpur unit and Mumbai unit is to be determined, for the purpose of apportionment of ITC under section 17(3)? (RTP Nov'22)

Answer 11

As per section 2(47), exempt supply means supply of any goods or services or both which attracts nil rate of GST or which may be wholly exempt from GST and includes nontaxable supply. An activity or transaction which is not a supply per se is not an exempt supply. In view of the same, the value of exempt supply by Nagpur unit and Mumbai unit has been computed as under:

Particulars	Mumbai unit(₹)	Nagpur unit(₹)
Sale of taxable goods	--	--
Interest received on fixed deposits [Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest are exempt vide Notification No. 12/2017 CT (R) dated 28.06.2017]	--	1,08,000
Sale of securities [Securities are neither goods nor services in terms of section 2(52) and 2(102) of the CGST Act, 2017. Hence, sale of securities is neither a supply of goods nor a supply of services. Thus, the same is not an exempt supply.]	--	--
Sale of agricultural land [Sale of land is neither a supply of goods nor a supply of services in terms of para 5 of Schedule III to the CGST Act, 2017. Hence, the same is not an exempt supply.]	--	--
Sale of old factory 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, 2017, 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 an exempt supply.]	--	--

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Transfer of actionable claims (other than lottery, betting and gambling) [Transfer of actionable claims (other than lottery, betting and gambling) is neither a supply of goods nor a supply of services in terms of para 6 of Schedule III to the CGST Act, 2017. Hence, the same is not an exempt supply.]	--	--
Total value of exempt supply	Nil	1,08,000

However, value of exempt supply by Nagpur unit and Mumbai unit for the purpose of apportionment of ITC under section 17(3) is not same and is determined as follows:

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 section 17(3), the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except sale of land and, subject to clause

(b) of paragraph 5 of Schedule II, sale of building. Further, as per explanation to Chapter V (Input Tax Credit) of the CGST Rules, 2017, the value of exempt supply in respect of land and building is the value adopted for paying stamp duty and for security is 1% of the sale value of such security.

Further, as per explanation 1 to rule 43, 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.

In view of the aforesaid provisions, value of exempt supply by Nagpur unit and Mumbai unit for the purpose of apportionment under section 17(3) is as follows:

Particulars	Mumbai unit(₹)	Nagpur unit(₹)
Interest received on fixed deposits [Excluded from value of exempt supply by virtue of explanation 1 to rule 43]	--	--
Sale of securities [1% of ₹ 4,50,000] [Includible as per section 17(3). Value of exempt supply in respect for security is 1% of the sale value of such security.]	4,500	--
Sale of agricultural land [Includible as per section 17(3). Value of exempt supply in respect of land is the value adopted for paying stamp duty.]	--	1,85,00,000
Sale of old factory building [Includible as per section 17(3). Value of exempt supply in respect of building is the value adopted for paying stamp duty.]	75,00,000	--
Transfer of actionable claims (other than lottery, betting and gambling) [Excluded from value of exempt supply by virtue of explanation to section 17(3).]	--	--
Total value of exempt supply	75,04,500	1,85,00,00

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Question 12

Swasthya Nursing Home, a clinical establishment, offers the following services:

- (i) **Rooms provided to the in-patients where the room charges per day are ₹ 6,500.**
- (ii) **Plastic surgery conducted to repair cleft lip of a new born baby.**
- (iii) **Air ambulance services to transport critically ill patients from distant locations to Swasthya Nursing Home.**
- (iv) **Supply of food to the in-patients as per the advice of the doctor/nutritionist from its restaurant – Annapurna Bhawan - located in the basement of Swasthya Nursing Home. The food is prepared by its employees and nothing is outsourced to any third-party vendors.**
- (v) **Homeopathic medical treatment.**

Swasthya Nursing Home also operates a cord blood bank which provides services in relation to preservation of stem cells.

Determine whether GST is payable in respect of each of the above services provided by Swasthya Nursing Home. (RTP May'23)

Answer 12

Health care services provided by a clinical establishment, an authorised medical practitioner or para-medics are exempt from GST vide Notification No. 12/2017 CT (R) dated 28.06.2017. In light of the same, the eligibility to exemption in respect of each service offered by Swasthya Nursing Home is examined below:

- (i) **Not Exempt.** Exemption available to health care services provided by a clinical establishment shall not apply to the services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding ₹ 5000 per day to a person receiving health care services.
- (ii) **Exempt.** Health care service does not include, inter alia, 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.
Therefore, plastic surgeries will not be entitled to the said exemption, but the plastic surgery conducted to repair a cleft lip will be eligible for exemption as it reconstructs anatomy or functions of body affected due to congenital defects (cleft lip).
- (iii) **Exempt.** Health care service includes services by way of transportation of the patient to and from a clinical establishment. Thus, air ambulance service to transport critically ill patients to Swasthya Nursing Home would be eligible for exemption under the said notification.
- (iv) **Exempt.** 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 health care services and is not separately taxable. Thus, it is exempt from GST.
- (v) **Exempt.** Since Homeopathy is a recognized system of medicine in terms of section 2(h) of Clinical Establishments Act, 2010, the same would be eligible for exemption under the said notification.

Further, exemption available to services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation has been withdrawn and thus, said services are no longer exempt from GST. Therefore, services provided in relation to preservation of stem cells by the cord blood bank

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operated by Swasthya Nursing Home will be liable to GST.

Question 13

Briefly explain the applicability of GST on the application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions.

(RTP Nov'23)

Answer 13

Educational services supplied by educational institutions to its students are exempt from GST vide Exemption Notification No. 12/2017 CT (R) dated 28.06.2017. As per said notification, services provided –

- by an educational institution to its students, faculty and staff;
- by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee are exempt from GST.

Therefore, it can be seen that all services supplied by an 'educational institution' to its students are exempt from GST. Further, consideration charged by the educational institutes by way of entrance fee for conduct of entrance examination is also exempt.

It has been clarified by CBIC vide Circular No. 177/09/2022 GST dated 03.08.2022 that the exemption is wide enough to cover the amount or fee charged for admission or entrance, or amount charged for application fee for entrance, or the fee charged from prospective students for issuance of eligibility certificate to them in the process of their entrance/admission to the educational institution. Services supplied by an educational institution by way of issuance of migration certificate to the leaving or ex-students are also covered by the exemption.

In view of the same, GST is not payable on the application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions.

Question 14

Vividh Pvt. Ltd. is engaged in supplying various services in Bangalore. It is registered in the State of Karnataka. It has furnished the following information for the month of June:

S.No	Particulars	Amount (₹)
(i)	Services provided by way of fumigation in a warehouse of agricultural produce.	13,00,000
(ii)	Service of transportation of passengers by metered cabs provided through Webcastle Ltd., an electronic commerce operator (ECO)	5,40,000
(iii)	4 buses each with a seating capacity of 72 passengers given on hire to State Transport Undertaking (STU). Such buses run on a route and timing as decided by STU.	6,00,000
(iv)	Goods transport services received from GTA for transporting the goods to be used in respect of the buses given on hire to STU. Tax on such services is payable @ 12%.	1,80,000

Compute net GST payable in cash by Vividh Pvt. Ltd. for the month of June

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assuming that the above amounts are exclusive of GST and rate of GST, wherever applicable, is 18% unless otherwise mentioned. (RTP May'23)

Answer 14

Computation of gross GST liability of Vividh Pvt. Ltd.

Particulars	GST (₹)
Services by way of fumigation in a warehouse of agricultural produce. [Taxable since the exemption earlier available with respect to the services provided by way of fumigation in a warehouse of agricultural produce has been withdrawn.]	2,34,000 [13,00,000 ×18%]
Service of transportation of passengers by metered cabs through Webcastle Ltd., an ECO [Taxable since services of transport of passengers by metered cabs supplied through ECO are not exempt from GST. However, tax on such services shall be paid by ECO. Therefore, Vividh Pvt. Ltd. is not liable to pay GST on the same.]	Nil
Buses with seating capacity of 72 passengers each 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 irrespective of whether such vehicles are run on routes and timings as decided by the State Transport Undertakings.]	Nil
Total GST payable	2,34,000
Less: Goods transport services availed [Since GST is payable @ 12% on goods transport services, GST is payable by the GTA1 under forward charge mechanism and not by Vividh Pvt. Ltd.]	Nil
Further, ITC of the same is not available as such services are exclusively used for supplying the exempt services of giving on hire the buses to STU.]	
Net GST payable in cash	2,34,000

¹ It has been most logically assumed that since the applicable rate of GST is 12%, GTA must have exercised the option to itself pay GST on the services supplied by it.

Question 15

BODMAS Ltd., providing educational services, furnishes you with the following information for the various services provided by it for the month of March:

Particulars	₹
Receipts from running a Boarding School (including receipts for providing residential dwelling service of ₹ 14,00,000)	30,00,000
Receipts of 'Gyan Uday' - an Industrial Training Institute (ITI) affiliated to the National Council for Vocational Training (NCVT)	2,00,000
Receipts of 'Lakshya', an institute, registered with Directorate General of Employment and Training (DGET), Union Ministry of Labour and Employment, running a Modular Employable Skill Course (MESK) approved by the National Council for Vocational Training (NCVT)	1,00,000

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Receipts of 'Wizard", a Commercial Coaching Institute providing commercial coaching in the field of arts and science (no certificate was issued on completion of the training)	80,000
Fees from prospective employers for campus interview	4,00,000
Renting of furnished flats for temporary stay to different persons	5,00,000
Receipts of 'Concepts', a Commercial coaching institute providing coaching in the field of commerce (a certificate was awarded to each trainee after completion of the training)	1,40,000
Receipts of Gurukul School providing education upto higher secondary	5,00,000

Compute the value of taxable supply assuming that all the above receipts are exclusive of GST.

(PYP 9 Marks Nov '19)

Answer 15

Services provided by an educational institution to its students, faculty and staff are exempt vide Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017. Further, an educational institution means, inter alia, an institution providing services by way of-

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

In view of the aforesaid provisions, value of taxable supply of BODMAS Ltd. for the month of March has been computed as follows:

Particulars	Amount (₹)
Receipts from Boarding School including receipts for residential dwelling service [Educational institution providing education up to higher secondary school or equivalent]	Exempt
Receipts of Gyan Uday [Educational institution running approved vocational education course (assuming that such courses are run in designated trades)]	Exempt
Receipts of Lakshya running Modular Employable Skill Course [Educational institution running approved vocational education course]	Exempt
Receipts of Wizard - a coaching institute [Taxable since coaching institute is not an educational institution]	80,000
Fees from prospective employers for campus interview [Taxable since such services are not specifically exempt]	4,00,000
Renting of furnished flats for temporary stay to different persons ⁴ [Not exempt since services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, are exempt only when the value of supply of a unit of accommodation is below ₹ 1,000 per day.] (The following exemption has been omitted via notification on 18.7.2022)	5,00,000
Receipts of Concepts – a coaching institute [Taxable since coaching institute is not an educational institution]	1,40,000
Receipts of Gurukul School providing education upto higher secondary	Exempt
Value of taxable supply	11,20,000

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EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

This question relating to the educational sector requires examinees to compute the value of taxable supply. Few examinees though correctly computed the value of taxable supply, but did not provide adequate reasoning for treatment of various receipts as taxable and exempt.

Question 16 (Includes concepts of Place of Supply)

In the case of transactions at (i) and (ii) below, determine whether the amounts received are liable to GST. Briefly explain the applicable statutory provisions in support of your conclusions.

- (i) **ABC Ltd., a registered bank, recovered cheque discounting charges of ₹ 5,250 from a customer, C & Co.(PYP 2 Marks May '22)**
- (ii) **T Ltd., a dealer in air-conditioners, supplies each unit at a list price of ₹ 30,000 per unit. He also has an EMI scheme where the customer can take delivery of air conditioner on a monthly EMI of ₹ 10,500 payable in three installments. T Ltd. Charges ₹ 600 extra for any delay in payment of monthly installments and this amount was recovered from customer Venkat for delay in payment of his 2nd installment. (PYP 2 Marks May'22)**
- (iii) **M/s Aerospace Airlines, having registered place of business in Mumbai under GST, issued a ticket from London to Delhi to Mr. Ajit Khanna, a resident of Agra, UP, who is not registered under the GST. Determine the 'place of supply' with supporting notes related to legal provisions. (PYP 1 Mark May '22)**

Answer 16

- (i) Cheque discounting is exempt from GST only to the extent consideration is represented by way of discount.
Any charges other than discount is not exempt from GST.
Thus, charges recovered on cheque discounting by ABC Ltd. are liable to GST.
Note: In the above Answer, it has been assumed that the cheque discounting charges are the service charges collected over and above discount. However, it is also possible to assume that the said charges represent the discount amount. In that case, said charges will be exempt from GST.
- (ii) Service of extending deposits, loans or advances in so far as the consideration is represented by way of interest is exempt.
Extra charges recovered for delay in payment of 2nd monthly instalment is taxable and is includible in the value of supply of the air conditioner.
- (iii) The place of supply of passenger transportation service to Mr. Ajit Khanna –an unregistered person – is London, i.e. the place where he embarked on the conveyance for a continuous journey.

Question 17

Sabka Niwas Charitable Trust, a trust registered under section 12AB of the Income – tax Act, 1961, provides the following information relating to supply of its services for the month of August:

Particulars	Amount (₹)
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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 community 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 Sabka Niwas 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.

(MTP 5 Marks March 22, MTP 7 Marks Aug'18,)

Answer 17

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/12AB of the Income-tax Act are exempt from GST vide exemption notification. However, said exemption is not available if:

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

Further, services by way of renting of residential dwelling for use as residence are also exempt vide exemption notification.

Computation of GST liability of Sabka Niwas 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 community 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

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Question 18

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

- (1) Fees of ₹ 10,000 charged from office staff for in-house soft skills development course conducted by Elite College providing education as part of a curriculum for obtaining a qualification recognised by Indian law.
- (2) Bus fees of ₹ 2,500 per month collected from students by Richfold College providing education as part of a curriculum for obtaining a qualification recognised by Indian law.
- (3) Housekeeping service provided by M/s. Spick Brothers to First step school, a play school, for cleaning its playground and classrooms - ₹ 25,000 per month.
- (4) Sach link supplied 'Tracing Alphabets', an online educational journal, to students of UKG class of Fun Thrill School - ₹ 2,000.

(MTP 5 Marks Apr'22, Oct 22, Oct'19, MTP 4 Marks Oct'20, PYP 4 Marks May'19)

Answer 18

- (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 Elite 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 soft skills development course would be exempt from GST, it being an educational institution.
- (2) Since Richfold College provides education as a part of a curriculum for obtaining a qualification recognised by Indian law, the transport services provided by Richfold 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 First Step 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 not available to an educational institution providing services by way of pre- school education and education up to higher secondary school or equivalent. Therefore, supply of online journal to students of UKG class of Fun Thrill School is not exempt from GST.

Question 19

Mr. Nagarjun, a registered supplier of Chennai, has received the following amounts in respect of the activities undertaken by him during the month ended on 30th September, 2023:

S. No.	Particulars	Amount (₹)
(i)	Amount charged for service provided to recognized sports body as selector of national team.	50,000

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(ii)	Commission received as an insurance agent from insurance company.	65,000
(iii)	Amount charged as business correspondent for the services provided to the urban branch of a nationalized bank with respect to savings bank accounts.	15,000
(iv)	Service to foreign diplomatic mission located in India.	28,000
(v)	Funeral services.	30,000

He received the services from unregistered goods transport agency for his business activities and paid freight of ₹ 45,000 (his aggregate turnover of previous year was ₹ 9,90,000).

Note: All the transactions stated above are intra-State transactions and also are exclusive of GST.

You are required to calculate gross value of taxable supply on which GST is to be paid by Mr. Nagarjun for the month of September, 2023. Working notes should form part of your answer.

(MTP 9 Marks Oct '20, MTP 7 Marks Oct'18, PYP 7 Marks May '18)

Answer 19

Computation of gross value of taxable supply on which GST is to be paid by Mr. Nagarjun

Particulars	Amount (₹)
Supplies on which Mr. Nagarjun is liable to pay GST under forward charge	
Amount charged for service provided to recognized sports body as selector of national team [Note 1]	50,000
Commission received as an insurance agent from insurance company [Note 2]	Nil
Amount charged as business correspondent for the services provided to the urban branch of a nationalised bank with respect to savings bank accounts [Note 3]	15,000
Services provided to foreign diplomatic mission located in India [Note 4]	28,000
Funeral services [Note 5]	Nil
Supplies on which Mr. Nagarjun is liable to pay GST under reverse charge	
Services received from GTA [Note 6]	45,000
Value of taxable supply on which GST is to be paid	1,38,000
	0

Notes:

- Services provided to a recognized sports body by an individual only as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body are exempt from GST vide Exemption Notification No. 12/2017 CT(R) dated 28.06.2017. Thus, service provided as selector of team is liable to GST.
- Though commission for providing insurance agent's services is liable to GST, the tax

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payable thereon is to be paid by the recipient of service i.e., insurance company, under reverse charge in terms of Notification No. 13/2017 CT(R) dated 28.06.2017. Thus, Mr. Nagarjun will not be liable to pay GST on such commission.

- (3) Services provided by business correspondent to a banking company with respect to accounts in its rural area branch are exempt from GST vide Exemption Notification No. 12/2017 CT(R) dated 28.06.2017. Thus, such services provided in respect of urban area branch will be taxable.
- (4) While services provided by a foreign diplomatic mission located in India are exempt from GST vide Exemption Notification No. 12/2017 CT(R) dated 28.06.2017, services provided to such mission are taxable.
- (5) Funeral services being covered in entry 4 of Schedule III to CGST Act, 2017 are not a supply and thus, are outside the ambit of GST.
- (6) GST on services provided by a GTA to inter alia a registered person is payable by the recipient of service i.e., the registered person, under reverse charge in terms of Notification No. 13/2017 CT(R) dated 28.06.2017. The turnover of previous year is irrelevant in this case.

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

The working notes for inclusion/exclusion of various activities for computation of gross value of taxable supply was missing in most of the cases. Largely, examinees answered merely on the basis of guess work instead of legal backing.

SECTION B

Question 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, 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 1

- 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

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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 are liable to GST.

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

Question 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 2

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

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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.

Question 3

Vedanta Hospital, Gurgaon has its own restaurant in the basement of hospital premises - Annapurna Bhawan - 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 3

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

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

Question 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 4

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

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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 students⁷¹, faculty and staff are exempt from GST vide exemption notification.

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

Question 5

India Corporations Ltd., a Public Sector Undertaking (PSU), has taken loan from a banking company - Wellness Bank Ltd. 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 5

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 Ltd., [a banking company]. Consequently, services provided by the Central Government, in the form of guarantee of loan, are exempt from tax.

Question 6

British High Commission, chief diplomatic mission of the United Kingdom, is located in India and 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 6

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

Question 7

Explain in brief whether the below mentioned independent cases of supply of services provided are exempt or taxable under GST law, providing very brief reasoning:

- (vi) **Himalayan Wanderers Campsite, a registered entity under GST, has fixed up various tents in Shimla, for lodging purposes being offered to tourists and trekkers. The details of tents rented by Himalayan Wanderers Campsite on 8th December is as under:**

No. of tents	Amount of rent	Nature	of
--------------	----------------	--------	----

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rented	charged per tent per day	occupancy
10	₹ 600	Single
15	₹ 1000	Double

- (vii) **Fables Infotech LLP**, a limited liability partnership firm having registered place of business in Hyderabad under GST, entered into a contract with **Neeta Services** for providing air-conditioned mini vans for 1 year for transportation of its female employees working in night shifts to be picked up from designated spots every day at 9.00 p.m. except weekends and dropped to the office. The same female employees were again picked up from office at 6.30 a.m. every morning except weekends and dropped back at the same spots from where they were picked up.
- (viii) **HumTum Services Limited**, registered under GST, provided catering services to **Baljatan Anganwadi**, an educational institute providing pre-school education amounting to ₹ 2,50,000 in the month of February.
- (ix) 50 women from different cities pursuing diploma in management courses, participated in the 'Leadership Program' designed especially for women for a duration of 9 months by IIM, Bangalore (a certificate as to their participation was awarded to each one of them after the completion of the programme).
- (x) **Mr. Ashok** rented his residential flat to his friend **Dr. Kishore**, who is not registered under GST for use as his medical clinic at a monthly rent of ₹ 15000.

Answer 7

- vi. Taxable:** Since there is no specific exemption with respect to services provided by a campsite for lodging purposes, services provided by Himalayan Wanderers Campsite are liable to GST.
- vii. Taxable:** Service of transport of passengers provided by Neeta Services are liable to GST since such services are being provided in a contract carriage which is air-conditioned.
- viii. Exempt:** Since catering services provided to an educational institution providing pre-school education are exempt from GST, HumTum Services Limited is not liable to pay GST.
- ix. Taxable:** Since short duration programs provided by IIMs are not any qualification recognized by law, GST is payable in the given case.
- x. Taxable:** Since residential dwelling is rented for use other than residence, GST is payable on the same.

Question 8

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

- (1) **Fees of ₹ 10,000 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.**

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

Answer 8

- 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, it being an educational institution.

- 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 provided such services are performed in such educational institution. However, such exemption is available only when the said services are provided to an educational institution providing services by way of pre-school education and education up to 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 not available to an educational institution providing services by way of pre-school education and education up to higher secondary school or equivalent.

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

Question 9

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

Particulars	Amount
-------------	--------

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	(₹)
Renting of residential dwelling for use as a residence to Mr. Soham, an unregistered person	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 community 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 9

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/12AB of the Income-tax Act are exempt from GST vide exemption notification. However, said exemption is not available if:

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

Further, services by way of renting of residential dwelling for use as residence to an unregistered person 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 to an unregistered person [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 Kalyan mandapam [Taxable since charges per day exceed ₹10,000]	12,00,000	2,16,000
Renting of community 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	7,50,000	1,35,000

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[Taxable since charges per month exceed ₹ 10,000]		
Total		3,51,000

Question 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 an unregistered goods transport agency for his business activities and paid freight of ₹ 45,000.

Note: All the transactions stated above are inter-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 applicable rate of GST is 5%.

Working notes should form part of your answer.

Answer 10

Computation of gross GST liability of Mr. Nagarjun

Particulars	Value (₹)	IGST (₹)
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 nationalized 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		

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Services received from GTA [Note 6]	45,000	2,250
IGST payable (Since all the transactions are inter-State transactions, IGST is payable on the same.)		

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 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 except where GTA is registered and has exercised the option to itself pay tax on said services⁷³. Since in the given case, GTA is unregistered, it could not have exercised the option to pay tax and thus, GST is payable @ 5% under reverse charge mechanism by the recipient – Mr. Nagarjun.

Question 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	13,00,000
Fee received from students of a competitive exam training academy run by Vividh Pvt. Ltd.	5,40,000
4 buses each with a seating capacity of 72 passengers given on hire to State Transport Undertaking	6,00,000
Rent paid to Local Municipal Corporation for premises taken on rent for competitive exam training academy	2,50,000
Goods transport services received from a registered GTA which has opted to pay tax itself @ 12%	1,80,000

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Compute gross GST liability including tax payable under reverse charge (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 11

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.]	13,00,000	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 has opted to pay 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

Question 12

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“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 Model
		(₹)	(₹)	(₹)	(₹)
i.	Printing services for printing the question papers (paper and content are provided by the Institutions)	2,50,000		1,50,000	2,00,000
ii.	Paper procured for printing the question papers	4,30,000		2,58,000	3,44,000
iii.	Honorarium to paper setters and examiners (not on the rolls of the Institution)	5,00,000			
iv.	Rent for exam centers taken on rent like schools etc., for conducting examination	8,00,000		1,00,000	
v.	Subscription for online educational journals [Little Millennium has taken the Subscription for online periodicals on child development and experiential learning]	4,00,000	80,000	2,20,000	2,40,000
vi.	Hire charges for buses used to transport students and faculty from their residence to the institutions and back	4,80,000	5,50,000	1,30,000	7,50,000

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vii.	Catering services for running a canteen in the campus for students (Catering services for KIT include a sum of ₹ 60,000 for catering at a student event organized in a banquet hall outside the campus)	3,20,000	2,60,000	1,80,000	5,00,000
viii.	Security and housekeeping services for the institution(s) (Security and housekeeping services for Spring Model include a sum of ₹ 80,000 payable for security and housekeeping at the student event organized 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 12

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

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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 exempt⁷⁴.

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

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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 faculty from their residence to the institutions and back	86,400 [4,80,000 x 18%]	Exempt	23,400 [1,30,000 x 18%]	Exempt
Catering services for running a canteen in the campus of 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	Exempt [1,80,000 x 5%]

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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 organized in a banquet hall will be taxable as only the security and housekeeping service provided within the premises of the pre-school and the higher secondary school are exempt.]	1,08,000 [6,00,000 × 18%]	Exempt	67,500 [3,75,000 × 18%]	14,400 [80,000 × 18%]
Total GST payable on goods and services received	2,62,000	14,400	2,15,460	98,880

Question 13

M/s A2Z, a proprietary firm registered under GST, is engaged in providing various services under one roof. The firm provides the following information pertaining to supplies made/input services availed by it during the month of March:

S. No.	Particulars	Amount (₹)
9.	Amount collected for loading, unloading, packing and warehousing of potato chips	15,000
10.	Fees paid for yoga camp conducted by a charitable trust registered under section 12AB of the Income-tax Act, 1961 for employees of the firm	20,000
11.	Interest received on fixed deposits with APNA Bank by the firm	30,000
12.	Professional services provided to foreign diplomatic mission located in India	50,000
13.	Recovery agent services provided to ABC Finance Ltd. - an NBFC located in Delhi	1,00,000
14.	Security services (by way of supply of security personnel) provided to XYZ Ltd. - a registered person under GST	80,000
15.	Receipts from running an educational institution (a Senior Secondary School) for services provided to its students (including receipts for providing residential dwelling service of ₹ 18,20,000 by the institution to the students)	35,00,000
16.	Supply value including cost of fuel for provision of	88,000

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	renting of motor vehicle for transportation of passengers' service to NPS Ltd.	
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Determine the GST liability (inclusive of liability for the supplies received also) of M/s A2Z for the month of March with necessary explanation for treatment of each item. Rate of tax for both inward and outward supply is CGST and SGST @ 9% each except for the service of renting a vehicle for transportation of passengers for which CGST and SGST @ 2.5% each is applicable. All the supplies are intra-State only. All amounts given hereunder are exclusive of GST.

Answer 13

Computation of GST liability of M/s A2Z for the month of March:

S. No.	Particulars	CGST (₹)	SGST (₹)
1.	Loading, unloading, packing and warehousing of potato chips [Loading, unloading, packing and warehousing of agricultural produce is exempt. However, potato chips are not an agricultural produce.]	1,350 [15,000 × 9%]	1,350 [15,000 × 9%]
2.	Fees paid for yoga camp [Services provided by a charitable trust registered under section 12AB of the Income-tax Act by way of advancement of yoga are exempt.]	-	-
3.	Interest received on fixed deposits [Services of extending fixed deposits in so far as the consideration is represented by way of interest are exempt.]	-	-
4.	Professional services provided to foreign diplomatic mission located in India [Not specifically exempt.]	4,500 [50,000 × 9%]	4,500 [50,000 × 9%]
5.	Recovery agent services provided to ABC Finance Ltd., an NBFC [Since such services are being provided to an NBFC, tax on the same is payable by recipient - ABC Finance Ltd. - under reverse charge (RCM).75]	-	-
6.	Security services provided to XYZ Ltd., a registered person [Since such services are being provided by a non-body corporate to a registered person, tax on the same is payable by recipient - XYZ Ltd. - under reverse charge (RCM) 76.]	-	-
7.	Receipts from running an educational	-	-

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	institution (including receipts for residential dwelling service) [Services provided by an educational institution and services by way of renting of residential dwelling for use as residence are exempt.]		
8.	Renting of motor vehicle service [Since services of renting of motor vehicle including cost of fuel with tax payable @ 2.5% CGST/SGST is being provided by a non-body corporate to a body corporate, tax on the same is payable by recipient – NPS Ltd. – under RCM77.]	-	-
	Total GST liability	5,850	5,850

Question 14

A2X Services Limited, registered under GST, is engaged in providing various services to various educational institutions. The company provides the following information in respect of services provided during the month of April:

S. No	Description of services provided
vi.	Transportation of students & staff of 'Shiksha University', a Deemed University
vii.	Catering services provided to 'Rank CBSE School'
viii.	Security personnel services provided to 'Win CBSE School', for its annual sports day held at SAI Sports Complex owned by Government of India
ix.	Supply of online periodical science journal to 'Merit CBSE School' for its higher secondary students
x.	Services, in relation to placement of students, to 'SKILL', a government recognized vocational training college

Comment on the taxability or otherwise of the above transactions under GST law. State the correct legal provisions for the same.

Answer 14

S. no	Particulars	Taxability
VI.	Transportation of students and staff of deemed university [Taxable since transportation services provided to an educational institution are exempt only if such institution provides pre-school education or education up to higher secondary school or equivalent.]	Taxable
VII.	Catering services provided to "Rank CBSE School" [Catering services provided to an	Exempt

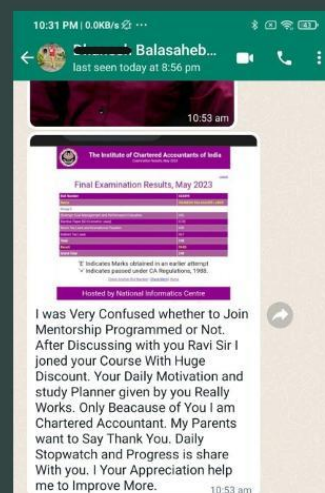
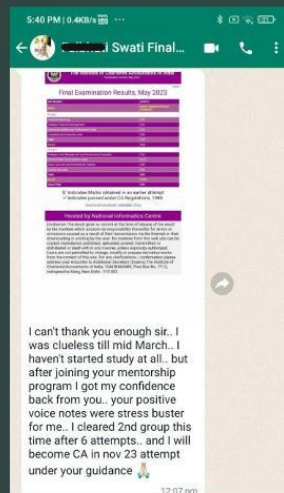
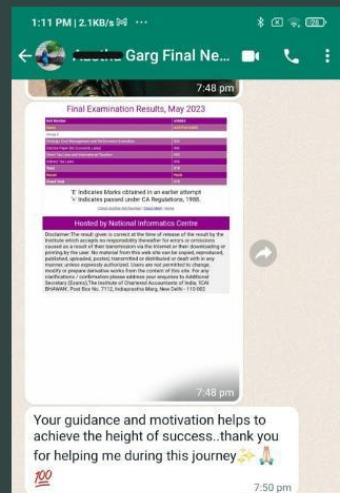
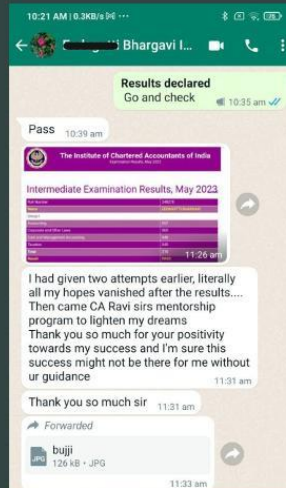
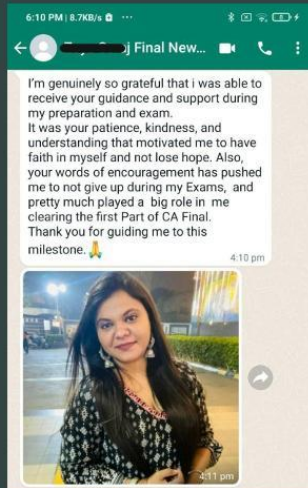
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	educational institution providing pre-school education or education up to higher secondary school or equivalent are exempt.]	
VIII.	Security services to “Win CBSE School” for its annual sports day held at SAI Sports complex [Security services provided to an educational institution providing pre-school education or education up to higher secondary school are exempt provided such services are performed in the premises of such institution. However, in this case, security services are being provided outside the school campus, and hence the same are taxable.]	Taxable
IX.	Supply of online periodical science journal to school for its higher secondary students [Taxable since educational institutions providing service by way of pre-school education and education up to higher secondary school or equivalent are not eligible for exemption in respect of supply of online educational journals.]	Taxable
X.	Services in relation to placement of students, to Government recognized vocational training college [Taxable since only services related to admission and conducting exams are exempt for vocational educational institutions.]	Taxable

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Chapter 5 Time Of Supply

Attempts wise Distribution

Row Labels	Dec' 21	Jan' 22	Jul' 21	May' 18	Nov' 18	May' 19	May' 23	May' 23	Nov' 18	Nov' 19	Nov' 20	Nov' 23
MCQ												
MTP						Q2						
RTP												Q1
QA												
MTP	Q10		Q8, Q9					Q1		Q11	Q3	Q4
PYP			Q7						Q6		Q2	
RTP	Q5											

SECTION A

MULTIPLE CHOICE QUESTIONS (MCQ'S)

1. Lalla (Pedewala) owns a famous sweets shop located and registered under GST in Vrindavan, Uttar Pradesh. He received an order for 100 kg of sweets on 2nd May from Parindey Travels (P) Ltd., located in same locality of Vrindavan and registered under GST, for a total consideration of ₹ 50,000. Complete order of sweets was delivered to Parindey Travels (P) Ltd. on 5th May but without invoice, as accountant of Mr. Lalla was on leave on that day. However, the invoice was raised for the same on 6th May, when the accountant joined the office after leave. Payment in full was made on 7th May.

Determine the time of supply of goods in this case. (RTP Nov '23, MTP 2 Marks Oct '23, March '19, 1 Mark Oct'19)

- (a) 2nd May
- (b) 5th May
- (c) 6th May
- (d) 7th May

Ans: (b)

2. M/s. Radhika Travels (P) Ltd., purchased a bus chassis from M/s. Jyoti Motors Ltd., for a consideration of Rs. 80.00 Lakh on 1-Aug-2018. M/s. Radhika Travels (P) Ltd., sent the bus chassis for body building to M/s. Hanumant Fabricators, and paid in advance the total consideration of Rs. 25.00 Lakh on 10-Aug-2018. M/s. Hanumant Fabricators, after completing the bus body, informed M/s. Radhika Travels (P) Ltd., for inspection of the work done on 1-Sep-2018. M/s. Radhika Travels (P) Ltd., visited the work shop of M/s. Hanumant Fabricators, on 7-Sep-2018, and confirmed that the bus body was in accordance with the terms of the contract. M/s. Hanumant Fabricators, raised an invoice of Rs. 25.00 Lakh on 15-Sep-2018, and

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supplied chassis along with the bus body so constructed, along with the invoice on 16-Sep-2018. State the time of supply in this case, out of the choices given below- (MTP 2 Marks Apr'19)

- (a) 10-Aug-2018
- (b) 7-Sep-2018
- (c) 15-Sep-2018
- (d) 16-Sep-2018

Ans: (a)

QUESTIONS AND ANSWERS

Question 1

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

(MTP 4 Marks April '23)

Answer 1

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.

Question 2

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

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clients.

SI. No.	Particulars	Date	Amount in ₹
(1)	Advance paid at the time of booking the hall for a function from 1 st to 3 rd 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 st Nov. to 3 rd 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 th 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?		

(PYP 5 Marks Nov '20)

Answer 2

The time of supply of services is the date of issue of invoice if the same is issued within 30 days from the date of supply of service or the date of receipt of payment, whichever is earlier.

In the given case, invoice is issued within 30 days of the supply of service and advances have also been received. Therefore, tax becomes payable at the time of receipt of advances on 16.07.2019 and 18.08.2019 as it is not clear at the time of receipt of such advances as to what would be the total value of the supply. However, when invoice is issued for a lesser value on 25.11.2019, refund would become payable to the client.

In case of change in rate of tax, where the service is supplied and invoice is issued after the change in rate of tax and payment is received before change in rate of tax, time of supply shall be date of issue of invoice, i.e., 25.11.2019. Hence, applicable rate of tax is new rate even though tax has been paid at old rate on advances received. Therefore, refund payable to client will be computed as under: Total advance received including

$$\text{GST} = ₹ 3,00,000^7$$

$$\text{Less: Actual liability } [₹ 2,50,000 + ₹ 2,50,000 \times 18\% \text{ (new rate of tax)}] = ₹ 2,95,000$$

$$\text{Amount of refund } ₹ 5,000$$

Question 3

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

Determine the time of supply of the plastic goods supplied by Chiku Traders to

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Neelu Traders as per the provisions of CGST Act, 2017. (MTP 4 Marks May '20, PYP 5 Marks Nov'18)

Answer 3

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

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

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

Question 4

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 18 th 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. (MTP 4 Marks Oct '23)

Answer 4

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
------	----------------

Paper 5 – Indirect Tax Laws

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.

Question 5

Dhruv & Co. sends certain textile products for dyeing to Bhanushali Manufacturers on job work basis on 16th August. On 18th August, Dhruv & Co. credited 100% of the job work charges to the bank account of Bhanushali Manufacturers in advance and recorded it in its books of accounts on the same date. Bhanushali Manufacturers issues the invoice for the same in first week of September. Assuming that inputs are received back by Dhruv & Co. after job work in the month of October (i.e. within time limit prescribed under section 143 of the CGST Act, 2017), determine the time of supply for such job work done by Bhanushali Manufacturers. (RTP Nov'21)

Answer 5

As per Schedule II of the CGST Act, 2017, the activity by way of any treatment or process which is applied to another person's goods is a supply of services. Hence, job work is squarely covered within the purview of supply of services. Accordingly, the time of supply shall be determined as per section 13 of the CGST Act, 2017.

As per section 13, time of supply of services where invoice has been issued within 30 days of provision of services is:

- date of issuance of invoice, or
- date of recording the payment in the books of accounts of the supplier, or
- date on which payment is credited in the bank account of the supplier, whichever is earlier.

In the present case, the service charges for job work are paid as advance at the time of sending inputs to job worker. Hence the time of supply of job work services shall be triggered at the time of payment of advance by Dhruv & Co., i.e. 18th August.

Question 6

Mr. Mahendra Sharma, an interior decorator registered at Ahmedabad (Gujarat), provided service to one of his clients XYZ Company Ltd., registered at Pune (Maharashtra). The provision of service was completed on 10-08-2018 and payment received was entered in the books of Mr. Mahendra Sharma on 11-08-2018. With effect from 16/08/2018, applicable GST rate was increased from 5% to 12%. However payment for the service received was credited in his bank account on 17/08/2018 and invoice for the same was raised on 23-08-2018.

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

Examine the correctness of Mr. Mahendra Sharma's contention and determine the time of supply and applicable rate of tax as per the statutory provisions. Would your answer undergo any change in the above case if the payment was credited to

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the bank account on 14-08-2018 instead of 17-08-2018? Note: You may assume that all days are working days. (PYP 5 Marks Nov '18)

Answer 6

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

(i) date of entering payment in the books of account of the supplier (11.08.2018)

or

(ii) date on which the payment is credited to his bank account (17.08.2018).

However, if the payment is credited in the bank account after 4 working days from the date of change in the rate of tax, the date of receipt of payment will be the date of credit in the bank account. In the given case, since the payment has been credited in the bank within 4 working days from the date of change in the rate of tax, the date of receipt of payment will be 11.08.2018 [i.e., earlier of 11.08.2018 or 17.08.2018].

Section 14 further provides that where goods and/or services have been supplied before the change in rate of tax (10.08.2018) and the payment has been received before the change in rate of tax (11.08.2018), but the invoice for the same is issued after the change in rate of tax (23.08.2018), the time of supply shall be the date of receipt of payment.

Therefore, in the given case, the time of supply will be 11.08.2018 and the applicable rate of tax will be rate prevalent at the time of supply, i.e. IGST @ 5%. Therefore, the contention of Mahendra Sharma is correct. Further, if the date on which the payment is credited to bank account of supplier is 14.08.2018, the date of receipt of payment will continue to be 11.08.2018 [i.e., earlier of 11.08.2018 or 14.08.2018] since the payment is credited in the bank account before change in rate of tax. Consequently, with other things remaining the same, the time of supply and the applicable rate of tax will remain the same.

Question 7

SRK Limited, registered under GST, is engaged in sale of fabrics as well as doing job work of knitting of yarn for garment manufacturers. The company provides the following information in respect of order received for both sale of fabrics and job work:

Event	Supply of fabrics	Job work of knitting
Date of confirmation of order	01-08-2020	10-09-2020
Date of receipt of advance of ₹ 1,00,000 each	05-08-2020	12-09-2020
Date of removal of goods on completion of order	10-08-2020	15-09-2020
Date of issue of invoice for full amount	15-08-2020	20-09-2020
Date of receipt of balance payment of ₹ 50,000 each	25-08-2020	25-09-2020

Determine the time of supply for the purpose of payment of tax under CGST Act, 2017, in respect of the above orders executed by the company. (PYP 5 Marks Jul'21)

Answer 7

Time of supply in case of supply of fabric:

Supply of fabric is supply of goods. The time of supply of goods for the purpose of

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payment of tax is the date of issue of invoice or the last date when the invoice ought to have been issued viz. before/at the time of removal of goods for supply to the recipient, where supply involves movement of goods. Thus, the time of supply for advance of ₹ 1,00,000 as well as for the balance payment of ₹ 50,000 received for the supply of fabric is 10.08.2020.

Time of supply in case of job work:

Job work is treated as supply of services. The time of supply of services in case where the invoice is issued within 30 days of provision of service is the earlier of date of invoice or date of receipt of payment (to the extent the invoice or payment covers the supply of services).

Thus, the time of supply for advance of ₹ 1,00,000 received for the supply of job work services is 12.09.2020 and for balance payment of ₹ 50,000 is 20.09.2020.

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

Few examinees were not conversant with the provision that the time of supply of goods for the purpose of payment of tax is the date of issue of invoice or the last date when the invoice ought to have been issued.

Question 8

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.

(MTP 4 Marks April '21)

Answer 8

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

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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.

Question 9

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

(MTP 4 Marks March '21 & Sep '23)

Answer 9

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

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

Question 10

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.

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(MTP 4 Marks Nov 21)

Answer 10

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.

Question 11

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. (MTP 4 Marks Oct '19, Oct'21)

Answer 11

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.

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SECTION B

Question 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 1

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.

Question 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 2

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.

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Question 3

An online portal, Best Info, raises invoice for data base 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 3

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

Question 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-

- (iv) **VST Ltd. shall make monthly payments [Payment for a month shall be made by 7th day of the next month]**
- (v) **Every quarter, Trust Industries Ltd. shall issue a statement of account showing the quantity and value of goods dispatched, payments received and payment due.**
- (vi) **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 4

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

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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.

Question 5

Renudhoot Ltd. enters into a contract with XYZ Ltd. on 2nd July 2022 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	02.07.2022	02.07.2022	02.07.2022	15 lakh
50% completion of building	15.03.2023	22.03.2023	29.03.2023	60 lakh
75% completion of building	20.06.2023	24.07.2023	23.07.2023	35 lakh
100% completion of building	30.09.2023	30.09.2023	20.09.2023	40 lakh

Answer 5

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:

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;

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	Time of supply
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completion	
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 (02.07.2022) and date of receipt of payment (02.07.2022) are the same. Therefore, time of supply is 02.07.2022.
50%	Since invoice has not been issued on or before the date of 50% completion, earlier of date of provision of service (15.03.2023) or date of receipt of payment (29.03.2023), i.e. 15.03.2023 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 (20.06.2023) or date of receipt of payment (23.07.2023), i.e. 20.06.2023 is the time of supply.
100%	Since invoice is issued within the prescribed time limit, earlier of the date of issue of invoice (30.09.2023) or date of receipt of payment (20.09.2023), i.e. 20.09.2023 is the time of supply.

Question 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 6

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:

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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.

Question 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 7

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

Question 8

Basis the following information, determine the time of supply:

S. No.	Event	Date
7)	Commencement of provision of service	05th June
8)	Completion of service	10th October
9)	Invoice issued	20th October
10)	Payment received by cheque and entered in the	15th

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	books	October
11)	Amount credited in Bank account	18th October
12)	Rate changed from 12% to 18%	16th October

Answer 8

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.

Question 9

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 supplies for the purpose of payment of tax.

Answer 9

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.

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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.

Question 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
1.	10th February	Payment of ₹ 1,00,000 made by buyer for supply of 'A' to be delivered in the month of March
2.	13th February	Receipt of ₹ 1,00,000 [as mentioned in point (i) above]
3.	17th February	Payment of ₹ 2,00,000 made by buyer for supply of 'B' to be delivered in the month of March

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4.	20th February	Receipt of ₹ 2,00,000 [as mentioned in point (iii) above]
5.	5th March	Product 'A' manufactured and removed
6.	6th March	Receipt of product 'A' [as mentioned in point (v) above] by the buyer
7.	10th March	Product 'B' manufactured and removed
8.	23rd March	Receipt of product 'B' [as mentioned in point (vii) above] by the buyer
9.	4th March	Invoice for ₹ 2,00,000 issued for supply of 'A'
10.	11th March	Invoice for ₹ 4,00,000 issued for supply of 'B'
11.	25th March	Payment made by the buyer of 'A'
12.	31st March	Payment [as mentioned in point (xi) above] received
13.	1st April	Payment made by the buyer of 'B'
14.	4th April	Payment [as mentioned in point (xiii) above] received

Answer 10

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.

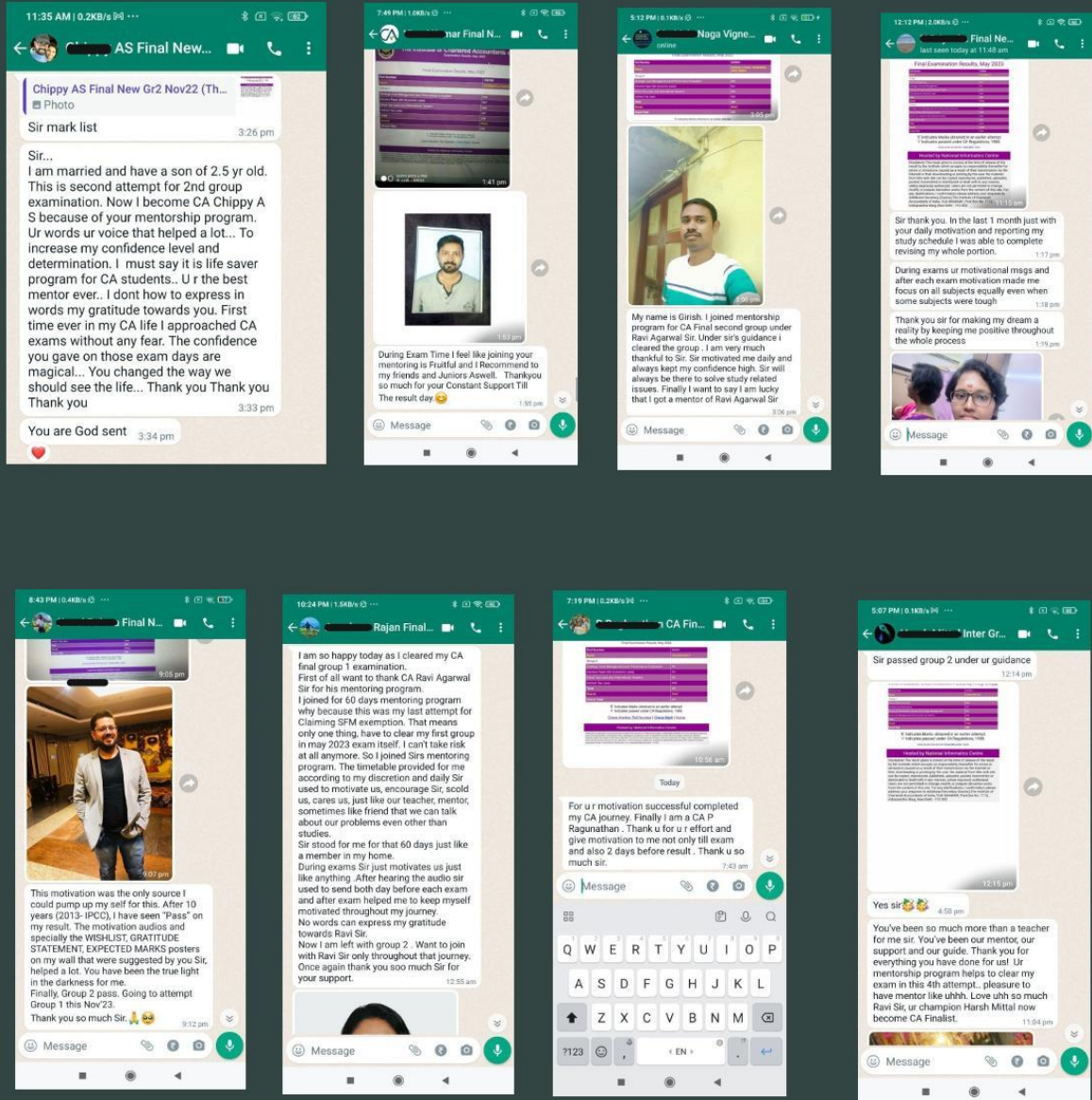
Also, it is important to note that the relief of not paying GST at the time of receipt of advance is available only in case of supply of goods, the tax on which is payable under forward charge. In case of reverse charge, GST is payable at the time of payment, if payment is recorded/made before receipt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

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Chapter 6 Value of Supply

Attempts wise Distribution

Row Labels	Dec '21	Jan' 22	Jul' 21	May' 18	Nov' 18	May' 19	May' 22	May' 23	Nov' 19	Nov' 20	Nov' 22	Nov' 23
MCQ												
MTP								Q7		Q2		
RTP			Q4			Q5, Q8		Q1		Q3, Q6		
QA												
MTP				Q3, Q23	Q24, Q25, Q26			Q22, Q29	Q18		Q28	
PYP	Q16 , Q15		Q1 4	Q21, Q27	Q11				Q12	Q13		
RTP	Q6			Q1	Q5, Q20		Q8		Q4	Q2, Q7, Q19, Q27	Q9	Q10

SECTION A

MULTIPLE CHOICE QUESTIONS

1. Dhoomketu, registered under GST in Virar, Maharashtra, is appointed as a del-credre agent by Bigbang Ltd. He sells shoes to his customers locally within the same State. Bigbang Ltd. is also registered under GST in Maharashtra.

During the current financial year, Bigbang Ltd. supplied taxable goods worth ₹ 9.50 crore whose open market value is ₹ 9.82 crore, from its Navi Mumbai unit to Dhoomketu. Dhoomketu has further sold these goods for ₹ 10.10 crore by raising invoices using his own GSTIN.

Dhoomketu has received a commission of ₹ 65 lakh from Bigbang Ltd. during the year and has guaranteed the payment of the value of such goods from the customers to

Bigbang Ltd. Dhoomketu has also provided financial assistance in the form of larger credit period to his customers, on which he has also earned interest of ₹ 25 lakh.

Compute the value of supply of Bigbang Ltd. and Dhoomketu for the current financial year assuming that both of them wish to adopt minimum value of supply to the extent possible.

- (a) Bigbang Ltd.: ₹ 9.09 crore and Dhoomketu: ₹ 11.00 crore
- (b) Bigbang Ltd.: ₹ 10.05 crore and Dhoomketu: ₹ 10.85 crore
- (c) Bigbang Ltd.: ₹ 10.15 crore and Dhoomketu: ₹ 10.85 crore
- (d) Bigbang Ltd.: ₹ 10.15 crore and Dhoomketu: ₹ 75.00 lakh (RTP May 23, Nov 21)

Ans: (a)

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2. A person purchases new battery in exchange of old battery and balance payment of ₹ 3500 in money. The price of the new battery without exchange is ₹ 15,000. Which one is correct regarding GST liability on the transaction?

- (a) GST is payable on ₹ 3500 + open market value of old battery.
 (b) GST is payable on ₹ 3500
 (c) GST is payable on open market value of new battery, i.e. ₹ 15,000
 (d) GST is payable on value of battery of like kind or quality (MTP 2 Marks Oct '20)

Ans: (c)

3. Mr. Kala is a proprietor of M/s. Kala & Associates (registered under GST) which deals in sale/ purchase of second hand cars. During the current financial year, he effected following intra-State transactions:

Particulars	Purchase Price	Sale Price
Car 1	₹ 5,00,000	₹ 7,50,000
Car 2	₹ 3,00,000	₹ 2,75,000
Car 3	₹ 6,00,000	₹ 6,50,000
Car 4	₹ 8,00,000	₹ 9,50,000

Mr. Kala purchased Car 4 from another registered person who charged GST of ₹ 1,30,000 and accordingly, Mr. Kala has availed the input credit of the same. Determine the GST liability of Mr. Kala assuming the applicable rate of tax as 18%.

- (a) ₹ 95,000
 (b) ₹ 1,08,000
 (c) ₹ 1,30,500
 (d) Exempt Supply, No GST (RTP May '20)

Ans: (a)

4. The Resident Welfare Association (RWA) of Kutumb Housing Society is registered under GST in the State of Maharashtra. There are 100 three BHK flats and 100 four BHK flats in the society. It received/paid the following amounts (excluding GST, wherever applicable) in the months of January and February: (RTP May 21)

Particulars	January (₹)	February (₹)
Maintenance charges per flat received from all 3 BHK flat owners	7,000	7,000
Maintenance charges per flat received from all 4 BHK flat owners	10,000	10,000
Interest received on the fixed deposit with Dhansukh Bank	5,00,000	5,00,000
Generator purchased for the power back-up of 4 BHK flats		1,00,000
Taps, pipes, other sanitary fittings purchased for 3 BHK flats	50,000	

Determine the net GST liability to be paid for the months of January and February, assuming that the GST rate is 18% on all inward and outward supplies.

- (a) January - ₹ 1,71,000; February - ₹ 1,62,000
 (b) January - ₹ 1,80,000; February - ₹ 1,62,000

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(c) January - ₹ 1,80,000; February - ₹ 1,80,000

(d) January - ₹ 1,71,000; February - ₹ 1,80,000

Ans: (b)

5. Mr. James Bond is a registered person under GST in the State of Maharashtra who sells footwear to his customers locally within the same State. He has been appointed as an agent by M/s. Toto Shoes Ltd., a company registered under GST in the State of Karnataka. During a financial year, M/s. Toto Shoes Ltd., sends taxable goods worth ₹ 5.00 crore from its Bengaluru store to Mr. James Bond who sells such goods for ₹ 5.00 crore by raising invoices using the GSTIN of M/s. Toto Shoes Ltd. Mr. James Bond receives a commission of ₹ 60.00 lakh from M/s. Toto Shoes (P) Ltd., during the said financial year. Compute the value of supply of Toto Shoes (P) Ltd. and Mr. James Bond for the financial year.

(a) M/s. Toto Shoes (P) Ltd.: Nil and James Bond: ₹ 5.6 crore

(b) M/s. Toto Shoes (P) Ltd.: ₹ 5 crore and James Bond: ₹ 5.6 crore

(c) M/s. Toto Shoes (P) Ltd.: ₹ 5 crore and James Bond: ₹ 60 lakh

(d) None of the above **(RTP May '19)**

Ans: (c)

6. Happy Singh is the lawful owner of a residential house situated in Chandigarh. The property has four floors constructed on it. Out of the four floors in his house, first and second floor are self-occupied and third and fourth floor have been let out for residential purposes. Ratanjot Singh, who is a tenant on third floor, has surrendered his tenancy rights to Parminder Singh for a tenancy premium of ₹ 5,00,000 on 1st June. Parminder Singh has paid the applicable stamp duty and registration charges on transfer of tenancy rights. Moreover, Parminder Singh will pay a monthly rent of ₹ 50,000 to Happy Singh from June.

Determine the value of taxable supply, in the given case, for the month of June.

(a) Happy Singh: ₹ 5,50,000; Ratanjot Singh: Nil

(b) Happy Singh: Nil; Ratanjot Singh: ₹ 5,00,000

(c) Happy Singh: ₹ 50,000; Ratanjot Singh: Nil

(d) Happy Singh: ₹ 50,000; Ratanjot Singh: ₹ 5,00,000 **(RTP May '20)**

Ans: (b)

7. Korelal Printon (P) Ltd., a registered person under GST in the State of Jammu & Kashmir, is engaged in the business of offset printing and is providing services to various book publishers. A publisher situated in the State of Himachal Pradesh, a registered person under GST, sent content of the books to be printed by Korelal Printon (P) Ltd. in PDF format. The publisher also sent paper worth ₹ 4.00 lakh (excluding GST) to the printer, free of cost, for the purposes of printing its books on 10th February, as per the agreement between them. Korelal Printon (P) Ltd. raised an invoice of ₹ 1.50 lakh (excluding GST) against printing of books and returned the printed books through challan to the publisher on 20th August. The Proper Officer intercepted the vehicle and claimed that Korelal Printon (P) Ltd. should have sent the invoice of ₹ 5.50 lakh, i.e. including the value of free of cost paper supplied by the publisher.

You may suitably advice which one of the following is the correct option-

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- (a) The value of supply of paper for job work is to be included in the invoice in terms of section 15 of the CGST Act, 2017.
- (b) The goods sent for job work i.e. paper sent for printing is a composite supply
- (c) Korelal Printon (P) Ltd. has entered into an agreement of printing books. Therefore, he is liable to pay tax on the gross value of ₹ 5.50 lakh.
- (d) Korelal Printon (P) Ltd. has entered into an agreement of printing books. Therefore, he is liable to pay tax on the net value of ₹ 1.50 lakh. **(MTP 2 Marks April '23)**

Ans: (d)

8. M/s. Aircool Ltd., a supplier of air conditioners, is registered in the State of Maharashtra. It has a policy to gift an air conditioner to its employees [residing in Gujarat] at the end of financial year in terms of the employment contract. The company installs such air conditioners at the residence of the employees. During the month of March, 20XX, the company installed 150 air conditioners at the residence of these employees. The total open market value of such air conditioners is ₹ 52.50 lakh (excluding GST). The tax rate on such air conditioners is 28% (14% CGST, 14% SGST and 28% IGST). Compute the GST liability of M/s. Aircool Ltd., if any.

- (a) ₹ 7,35,000 - CGST, ₹ 7,35,000- SGST
- (b) ₹ 14,70,000 - IGST
- (c) Nil
- (d) None of the above **(RTP May '19)**

Ans: (c)

QUESTIONS AND ANSWERS

Question 1

Aviant Ltd., registered in Noida (Uttar Pradesh), is a supplier of machinery used for making bottle caps. The supply of machinery is affected 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 case of each 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)].**

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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 given at the time of receiving payment from the customer (no separate amount of GST is recovered); 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 29th August at a price of ₹ 40,00,000 (excluding all taxes). Invoice was issued on 29th 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 30th September.

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 liability [CGST, SGST or IGST, as the case may be] with respect to the supply of machinery and support your conclusions with legal provisions in the form of explanatory notes.

Make suitable assumptions, wherever needed. (New SM, MTP 10 Marks April '18, RTP May 18)

Answer 1

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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 7 and Note 8] – [A]	5,07,600
Tax liability for the month of September [Note 10]	
Interest collected @ 2% on ₹ 41,10,000 [Note 9]	82,200
Add: Cash discount recovered [Note 9]	80,000
Value of interest and cash discount inclusive of tax	1,62,200
IGST = (₹1,62,200/112) × 12 – [B]	17,379
Total IGST payable on the machinery [A] + [B]	5,24,979

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

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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 recovered and interest respectively 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 29th August. Thus, the time of supply of goods is 29th 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 30th September, the date when the full payment was made. The supplier may issue a debit note for such interest and cash discount recovered.

Question 2

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

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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 on 1st April. Under this scheme, BEL offers a discount of 10% (per television) on televisions supplied to the distributors if the distributors sell 500 televisions in a quarter. The discount is offered on the price at which the televisions are sold to the distributors (excluding all charges and taxes).

It appoints Shah Electronics (an unrelated party as per GST Law) as its distributor in Haryana on 1st April and dispatches 750 televisions on 8th April as stock for the quarter April-June. BEL has sold the televisions to distributor - Shah Electronics at ₹ 8,400 per television (exclusive of applicable taxes). Shah Electronics has requested BEL for a special packing of the televisions delivered to it for which BEL has charged ₹ 1,200 per television. Shah Electronics places a purchase order of 1,000 televisions with BEL for the quarter July - September. The distributor reports sales of 700 televisions for the quarter April -June and 850 televisions for the quarter July-September. The discount policy offered by BEL as explained above is also available to Shah Electronics as per the distributorship agreement.

While Shah Electronics reverses the input tax credit availed for the quarter July -September, it has failed to reverse the input tax credit availed for the quarter April-June.

Examine the scenario with reference to section 15 of the CGST Act, 2017 and compute the taxable value of televisions supplied by BEL to Shah Electronics during the quarters April -June and July- September. (MTP 9 Marks Apr'23 & Apr'22, RTP Nov'20)

Answer 2

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.

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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 (Rs.)
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 (T 9600x750)	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 (Rs.)
-------------	-----------------

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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 [7 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 71,51,200 [1,000 x (8,400 x 10%) x 18%].

Question 3

Kaya Trade Links Pvt. Ltd. is a registered manufacturer of premium ceiling fans. It sells its fans exclusively through distributors appointed across the country. The maximum retail price (MRP) printed on the package of a fan is Rs. 10,000. The company sells the ceiling fans to distributors at Rs. 7,000 per fan (exclusive of applicable taxes). The applicable rate of GST on ceiling fans is 18%.

The stock is dispatched to the distributors on quarterly basis - stock for a quarter being dispatched in the second week of the month preceding the relevant quarter. However, additional stock is dispatched at any point of the year if the company receives a requisition to that effect from any of its distributors. The company charges Rs. 1,000 per fan from distributors towards packing expenses.

The company has a policy to offer a discount of 10% (per fan) on fans supplied to the distributors for a quarter, if the distributors sell 500 fans in the preceding quarter. The discount is offered on the price at which the fans are sold to the distributors (excluding all charges and taxes).

The company appoints Prakash Sales as a distributor on 1st April and dispatches 750 fans on 8th April as stock for the quarter April-June. Prakash Sales places a purchase order of 1,000 fans with the company for the quarter July-September. The order is dispatched by the company on 10th June and the

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same is received by the distributor on 18th June. The distributor makes the payment for the fans on 26th June and avails applicable input tax credit. The distributor reports sales of 700 fans for the quarter April-June and 850 fans for the quarter July-September.

Examine the scenario with reference to section 15 of the CGST Act, 2017 and compute the taxable value of fans supplied by Kaya Trade Links Pvt. Ltd. to Prakash Sales during the quarter July- September.

Note: Make suitable assumptions, wherever necessary. (MTP 8 Marks Mar'18 & Aug '18)

Answer 3

Section 15(3)(a) of the CGST Act allows discounts to be deducted from the value of taxable supply if the same is given before or at the time of the supply and if such discount has been duly recorded in the invoice issued in respect of such supply. In other words, pre-supply discounts recorded in invoices are allowed as deduction. Further, post supply discounts are also allowed as deduction from the value of supply under section 15(3)(b) of the CGST Act if-

- (i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
- (ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

In the given case, Prakash Sales is entitled for 10% discount on fans supplied by Kaya Trade Links Pvt. Ltd. for the quarter July-September as it has sold more than 500 fans in the preceding quarter April-June. However, since the entire stock for the quarter July-September has already been despatched by Kaya Trade Links Pvt. Ltd. in the month of June, the discounts on the fans supplied to Prakash Sales for the quarter July-September will be a post-supply discount.

Such post-supply discount will be allowed as a deduction from the value of supply since the discount policy was known before the time of such supply and the discount can be specifically linked to relevant invoices (invoices pertaining to fans supplied to Prakash Sales for the quarter July-September) provided Prakash Sales reverses the input tax credit attributable to the discount on the basis of document issued by Kaya Trade Links Pvt. Ltd.

The value of supply will thus, be computed as under:

Particulars	Amount (Rs.)
Price at which the fans are supplied to Prakash Sales [Note 1]	7,000
Add: Packing expenses [Note 2]	1,000
Less: Discount [Note 3]	(700)
Value of taxable supply of one unit of fan	7,300
Value of taxable supply of fans for the quarter July-September [Rs. 7,300 x 1,000]	73,00,000

Notes:

- (1) The value of a supply is the transaction value, which is the price actually paid or payable for the said supply, in terms of section 15(1) of the CGST Act presuming that the supplier and the recipient of supply are not related and price is the sole

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consideration for the supply.

- (2) The value of supply includes incidental expenses like packing charges in terms of section 15(2)(c) of the CGST Act.
- (3) Since all the conditions specified in section 15(3)(b) of the CGST Act have been fulfilled, the post-supply discount will be allowed as deduction from the value of supply presuming that Prakash Sales has reversed the input tax credit attributable to such discount on the basis of document issued by Kaya Trade Links Pvt. Ltd. The input tax credit to be reversed will work out to be Rs. 1.26 lakh [$1,000 \times (7,000 \times 10\%) \times 18\%$].

Question 4

Honey cure Laboratories Ltd. is a registered supplier of bulk drugs in Delhi. It manufactures bulk drugs and supplies the same in the domestic and overseas market. The bulk drugs are supplied within Delhi and in the overseas market directly from the company's warehouse located in South Delhi. For supplies in other States of India, the company has appointed consignment agents in each such State. However, supplies in Gurgaon (Haryana) and Noida (U.P.) are effected directly from South Delhi warehouse. The drugs are supplied to the consignment agents from the South Delhi warehouse.

Honey cure Laboratories Ltd. also provides drug development services to drug manufacturers located in India, including testing of their new drugs in its laboratory located in Delhi.

The company has furnished the following information for the month of January, 20XX:

Particulars	Rs.
Advance received towards drug development services to be provided to Orochem Ltd., a drug manufacturer, located in Delhi [Drug development services have been provided in February, 20XX and invoice is issued on 28.02.20XX]	5,00,000
Advance received for bulk drugs to be supplied to Novick Pharmaceuticals, a wholesale dealer of drugs in Gurgaon, Haryana [Invoice for the goods is issued at the time of delivery of the drugs in March, 20XX]	6,00,000
Supply of bulk drugs to wholesale dealers of drugs in Delhi	60,00,000
Bulk drugs supplied to Anchor Pharmaceuticals Inc., USA under bond [Consideration received in convertible foreign exchange]	90,00,000
Drug development services provided to Unipharma Ltd., a drug manufacturer, located in Delhi	6,00,000

You are required to determine the GST liability [CGST & SGST or IGST, as the case may be] of Honey cure Laboratories Ltd. for the month of January, 20XX with the help of the following additional information furnished by it for the said period:

1. **Consignments of bulk drugs were sent to Cardinal Pharma Pvt. Ltd. and Rochester Medicos – agents of Honeycure Laboratories Ltd. in Punjab and Haryana respectively. Cardinal Pharma Pvt. Ltd. and Rochester Medicos supplied these drugs to the Medical Stores located in their respective States for Rs. 60,00,000 and Rs. 50,00,000 respectively.**

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2. Bulk drugs have been supplied to Ronn Medicos Pvt. Ltd. - a wholesale dealer of bulk drugs in Gurgaon, Haryana for consideration of Rs. 15,00,000. Honeycure Laboratories Ltd. owns 60% shares of Ronn Medicos Pvt. Ltd. Open market value of the bulk drugs supplied to Ronn Medicos Pvt. Ltd. is Rs. 30,00,000. Further, Ronn Medicos Pvt. Ltd. is not eligible for full input tax credit.
3. The turnover of Honeycure Laboratories Ltd. in the preceding financial year was Rs. 70 lakh with regard to supply of bulk drugs and Rs. 45 lakh with regard to supply of drug development services.

Note:

- (i) All the given amounts are exclusive of GST, wherever applicable.
- (ii) Assume the rates of GST to be as under:

Goods/services supplied	CGST	SGS T	IGS T
Bulk drugs	2.5%	2.5 %	5%
Drug development services	9 %	9%	18 %

You are required to make suitable assumptions, wherever necessary.
(MTP 10 Marks Mar'18 & Apr'19, RTP Nov'19)

Answer 4

Computation of GST Liability of Honey cure Laboratories Ltd. for the month of January, 20XX

Particulars	CGST (Rs.)	SGST (Rs.)	IGST (Rs.)
Advance received for drug Development services supplied to Orochem Ltd., a drug manufacturer, located in Delhi [Note - 1]	45,000 [5,00,000 × 9%]	45,000 [5,00,000 × 9%]	
Advance received for bulk drugs to be supplied to Novick Pharmaceuticals, a wholesale dealer of drugs in Gurgaon, Haryana [Note - 2]			Nil
Supply of bulk drugs to wholesale dealers of drugs in Delhi [Note - 3]	1,50,000 [60,00,000 × 2.5%]	1,50,000 [60,00,000 × 2.5%]	
Bulk drugs supplied to Anchor Pharmaceuticals Inc., USA [Note - 4]			Nil
Supply of drug development services to Unipharma Ltd., a drug	54,000 [6,00,000 × 9%]	54,000 [6,00,000 × 9%]	

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manufacturer, located in Delhi [Note - 5]			
Supply of bulk drugs to consignment agents - Cardinal Pharma Pvt. Ltd. and Rochester Medicos of Punjab and Haryana [Note - 6]			4,95,000 [99,00,000 × 5%]
Supply of bulk drugs to Ronn Medicos of Gurgaon, Haryana [Note - 7]			1,50,000 [30,00,000 × 5%]
Total GST liability	2,49,000	2,49,000	6,45,000

Notes:

- Being an intra-State supply of services, supply of drug development services to Orochem Ltd. of Delhi is subject to CGST and SGST @ 9% each. Further, in terms of section 13(2) of the CGST Act, the time of supply of services is the earlier of the date of invoice or date of receipt of payment, if the invoice is issued within 30 days of the supply of service. In the given case, invoice is issued within 30 days of the supply of service. Therefore, time of supply of services will be date of receipt of advance and hence, GST is payable on the advance received in January, 20XX.
- Being an inter-State supply of goods, supply of bulk drugs to Novick Pharmaceuticals of Gurgaon, Haryana is subject to IGST @ 5%. Further, in terms of section 12(2) of the CGST Act, the time of supply of goods is the earlier of the date of issue of invoice/last date on which the invoice is required to be issued or date of receipt of payment. However, *Notification No. 40/2017 CT dated 13.10.2017* has postponed the time of supply of advance received for suppliers of goods having aggregate turnover up to Rs. 1.5 crore in the preceding financial year (excluding composition suppliers) till the time of issue of invoice. Thus, GST is not payable at the time of receipt of advance against supply of goods in case of such suppliers¹.
Since the aggregate turnover of Honeycure Laboratories Ltd. does not exceed Rs. 1.5 crore [Rs. 1.15 lakh = Rs. 70 lakh + Rs. 45 lakh] in the preceding financial year, the time of supply of the advance received for bulk drugs to be supplied to Novick Pharmaceuticals is the time of issue of invoice, which is in March, 20XX. Thus, said advance will be taxed in March, 20XX and not in January, 20XX.
- Being an intra-State supply of goods, supply of bulk drugs to wholesale dealers of drugs in Delhi is subject to CGST and SGST @ 2.5 % each.
- Section 2(5) of the IGST Act defines export of goods as taking goods out of India to a place outside India. In view of the said definition, supply of the bulk drugs to Anchor Pharamaceuticals Inc. of USA under bond is export of goods.
Export of goods is a zero-rated supply [Section 16(1) of the IGST Act]. A zero-rated supply under bond is made without payment of integrated tax [Section 16(3)(a) of IGST Act].
- Being an intra-State supply of services, supply of drug development services to Unipharma Ltd. of Delhi is subject to CGST and SGST @ 9% each.
- Value of supply of goods made through an agent is determined as per rule 29 of the CGST Rules. Accordingly, the value of supply of goods between the principal and his agent is the open market value of the goods being supplied, or at the option of the supplier, is 90% of the price charged for the supply of goods of like kind and quality

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by the recipient to his unrelated customer, where the goods are intended for further supply by the said recipient.

In the given case, since open market value is not available, value of bulk drugs supplied to consignment agents - Cardinal Pharma Ltd. and Rochester Medicos – will be Rs. 99,00,000 [90% of (Rs. 60,00,000 + Rs. 50,00,000)]. Further, being an inter-State supply of goods, supply of bulk drugs to the consignment agents is subject to IGST @ 5%.

7. If any person directly or indirectly controls another person, such persons are deemed as related persons. [Clause (a)(v) of explanation to section 15 of the CGST Act]. In the given case, since Honeycure Laboratories Ltd. owns 60% shares of Ronn Medicos, both are related persons.

Value of supply of goods between related persons (other than through an agent) is determined as per rule 28 of the CGST Rules. Accordingly, the value of supply of goods between related persons is the open market value of such goods and not the invoice value. Furthermore, since Ronn Medicos is not eligible for full input tax credit, value declared in the invoice cannot be deemed to be the open market value of the goods. Thus, open market value of the bulk drugs supplied to Ronn Medicos i.e., Rs. 30,00,000 is the value of supply of such goods. Further, being an inter-State supply of goods, supply of bulk drugs to Ronn Medicos is subject to IGST @ 5%.

Question 5

Jaskaran, a registered supplier of Delhi, has made the following supplies in the month of January, 20XX:

S. No.	Particulars	Amount* (₹)
(i)	Supply of 20,000 packages at ₹ 30 each to Sukhija Gift Shop in Punjab [Each package consists of 2 chocolates, 2 fruit juice bottles and a packet of toy balloons]	6,00,000
(ii)	10 generators hired out to Morarji Banquet Halls, Chandigarh [including cost of transporting the generators (₹ 1,000 for each generator) from Jaskaran's warehouse to the Morarji Banquet Halls]	2,50,000
(iii)	500 packages each consisting of 1 chocolate and 1 fruit juice bottle given as free gift to Delhi customers on the occasion of Diwali [Cost of each package is ₹ 12, but the open market value of such package of goods and of goods of like kind and quality is not available. Input tax credit has not been taken on the items contained in the package]	
(iv)	Catering services provided free of cost for elder brother's business inaugural function in Delhi [Cost of providing said services is ₹ 55,000, but the open market value of such services and of services of like kind and quality is not available.]	

*excluding GST

You are required to determine the GST liability [CGST & SGST and/or IGST, as the case may be] of Jaskaran for the month of January, 20XX with the help of

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the following additional information furnished by him for the said period:

1. Penalty of ₹ 10,000 was collected from Sukhija Gift Shop for the payment received with a delay of 10 days.
2. The transportation of the generators from Jaskaran's warehouse to the customer's premises is arranged by Jaskaran through a Goods Transport Agency (GTA) who pays tax @ 12%.
3. Assume the rates of GST to be as under: (RTP Nov '18)

Goods/services supplied	CGST	SGST	IGST
Chocolates	9%	9%	18%
Fruit juice bottles	6%	6%	12%
Toy balloons	2.5%	2.5%	5%
Service of renting of generators	9%	9%	18%
Catering service	9%	9%	18%

Answer 5

Computation of GST liability of Jaskaran for the month of January, 20XX

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
Supply of 20,000 packages to Sukhija Gift Shop, Punjab [Note-1]			1,09,526 [6,08,475 × 18%]
Renting of 10 generators to Morarji Banquet Halls, Chandigarh [Note-2]			45,000 [2,50,000 × 18%]
500 packages given as free gift to the customers [Note-3]	Nil	Nil	Nil
Catering services provided free of cost for elder brother's business inaugural function in Delhi [Note-3]	5,445 [60,500 × 9%]	5,445 [60,500 × 9%]	
Total GST liability (rounded off)	5,445	5,445	1,54,526

Notes:

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

Supply of a package containing chocolates, fruit juice bottles and a packet of toy balloons is a mixed supply as each of these items can be supplied separately and is not dependent on any other. Further, as per section 8(b) of the CGST Act, 2017, the mixed supply is treated as a supply of that particular supply which attracts the highest rate of tax. Thus, in the given case, supply of packages is treated as supply of chocolates [since it attracts the highest rate of tax]. Consequently, being an inter-State supply of goods, supply of packages to Sukhija Gift Shop of Punjab is subject to IGST @ 18% each.

Further, value of supply includes interest or late fee or penalty charged for delayed

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payment of any consideration for any supply in terms of section 15(2)(d) of the CGST Act, 2017. Thus, penalty of ₹ 10,000 [considered as inclusive of GST] collected from Sukhija Gift Shop for the delayed payment will be included in the value of supply. The total value of supply is ₹ 6,08,475 [₹ 6,00,000 + (₹ 10,000 × 100/118)]

2. Services by way of transportation of goods by road except the services of a Goods Transportation Agency (GTA) are exempt vide Notification No. 9/2017 IT (R) dated 28.06.2017. Since Jaskaran is not a GTA, transportation services provided by him are exempt from GST. However, since the generators are invariably hired out along with their transportation till customer's premises, it is a case of composite supply under section 2(30) of the CGST Act, 2017 wherein the principal supply is the renting of generator.

As per section 8(a) of the CGST Act, 2017, the composite supply is treated as the supply of the principal supply. Therefore, the service of transportation of generators will also be taxed at the rate applicable for renting of the generator (principal supply). Consequently, being an inter-State supply of service, service of hiring out the generators to Morarji Banquet Halls of Chandigarh is subject to IGST @ 18% each.

3. As per section 7(1)(c) of the CGST Act, 2017, an activity made without consideration can be treated as supply only when it is specified in Schedule I of the CGST Act, 2017. Para 2. of Schedule I provides that supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business, are to be treated as supply even if made without consideration.

However, since the question does not provide that customers are related to Jaskaran, free gifts given to the customers cannot be considered as a supply under section 7. Consequently, no tax is leviable on the same.

4. Further, the catering services provided by Jaskaran to his elder brother without consideration will be treated as supply as Jaskaran and his elder brother, being members of same family, are related persons in terms of explanation (a)(viii) to section 15 of the CGST Act, 2017 and said services have been provided in course/furtherance of business. Value of supply of services between related persons, other than through an agent is determined as per rule 28 of the CGST Rules, 2017. Accordingly, the value of supply is the open market value of such supply; if open market value is not available, the value of supply of goods or services of like kind and quality. However, if value cannot be determined under said methods, it must be worked out based on the cost of the supply plus 10% mark-up. Thus, in the given case, value of catering services provided to the elder brother of Jaskaran is ₹ 60,500 [₹ 55,000 × 110%]. Further, being an intra-State supply of services, catering services are subject to CGST and SGST @ 2.5% each.
5. As per Notification No. 13/2017 CT(R) dated 28.06.2017, GST is payable by the recipient on reverse charge basis on the receipt of services of transportation of goods by road from a goods transport agency (GTA) provided such GTA has not paid GST @ 12%. Since in the given case, Jaskaran has received services from a GTA who has paid GST @ 12%, reverse charge provisions will not be applicable.

Question 6

Kaushal Manufacturers Ltd., registered in Delhi, is a manufacturer and supplier of electronic home appliances. It is paying tax under regular scheme. It supplies the electronic home appliances in the domestic as well as overseas market. For

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supplies in other States of India, the company has appointed consignment agents in each such State, except Gurgaon, Haryana and Noida, Uttar Pradesh, where the goods are supplied directly from its Delhi warehouse.

In the month of January, consignments of electronic home appliances were sent to Cardinal Electricals Pvt. Ltd. and Rochester Technos – agents of Kaushal Manufacturers Ltd. in Punjab and Madhya Pradesh respectively. Cardinal Electricals Pvt. Ltd. and Rochester Technos supplied these electronic home appliances under their invoices to the stores located in their respective States for ₹ 40,00,000 and ₹ 70,00,000 respectively. Open market value of such appliances is not available.

Further, in January, electronic home appliances have been supplied to Ronn Technomart - a wholesale dealer of electronic home appliances in Noida, Uttar Pradesh for consideration of ₹ 23,00,000, from its Delhi warehouse. Kaushal Manufacturers Ltd. owns 75% shares of Ronn Technomart. Open market value of the electronic home appliances supplied to Ronn Technomart is ₹ 30,00,000. Further, Ronn Technomart is not eligible for full input tax credit.

Kaushal Manufacturers Ltd. also provides repair and maintenance services to electronic appliance manufacturers located in India.

The company has also furnished the following information for the month of January:

Particulars	₹
Supply of electronic home appliances to wholesale dealers of such appliances in Delhi	84,00,000
Electronic home appliances supplied to Anchor Electricals Inc., USA under LUT [Consideration received in convertible foreign exchange]	1,26,00,000
Repair and maintenance services provided to Unitech Ltd., an electronic appliance manufacturer, located in Delhi	8,40,000
Advance received towards repair and maintenance services to be provided to Orelec Ltd., an electronic appliance manufacturer, located in Delhi [Repair and maintenance services have been provided in February and invoice is issued on 28 th February]	7,00,000
Advance received for electronic home appliances to be supplied to Novick Electricals, a wholesale dealer of such appliances in Gurgaon, Haryana [Invoice for the goods is issued at the time of delivery of the electronic appliances in March]	8,40,000

You are required to determine the gross GST liability [CGST & SGST and/or IGST] of Kaushal Manufacturers Ltd. for the month of January.

Note:

- (i) All the given amounts are exclusive of GST, wherever applicable.
- (ii) Assume the rates of GST to be as under:

Goods/services supplied	CGST	SGST	IGST
Electronic home appliances	2.5%	2.5%	5%
Repair and maintenance services	9%	9%	18%

You are required to make suitable assumptions, wherever necessary. (RTP Nov '21)

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Answer 6

Computation of gross GST Liability of Kaushal Manufacturers Ltd. for the month of January

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
Supply of electronic home appliances to consignment agents - Cardinal Electricals Pvt. Ltd. and Rochester Technos of Punjab and Madhya Pradesh [Note - 1]			4,95,000 [99,00,000 × 5%]
Supply of electronic home appliances to Ronn Technomart of Noida, Uttar Pradesh [Note - 2]			1,50,000 [30,00,000 × 5%]
Supply of electronic home appliances to wholesale dealers of such appliances in Delhi [Note - 3]	2,10,000 [84,00,000 × 2.5%]	2,10,000 [84,00,000 × 2.5%]	
Electronic home appliances supplied to Anchor Electricals Inc., USA under LUT [Note - 4]			Nil
Supply of repair and maintenance services to Unitech Ltd., an electronic appliance manufacturer, located in Delhi [Note - 5]	75,600 [8,40,000 × 9%]	75,600 [8,40,000 × 9%]	
Advance received for repair and maintenance services supplied to Orelec Ltd., a electronic appliances manufacturer, located in Delhi [Note - 6]	63,000 [7,00,000 × 9%]	63,000 [5,00,000 × 9%]	
Advance received for electronic home appliances to be supplied to Novick Electricals, a wholesale dealer of electronic appliances in Gurgaon, Haryana [Note - 7]			Nil
Total GST liability	3,48,600	3,48,600	6,45,000

Notes:

- Value of supply of goods made through an agent is determined as per rule 29 of the CGST Rules, 2017. Accordingly, the value of supply of goods between the principal and his agent is the open market value of the goods being supplied, or at the option of the supplier, is 90% of the price charged for the supply of goods of like kind and quality by the recipient to his unrelated customer, where the goods are intended for further supply by the said recipient.

In the given case, since open market value is not available, value of electronic home appliances supplied to consignment agents - Cardinal Electricals Pvt. Ltd. and Rochester Technos – will be ₹ 99,00,000 [90% of (40,00,000 + 70,00,000)]. Further, being an inter-State supply of goods, supply of electronic home appliances to the consignment agents is subject to IGST @ 5%.

- If any person directly or indirectly controls another person, such persons are deemed as related persons. [Clause (a)(v) of explanation to section 15 of the CGST Act]. In the given case, since Kaushal Manufacturers Ltd. owns 75% shares of Ronn Technomart, both are related persons.

Value of supply of goods between related persons (other than through an agent) is determined as per rule 28 of the CGST Rules, 2017. Accordingly, the value of supply of goods between related persons is the open market value of such goods and not the

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invoice value. Furthermore, since Ronn Technomart is not eligible for full input tax credit, value declared in the invoice cannot be deemed to be the open market value of the goods.

Thus, open market value of the electronic home appliances supplied to Ronn Technomart, i.e. ₹ 30,00,000 is the value of supply of such goods. Further, being an inter-State supply of goods, supply of electronic home appliances to Ronn Technomart is subject to IGST @ 5%.

3. Being an intra-State supply of goods, supply of electronic home appliances to wholesale dealers of said appliances in Delhi is subject to CGST and SGST @ 2.5 % each.
4. Section 2(5) of the IGST Act defines export of goods as taking goods out of India to a place outside India. In view of the said definition, supply of the electronic home appliances to Anchor Electricals Inc. of USA under LUT is export of goods. Export of goods is a zero-rated supply [Section 16(1) of the IGST Act]. A zero-rated supply under LUT is made without payment of integrated tax [Section 16(3)(a) of IGST Act].
5. Being an intra-State supply of services, supply of repair and maintenance services to Unitech Ltd. of Delhi is subject to CGST and SGST @ 9% each.
6. Being an intra-State supply of services, supply of repair and maintenance services to Orelec Ltd. of Delhi is subject to CGST and SGST @ 9% each. Further, in terms of section 13(2) of the CGST Act, the time of supply of services is the earlier of the date of invoice or date of receipt of payment, if the invoice is issued within 30 days of the supply of service. In the given case, invoice is issued within 30 days of the supply of service. Therefore, time of supply of services will be date of receipt of advance and hence, GST is payable on the advance received in January.
7. Being an inter-State supply of goods, supply of electronic home appliances to Novick Electricals of Gurgaon, Haryana is subject to IGST @ 5%. Further, in terms of section 12(2) of the CGST Act, the time of supply of goods is the earlier of the date of issue of invoice/last date on which the invoice is required to be issued or date of receipt of payment.

However, *Notification No. 66/2017 CT dated 15.11.2017* specifies that time of supply of goods for the purpose of payment of tax is the date of issue of invoice/last date when the invoice ought to have been issued under section 31.

Thus, GST is not payable at the time of receipt of advance against supply of goods. The time of supply of the advance received for electronic home appliances to be supplied to Novick Electricals is the time of issue of invoice, which is in March. Thus, said advance will be taxed in March and not in January.

Question 7

Skylark Pvt. Ltd., Noida (Uttar Pradesh) is engaged in various kinds of commercial activities. It manufactures taxable goods as also provides certain services. The company has branch office in New Delhi. The Head office at Noida and the branch office in New Delhi are registered under GST. The branch office at New Delhi is eligible for full input tax credit.

The company has reported a total turnover of ₹ 256 crore (exclusive of GST) for the month of August 20XX. The following information is provided by the

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company in relation to such turnover:

- (i) The turnover includes ₹ 45 crore from sale of securities which were purchased for ₹ 30 crore in the month of January last year.
- (ii) The company supplied goods worth ₹ 50 crore to ABC Ltd. in UK under a letter of undertaking (LUT). The total export proceeds are received in the month of August 20XX itself; ₹ 30 crore in foreign currency and balance ₹ 20 crore in Indian rupees.
- (iii) The company provided consulting services to Sherpa & Sons in Nepal for ₹ 30 crore under a LUT. The entire consideration is received in Indian rupees in the month of August 20XX itself, with the permission of RBI.
- (iv) The turnover includes supply of goods worth ₹ 10 crore to Shanghai Jianguo Trading Company Ltd., a company based in China. As per the sale contract, the goods were to be assembled at Shanghai Jianguo Trading Company Ltd.'s office in Gurugram, Haryana. The payment of the goods is received in convertible foreign exchange in the month of August 20XX itself.
- (v) Goods worth ₹ 20 crore are supplied under a LUT to DEF Pvt. Ltd. located in a SEZ in the State of Uttar Pradesh.
- (vi) Goods worth ₹ 40 lakh were being procured from a vendor in Japan. While the goods were in transit, the company secured an order for the said goods for ₹ 50 lakh from a buyer in Thailand. Thus, the goods were directly sent to Thailand without entering India.
- (vii) The company owns three immovable properties in Noida. The first building is let out for running a printing press at ₹ 10 lakh per month. The second building is let out for residential purpose at ₹ 5 lakh per month. The third building is let out to a Cold Storage operator at ₹ 5 lakh per month. The cold storage operator sub-lets the building as a warehouse to store potatoes.
- (viii) The remaining turnover comprised of taxable goods sold within the State and outside the State in the ratio of 3:2. Total turnover of ₹ 256 crore includes the turnover referred to in points (i) to (vii) above. In addition to above –
 - (i) the company transferred its stock (taxable goods) from Noida to Delhi branch without any consideration; the value declared in the invoice is ₹ 4.5 crore (exclusive of GST). The cost of production of such goods is ₹ 10 crore. Such stock is sold to independent buyers at ₹ 15 crore (exclusive of GST).
 - (ii) the company had sent goods worth ₹ 12 crore (exclusive of GST) to M/s Sharma Traders in Haryana on approval basis on 15th January, 20XX, 15th February 20XX & 15th March 20XX (₹ 4 crore each month). Goods sent during all the three months are approved in the month of September 20XX.

Compute the GST liability [CGST & SGST or IGST, as the case may be] of Skylark Pvt. Ltd., Noida for the month of August 20XX. Make suitable assumptions wherever required. Assume the rates of taxes to be as under: (RTP May '20)

	CGS T	SGS T	IGST
Goods	6%	6%	12%
Services	9%	9%	18%

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Answer 7

Computation of GST liability of Skylark Pvt. Ltd. for the month of August 20XX

S. No.	Particulars	Value (₹ in crores)	CGST @ 6% (₹ in crores)	SGST @ 6% (₹ in crores)	IGST@ 12% (₹ in crores)
Goods					
(i)	Export of goods to ABC Ltd. in UK under a letter of undertaking (LUT) [Note 1]	50			Nil
(ii)	Supply of goods to Shanghai Jianguo Trading Company Ltd. [Note 2]	10			1.20
(iii)	Goods supplied to DEF Pvt. Ltd. located in a SEZ [Note 3]	20			Nil
(iv)	Sale within the State [Note 4]	60.18	3.6108	3.6108	-
(v)	Sale outside the State [Note 4]	40.12			4.8144
(vi)	Stock transfer from Noida to Delhi [Note 5]	4.5			0.54
(vii)	Goods sent for sale on approval basis on 15 th February, 20XX [Note 6]	<u>4.00</u>			<u>0.48</u>
Total tax liability on goods [A]			3.6108	3.6108	7.0344
Services					
(i)	Export of services to Nepal under a LUT [Note 7]	30			Nil
(ii)	Receipts from renting of buildings [Note 8]	<u>0.15</u>	<u>0.0135</u>	<u>0.0135</u>	
Total tax liability on services [B]			0.0135	0.0135	
Neither goods nor services					
(i)	Sale of securities [Note 9]	45	Nil	Nil	Nil
(ii)	Goods procured from vendor in Japan and supplied to buyer in Thailand [Note 10]	0.50			Nil
Total tax liability on goods and services [(A) + (B)]			3.6243	3.6243	7.0344

Notes:

- As per section 2(5) of the IGST Act, 2017, export of goods means taking goods out of India to a place outside India. Receipt of consideration in foreign exchange is not a pre-requisite for export of goods. Export of goods is a zero rated supply in terms of section 16(1)(a) of the IGST Act, 2017. A zero rated supply is supplied without payment of tax under a LUT in terms of section 16(3)(a) of that Act.
- As per section 2(5) of the IGST Act, 2017, export of goods means taking goods out of

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India to a place outside India. Since, in the given case, the goods are being assembled in India (Gurugram, Haryana), the same are not exported.

Hence, the place of supply thereof will be governed by section 10 of the IGST Act, 2017 which prescribes the provisions for determining the place of supply of goods other than supply of goods imported into or exported from India. As per section 10(1)(d) of the IGST Act, 2017, where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly. Therefore, in the given case, the place of supply will be Gurugram, Haryana.

Since the location of the supplier (Uttar Pradesh) and the place of supply (Haryana) are in two different States, the same is an inter-State supply liable to IGST [Section 7(1)(a) of the IGST Act, 2017 read with section 5(1) of that Act].

- (3) As per section 7(5)(b) of the IGST Act, 2017, supply of goods and/or services to a special economic zone (SEZ) unit is treated to be a supply of goods and/or services in the course of inter-State trade or commerce. Therefore, supply of goods to a SEZ unit located within the same State shall be liable to IGST [Section 5(1) of the IGST Act, 2017].

Supply of goods and/or services to a SEZ unit is a zero rated supply in terms of section 16(1)(b) of the IGST Act, 2017. A zero rated supply is supplied without payment of tax under a LUT in terms of section 16(3)(a) of that Act.

- (4) Remaining turnover will be calculated as under
 $\text{₹ } 256 \text{ crore} - (\text{₹ } 45 \text{ crore} + \text{₹ } 50 \text{ crore} + \text{₹ } 30 \text{ crore} + \text{₹ } 10 \text{ crore} + \text{₹ } 20 \text{ crore} + \text{₹ } 0.50 \text{ crore} + \text{₹ } 0.10 \text{ crore} + \text{₹ } 0.05 \text{ crore} + \text{₹ } 0.05 \text{ crore}) = \text{₹ } 100.30 \text{ crore}$
 Supply within the State - $\text{₹ } 100.30 \text{ crore} \times \frac{3}{5} = \text{₹ } 60.18$

Supply outside the State - $\text{₹ } 100.30 \text{ crore} \times \frac{2}{5} = \text{₹ } 40.12$

Supply within the State is intra-State supply in terms of section 8(1) of IGST Act, 2017 and thus, chargeable to CGST and SGST. Supply outside the State is inter-State supply chargeable to IGST [Section 7(1) of IGST Act, 2017 read with section 5(1) of the said Act].

- (5) As per section 25(4) of the CGST Act, 2017, a person who has obtained more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as 'distinct persons'. Schedule I to the CGST Act, 2017 specifies situations where activities are to be treated as supply even if made without consideration. Supply of goods and/or services between 'distinct persons' as specified in section 25 of the CGST Act, 2017, when made in the course or furtherance of business is one such activity included in Schedule I under para 2.

In the given case-

- the location of the supplier is in Noida (Uttar Pradesh); and
- the place of supply is the location of such goods at the time at which the movement thereof terminates for delivery to the recipient i.e., Delhi, in terms of section 10(1)(a) of the IGST Act, 2017.

Therefore, the stock transfer by Noida office to Delhi branch is an inter-State supply as the location of the supplier and the place of supply are in two different States [Section 7(1)(a) of IGST Act, 2017]. Thus, the supply is leviable to IGST in terms of section 5(1) of the IGST Act, 2017.

Rule 28 of the CGST Rules, 2017 prescribes the provisions to determine the value of supply of goods or services or both between distinct or related persons, other than through an agent. Second proviso to the said rule lays down that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to

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be the open market value of the goods or services. Therefore, the value of supply in this case will be ₹ 4.5 crore and open market value and cost of production of the goods will be irrelevant.

- (6) As per section 31(7) of the CGST Act, 2017, where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.

In the given case, the time period of six months for goods sent on 15th February, 20XX expires on 15.08.20XX. Therefore, the invoice for the said goods shall be issued on 15.08.20XX and in terms of section 12(2)(a) of the CGST Act, 2017 read with *Notification No. 66/2017 CT dated 15.11.2017*, this date would also be the time of supply of such goods. Thus, such goods will be liable to tax in the month of August 20XX. Goods sent in the month of January would have been taxed in the month of July and goods sent in the month of March would be taxed in the month of September.

Here,

- the location of the supplier is in Noida (Uttar Pradesh); and
- the place of supply is the location of the goods at the time at which the movement thereof terminates for delivery to the recipient i.e., Haryana in terms of section 10(1)(a) of the IGST Act, 2017.

Since the location of the supplier (Uttar Pradesh) and the place of supply (Haryana) are in two different States, the same is an inter-State supply liable to IGST [Section 7(1)(a) of the IGST Act, 2017 read with section 5(1) of that Act].

- (7) The given case is an export of service as per section 2(6) of the IGST Act, 2017, as-
- (i) the supplier of service is located in India (Noida);
 - (ii) the recipient of service is located outside India (Nepal);
 - (iii) the place of supply of service is outside India (Place of supply of consulting service will be the location of recipient, i.e. Nepal);
 - (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India (Receipt of export consideration in Indian rupees is permitted by RBI in the given case); and
 - (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.

Export of services is a zero rated supply in terms of section 16(1)(a) of the IGST Act, 2017. A zero rated supply is supplied without payment of tax under a LUT in terms of section 16(3)(a) of that Act.

- (8) Letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of service in terms of para 2(b) of the Schedule II to the CGST Act, 2017. Services by way of renting of residential dwelling for use as residence is exempt from tax [*Notification No. 12/2017 CT (R) dated 28.06.2017*]. Therefore, rent of ₹ 10 lakh received from letting out of building for printing press will be liable to tax and rent of ₹ 5 lakh received from letting out of building for residential purposes will be exempt from tax.

Further, services by way of loading, unloading, packing, storage or warehousing of agricultural produce is exempt from tax [*Notification No. 12/2017 CT (R) dated 28.06.2017*]. However, in the given case, the Cold Storage Operator and not Skylark Pvt. Ltd. is engaged in warehousing of agricultural produce. Therefore, the Cold Storage Operator providing warehousing services for potatoes, being an

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agricultural produce, will be eligible for such exemption and services provided by Skylark Pvt. Ltd., being services of renting of immovable property (₹ 5 lakh), will be liable to tax.

In case of letting out of first and third buildings,

- the location of the supplier is in Noida (Uttar Pradesh); and
- the place of supply is the location of the immovable property, i.e. Noida in terms of section 12(3)(a) of the IGST Act, 2017.

Since the location of the supplier (Uttar Pradesh) and the place of supply (Noida) are in the same State, the same is an intra-State supply in terms of section 8(1) of the IGST Act, 2017 and is thus, liable to CGST and SGST.

- (9) GST is leviable on supply of goods and/or services [Section 9(1) of the CGST Act, 2017]. Securities are specifically excluded from the definition of goods and services as provided under clause (52) and clause (102) respectively of section 2 of the CGST Act, 2017. Therefore, sale of securities will not be liable to GST.
- (10) Paragraph 7 of the Schedule III to CGST Act, 2017 provides that supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India (third country shipments) is treated neither as a supply of goods nor a supply of services. Thus, there is no GST liability on such sales. Further, since such goods do not enter India at any point of time, customs duty and IGST leviable on imported goods will also not be leviable on such goods.

Question 8

Adityanath Private Limited is registered under GST in the State of Uttar Pradesh. It is engaged in supplying three products – Product Alpha, Product Beta and Product Gamma, from its factory located in Rampur, Uttar Pradesh. Product Alpha and Product Beta are taxable whereas Product Gamma is exempt from GST. Besides, it also supplies cigarettes from its factory located in Kanpur and owns a petrol pump in Lucknow. It is also engaged in supply of certain services. It has furnished the following information with regard to the supplies made by it in the month of August:

Particulars	(₹)*
Supply of Product Alpha	50,00,000
Supply of Product Gamma	1,00,00,000
Supply of management consultancy services	50,00,000
Renting of commercial complex to local traders of electronic goods	50,00,000
Export of Product Beta	1,00,00,000
Export of consultancy services [including exports made to a Nepal based company of ₹ 5 lakh (payment is received in Indian currency in said case)]	20,00,000
Sale of building (excluding stamp duty of ₹ 2.50 lakh being 2% of value adopted for paying stamp duty) [Entire consideration is received post issuance of completion certificate; building was occupied thereafter]	2,50,00,000
Interest received on investment in fixed deposits with Manimani bank	10,50,000
Sale of shares of a public company (Purchase price of such shares is ₹ 2,40,00,000)	2,50,00,000
Supply of cigarettes [GST being levied @ 28%.] (including excise duty of ₹ 12,50,000)	1,00,00,000

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Supply of petrol and diesel (including VAT of ₹ 5,00,000 and excise duty of ₹ 12,50,000)	80,00,000
Amount received from Durga Das Private Limited of Lucknow, Uttar Pradesh. It has sponsored the business exhibition organized in Delhi by Adityanath Private Limited.	6,00,000

***excluding GST**

With the help of the above-mentioned information, compute the gross GST liability of Adityanath Private Limited for the month of August on the outward supplies made by it during said period. Note: Assume that rates of GST on outward supply of goods and services are 12% and 18% respectively unless otherwise specified (Ignore CGST, SGST or IGST for the sake of simplicity). Exports made by Adityanath Private Limited, if any, have been made to persons other than distinct/related persons and are made by furnishing LUT without payment of IGST. (RTP May 22)

Answer 8

Computation of gross GST liability on outward supply of Adityanath Private Limited for the month of August

Particulars	Value (₹)	GST (₹)
Supply of Product Alpha [Liable to GST @ 12%]	50,00,000	6,00,000
Supply of Product Gamma [Exempt from GST]	1,00,00,000	Nil
Supply of management consultancy services [Liable to GST @ 18%]	50,00,000	9,00,000
Renting of commercial complex to local traders of electronic goods [Services by way of renting of residential dwelling for use as residence are exempt from GST. Thus, renting of commercial complex is taxable and GST is payable on the same @ 18%.]	50,00,000	9,00,000
Export of Product Beta [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 made without payment of tax under a LUT in terms of section 16(3)(a) of that Act.]	1,00,00,000	Nil
Export of consultancy services [As per section 2(6) of the IGST Act, 2017, an activity is treated as export of service if, inter alia, payment for the service is received in convertible foreign exchange or in Indian rupees wherever permitted by the RBI. Since in case of exports to Nepal, RBI regulations allow receipt of payment in Indian rupees, exports of services to Nepal are treated as 'normal exports'. 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 made without payment of tax under a LUT in terms of section 16(3)(a) of that Act.]	20,00,000	Nil
Sale of building [Sale of building is neither a supply of goods nor a supply	2,50,00,000	Nil

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of services in terms of para 5 of Schedule III to the CGST Act, 2017, 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.]		
Interest received on investment in fixed deposits with Manimani Bank [Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest are exempt vide Notification No. 12/2017 CT (R) dated 28.06.2017]	10,50,000	Nil
Sale of shares [Shares are neither goods nor services in terms of section 2(52) and 2(102) of the CGST Act, 2017. Hence, sale of shares is neither a supply of goods nor a supply of services and hence, is not liable to GST.]	2,50,00,000	Nil
Supply of cigarettes [Liable to GST @ 28%] [Excise duty is included in the value since as per section 15(2)(a) of the CGST Act, 2017, value of supply includes all taxes, duties, cesses other than GST.]	1,00,00,000	28,00,000
Supply of petrol and diesel [Supply of petrol and diesel is not leviable to GST as per section 9 of the CGST Act, 2017.]	80,00,000	Nil
Amount received from Durga Das Private Limited for sponsorship of the business exhibition [Tax on services provided by any person by way of sponsorship to any body-corporate located in taxable territory is payable by the recipient (Durga Das Private Limited) under reverse charge. Thus, tax on such services is not payable by Adityanath Private Limited.]	6,00,000	Nil
Total GST liability on outward supply		52,00,000

Question 9

In the above question, all other things remaining the same, compute the value of supply (most beneficial) made by Bangalore unit as well as the value of supply (most beneficial) made by Ahmedabad Retail Showroom if Super Lever Limited furnishes the following additional information for the month of October:

- (i) **Bangalore unit has appointed M/s. Equilibrium Sales as its sole selling agent. M/s. Equilibrium Sales sells the electronic goods of Bangalore unit under the invoice issued in its own name. The Bangalore unit transferred goods costing ₹ 7,25,000 to M/s. Equilibrium Sales on 20th October which were sold by M/s. Equilibrium Sales on 31st October at ₹ 7,65,000. On 20th October, another electronic goods' manufacturer supplied the goods of like kind and quality to M/s. Equilibrium Sales as the one supplied by the Bangalore unit at a price of ₹ 7,75,000.**
- (ii) **The Retail Showroom at Ahmedabad transfers goods costing ₹ 85,000 to its agent, M/s. Paridhi Sales on 12th October. M/s. Paridhi Sales sells such goods on 18th October at ₹ 5,00,000 under the invoice issued in the name of Retail Showroom at Ahmedabad. On 17th October, M/s Paridhi Sales has sold goods of**

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like kind and quality as the one supplied by the Retail Showroom at Ahmedabad to an unrelated customer at ₹ 4,70,000.

The Retail Showroom at Ahmedabad also transfers goods costing ₹ 2,25,000 to its agent, M/s. Dhara Enterprises on 15th October. M/s. Dhara Enterprises sells such goods on 20th October at ₹ 1,00,000 under the invoice issued in its own name. On 19th October, M/s Paridhi Sales has sold goods of like kind and quality as the one supplied by the Retail Showroom at Ahmedabad to an unrelated customer at ₹ 98,000.

Note: M/s. Equilibrium Sales, M/s. Paridhi Sales and M/s. Dhara Enterprises are not eligible for full input tax credit. Further, open market value of the goods is not available in any of the above cases. (RTP Nov'22)

Answer 9

- (i) As per clause (c) of explanation to section 15, persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related. Thus, in the given case, since M/s. Equilibrium Sales is a sole selling agent of Bangalore unit, both are related persons.

Further, an activity/transaction qualifies as supply under GST only if it is undertaken for a consideration and in course/furtherance of business. However, supply of goods between 'related persons' made in the course or furtherance of business qualifies as supply even if made without consideration [Section 7(1)(c) read with Schedule I].

Furthermore, value of supply of goods between related persons (other than through an agent) is determined as per rule 28. Accordingly, the value of supply of goods between related persons will be determined as follows:

- (a) the open market value of such supply;
- (b) if open market value is not available, the value of supply of goods or services of like kind and quality;
- (c) if value cannot be determined under the above methods, it must be worked out based on the cost of the supply plus 10% mark-up or by other reasonable means, in that sequence.

However, 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 unrelated customer.

Further, 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. Open market value of the goods is not available in the given case. Further, since M/s. Equilibrium Sales is not eligible for full input tax credit, value declared in the invoice cannot be deemed to be the open market value of the goods. Since M/s. Equilibrium Sales further supplies the goods, value of the goods will be lower of:

- (i) value of supply of goods or services of like kind and quality, i.e. ₹ 7,75,000 or
- (ii) 90% of the price charged for the supply of goods of like kind and quality by Equilibrium Sales to its unrelated customer, i.e. ₹ 6,88,500 [₹ 7,65,000 × 90%].

Thus, the value of supply, in the given case, will be ₹ 6,88,500.

- (ii) An activity/transaction qualifies as supply under GST only if it is undertaken for a consideration and is in course/furtherance of business. However, supply of goods by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal is considered as supply even if made without consideration provided the

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invoice for further supply is issued by the agent in his own name [Section 7(1)(c) read with Schedule I to the CGST Act, 2017]. Where the invoice is issued by the agent to the customer in the name of the principal, such agent is not an agent in terms of Schedule I.

Since M/s. Paridhi Sales sells the goods under the invoice issued in the name of Retail Showroom at Ahmedabad, it is not an agent in terms of Schedule I.

Resultantly, transfer of goods by Retail Showroom at Ahmedabad to M/s. Paridhi Sales does not qualify as supply since it is made without consideration.

Further, since M/s. Dhara Enterprises sells the goods under the invoice issued in its own name, it falls within the purview of an agent in terms of Schedule I. Resultantly, transfer of goods by Retail Showroom at Ahmedabad to M/s. Dhara Enterprises qualifies as supply even though it is made without consideration.

Value of supply of goods made through an agent is determined as per rule 29.

Accordingly, the value of supply of goods between the principal and his agent is the open market value of the goods being supplied, or at the option of the supplier, is 90% of the price charged for the supply of goods of like kind and quality by the recipient to his unrelated customer, where the goods are intended for further supply by the said recipient.

In the given case, since open market value is not available, value of the goods supplied to M/s. Dhara Enterprises will be ₹ 88,200 [90% of ₹ 98,000].

Thus, value of supply of Bangalore unit is ₹ 6,88,500 and Retail Showroom at Ahmedabad is ₹ 88,200.

Question 10

Sudarshan Ltd., a registered supplier under GST in the State of Kerala, is engaged in providing a bouquet of goods and services (other than renting of cars). It provides the following information for the month of January:

S. No.	Particulars	Amount (₹)
	OUTWARD SUPPLY:	
(i)	Distributed 1,000 free gifts (electronic items worth ₹ 5,000 each purchased from unregistered local vendors) to its customers within Kerala in the month of January to promote sales	Nil
(ii)	Supplies a consignment of goods in the territorial waters to Dhruvtara Enterprises. The said territorial waters is located at a distance of 11 nautical miles from the baseline of State of Kerala and 12 nautical miles from the baseline of State of Tamil Nadu.	6,00,000
(iii)	Advance received during the month for future intra-State taxable supply [Advance of ₹ 2,10,000 was related to supply of goods and the rest was related to service]	7,00,000
(iv)	Provided pure labour services of construction of single commercial unit located in Mumbai not forming part of any residential complex to a customer in Mumbai (Maharashtra).	15,00,000

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	INWARD SUPPLY:	
(i)	Monthly rent paid to Kerala State Government for an office taken on rent	6,00,000
(ii)	Purchased raw material from Saksham Steels Ltd., registered in the State of Andhra Pradesh	15,00,000
(iii)	Purchased a new truck from a dealer in Cochin, Kerala for transport of materials	12,00,000

The company provided the following additional information:

- (i) During the course of arranging and filing documents, the accountant of Sudarshan Ltd. observed that an invoice for ₹ 96,000 (excluding GST) dated 2nd December of last year was omitted to be recorded in the books of accounts and no payment was made against the same till the end of January. This invoice was issued by Mr. Rishi of Kerala, from whom Sudarshan Ltd. had taken cars on rental basis. Invoice included cost of fuel also.
 - (ii) Availed services of an arbitral tribunal in Kannur, Kerala worth ₹ 7,00,000 to settle a case relating to Companies Act.
 - (iii) The company claimed depreciation under the Income-tax Act, 1961 on the new truck purchased including all applicable taxes.
 - (iv) Saksham Steels Ltd. is mandatorily required to issue e-invoice. However, it did not issue e-invoice with invoice reference number (IRN). The invoice was reflected in GSTR-2B.
 - (v) Turnover of Sudarshan Ltd. for the previous financial year was ₹ 180 lakh.
 - (vi) Rates of CGST, SGST and IGST are 9%, 9% and 18% respectively for both inward and outward supply of goods and services.
 - (vii) All the amounts given above are exclusive of taxes wherever applicable.
- From the information given above, you are required to compute the minimum net GST liability payable in cash (CGST, SGST or IGST, as the case may be) for the month of January. Reason for treatment needs to be given.
(RTP Nov'23)

Answer 10

Computation of minimum net GST payable in cash by Sudarshan Ltd. for January

Particulars	Value (₹)	CGST T (₹)	SGST T (₹)	IGST T (₹)
GST payable under forward charge				

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Free gifts to customers [Not a supply as it is made without consideration and is also not covered in Schedule I because free gifts have been distributed to an unrelated person (customers are not related persons) and ITC has also not been availed on the same.]	Nil	-	-	-
Supply of consignment in territorial waters [Where the supply is in the territorial waters, the place of supply is deemed to be in the coastal State where the nearest point of the appropriate baseline is located. Therefore, place of supply will be in Kerala being nearer to base line and hence, supply will be intra-State supply]	6,00,000	54,000 [6,00,000 x 9%]	54,000 [6,00,000 x 9%]	
Receipt of advance from customer [Tax will be payable only on advance for services. In case of goods, tax is payable at the time of issuance of invoice and not at the time of receipt of advance.]	4,90,000 (7,00,000 - 2,10,000)	44,100 [4,90,000 x 9%]	44,100 [4,90,000 x 9%]	
Inter-State supply of pure labour services for construction of single commercial unit in Mumbai [Services by way of pure labour contracts of construction of original works pertaining to a single residential unit otherwise than as a part of a residential complex is exempt. Hence, such services in relation to a commercial unit shall be taxable.]				2,70,000 [15,00,000 x 18%]
Total output GST		98,100	98,100	2,70,000
Less: Input tax credit [Refer working note below] [CGST credit be first utilized for payment of CGST liability and then for payment of IGST liability in that order. Similarly, SGST credit be first utilized for payment of SGST liability and then for payment of IGST liability in that order. ITC of CGST cannot be utilized for payment of SGST and vice versa.]		98,100	98,100	18,900 (CGST)
		-	-	18,900 (SGST)
Net output GST payable in cash [A]		Nil	Nil	2,32,200
GST payable under reverse charge				
Tax on rent paid to State Government of Kerala by Sudharshan Ltd. (a registered person) is payable under reverse charge	6,00,000	54,000	54,000	

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Tax on services provided by the arbitral tribunal is payable under reverse charge by the recipient of service.	7,00,000	63,000	63,000	
GST payable in cash under reverse charge [B] [Tax payable under reverse charge, being not an output tax, cannot be set off against ITC and thus, will have to be paid in cash.]		1,17,000	1,17,000	
Minimum net GST payable in cash [A] + [B]		1,17,000	1,17,000	2,32,200

Working Note:

Computation of ITC available with Sudarshan Ltd. for January

Particulars	CGST (₹)	SGS T (₹)	IGS T (₹)
Monthly rent paid to Kerela State Government for an office taken on rent [Being services used in the course of furtherance of business, ITC shall be available thereon.]	54,000 [6,00,000 x 9%]	54,000 [6,00,000 x 9%]	
Cars taken on rental basis from Mr. Rishi [Tax on renting of motor car services wherein cost of fuel is included in consideration provided by a non-body corporate to a body corporate and invoice is issued charging CGST/SGST @ 2.5% is payable under reverse charge. Time of supply of such services is 1st February being earlier of date of payment, or date immediately following 60 days since issue of invoice by the supplier. Since the time of supply of renting of motor car services in the given case does not fall in January, tax liability on the same does not arise in said month. Further, ITC on renting of motor car services received is blocked since the recipient - Sudarshan Ltd. is not in the same line of business.]	--	--	--
Services of an arbitral tribunal [Services provided by an arbitral tribunal to a business entity with an aggregate turnover up to threshold limit of registration in the previous financial year are exempt from GST. Thus, services provided by the arbitral tribunal to Sudarshan Ltd., a business entity whose aggregate turnover in the previous financial year exceeds the applicable threshold limit for registration [viz. ₹ 20 lakh, being a supplier of goods and services in the State of Kerala] shall be liable to tax. Further, being services used in the course of furtherance of business, ITC shall be available thereon.]	63,000 [7,00,000 x 9%]	63,000 [7,00,000 x 9%]	

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Purchase of raw material from Saksham Steels Ltd. [An e-invoice without IRN is not treated as invoice and hence, without a valid document, ITC cannot be claimed on such inputs]	-	-	
Purchase of truck [Motor vehicle used for transportation of goods is eligible for credit. However, since depreciation has been claimed on applicable taxes as well, ITC of tax paid on purchase of such truck cannot be claimed.]	-	-	
Total ITC	1,17,000	1,17,000	

Question 11

M/s Jonty India Ltd. a manufacturer of heavy machines registered at Jaipur (Rajasthan) supplied one machine to M/s. Dhanuka Ltd. of Udaipur (Rajasthan) on 05-02-2018 under an invoice of the same date. Using the information given below, compute the value of the machine and the GST payable (CGST & SGST or IGST as the case may be) in cash for the month of February, 2018 by M/s Jonty India Ltd. with appropriate working notes.

Assume Rate of CGST, SGST and IGST on the machine to be 9%, 9% and 18% respectively.

Sl. No.	Particulars	Amount in ₹
(i)	The Basic price of the machine (exclusive of taxes and discount).	28,50,000
(ii)	Trade discount is allowed at 3% on the basic price and is shown in the invoice.	85,500
(iii)	Secondary packing (in iron sheets) charges for safe transportation of the machine on the request of buyer.	30,000
(iv)	Design and engineering charges of the machine	90,000
(v)	Tax levied by Municipal Authority on the sale of the machine.	25,000
(vi)	Subsidy received by the supplier from the State Government to encourage manufacture of the machine.	80,000
(vii)	Pre-delivery inspection charges paid to an independent agency in terms of the agreement for supply. The amount was paid by M/s. Dhanuka Ltd.	22,000
(viii)	Interest amount paid by M/s. Dhanuka Ltd. for delay in payment for the machine.	12,000
	Inward Supplies	
(i)	IGST paid on food items for consumption by employees working in the factory.	8,000
(ii)	SGST and CGST (₹ 15,000 each) paid on Electrical transformer used in the manufacturing process.	30,000

Note:

- (i) M/s Jonty India Ltd. has no input tax credit balance at the beginning of February, 2018. All the other conditions necessary for availing the eligible

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input tax credit have been fulfilled.

- (ii) There are no other transactions of supplies during the month of February, 2018.
- (iii) M/s Jonty India Ltd. and M/s. Dhanuka Ltd. are not related persons.
(PYP 10 Marks Nov '18)

Answer 11

Computation of value of machine sold by M/s. Jonty India Ltd.

Particulars	₹
Basic price of machine	28,50,000
Add: Secondary packing [Note 1(i)]	30,000
Design and engineering charges [Note 1(ii)]	90,000
Tax levied by Municipal Authority [Note 1(iii)]	25,000
Pre-delivery inspection charges paid by M/s. Dhanuka Ltd. [Note 1(iv)]	22,000
Interest for delay in payment [₹ 12,000 x 100/118] [Note 1(v)] – (rounded off)	10,169
Less: 3% Trade discount on basic price of machinery = ₹ 28,50,000 × 3% [Note 2]	(85,500)
Taxable value of supply	29,41,669

Computation of net GST payable (in cash) by M/s. Jonty India Ltd. for the month of February, 2018

Particulars	CGST @ 9% (₹)	SGST @ 9% (₹)
Tax on value of ₹ 29,41,669 (rounded off)	2,64,750	2,64,750
Less: Input tax credit [ITC] of tax paid on electrical transformer used in the manufacturing process [Note 3]	15,000	15,000
Net GST payable	2,49,750	2,49,750

Notes:

- (1) As per section 15(2) of the CGST Act, 2017-
- All incidental expenses, including packing, charged by the supplier to the recipient of a supply are includible in the value of supply.
 - 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.
 - Any taxes levied under any law for the time being in force other than CGST/SGST/UTGST/IGST, if charged separately by the supplier are includible in the value of supply.
 - Any amount that the supplier is liable to pay in relation to such supply, but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods and/or services is includible in the value of supply.
 - Interest for the delayed payment of any consideration for any supply is includible in the value of supply. Further, it is assumed that such interest is inclusive of tax and that the same has been received by M/s. Jonty India Ltd. in the month of February itself. Therefore, the time of supply of such interest will be in February, 2018 and the same will be considered while paying the tax liability of that month.

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- (vi) Subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments are includible in the value of supply. Since in the given case, subsidy is received from State Government, the same has not been included in the value of supply presuming it to be directly linked to the price.*
- (2) Trade discount has been shown in the invoice and hence, the same is excluded from the value of supply in terms of section 15(3) of the CGST Act, 2017.
- (3) ITC on food or beverages is specifically disallowed unless the same is used for making outward taxable supply of the same category or as an element of the taxable composite or mixed supply¹ [Section 17(5)]. Further, since transformers are used in the course or furtherance of business, ITC thereon is available in terms of section 16(1).
- Note***In the above answer, it has been assumed that the basic price of the machine has been arrived at after adjusting the subsidy and that the basic price is the price charged from the customer .

Consequently, subsidy received from State Government has not been reduced from the basic price of the machine while arriving at the taxable value of supply. However, it is also possible to assume that the subsidy has yet not been adjusted in the basic price and that the price which will be charged from the customer is ₹ 27,70,000 (₹ 28,50,000 – ₹ 80,000) i.e., after excluding subsidy. In that case, the value of supply will be ₹ 28,61,669.

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

Majority of the examinees computed the amount of GST payable correctly. However, they did not provide adequate reasoning in respect of interest and pre-delivery inspection charges.

Question 12

Surya Agencies has agreed to supply goods to customer's premises. Goods valued ₹ 80,000 are taxable @ 5% IGST as it is an inter-State supply. It also pays freight and transit insurance of ₹ 12,000. GTA is a registered entity and has charged GST (6% CGST and 6% SGST) under forward charge.

- Compute the invoice value of supply including IGST.
- What will be the invoice value of supply including IGST, if the supply was under ex-factory basis instead of door-delivery basis? (PYP 4 Marks Nov '19)

Answer 12

Computation of invoice value of supply

- (i) **When supplier agrees to supply the goods at customer's premises, i.e. freight and transit insurance are paid by the supplier, invoice value of supply will be computed as follows:**

Particulars	Amount (₹)
Value of goods supplied	80,000

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Add: Freight and transit insurance [Since the supplier has agreed to deliver the goods at the customer's premises and to pay for freight and insurance, the contract of supply becomes a composite supply, the principal supply being the supply of goods.]	12,000
Total	92,000
Add: IGST @ 5% [Being a composite supply, GST at the rate applicable for principal supply will be charged]	4,600
Invoice value of supply	96,600

- (ii) **When supplier agrees to supply the goods on ex-factory basis, i.e. the buyer pays the freight and transit insurance, invoice value of supply will be computed as follows:**

Particulars	Amount (₹)
Value of goods supplied	80,000
Add: IGST @ 5% of ₹ 80,000	4,000
Invoice value of supply	84,000

Note: The above answer is based on the view that part (ii) of the question is an independent case and thus, the information provided in the first paragraph of the question regarding payment of freight and transit insurance by Surya Agencies does not apply to it. Moreover, when the contract is ex-factory, it implies that the freight and insurance will be the buyer's responsibility and seller will have no role, whatsoever, in delivering the goods to the customer's premises.

Question 13

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 2020:

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

Additional information:

The concern has not opted to value the money change under rule 32(2)(b) of the CGST Rules, 2017. Basic air fare component under both domestic and international ticket value is 70% and 60% respectively.

(PYP 4 Marks Nov '20)

Answer 13

- (i) Since in the given case, neither of the currencies exchanged is Indian Rupees, value of taxable supply, in terms of rule 32(2)(a) of the CGST Rules, 2017, is 1% of lower of the following:
- (A) US dollar converted into Indian rupees at RBI reference rate
= US \$ 6,000 × ₹ 72 = ₹ 4,32,000
- (B) Singapore dollar converted into Indian rupees at RBI reference rate
= Singapore dollar 9,000 × ₹ 52 = ₹ 4,68,000

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Value of taxable service for the month of March 2020 = 1% of ₹ 4,32,000 = ₹ 4,320

(ii) Computation of value of taxable supply

Particulars	₹	₹
Basic fare in case of domestic bookings [₹ 7,00,000 x 70%]	4,90,000	
Value of taxable supply @ 5% [A] [Rule 32(3) of the CGST Rules, 2017]		24,500
Basic fare in case of international bookings [₹ 15,00,000 x 60%]	9,00,000	
Value of taxable supply @ 10% [B] [Rule 32(3) of the CGST Rules, 2017]		90,000
Value of taxable supply [A] + [B]		1,14,500

Question 14 (Includes concepts of ITC)

MS Ltd. is a GST registered company. During the month of October, 20XX, the company has undertaken the following transactions and wants you to work out the GST output liability, admissible input tax credit and the amount that will have to be paid in cash by the company to the Government before taking you as a Manager in the company. There is no carry forward amount in respect of any of the items to be considered for the purpose of calculations other than what is mentioned specifically below.

Rate of IGST can be taken as 18%, CGST 9% and SGST 9% on all goods and services except GTA service/transportation service and restaurant service for which CGST and SGST rate would be 2.50% each and IGST rate would be 5%. The amounts indicated for all the items are without including the CGST and SGST or IGST element. Whether a supply attracts IGST or CGST/SGST has to be determined on the basis of details given.

The company has indicated to you that the GST liability for October, 20XX for their main product alone is ₹ 54 lakh of CGST and SGST each and ₹ 72 lakh IGST and the eligible credit on the inputs and input services for October, 2020 is ₹ 1.45 crore IGST and ₹ 20 lakh each towards CGST and SGST which can be straightaway taken for calculations.

Company has provided you the other details which is not part of the above as under:

S.No.	Details of the transaction
i.	During the month of October 2020, the company offered a special discount of 25% on a product, the sale of which it intended to discontinue from 1 st December 2020 onwards and issued credit notes to the dealers. This product was lying in stock with the dealers and the discount offered to the customers was borne by the company by issuing the credit note. The amount reimbursed to the dealers for the discounts given to the customers in the month of October 2020 was ₹ 36,00,000 in the course of inter-State.

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ii.	The company sold a van used for personal transport by auction. The van had been purchased at ₹ 3,20,000. The depreciated value at the time of sale was ₹ 1,40,000. No GST credit was taken. The van was sold for an amount of ₹ 1,50,000 during the month of October 2020 in the course of intra-State.
iii.	The company has a policy of raising invoices separately towards transportation cost of their products on their dealers at the time of invoicing for the products sold to them. The company is collecting GST at 5% on all transactions and the amount is collected as a percentage of the value of the goods supplied irrespective of the distance involved. The amount collected during the month of October 2020 towards transportation in intra-State transaction is ₹ 6 lakh and inter-State transactions is ₹ 4 lakh.
iv.	The security establishment of the company caught an employee who had stolen bearings of value ₹ 2.50 lakh during the month of October 2020. Bearings could not be recovered. But the company successfully recovered the cost from the employee. IGST credit of ₹ 45,000 had been taken by the company on these bearings.
v.	The company supplies food and beverages to the employees and all the items are priced at 10% of the actual cost to the company. During the month of October, 2020, the company had charged ₹ 50,000 to the employees. Assume that it is intra-State transaction.
vi.	During the month of October, 2020, the company purchased 10 mobile phones in its name and distributed to the employees to enable them to perform their duties more efficiently for the company. Total price of the phones was ₹ 1,20,000. At the end of the month, company sold these mobiles to employees and company recovered only ₹ 20,000 from the employees. Assume that it is intra-State transaction.
vii.	The company's registered office is located in a building which belongs to the local Municipality. The monthly rent is ₹ 1.50 lakh.
viii.	The whole-time director of the company was paid a salary of ₹ 5 lakh during the month. He was also paid ₹ 20,000 towards sitting fees for his participation in the meeting.

Give a brief note to support your treatment for the items wherever required.

Note: Company wants to pay minimum amount of SGST as far as possible.
(PYP 14 Marks)

Jul'21)

Answer 14

Computation of output GST liability of MS Ltd. for October 20XX

Particulars	CGST (₹ in lakh)	SGST (₹ in lakh)	IGST (₹ in lakh)
GST liability for main product	54	54	72
After-sales discount on a product [In the given case, discount given after effecting the supply is not in terms of an agreement that existed	Nil	Nil	

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at the time of supply. Therefore, discount is not allowed as deduction from value of supply.]			
Sale of van used for personal transport by auction ¹	0.135 [1.5 × 9%]	0.135 [1.5 × 9%]	
Transportation cost charged on the product [Supply of goods and transport service is a composite supply as the transportation cost is charged at a flat rate from all customers irrespective of the distance involved. Therefore, rate of principal supply (product) viz. 9% CGST and SGST each is charged on intra-State supply and 18% IGST is charged on inter-State supply.]	0.54 [6 × 9%]	0.54 [6 × 9%]	0.72 [4 × 18%]
Food and beverages supplied to the employees [Goods being provided to the related person (employees), open market value of the same [actual cost (50,000×100/10)] has been considered as value. CGST & SGST @ 9% each is payable on food items.]	0.45 [5.0×9%]	0.45 [5.0×9%]	
Supply of mobile phones to employees ² [Supply being made to the related person (employees), open market value ³ of the same has been considered as value.]	0.108 [1.20×9%]	0.108 [1.20×9%]	
Total output tax liability	55.233	55.233	72.72
Less: ITC set off [Refer working note (1) below] [IGST credit is first utilized for payment of IGST liability and then for payment SGST liability followed by CGST liability since the SGST liability is to be kept at minimum.]	(16.597)	(55.233)	(72.72)
After exhausting IGST credit, CGST and SGST credit is to be utilized. ITC of CGST cannot be utilized for payment of SGST and vice versa.	(20.261)		
GST payable in cash [A]	18.375	Nil	Nil
GST under reverse charge payable in cash [Refer working note (2) below] [B] [Tax payable under reverse charge, being not an output tax, cannot be set off against ITC and thus, will have to be paid in cash.]	0.153	0.153	
Total GST payable in cash = [A]+ [B]	18.528	0.153	

¹ The value of supply as well as applicable rate of tax to be paid in case of old and used motor vehicles can also be determined in terms of Notification No 8/2018 CT (R) dated 25.01.2018.

² It has been assumed that selling of mobile phones to employees at reduced rates does not form part of the employment contract. Further, mobile phones have been considered as inputs. However, it is also possible to consider mobile phones as capital goods. Since in the given case mobile phones (capital goods) are being removed after being used, a

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specified 'amount' determined in terms of section 18(6) of the CGST Act, 2017 shall be payable.

³ Since mobile phones have been considered as inputs, purchase price of ₹ 1,20,000 for the mobile phones has been considered as its open market value.

Working notes:

(1) Computation of ITC available with MS Ltd. for October 20XX

Particulars	CGST (₹ in lakh)	SGST (₹ in lakh)	IGST (₹ in lakh)
Eligible credit on inputs and input services for the month	20	20	145
Ball bearings stolen [ITC on stolen goods is blocked. Hence, ITC taken on stolen ball bearings needs to be reversed.]			(0.45)
Mobile phones purchased for employees [ITC of goods used in course or furtherance of business is allowed.]	0.108 [1.2 × 9%]	0.108 [1.2 × 9%]	
Rent paid to Municipality	0.135 [1.5 × 9%]	0.135 [1.5 × 9%]	
Sitting fee paid to whole time director	0.018 [0.20 × 9%]	0.018 [0.20 × 9%]	
Total	20.261	20.261	144.55

(2) Tax payable under reverse charge

Particulars	CGST (₹ in lakh)	SGST (₹ in lakh)	IGST (₹ in lakh)
Rent paid to Municipality [Tax on renting of immovable property services supplied by local authority to a registered person is payable under reverse charge.]	0.135 [1.5 × 9%]	0.135 [1.5 × 9%]	
Sitting fee paid to whole time director [Services provided by employee to employer in the course of his employment are not a supply. Hence, salary paid to director is not taxable. However, sitting fee is a consideration for the services provided beyond course of employment and hence, is taxable. Further, tax on sitting fee paid to director is payable under reverse charge.]	0.018 [0.20 × 9%]	0.018 [0.20 × 9%]	
Total tax payable under reverse charge	0.153	0.153	

Note: In the above question, "GST at 5% on all transactions and the amount is collected as a percentage of the value....." may be read as ".....GST at 5% on all transactions. The transportation cost is collected as a percentage of the value.....".

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

Majority of the examinees did not support their answers with explanatory notes and ended up losing marks. Many examinees erroneously allowed the post supply discount as deduction from the value of supply although the same was not allowable as it is in terms of an agreement that existed at the time of supply. Some examinees failed to appreciate that supply of goods and transport service was a composite supply; instead, they wrongly

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Question 15

Jupiter Chemicals Ltd. (JC) is a manufacturer of industrial chemicals. It has its factory at Haridwar, Uttarakhand and is registered under GST. It has its subsidiary company, Angel Traders Pvt. Ltd. (AT), with holding of 75% of its share capital. AT is engaged in trading of chemicals manufactured by JC in North India and is registered under GST in Delhi at warehouse address. JC has also appointed a consignment agent - Popular Distributors (PD) - in Chennai which is catering the Southern India market. JC has also setup a state of art research and development centre along with laboratory near the Haridwar factory and undertakes testing and development services for chemicals from outside customers across the country. Following information is available for the month of April 2021 of JC Haridwar:

S. No.	Particulars	Amount (₹)
(i)	JC supplies the chemicals to PD Chennai during the month. (PD sold the above said goods to the unrelated wholesalers in the States of Tamil Nadu and Andhra Pradesh for ₹ 60,00,000 during the same month). Open market value is ₹ 55,00,000	45,00,000
(ii)	JC supplied chemicals to AT during the month. (AT further sold the said chemicals to unrelated retailers in Delhi for ₹ 42,00,000 and AT is not eligible for full input tax credit). Open Market value is ₹ 38,00,000	30,00,000
(iii)	JC exports chemicals to South Africa with payment of IGST and consideration for the same was received in convertible foreign exchange.	28,00,000
(iv)	JC provided inter-State supply of testing services to various customers during the month	8,50,000
(v)	Supply of chemical to one of its customers in Mumbai who required the chemical to be tested before dispatch and subject to test report coming according to his parameters. Testing was successful and testing charges of ₹ 50,000 were charged extra.	6,50,000 (excluding testing charges)
(vi)	Supply of chemical at subsidized rate for research and development activity not related to the business of JC to an unrelated charitable association in Haridwar, Uttarakhand. Open market value of the chemical is ₹ 6,50,000.	5,00,000

Assume that the rates of GST on chemicals are IGST-12%, CGST-6% and SGST-6%, and on testing and development services are IGST-18% and SGST-9%. You are required to determine the taxable value (most beneficial) and GST liability

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(IGST, CGST and SGST separately) of Jupiter Chemicals (JC) Haridwar for the month of April 2021. (PYP 9 Marks Dec '21)

Answer 15

Determination of taxable value and GST liability of Jupiter Chemicals (JC) Haridwar for the month of April 2021

S. No.	Particulars	Taxable value (₹)	CGST (₹)	SGST (₹)	IGST (₹)
(i)	Inter-State supply of chemicals to consignment agent – PD, Chennai	54,00,000*			6,48,000
	[Value, at the option of supplier, is:				[54,00,000 × 12%]
	(i) Open market value (OMV)				
	[55,00,000]				
	or				
(ii)	(ii) 90% of price charged for goods of like kind and quality to unrelated customers who further supply such goods (90% of ₹ 60,00,000)1.]				
	Inter-State supply of chemicals to related person - AT	37,80,000*			4,53,600
	[Value of supply of goods to a related person who further supplies such goods as such, at				[37,80,000 × 12%]
	the option of supplier, is:				
	(i) OMV, if OMV is available				
	[₹38,00,000]				
	or				
	(ii) 90% of price charged for goods of like kind and quality to unrelated customers (90% of ₹ 42,00,000)2]				
(iii)	Export of chemicals to South Africa	28,00,000	--	--	3,36,000
					[28,00,000 × 12%]
(iv)	Inter-State supply of testing services	8,50,000			1,53,000
					[8,50,000 × 18%]
(v)	Inter-State supply of chemical to customer in Mumbai	7,00,000			84,000
	[Any amount charged for anything done by supplier in respect of supply of goods at the time of/before delivery of goods is includible in the value of				[7,00,000 × 12%]

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	supply.]				
(vi)	Intra-State supply of chemical	5,00,000	30,000	30,000	
	to an unrelated charitable association in Haridwar		[5,00,000 × 6%]	[5,00,000 × 6%]	
	[In case of supply made to unrelated recipient where price is the sole consideration for supply, value of the supply is the transaction value which is price actually paid for the supply.]				
	Total	1,40,30,000	30,000	30,000	16,74,600

1 It has been assumed that the expression “above said goods” in the question means goods of like kind and quality.

2 It has been assumed that the expression “said chemicals” in the question means goods of like kind and quality.

*Note: Since the question requires to compute the most beneficial taxable value of supply, lower of the two values has been taken as value of supply.

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

Following points merit consideration:-

- i. Pure labour services for construction of single commercial unit is taxable but some of the examinees misread it as single residential unit and wrongly treated the same as exempt.
- ii. Some examinees were unaware of time of supply in respect of advance received for supply of goods.
- iii. In few cases, examinees failed to apply the reverse charge mechanism in respect of payment to independent director.
- iv. Majority of the examinees missed the provision that e-invoices without invoice reference number (IRN) is not treated as invoice and hence, without a valid document, ITC cannot be claimed on such inputs.

Question 16 (Includes concepts of ITC, Charge of GST, Supply under GST, Import & Export under GST)

Priya Infra Ltd., a registered supplier under GST in the State of Kerala, is engaged in the construction business. It provides the following information for the month of April, 20XX:

S. No.	Particulars	Amount (₹)
	OUTWARD SUPPLY:	

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(i)	Transferred one load of tiles to its branch in Cochin, Kerala, from its head office at Trivandrum, Kerala. Both places are under the same GST registration.	7,50,000
(ii)	Provided pure labour services of construction of single commercial unit not forming part of any complex to a customer in Bengaluru (Karnataka).	15,00,000
(iii)	Supplies a consignment of marbles in the territorial waters to Classic Builders LLP. The said territorial waters is located at a distance of 11 nautical miles from the baseline of State of Kerala and 12 nautical miles from the baseline of State of Tamil Nadu.	6,00,000
(iv)	Received an advance for future supplies of goods and services from a customer in Kerala (of which 70% is related to future supplies of services).	7,00,000
(v)	Computer used for business purpose was given free of cost to an unrelated person based in Kerala, computer was purchased 2 years' back at cost of ₹ 88,500 (including GST of ₹ 13,500,) having a W.D.V. of ₹ 71,685 as on the date of sale. Open market value is ₹ 55,000 (excluding GST). No ITC is taken on this computer at the time of purchase.	Nil
INWARD SUPPLY:		
(i)	Availed services of an arbitral tribunal In Trivandrum, Kerala to settle a case relating to RERA Act.	7,00,000
(ii)	Purchased construction materials from Baahu Steels Ltd., registered in the State of Andhra Pradesh	15,00,000
(iii)	Purchased a new truck from a dealer in Cochin, Kerala for transport of materials	12,00,000

The company provided the following additional information:

- (i) Paid ₹ 6,00,000 as remuneration to an independent director based at Cochin during the month.
 - (ii) The company claimed depreciation under the Income-tax Act, 1961 on the new truck purchased including all applicable taxes.
 - (iii) E-invoice portal shows that Baahu Steels Ltd.'s GST number has been enabled for e-invoicing. However, the supplier did not issue e-invoice/ tax invoice with invoice reference number (IRN). The invoice was reflected in GSTR-2A.
 - (iv) Turnover of Priya Infra Ltd. for the previous financial year was ₹ 180 lakh.
 - (v) Rates of CGST, SGST and IGST are 9%, 9% and 18% respectively for both inward and outward supply of goods and services.
 - (vi) All the amounts given above are exclusive of taxes wherever applicable.
- From the information given above, you are required to compute the minimum net GST liability payable in cash (CGST, SGST or IGST, as the case may be) for the month of April 2021. Reason for treatment needs to be given. (PYP 14 Marks Dec '21)

Answer 16

Computation of minimum net GST payable in cash by Priya Infra Ltd. for April 20XX

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
GST payable under forward charge			

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Transfer of tiles to branch within Kerala [Such transfer is not a supply as the branch has the same GSTIN as that of the head office and thus, is not a distinct person]	-	-	-
Inter-State supply of pure labour services for construction of single commercial unit in Bengaluru [Services by way of pure labour contracts of construction of original works pertaining to a single residential unit otherwise than as a part of a residential complex is exempt. Hence, such			2,70,000 [15,00,000 x 18%]
services in relation to a commercial unit shall be taxable.]			
Supply of consignment in territorial waters [Where the place of supply is in the territorial waters, the place of supply is deemed to be in the coastal State where the nearest point of the appropriate baseline is located. Therefore, place of supply will be in Kerala being nearer to base line and hence, supply will be intra-State supply]	54,000 [6,00,000 x 9%]	54,000 [6,00,000 x 9%]	
Receipt of advance from customer in Kerala [Tax will be payable only on advance for services. In case of goods, tax is payable at the time of issuance of invoice and not at the time of receipt of advance.]	44,100 [7,00,000 x 70% x 9%]	44,100 [7,00,000 x 70% x 9%]	
Computer given free of cost to unrelated customer [Since ITC has not been taken on the computer, permanent transfer of the same without any consideration to an unrelated customer shall not amount to deemed supply in terms of Schedule I to the CGST Act, 2017. Further, since no ITC has been taken, question of reversal of ITC attributable to the remaining useful life of the computer does not arise.]	-	-	
Total output GST	98,100	98,100	2,70,000
Less: Input tax credit [Refer working note below] [CGST credit be first utilized for payment of CGST liability and then for payment of IGST liability in that order. Similarly, SGST credit be first utilized for payment of SGST liability and then for payment of IGST liability in that order. ITC of CGST cannot be utilized for payment of SGST and vice versa.]	98,100	98,100	18,900 (CGST)
	-	-	18,900 (SGST)
Net output GST payable in cash [A]	Nil	Nil	2,32,200

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GST payable under reverse charge			
Tax on services provided by the arbitral tribunal is payable under reverse charge by the recipient of service.	63,000	63,000	
Tax on remuneration paid to director is payable under reverse charge by the recipient of the service.	54,000	54,000	
GST payable in cash under reverse charge [B] [Tax payable under reverse charge, being not an output tax, cannot be set off against ITC and thus, will have to be paid in cash.]	1,17,000	1,17,000	
Minimum net GST payable in cash [A] + [B]	1,17,000	1,17,000	2,32,200

Working Note:

Computation of ITC available with Priya Infra Ltd. for April 20XX

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
Services of an arbitral tribunal [Services provided by an arbitral tribunal to a business entity with an aggregate turnover up to threshold limit of registration in the previous financial year are exempt from GST.]	63,000 [7,00,00 0 x 9%]	63,000 [7,00,00 0 x 9%]	
Thus, services provided by the arbitral tribunal to Priya Infra Ltd., a business entity whose aggregate turnover in the previous financial year exceeds the applicable threshold limit for registration [viz. ₹ 20 lakh, being a supplier of goods and services in the State of Kerala] shall be liable to tax. Further, being services used in the course of furtherance of business, ITC shall be available thereon.]			
Purchase of materials from Baahu Steels Ltd. [An e-invoice without IRN is not treated as invoice and hence, without a valid document, ITC cannot be claimed on such inputs]	-	-	
Purchase of truck [Motor vehicle used for transportation of goods is eligible for credit. However, since depreciation has been claimed on applicable taxes as well, ITC of tax paid on purchase of such truck cannot be claimed.]	-	-	
Payment of remuneration to independent director based at Cochin [Services provided by employee to employer in the course of his employment are not a supply. However, independent	54,000 [6,00,00 0 x 9%]	54,000 [6,00,00 0 x 9%]	

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director is not an employee of the company and hence, remuneration paid to him is taxable. Further, being services used in the course of furtherance of business, ITC shall be available thereon.]			
Total ITC	1,17,00 0	1,17,00 0	

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

Most of the examinees were ignorant about the most beneficial option available under rules 28 and 29 of the CGST Rules, 2017.

Question 17 (Includes concepts of Import & Export under GST, Supply under GST, Charge of GST, Input Tax Credit)

Vasudev is a mining contractor. He has crossed the threshold limit for registration in the preceding financial year 2022-23 and is now duly registered under GST in the State of Gujarat. He has undertaken following transactions during the month of April, 2023:

S. No.	Particulars	Value of supply in ₹ (exclusive of taxes)
(a)	Vasudev is an operating member in mining and exploration services at Aliabet Oilfield, Bhavnagar, Gujarat. He has provided certain services to the Joint Venture (JV) at same site in which he is also a member. He believes that the consideration received from the JV is 'Cost Recovery' and not taxable.	15,00,000
(b)	He has purchased certain machinery from Mumbai, Maharashtra, to render services to the JV at Aliabet Oilfield.	8,00,000

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(c)	He has obtained professional services from a senior advocate of Ahmedabad, Gujarat to represent him in a matter before the Tribunal.	1,50,000
(d)	He was allotted an office on rent by the State Government of Gujarat close to the sea shore of Aliabet Oilfield.	2,50,000
(e)	He got a portion of the petroleum silt (non taxable under GST) as part of compensation while exploring the petroleum reserves at Aliabet Oilfield - which as per the contract with the government is part of 'Cost Petroleum'.	8,00,000
(f)	He sells the petroleum silt (non-taxable under GST) to a SEZ Developer in Bhavnagar, Gujarat. He has already filed LUT under GST.	7,50,000
(g)	Consideration received in the nature of recovery of bond amount in case of 3 employees leaving employment before a minimum period of 1 year as per the terms of contract.	75,000
(h)	Consideration received towards transfer of tenancy rights in Gujarat, which according to Vasudev is not liable to GST as it has suffered stamp duty.	7,00,000
(i)	Consideration received from mining lease holders for renting of 5 dumpers including driver given for transport of minerals within the mining area for a period of 2 years.	5,00,000
(j)	He has been assigned the mining right from Government and the amount of IGST involved against royalty payment is ₹ 3,00,000.	

Additional information:

- (1) Vasudev has filed bond/LUT to claim benefits under zero rated supplies.
- (2) Assume the CGST and SGST rates to be 2.5% each and IGST rate to be 5% on supply of goods.
- (3) Assume the CGST and SGST rates to be 9% each and IGST rate to be 18% on supply of services.
- (4) There is opening balance of ₹ 34,000 in the Electronic Cash ledger (SGST). And there was brought forward ITC of ₹ 15,000 in Electronic Credit ledger (IGST), ₹ 50,000 in Electronic Credit ledger (CGST), ₹ 9,000 in Electronic Credit ledger (SGST).

From the above details, compute the minimum net GST payable by Vasudev in cash (CGST, SGST or IGST as the case may be) for the month of April, 2023. Working notes should form part of your answer. (PYP 14 Marks May '23)

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Answer 17

Computation of tax payable in cash

S. No	Particulars	Amount (₹)	CGST (₹)	SGST (₹)	IGST (₹)
A. GST liability on outward supply					
(i)	Consideration for services provided as an operating member to the Joint Venture [The operating member is providing the mining and exploration service to the joint venture, and thus, the consideration received therefor is not cost petroleum and hence, is liable to tax.]	15,00,000	1,35,000 (15,00,000 x 9%)	1,35,000 (15,00,000 x 9%)	
(ii)	Compensation received in the form of petroleum silt, which, as per the contract with the Government, is part of cost petroleum [Cost petroleum is not a consideration for service to the Government and thus, is not taxable.]	8,00,000	Nil	Nil	Nil
(iii)	Sale of petroleum silt to a SEZ developer [Supply to SEZ developer is a zero-rated supply made under a bond/LUT and no tax is payable on the same.]	7,50,000	Nil	Nil	Nil
(iv)	Bond amount recovered from employees leaving employment before stipulated period [Not a supply since bond amount recovered is not a consideration for tolerating the act of such premature quitting of employment.]	75,000	Nil	Nil	Nil

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(v)	Transfer of tenancy rights ³ [Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable even though stamp duty has been paid on the same.]	7,00,000	63,000 (7,00,000 x 9%)	63,000 (7,00,000 x 9%)	
(vi)	Renting of dumpers including driver ⁴ [Taxable.]	5,00,000	45,000 (5,00,000 x 9%)	45,000 (5,00,000 x 9%)	
Total tax liability on outward supplies			2,43,000	2,43,000	
B.	GST liability on inward supplies under reverse charge (RCM)				
(i)	Professional services provided by senior advocate to Vasudev, i.e. a business entity	1,50,000	13,500 (1,50,000 x 9%)	13,500 (1,50,000 x 9%)	
(ii)	Renting of office provided by the State Government to Vasudev (a registered person)	2,50,000	22,500 (2,50,000 x 9%)	22,500 (2,50,000 x 9%)	
(iii)	Assignment of mining right by Government to Vasudev (a registered person)				3,00,000
Total tax liability on inward supplies under reverse charge			36,000	36,000	3,00,000
C.	Input tax credit				
(i)	Opening balance		50,000	9,000	15,000
(ii)	Inter-State purchase of machinery	Since the goods and services are used for effecting taxable supplies including zero rated supplies,	8,00,000		40,000 (8,00,000 x 5%)
(iii)	Professional services from senior advocate ⁵		1,50,000	13,500 (1,50,000 x 9%)	13,500 (1,50,000 x 9%)
(iv)	Renting of office		2,50,000	22,500 (2,50,000 x 9%)	22,500 (2,50,000 x 9%)
(v)	Assignment of				

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	mining right	full ITC thereon will be allowed.				3,00,000
Total ITC			86,000	45,000		3,55,000
Note: [ITC may be availed for making zero rated supply even if such a supply is an exempt supply. Sale of petroleum silt, being a non-taxable supply, is an exempt supply but since it is also a zero-rated supply, ITC can be availed for making such supply.]						
D.	Computation of tax payable in cash					
	Total tax liability on outward supplies		2,43,000	2,43,000		
	Less: ITC of IGST Note: ITC of IGST to be used first before ITC of CGST and SGST		1,57,000	1,98,000		
	Less: ITC of CGST and SGST		86,000 (CGST)	45,000 (SGST)		
	Add: Reverse charge liability payable in cash without set off of ITC [Tax payable under reverse charge, being not an output tax, cannot be set off against ITC and thus, will have to be paid in cash.]		36,000	36,000	3,00,00 0	
	Total tax liability payable in cash Less: Balance of Electronic Cash Ledger		36,000	36,000 (-)34000	3,00,00 0	
	Net minimum tax liability payable in cash		36,000	2,000	3,00,00 0	

1 It is assumed that the immovable property in respect of which the tenancy rights are transferred, is a commercial property and the same is located in Gujarat.

1 Renting of dumpers including driver to mining lease holders has been assumed to be an intra-State transaction. Alternatively, it is also possible to assume the said transaction to be an inter-State transaction. In that case, IGST of ₹ 90,000 will be charged.

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Question 18

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. (MTP 4 Marks Oct '19)

Answer 18

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 \$ 10,000]	7,40,000	
Up to ₹ 1,00,000		1,000
For ₹ 6,40,000 [0.50% x ₹ 6,40,000]		3,200
Value of supply		4,200

Question 19

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.

(RTP May'20)

Answer 19

Computation of the value of supply and the GST liability of Dushyant for the month of December

Particulars	Amount (₹)

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Rent of the commercial building	19,50,00 0
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	20,50,00 0
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 as per section 15(2)(c).
- (2) Since municipal tax is paid by the supplier (Dushyant) and not charged to the recipient, the same is not includible in the value.

Question 20

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).

(RTP Nov'18 & Nov'19)

Answer 20

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:

$$= (\text{RBI reference for US \$} - \text{Buying rate of US \$}) \times \text{Total number of units of US \$ bought}$$

$$= (74.6 - 74) \times 1,000$$

$$= ₹ 600/-$$

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- (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.	Up to ₹ 1,00,000	1% of the gross amount of currency exchanged OR ₹ 250 whichever is higher
2.	Exceeding ₹ 1,00,000 and up to ₹ 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/-

Question 21

Rustagi & Co. manufactures customized products at its unit situated and registered in Madhya Pradesh. Cost of production of 1,000 products for Rustagi & Co. 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 situated and registered in Himachal Pradesh. The value declared on the invoice for such transfer is the cost of production of such products.

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The Himachal 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 Himachal 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 Himachal Pradesh unit.

1,000 units of the products of same kind and quality are supplied to Himachal Pradesh unit, at the time when goods are sent by Madhya Pradesh unit, by another manufacturer located in Himachal Pradesh.

The ex-factory price of such goods is ₹ 19,00,000. The Himachal Pradesh unit of Rustagi & Co. is eligible for full ITC.

Determine the value of 1000 products supplied by Rustagi & Co. to its Himachal Pradesh unit.

(PYP 5 Marks May'18)

Answer 21

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 Himachal 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 by the supplier 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 Himachal 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 Himachal Pradesh unit in terms of rule 28 is the open market value of such products which

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is ₹ 20,00,000.

Question 22

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 supply of insurance services. The company has provided the following details in relation to its receipts:

SI. No.	Particulars	Amount
1.	Premium for only risk cover	25,00,000
2.	Premium from new policy subscribers	40,00,000
3.	Renewal premium	80,00,000
4.	Single premium on annuity policy	1,00,00,000

All amounts are exclusive of tax. You are required to compute the value of supply by CLICL in terms of rule 32(4). (MTP 4 Marks March '23, PYP 5 Marks May '19)

Answer 22

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-

- in case of single premium annuity policies, 10% of single premium charged from the policy holder;
- 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;
- in case the entire premium paid by the policy holder is only towards the risk cover in life insurance, the premium so paid.

Therefore, in the given case, the value of the services provided by CLICL will be computed as under:

Computation of value of supply for CLICL

Particulars	Amount (₹)
Premium for only risk cover	25,00,000
Premium from new policy subscribers 25% of ₹ 40,00,000	10,00,000
Renewal premium 12.5% of ₹ 80,00,000	10,00,000
Single premium on annuity policy 10% of ₹ 1,00,00,000	10,00,000

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Total value of supply	55,00,000
------------------------------	------------------

Question 23

Royal Manufacturers, a registered supplier of machinery, supplied a special purpose machine to Dharam Furnishers for which it charges a price of Rs. 9,00,000. Further, it charged the following additional amounts in relation to said supply:

S.No.	Particulars	Rs.
(i)	Transit insurance	16,500
(ii)	Packing charges	13,500
(iii)	Extra charges for designing the machine	30,000
(iv)	Freight	18,000

Following additional information is also available -

- (a) **Cash discount @ 2% on price of machinery has been allowed to Dharam Furnishers at the time of supply and also recorded in invoice.**
- (b) **GST rate – 18%.**

Calculate value of supply of the special purpose machine. (MTP 7 Marks Apr'18)

Answer 23

Computation of value of the special purpose machine

Particulars	Rs.
Price of machinery	9,00,000
Add: Transit insurance [Note 1]	16,500
Packing charges [Note 2]	13,500
Extra design charges [Note 3]	30,000
Freight [Note 1]	18,000
Total	9,78,000
Less: 2% cash discount on price of machinery [Rs. 9,00,000 × 2%] [Note 4]	<u>18,000</u>
Value of taxable supply	9,60,000

Notes:

- (1) The given supply is a composite supply involving supply of goods (special machine) and services (transit insurance and freight) where the principal supply is the supply of goods.
As per section 8(a) of the CGST Act, 2017, a composite supply is treated as a supply of the principal supply involved therein and charged to tax accordingly.
- (2) All incidental expenses including packing charged by the supplier to the recipient of a supply are includible in the value of supply in terms of section 15(2)(c) of CGST Act, 2017.
- (3) Any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods is includible in the value of supply in terms of section 15(2)(c) of CGST Act, 2017. Thus, extra designing charges are to be included in the value of supply.

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- (4) Cash discount was given at the time of supply and also recorded in invoice, so the same is not to be included while computing value of supply in terms of section 15(3)(a) of CGST Act, 2017.

Question 24

Maahi Ltd. of Bhopal (Madhya Pradesh) is a supplier of machinery. Maahi Ltd. has supplied machinery to ABC Enterprises in Indore (Madhya Pradesh) on 1st October, 20XX. The invoice for supply has been issued on 1st October, 20XX. Maahi Ltd. and ABC Enterprise are not related and price is the sole consideration for the supply.

Following information is provided:

Basic price of machinery excluding all taxes is Rs. 20,00,000. In addition to the basic price, Maahi Ltd. has collected the design and engineering charges of Rs. 10,000 and loading charges of Rs. 20,000 for the machinery.

Maahi Ltd. provides 1 year mandatory warranty for the machinery on payment of additional charges of Rs. 1,00,000.

Maahi Ltd. has collected consultancy charges in relation to pre-installation planning of Rs. 10,000 and freight and insurance charges from place of removal to buyer's premises of Rs. 20,000.

Maahi Ltd. received subsidy of Rs. 50,000 from Central Government for supplying the machinery to backward region since receiver was located in a backward region. Maahi Ltd. also received Rs. 50,000 from the joint venture partner of ABC Enterprises for making timely supply of machinery to the recipient.

A cash discount of 1% on the basic price of the machinery is offered at the time of supply, if ABC Enterprises agrees to make the payment within 30 days of the receipt of the machinery at his premises. Discount @ 1% was given to ABC Enterprises as it agreed to make the payment within 30 days.

The machinery attracts CGST and SGST @ 18% (9% + 9%) and IGST @18%. Compute the CGST and SGST or IGST payable, as the case may be, on the machinery.

(MTP 10 Marks Aug '18, PYP 10 Marks May '18)

Answer 24

Computation of GST payable

Particulars	Rs.
Basic Price of the machinery [Note 1]	20,00,000
Add: Design and engineering charges [Note 1]	20,000
Loading charges [Note 1]	10,000
Warranty cost [Note 2]	1,00,000
Consultancy charges in relation to pre-installation planning [Note 3]	10,000

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Freight and insurance charges [Note 2]	20,000
Subsidy received from Central Government [Note 4]	Nil
Receipts from Joint Venture of ABC Enterprises [Note 4]	50,000
Less: 1% discount on basic price = Rs. 20,00,000 x 1% [Note 5]	<u>(20,000)</u>
Value of supply	21,90,000
CGST @ 9% [Note 6]	1,97,100
SGST @ 9% [Note 6]	1,97,100

Notes:

- In terms of section 15(1) of the CGST Act, 2017, the value of the supply is the transaction value i.e., price actually paid or payable for the machinery by ABC Enterprises.

Design and engineering charges are includible in the value of supply as any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods is so includible in terms of section 15(2)(c) of CGST Act, 2017.

Further, loading charges being incidental expenses charged by the supplier to the recipient of supply, are includible in the value as per section 15(2)(c) of the CGST Act, 2017.

- Supply of machinery (goods) with supply of ancillary services like warranty and freight and insurance is a composite supply, the principle supply of which is the supply of machinery. [Section 2(30) of the CGST Act, 2017 read with section 2(90) of that Act]. Thus, value of such ancillary supply is includible in the value of composite supply.
- Any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods is includible in the value of supply in terms of section 15(2)(c) of CGST Act, 2017.
- Subsidies provided by the Central Government and State Governments are not includible in the value of supply in terms of section 15(2)(e) of the CGST Act, 2017. However, subsidy directly linked to the price received from a non-Government body is includible in the value in terms of section 15.
- Cash discount has been given to ABC Enterprises upfront at the time of supply and thus would have been recorded in the invoice and hence, the same is excluded from the value of supply in terms of section 15(3)(a) of the CGST Act, 2017.
- In the given case-
 - the location of the supplier is in Bhopal (Madhya Pradesh); and
 - the place of supply of machinery is the location of the machinery at the time at which the movement of the same terminates for delivery to the recipient i.e., Indore (Madhya Pradesh) vide section 10(1)(a) of IGST Act, 2017.

Therefore, as per section 8(1) of IGST Act, 2017, the given supply is an intra-State supply as the location of the supplier and the place of supply are in the same State. Thus, the supply will be leviable to CGST and SGST.

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

Majority of the examinees computed the GST liability correctly but did not support their answer with adequate reasoning and thus lost marks.

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Question 25

Determine the value of supply and the GST liability, to be collected and paid by the owner, with the following particulars:

	Rs.
Rent of the commercial building	18,00,000
Maintenance charges collected by local society from the owner and reimbursed by the tenant	2,50,000
Owner intends to charge GST on refundable advance, as GST is applicable on advance	6,00,000
Municipal taxes paid by the owner	3,00,000

Rent and maintenance charges are exclusive of GST.

GST rates applicable on renting of business premises is as follows:

CGST 9%

SGST 9%

Provide suitable explanations where required. (MTP 5 Marks Aug '18)

Answer 25

Particulars	Amount (Rs.)
Rent of the commercial building	18,00,000
Maintenance charges collected by the local society from the owner and reimbursed by the tenant [Note-1]	2,50,000
Refundable advance [Note-2]	Nil
Municipal taxes paid by the owner [Note-3]	Nil
Value of supply	20,50,000
CGST @ 9%	1,84,500
SGST @ 9%	1,84,500

Notes:-

- Being reimbursed by the tenant, such charges ultimately form part of the rent paid by the tenant to the owner and thus, will form part of the value.
- Being refundable, the advance is in the nature of security deposit which does not constitute consideration in terms of section 2(31) of the CGST Act, 2017 and thus, is not includible in the value.
- Being an expenditure incurred by the supplier, the same is not includible in the value, assuming that such taxes are not charged to the recipient.

Question 26

Element Ltd. provides you the following particulars relating to goods supplied by it to Molecule Ltd.:

Particulars	Rs.

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List price of the goods (exclusive of taxes and discounts).	76,000
Special packing at the request of customer to be charged to the customer.	5,000
Duty levied by local authority on the sale of such goods.	4,000
CGST and SGST charged in invoice.	14,400
Subsidy received from a NGO (The price of Rs. 76,000 given above is after considering the subsidy)	5,000

Element Ltd. offers 3% discount of the list price of the goods which is recorded in the invoice for the goods. Determine the value of taxable supplies made by Element Ltd.

(MTP 5 Marks Oct '18)

Answer 26

Computation of value of taxable supplies by Element Ltd.

Particulars	Rs.
List price of the goods	76,000
Add: Special packing [Note 1]	5,000
Duty levied by local authority on sale of goods [Note 2]	4,000
CGST and SGST charged [Note 2]	-
Subsidy received from a NGO [Note 3]	5,000
Less: Discount offered	
= 3% of List price = Rs. 76,000 × 3% [Note-4]	2,280
Value of taxable supplies	87,720

Notes:

- Being incidental expenses charged by the supplier to the recipient of supply, packing charges are includible in the value as per section 15(2)(c) of the CGST Act, 2017.
- Taxes, duties, etc. levied under any law for the time being in force other than CGST, SGST/UTGST, IGST are includible in the value as per section 15(2)(a) of CGST Act, 2017. Duty levied by local authority on sale of goods has been assumed to be recovered from Molecule Ltd. and not included in the list price of the goods.
- Subsidy directly linked to the price received from a non-Government body is includible in the value in terms of section 15(2)(e) of CGST Act, 2017.
- Since discount is known at the time of supply, it is deductible from the value in terms of section 15(3)(a) of CGST Act, 2017

Question 27

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. avails the services of Rudra Logistics, a licensed customs broker with its office at Ahmedabad (Gujarat), in meeting all the legal formalities for getting the said machine cleared from the customs station.

Rolly Polly Manufacturers Ltd. also 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 its warehouse at Mumbai.

These expenses would be reimbursed by Rolly Polly Manufacturers Ltd. to

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Rudra Logistics on actual basis. In addition, Rolly Polly Manufacturers Ltd. will also pay the agency charges to Rudra Logistics for the services rendered by it.

Rudra Logistics raised an invoice in July, 20XX as follows:

S.No	Particulars	Amount* (₹)
(i)	Agency charges	5,00,000
(ii)	Unloading of machine at Kandla port, Gujarat	50,000
(iii)	Charges for transport of machine from Kandla port, Gujarat to 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)	Customs duty on machine	5,00,000
(vi)	Dock dues	50,000
(vii)	Port charges	50,000
(viii)	Hotel expenses	45,000
(ix)	Travelling expenses	50,000
(x)	Telephone expenses	2,000

***exclusive of GST wherever applicable**

Compute the value of supply made by Rudra Logistics with the help of given information. Would your answer be different if Rudra Logistics charges ₹ 13,00,000 as a lump sum consideration for clearing the imported machine from the customs station and bringing the same to the warehouse of Rolly Polly Manufacturers Ltd.? (MTP 9 Marks March '19, March'22 Oct '22, RTP May 20)

Answer 27

As per explanation to rule 33 of the CGST Rules, 2017, a **“pure agent”** means a person who-

- 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;
- 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;
- does not use for his own interest such goods or services so procured; and
- 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 been authorised by the recipient of supply - Rolly Polly Manufacturers Ltd. - to incur, on its behalf, the expenses incurred in relation to clearance of the imported machine from the customs station and bringing the same to the warehouse of the recipient, i.e. expenses mentioned in S.No. (ii) to (vii). Further, Rudra Logistics does not hold any title to said services and does not use them for his own interest.

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Lastly, Rudra Logistics receives only the actual amount incurred to procure such services in addition to agency charges. Thus, Rudra Logistics qualifies as a pure agent.

Further, rule 33 of the CGST Rules, 2017 stipulates that notwithstanding anything contained in the provisions of Chapter IV – Determination of Value of Supply, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely-

- (I) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorization by such recipient;
- (II) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- (III) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Since conditions (I) to (III) mentioned above are satisfied in the given case, expenses (ii) to (vii) incurred by Rudra Logistics as a pure agent of Rolly Polly Manufacturers Ltd. shall be excluded from the value of supply.

Accordingly, value of supply made by Rudra Logistics will be computed as under:

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

However, if Rudra Logistics charges ₹ 13,00,000 as a lump sum consideration for getting the imported machine cleared from the customs station and bringing the same to the warehouse of Rolly Polly Manufacturers Ltd., Rudra Logistics would incur expenses (ii) to (vii) for its own interest (as the agreement requires it to get the imported machine cleared from the customs station and bring the same to the Rolly Polly Manufacturers Ltd.'s warehouse). Thus, Rudra Logistics would not be considered as a pure agent of Rolly Polly Manufacturers Ltd. for said services. Consequently, in that case, value of supply will be ₹ 13,00,000.

Question 28 (Includes concepts of Charge of GST -RCM, Exemptions under GST)

Gupta and Gupta Brothers is a partnership concern registered under GST in the State of Gujarat. It provides the following information pertaining to supplies made/received by it during the month of May:

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	Particulars	₹
(i)	Loading, unloading, packing and warehousing of tomato ketchup bottles	4,00,000
(ii)	Provided security services (services provided by way of supply of security personnel) to Sudarshan Ltd., a registered person under GST	3,35,000
(iii)	Provided security services (services provided by way of supply of security personnel) to Divyajyoti Trust, an unregistered person under GST	1,00,000
(iv)	Provided renting of motor vehicle service for carrying passengers to Bharat Travels Ltd. and supply value included cost of fuel	2,35,000
(v)	Provided renting of motor vehicle service for carrying passengers to Suvidha & Co., a partnership firm and supply value included cost of fuel	40,000
(vi)	Recovery agent services provided to Manimani Finance Ltd., an NBFC	4,20,000
(vii)	Received legal consultancy service from Dhruv and Co., a law firm, for business purposes	70,000
(viii)	Services provided to Gujarat Government administration under a Health Training programme (90% of the total expenditure for said programme is borne by Gujarat Government.)	80,000

Determine the GST liability (inclusive of GST liability for the supplies received, if any) of Gupta and Gupta Brothers for the month of May by giving necessary explanations for treatment of various items. Rate of tax for both inward and outward supply is CGST @ 9% and SGST @ 9% except services of renting a motor vehicle for transportation of passengers, on which CGST @ 2.5% and SGST @ 2.5% is applicable. Gupta and Gupta Brothers commenced its business from April in the current financial year. All the above supplies are intra-State supplies. (MTP 9 Marks Sep'22)

Answer 28

GST liability of Gupta & Gupta Brothers

	Particulars	Value [₹]	CGST payable [₹]	SGST payable [₹]
A.	GST liability on outward supply			
(i)	Loading, unloading, packing and warehousing of tomato ketchup [Loading, unloading, packing and warehousing of agricultural produce is exempt. However, tomato ketchup is not an agricultural produce.]	4,00,000	36,000 [4,00,000 x 9%]	36,000 [4,00,000 x 9%]

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(ii)	Security services to Sudarshan Ltd., a registered person [Tax is payable under reverse charge by the recipient since security services are being provided by a non-body corporate to a registered person.]	-		
(iii)	Security services to Divyajyoti Trust, an unregistered person [Tax is payable under forward charge since security services are being provided by a non-body corporate to an unregistered person.]	1,00,000	9,000 [1,00,000 x 9%]	9,000 [1,00,000 x 9%]
(iv)	Renting of motor vehicle for carrying passengers to Bharat Travels Ltd. where value included cost of fuel [Tax is payable under reverse charge by recipient since such services are provided by a non-body corporate to a body corporate and GST is payable @ 5%.]	-		
(v)	Renting of motor vehicle for carrying passengers to Suvidha & Co., a partnership firm, where supply value included cost of fuel [Tax is payable under forward charge since such services are provided by a non-body corporate to a non-body corporate.]	40,000	1,000 [40,000 x 2.5%]	1,000 [40,000 x 2.5%]
(vi)	Recovery agent services provided to Manimani Finance Ltd., an NBFC [Since such services are being provided to an NBFC, tax on the same is payable by recipient - Manimani Finance Ltd. - under reverse charge [RCM].]	--	--	--
(viii)	Services provided to Gujarat Government administration under a Health Training programme [Exempt since the total expenditure borne by the Gujarat Government is more than 75%.]	--	--	--
Total GST liability on outward supplies			46,000	46,000
B.	GST liability on inward supplies under reverse charge			
(vi)	Availed legal consultancy service from Dhruv and Co., a law firm, for business purposes [Legal services provided by a	70,000	-	

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	<p>partnership firm of advocates/individual advocate other than a senior advocate 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, are exempt from GST. Since Gupta and Gupta Brothers started its business in April in the current financial year, its turnover in the preceding financial year is nil making it eligible for exemption from registration in the preceding financial year and hence, the legal services provided to it are exempt from GST.]</p>			
	<p>GST liability on inward supplies under reverse charge</p>		-	-

Question 29

Shakuntla Associates is the supplier of water coolers. Shakuntla Associates supplied water coolers to an unrelated party, Binaca Traders for consideration of ₹ 2,95,000 (inclusive of GST @ 18%). Binaca Traders also gave some materials to Shakuntla Associates [valuing ₹ 10,000 (exclusive of GST)] as an additional consideration for such supply.

At the same time, Shakuntla Associates 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 Shakuntla Associates to Binaca Traders.**
- (2) What would your answer be if price of ₹ 2,97,360 is not available at the time of supply of goods to Binaca Traders? Explain briefly.**
(MTP 5 Marks March '23)

Answer 29

- (1)** In the given case, price is not the sole consideration for the supply. Apart from monetary consideration, the buyer has given some material to the supplier as consideration for such supply. Hence, the value of the supply cannot be determined on the basis of the transaction value in terms of section 15(1) of the CGST Act, 2017.

Here, the value will be determined with the help of rule 27 of the CGST Rules, 2017 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.

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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.
- (3) Therefore, the value in the given case will be (₹ 2,95,000 x 100/118) + ₹ 10,000, which is ₹ 2,60,000.

SECTION B

Question 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 1

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

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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.

Question 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 price linked 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 2

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

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interest, the same is inclusive of GST. Thus, the value has been computed by making back calculations ($\frac{\text{interest}}{100+\text{tax rate}} \times 100$). 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.

Question 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 3

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-

- (iii) 1% of the gross amount of currency exchanged for an amount up to ₹ 1,00,000, subject to a minimum amount of ₹ 250;
- (iv) ₹ 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 \$ 10,000]	7,40,000	
Up to ₹ 1,00,000		1,000
For ₹ 6,40,000 [0.5% x ₹ 6,40,000]		3,200
Value of supply		4,200

Question 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 4

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

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Value of supply [A] + [B] (rounded off)		36,733
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Note:

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

Question 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 2020-21; 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 2020-21. 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 5

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 2020-21 will be computed as follows:

- (i) Amount allocated for investment intimated to policy holder at the time of supply of service Value of service = ₹ (180-100) lakh = ₹ 80,00,000
- (ii) Amount allocated for investment not intimated to policyholders at the time of supply of service Value of service = 25% of ₹ 180 lakh = ₹ 45,00,000
- (iii) Gross premium received is only towards risk cover Value of service = ₹ 180 lakh

Question 6

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Income tax collected at source should be included in value of the supply in terms of section 15(2)(a). Examine the correctness of the statement.

Answer 6

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.

Question 7

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 7

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.

Question 8

Examine whether the following discounts ought to be excluded to determine the value of supply:

- (i) **Company offering 20% discount for single purchase 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-valued the product at a lower value and issued credit note to the buyer for the differential amount.**

Answer 8

- (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 which can be specifically linked to the relevant invoices 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/deducted to determine the value of supply provided they satisfy the parameters laid down in

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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 as per the agreement made at or before the time of supply. Therefore, such discounts shall not be excluded while determining the value of supply.

Question 9

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 9

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 equivalent monetary value of such additional consideration must be added to the retainership 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.

Question 10

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 10

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.

Question 11

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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 11

In terms of rule 32(6) relating to valuation, the value of a coupon is equal to the money value of the goods redeemable against

Question 12

A pharmaceutical company supplies a drug intermediate to its own unit in another State for conversion into formulations. The drug intermediate 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. After conversion, the finished product is sold from the said unit itself by the company.

How will the value of the supply of this drug intermediate be determined under GST law?

Answer 12

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 by the supplier will be deemed to be the open market value of the drug intermediate and thus, the invoice value will be the value of taxable supply.

Question 13

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 13

Computation of the value of supply and the GST liability of Dushyant for the month of December

Particulars	Amount (₹)

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Rent of the commercial building	19,50,00 0
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	20,50,00 0
CGST @ 9%	1,84,500
SGST @ 9%	1,84,500

Notes:

- (3) 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 as per section 15(2)(c).
- (4) Since municipal tax is paid by the supplier (Dushyant) and not charged to the recipient, the same is not includible in the value.

Question 14

Vayu Ltd. provides you the following particulars relating to goods supplied by it to Agni Ltd.:

Particulars	Amount (₹)
List price discounts) 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 separately in invoice	14,400
Price linked 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 14

Computation of value of taxable supplies by Vayu Ltd.

Particulars	₹
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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).

Question 15

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 on 1st April. 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.

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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 15

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

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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%].

Question 16

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

- (iii) **1,000 US \$ are purchased from Nandi Enterprises at the rate of ₹ 74 per**

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US \$. RBI reference rate for US \$ on that day is ₹ 74.60.

- (iv) **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 16

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)

- (iii) Value of supply of services for a currency, when exchanged from, or to, Indian Rupees, shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency. Thus, value of supply is:

$$= (\text{RBI reference for US \$} - \text{Buying rate of US \$}) \times \text{Total number of units of US \$ bought}$$

$$= (74.6 - 74) \times 1,000$$

$$= ₹ 600/-$$

- (iv) When the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received by the person changing the money. Thus, value of supply is:

$$= 1\% \text{ of the gross amount of Indian Rupees received}$$

$$= 1\% \text{ of } (74.50 \times 2,000) = ₹ 1,490/-$$

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.	Up to ₹ 1,00,000	1% of the gross amount of currency exchanged OR ₹ 250 whichever is higher
2.	Exceeding ₹ 1,00,000 and up to ₹ 10,00,000	₹ 1,000 + 0.50% of the (gross amount of currency exchanged - 1,00,000)

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

(iii) 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/-

(iv) 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/-

Question 17

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 in the invoice issued by it to Rolly Manufacturers Ltd.:

Particulars	Amount (₹)
Agency charges	5,00,000
Unloading of machine at Kandla port, Gujarat	50,000
Charges for transportation of machine from Kandla port, Gujarat to its Rudra Logistics' godown in Ahmedabad, Gujarat	25,000
Charges for transportation of machine from Rudra Logistics' Ahmedabad godown to the warehouse of Rolly Polly Export Import House in Mumbai, Maharashtra	28,000

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Prepared and submitted Bill of Entry and paid customs duty	5,00,000
Dock dues paid	50,000
Port charges paid	50,000
Hotel expenses	45,000
Travelling expenses	50,000
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 17

As per explanation to rule 33, a “pure agent” means a person who-

- 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;
- 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;
- does not use for his own interest such goods or services so procured; and
- 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 use them 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-

- the supplier acts as a pure agent of the recipient of the supply, when he

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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.

Question 18

Rustagi & Co. manufactures customized products at its unit situated and registered in Madhya Pradesh. Cost of production of 1,000 products for Rustagi & Co. 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

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situated and registered in Himachal Pradesh. The value declared on the invoice for such transfer is the cost of production of such products.

The Himachal 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 Himachal 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 Himachal Pradesh unit.

1,000 units of the products of same kind and quality are supplied to Himachal Pradesh unit, at the time when goods are sent by Madhya Pradesh unit, by another manufacturer located in Himachal Pradesh.

The ex-factory price of such goods is ₹ 19,00,000. The Himachal Pradesh unit of Rustagi & Co. is eligible for full ITC.

Determine the value of 1000 products supplied by Rustagi & Co. to its Himachal Pradesh unit.

Answer 18

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 Himachal 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 –

- (d) be the open market value of such supply;
- (e) if open market value is not available, be the value of supply of goods of like kind and quality;
- (f) 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 by the supplier 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 Himachal 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 Himachal Pradesh

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unit in terms of rule 28 is the open market value of such products which is ₹ 20,00,000.

Question 19

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 an additional 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 19

- (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 ($\text{₹ } 2,97,360 \times 100/118$) 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 ($\text{₹ } 2,95,000 \times 100/118$) + ₹10,000, which is ₹2,60,000

Question 20

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 supply of insurance services. The company has provided the following details in relation to its receipts:

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SI. No.	Particulars	Amount
1.	Premium for only risk cover	25,00,000
2.	Premium from new policy subscribers	40,00,000
3.	Renewal premium	80,00,000
4.	Single premium on annuity policy	1,00,00,000

All amounts are exclusive of tax. You are required to compute the value of supply by CLICL in terms of rule 32(4).

Answer 20

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-

- (iv) in case of single premium annuity policies, 10% of single premium charged from the policy holder;
- (v) 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;
- (vi) in case the entire premium paid by the policy holder is only towards the risk cover in life insurance, the premium so paid.

Therefore, in the given case, the value of the services provided by CLICL will be computed as under:

Computation of value of supply for CLICL

Particulars	Amount (₹)
Premium for only risk cover	25,00,000
Premium from new policy subscribers 25% of ₹ 40,00,000	10,00,000
Renewal premium 12.5% of ₹ 80,00,000	10,00,000
Single premium on annuity policy 10% of ₹ 1,00,00,000	10,00,000
Total value of supply	55,00,000

Question 21

Aviant Ltd., registered in Noida (Uttar Pradesh), is a supplier of machinery used for making bottle caps. The supply of machinery is affected 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.**

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However, the actual price at which the machinery is supplied to an individual customer varies within a range of $\pm 10\%$ 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 case of each 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 given at the time of receiving payment from the customer (no separate amount of GST is recovered); 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 29th August at a price of ₹ 40,00,000 (excluding all taxes). Invoice was issued on 29th 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 30th September.

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%

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Other services involved in the above supply

CGST – 9%	SGST – 9%	IGST – 18%
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Calculate the GST liability [CGST, SGST or IGST, as the case may be] with respect to the supply of machinery and support your conclusions with legal provisions in the form of explanatory notes.

Make suitable assumptions, wherever needed. (New SM, MTP 10 Marks April '18, RTP May 18)

Answer 21

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 7 and Note 8] – [A]	5,07,600
Tax liability for the month of September [Note 10]	
Interest collected @ 2% on ₹ 41,10,000 [Note 9]	82,200
Add: Cash discount recovered [Note 9]	80,000
Value of interest and cash discount inclusive of tax	1,62,200
IGST = (₹1,62,200/112) × 12 – [B]	17,379
Total IGST payable on the machinery [A] + [B]	5,24,979

Notes:

- (11) 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.
- (12) 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).
- (13) Any amount charged for anything done by the supplier in respect of the

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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).

- (14) 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.

- (15) 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).
- (16) 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.

- (17) 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.

- (18) 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.

- (19) 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 recovered and interest respectively are inclusive of tax. Thus, tax payable thereon has to be computed by making back calculations in terms of rule 35.

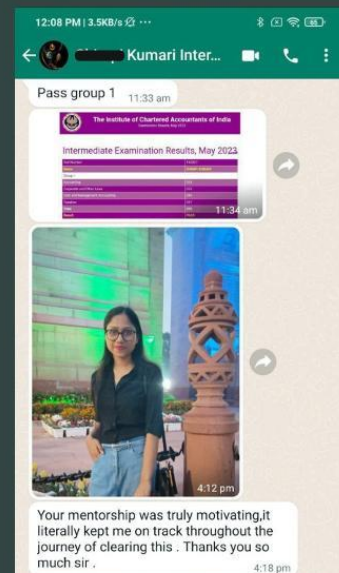
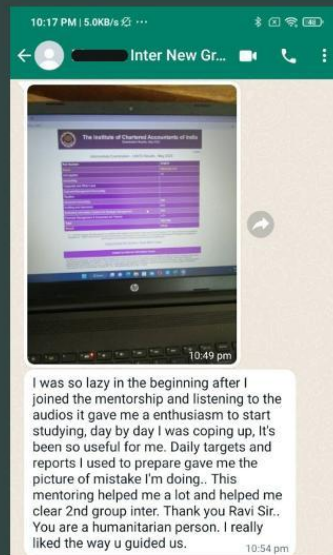
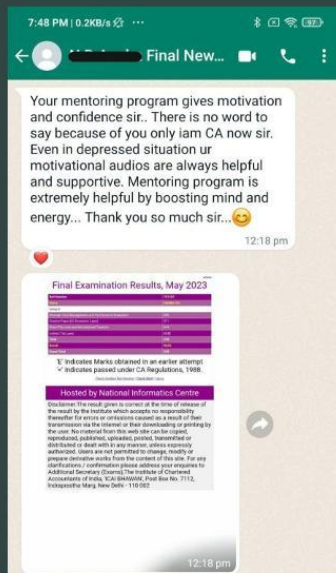
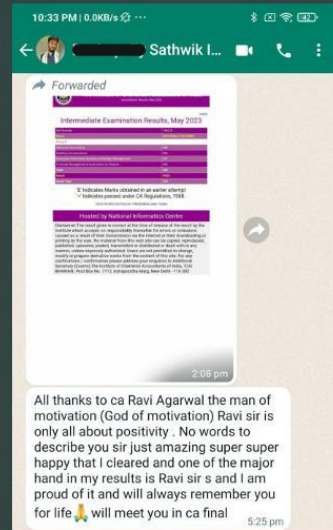
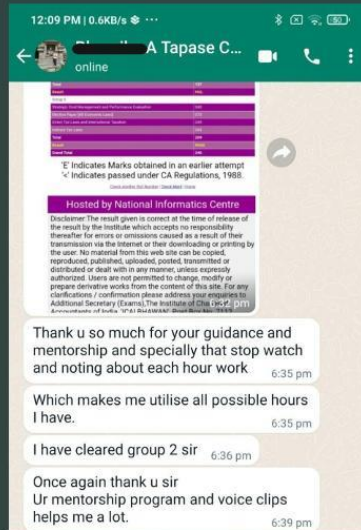
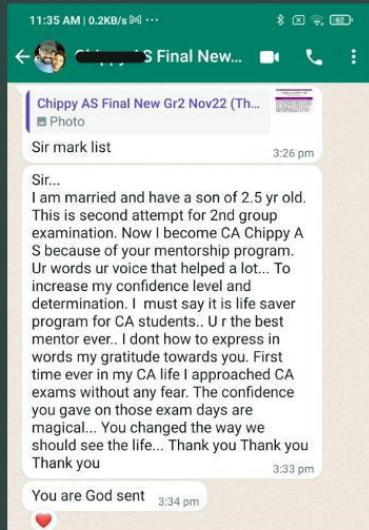
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(20) Invoice for the supply has been issued on 29th August. Thus, the time of supply of goods is 29th August in terms of section 12(1)(a).

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 30th September, the date when the full payment was made. The supplier may issue a debit note for such interest and cash discount recovered.

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Chapter 7 Input Tax Credit

Attempts wise Distribution

Row Labels	Dec' 21	Jan' 21	Jul' 21	May '18	Nov' 18	May' 19	May '22	May' 23	Nov' 19	Nov' 20	Nov' 22	Nov' 23
MCQ												
MTP							Q2					
MTP						Q1,Q 3						Q5
RTP									Q4			
QA												
MTP	Q30, Q36				Q15	Q32		Q16, Q17		Q7, Q33	Q13, Q37	Q34
PYP		Q26	Q28	Q35	Q27	Q10, Q11	Q29	Q6	Q23	Q24, Q25	Q5	
RTP	Q20		Q4, Q19	Q9	Q31, Q38	Q12, Q14, Q18	Q1		Q8	Q2, Q3	Q21	Q22

SECTION A

MULTIPLE CHOICE QUESTIONS (MCQ'S)

1. A taxable person has made following supplies in January – Sales within the State – Rs. 2,00,000. Exports out of India– Rs. 60,000.

Supplies to SEZ located within the State – Rs. 40,000.

He does not intend to clear goods under Letter of Undertaking (LUT) or bond. The input tax credit available to him during January, 2018 – IGST – Nil. CGST – Rs.10,000. SGST – Rs. 20,000.

There is no opening balance in his electronic cash ledger or electronic credit ledger.

Tax rates are –

SGST – 9%, CGST – 9%, IGST – 18%. How much amount is payable by him in cash?

- (a) CGST – Rs. 8,000 SGST – Nil
- (b) CGST – Rs. 11,600 SGST – Rs. 1,600
- (c) CGST – Rs. 8,000, SGST – Nil, IGST – Rs. 5,200
- (d) CGST – Rs. 8,000 SGST – Nil, IGST – Rs. 16,000 (MTP 2 Marks Apr'19)

Ans: (d)

2. Sachi Traders, registered in Maharashtra, purchased machinery two years back worth ₹ 2,00,00,000 and did not avail ITC on said machinery at the time of its purchase. After using the machinery for two years, it gave said machinery free of cost in the month of September (in the current year) to an unrelated person in Punjab. On the date of transfer, open market value of the machinery was ₹ 1,25,00,000 and the written

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down value was ₹ 1,53,00,530.

In the month of September, it also supplied taxable goods worth ₹ 50,00,000 to Hike Oil Corporation Limited in the territorial waters. The said territorial waters are located at a distance of 5 nautical miles from the baseline of the State of Maharashtra and 7 nautical miles from the baseline of the State of Kerala.

All above amounts are exclusive of GST and rates of applicable CGST, SGST and IGST in above cases are 9%, 9% and 18%.

You are required to determine the amount of net CGST and SGST and/or IGST payable in the month of September.

- (a) CGST: ₹ 4,50,000; SGST: ₹ 4,50,000; IGST: Nil
- (b) CGST: Nil; SGST: Nil; IGST: ₹ 9,00,000
- (c) CGST: Nil; SGST: Nil; IGST: Nil
- (d) CGST: ₹ 4,50,000; SGST: ₹ 4,50,000; IGST: ₹ 22,50,000 (MTP 2 Marks Mar'22)

Ans: (a)

3. XY, Bangalore, Karnataka furnishes following information:

- (i) 10 MT of inputs stock transferred to branch located in Chennai, Tamil Nadu on 10th April, 20XX. Transfer value of the inputs shown in the invoice is ₹ 10,000.
- (ii) 5 MT of inputs supplied to customer located in Chennai at ₹ 12,500 on 10th April, 20XX.
- (iii) Cost of production of 1 MT of input is ₹ 750.
- (iv) Chennai branch is eligible for full input tax credit.

The value of the inputs stock transferred to Chennai Branch is-

- (a) ₹ 10,000
- (b) ₹ 25,000
- (c) ₹ 8,250
- (d) ₹ 12,500 (MTP 2 Marks Mar'19)

Ans: (a)

4. Mr. Rahul Roy, proprietor of M/s. Royal Shoe & Company is running a business of manufacturing shoes with the brand name of 'JUNOON'. The manufacturing unit is located in Delhi and registered under GST. However, due to low profitability in the business, he has decided to transfer his business to his friend Mr. Dilip Tijori. Mr. Dilip Tijori is already running the business of manufacturing shoes under a proprietorship firm named M/s Hawaii Shoes & Company which is located in Mumbai and registered under GST.

Mr. Rahul Roy has approached you to help him with the issue of transfer of unutilized input tax credit in electronic credit ledger of M/s. Royal Shoe & Company to M/s Hawaii Shoes & Company.

Advise Mr. Rahul Roy with the correct option in accordance with the provisions of the CGST Act, 2017:

- (a) M/s. Royal Shoe & Company cannot transfer unutilised input tax credit in its electronic credit ledger to M/s Hawaii Shoes & Company, as the proprietors are different.
- (b) M/s. Royal Shoe & Company can transfer unutilized input tax credit in its electronic credit ledger to M/s Hawaii Shoes & Company and it can further be

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utilized in setting off GST liability for succeeding period.

- (c) M/s. Royal Shoe & Company can transfer unutilized input tax credit in its electronic credit ledger to M/s Hawaii Shoes & Company and it can be further utilized in setting off GST liability for a period upto the month of September following the year in which ITC was transferred.
- (d) M/s. Royal Shoe & Company cannot transfer unutilized input tax credit in its electronic credit ledger to M/s Hawaii Shoes & Company but can claim refund of such unutilized input tax credit. **(RTP Nov '19)**

Ans: (b)

5. Mr. Chandni, registered under GST in Delhi, is a domestic trader as also an exporter of whole-sale goods. His annual turnover and input tax details are as follows:

	Turnover ₹	Tax paid on inputs ₹
Taxable goods	90,00,000	9,00,000
Exempt goods	10,00,000	1,00,000
Exported goods	15,00,000	2,00,000

No GST is payable on exempt and exported goods. Mr. Chandni seeks your expert help in calculating the amount of ITC which he is eligible to claim under GST law. ITC admissible, in given case, is:

- (a) ₹ 12,00,000
 (b) ₹ 11,00,000
 (c) ₹ 10,00,000
 (d) ₹ 9,00,000 **(MTP 2 Marks Sep '23)**

Ans: (b)

QUESTIONS AND ANSWERS

Question 1

The total GST Liability on Outward supply is Rs. 52,00,000. compute the net GST payable from Electronic Cash Ledger if Adityanath Private Limited furnishes the following additional information:

Particulars	(₹)*
Consideration paid for repair of machinery used for manufacturing Product Alpha by George Inc. of USA [Said machinery was sent to George Inc. in August for carrying out repair work on the same.]	5,20,000
Life insurance premium paid by the company for the life insurance of employees as per the policy of the company. There is no legal obligation for such insurance for employees.	48,50,000
Audit fees paid	6,50,000
Raw material purchased [including raw material of ₹ 1,50,000 imported from China. Basic customs duty of ₹ 15,000, social welfare surcharge of ₹ 1,500 and integrated tax of ₹ 29,970 are separately paid on the imported raw material]	10,00,000
Transportation charges paid for transporting the goods [₹ 4,00,000 is paid to Goods Transport Agency (GTA) registered in Uttar Pradesh and ₹ 1,00,000 is paid for transport of goods by horse	5,00,000

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pulled carts. GST applicable on the services of GTA is 5%.]	
Telephone expenses paid [Such expenses pertain to bills for landline phone installed at the factory and mobile phones given to employees for official use.]	4,25,000
Bank charges paid towards company's current account maintained with Manimani Bank	2,00,000
Legal services received from an advocate during the period only in relation to Product Beta	3,50,000

*excluding GST

Note: Assume that rates of GST on all inward supply of goods and services are 12% and 18% respectively unless otherwise specified (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 Adityanath Private Limited was ₹ 40 crores in the preceding financial year. The inputs and input services received during August are commonly used for making all the outward supplies unless otherwise specified. The opening balance of Electronic Credit Ledger for the relevant tax period is Nil. (RTP May'22)

Answer 1

Computation of net GST payable by Adityanath Private Limited for the month of August

Particulars	(₹)
Gross GST liability on outward supply	52,00,000
Less: Input tax credit (ITC) [Refer Working Note 2] [Since the value of taxable supply other than exempt supply and zero-rated supply of Adityanath Private Limited in August exceeds ₹ 50 lakh, amount available in electronic credit ledger which it can use to discharge its output tax liability of said month cannot exceed 99% of such tax liability in terms of rule 86B of the CGST Rules, 2017.]	2,74,417
GST payable from Electronic Cash Ledger [A]	49,25,583
Add: GST payable on inward supplies under reverse charge	
Legal services [₹ 3,50,000 × 18%] [Tax on legal services provided by an advocate to a business entity, is payable under reverse charge by the business entity in terms of Notification No. 13/2017 CT (R) dated 28.06.2017.]	63,000
Services received from GTA [₹ 4,00,000 × 5%] [Tax on services provided by a GTA (who has not paid GST @ 12%) to a body corporate, is payable under reverse charge by the body corporate in terms of Notification No. 13/2017 CT (R) dated 28.06.2017.]	20,000
Tax payable under reverse charge [B]	83,000

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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.]	50,08,583
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Working Note - 1

Computation of common credit attributable to exempt supplies during August

Particulars	Amount (₹)	ITC (₹)
Repair of machinery by George Inc. of USA [In case where either supplier or recipient is located outside India, the place of supply of services supplied in respect of goods required to be made physically available by recipient to supplier is the location where the services are actually performed in terms of section 13(3)(a) of the IGST Act, 2017. Hence, place of supply of repair services received in the given case is outside India. Since the location of supplier and place of supply are outside India, said repair services are not liable to GST.]	5,20,000	Nil
Life insurance premium paid by the company for the life insurance of employees [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 in terms of second proviso to section 17(5)(b).]	48,50,000	Nil
Audit fees [6,50,000 × 18%] [Credit of tax paid on input services used in the course or furtherance of business is available in terms of section 16(1) of the CGST Act, 2017]	6,50,000	1,17,000
Raw material [₹(10,00,000 - 1,50,000) × 12% + ₹ 29,970] [Credit of tax paid on inputs used in the course or furtherance of business is available in terms of section 16(1) of the CGST Act, 2017. Further, IGST charged on raw material imported from China is also available because input tax, inter alia, includes IGST charged on import of goods (Section 2(62) of the CGST Act).]	10,00,000	1,31,970
Transportation charges for transporting the goods [₹ 4,00,000 × 5%] [Services by way of transportation of goods by road are exempt from GST except the services of a GTA. Hence, GST is not payable on transportation charges paid for horse pulled carts.]	4,00,000	20,000
Telephone expenses [₹ 4,25,000 × 18%] [Credit of tax paid on input services used in the course or	4,25,000	76,500

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furtherance of business is available in terms of section 16(1) of the CGST Act, 2017.]		
Bank charges paid towards company's current account maintained with bank [₹ 2,00,000 × 18%] [Credit of tax paid on input services used in the course or furtherance of business is available in terms of section 16(1) of the CGST Act, 2017.]	2,00,000	36,000
Common credit on inputs and input services		3,81,470
Common credit attributable to exempt supplies (rounded off) = Common credit on inputs and input services x (Exempt turnover during the period / Total turnover in State during the period) = ₹ 3,81,470 x ₹ 29,60,00,000 / ₹ 66,40,00,000 Exempt turnover = ₹ 29,60,00,000 and total turnover in State = ₹ 66,40,00,000 [Refer note below]		1,70,053
Legal services received from advocate [₹3,50,000 × 18%] [Legal 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 (Adityanath Private Limited) in the preceding financial year exceeds ₹ 20 lakh. Further, credit of tax paid on input services used in the course or furtherance of business is available in terms of section 16(1) of the CGST Act, 2017. Full credit is available as these services are exclusively used for effecting taxable supply.]	3,50,000	63,000

Note:

As per section 17(3) of the CGST Act, 2017, value of exempt supply includes supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building. As per explanation to Chapter V (Input Tax Credit) of the CGST Rules, 2017, the value of exempt supply in respect of land and building is the value adopted for paying stamp duty and for security is 1% of the sale value of such security. Further, as per explanation to rule 42 of the CGST Rules, 2017, the aggregate value of exempt supplies, inter alia, excludes the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances. Aggregate value of exempt supplies and total turnover excludes the central excise duty, State excise duty, central sales tax and VAT.

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), value of sale of shares (1% of ₹ 2,50,00,000 = ₹ 2,50,000), supply of Product Gamma (₹1,00,00,000) and supply of petrol and diesel (₹ 80,00,000 - ₹ 5,00,000 - ₹ 12,50,000 = ₹ 62,50,000), which comes out to be ₹ 29,60,00,000.

Total turnover in State = ₹ 66,40,00,000 [₹ 50,00,000 + ₹ 1,00,00,000 + ₹ 50,00,000 + ₹ 50,00,000 + ₹ 1,00,00,000 + ₹ 20,00,000 + (₹ 2,50,000 / 2 x 100 = ₹ 1,25,00,000) + ₹ 10,50,000 + (1% of ₹ 2,50,00,000 = ₹ 2,50,000) + (₹ 1,00,00,000 - 12,50,000 = ₹ 87,50,000) + (₹ 80,00,000 - ₹ 5,00,000 - ₹ 12,50,000 = ₹ 62,50,000) + ₹ 6,00,000]

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Working Note 2

Computation of ITC available in the Electronic Credit Ledger of Adityanath Private Limited for the month of August

Particulars	(₹)
Common credit on inputs and input services [Refer working note-1]	3,81,470
Legal services used in the manufacture of taxable Product 'Beta' [Refer Working Note-1]	63,000
ITC available in the Electronic Credit Ledger	4,44,470
Less: Common credit attributable to exempt supplies during August [Refer Working Note 1]	1,70,053
Net ITC available	2,74,417

Question 2

Arise India Pvt. Ltd., a company engaged in manufacturing of various goods, has its corporate office at Mumbai and manufacturing units in Pune and Chennai and service centres in Kolkata and Bengaluru. The manufacturing units at Pune and Chennai and service centres at Kolkata and Bengaluru are registered in Maharashtra, Tamil Nadu, West Bengal and Karnataka respectively. The corporate office is registered as an input service distributor. All the units and centres of Arise India Pvt. Ltd. are operational in the current year. The corporate office intends to distribute input tax credit (ITC) for the month of October 20XX. The following details are available for such distribution:

Table 1

Unit/centre	Turnover for the quarter ending September 20XX* (₹)	Eligible ITC on input services attributable to a specific unit/centre, for the month of October 20XX (₹)
Pune	20,00,000	IGST – ₹ 3,00,000; CGST – ₹ 30,000; SGST – ₹ 30,000
Chennai	30,00,000	IGST – ₹ 24,000; CGST – ₹ 6,000; SGST – ₹ 6,000
Kolkata	10,00,000	Nil
Bengaluru	40,00,000	Nil

**Note: Turnover excludes all taxes and duties*

MAY, 2020 Table 2

S. No.	Particulars	CGST	SGST	IGST
(i)	Input services used by all units and centres			
(a)	Eligible ITC under the provisions of the GST law	1,20,000	1,20,000	2,40,000
(b)	Ineligible ITC in terms of section 17(5) of the CGST Act, 2017	40,000	40,000	80,000
(ii)	Inputs used by Pune unit and Kolkata	60,000	60,000	

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	centre			
(iii)	Input services used by Chennai unit and Bengaluru centre (ITC pertaining to such invoices is eligible ITC under the provisions of the GST law)	30,000	30,000	10,000

Chennai unit manufactures exempted products. Compute the amount of ITC to be distributed to each of the units and centres. (RTP May '20)

Answer 2

Computation of ITC to be distributed by ISD

S. No.	Particulars	Pune unit (₹)	Chennai unit (₹)	Kolkata centre (₹)	Bengaluru centre (₹)
(i)	IGST credit of ₹ 3,00,000, CGST credit of ₹ 30,000 and SGST credit of ₹ 30,000 specifically attributable to Pune unit [Note 1]	3,00,000 (IGST) 30,000 (CGST) 30,000 (SGST)			
(ii)	IGST credit of ₹ 24,000, CGST credit of ₹ 6,000 and SGST credit of ₹ 6,000 specifically attributable to Chennai unit [Note 2]		36,000 (IGST)		
(iii)	Eligible ITC pertaining to input services used by all units and centres [Note 3]	24,000 (CGST) 24,000 (SGST) 48,000 (IGST)	1,44,000 (IGST)	48,000 (IGST)	1,92,000 (IGST)
(iv)	Ineligible ITC pertaining to input services used by all units and centres [Note 4]	8,000 (CGST) 8,000 (SGST) 16,000 (IGST)	48,000 (IGST)	16,000 (IGST)	64,000 (IGST)
(v)	Inputs used by Pune unit and Kolkata centre [Note 5]	Nil	Nil	Nil	Nil
(vi)	Input services used by Chennai unit and Bengaluru centre [Note 6]		30,000 (IGST)		40,000 (IGST)

Notes:

- (1) IGST credit of ₹ 3,00,000, CGST credit of ₹ 30,000 and SGST credit of ₹ 30,000 specifically attributable to Pune unit will be distributed as IGST credit of ₹ 3,00,000, CGST credit of ₹ 30,000 and SGST credit of ₹ 30,000 respectively, only to Pune unit, since recipient is located in the same State in which ISD is located [Section 20(2)(c) of the CGST Act, 2017 read with clauses (e) & (f)(i) of sub-rule (1) of rule 39 of the CGST Rules, 2017].

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- (2) Total GST credit (CGST+ SGST + IGST) of ₹ 36,000 specifically attributable to Chennai unit will be distributed as IGST credit of ₹ 36,000, only to Chennai unit, since recipient and ISD are located in different States [Section 20(2)(c) of the CGST Act, 2017 read with clauses (e) & (f)(ii) of sub-rule (1) of rule 39 of the CGST Rules, 2017].
- (3) Eligible ITC of CGST [₹ 1,20,000], SGST [₹ 1,20,000] and IGST [₹ 2,40,000] will be distributed among the units and centres in the ratio of their turnover of the last quarter [Section 20(2)(e) of the CGST Act, 2017 read with clause (a)(ii) of the explanation to the said section and rule 39(1)(b) of the CGST Rules, 2017].

Ratio of the turnover of the units and centres in last quarter, previous to the month during which ITC is to be distributed:

= 20 lakh : 30 lakh : 10 lakh : 40 lakh

= 2: 3: 1: 4

Therefore,

Pune unit will get - ₹ 24,000 [1,20,000 x (2/10)] as CGST credit, ₹ 24,000 [1,20,000 x (2/10)] as SGST credit and ₹ 48,000 [2,40,000 x (2/10)] as eligible IGST credit [Clauses (e) & (f)(i) of sub-rule (1) of rule 39 of the CGST Rules, 2017].

Chennai unit will get - ₹ 1,44,000 [₹ 4,80,000¹ x (3/10)] as IGST credit [Clauses (e) & (f)(ii) of sub-rule (1) of rule 39 of the CGST Rules, 2017]. The credit attributable to a recipient is distributed even if such recipient is making exempt supplies [Clause (d) of sub-rule (1) of rule 39 of the CGST Rules, 2017].

Kolkata centre will get - ₹ 48,000 [₹ 4,80,000 x (1/10)] as IGST credit [Clauses (e) & (f)(ii) of sub-rule (1) of rule 39 of the CGST Rules, 2017].

Bengaluru will get - ₹ 1,92,000 [₹ 4,80,000 x (4/10)] as IGST credit [Clauses (e) & (f)(ii) of sub-rule (1) of rule 39 of the CGST Rules, 2017].

- (4) Ineligible ITC of CGST [₹ 40,000], SGST [₹ 40,000] and IGST [₹ 80,000] will also be distributed among the units and centres in the ratio of their turnover of the last quarter [Section 20(2)(e) of the CGST Act, 2017 read with clause (a)(ii) of the explanation to the said section and rule 39(1)(b) of the CGST Rules, 2017].

Ratio of the turnover of the units and centres in last quarter, previous to the month during which ITC is to be distributed:

= 20 lakh : 30 lakh : 10 lakh : 40 lakh

= 2: 3: 1: 4

Therefore,

Pune unit will get - ₹ 8,000 [40,000 x (2/10)] as CGST credit, ₹ 8,000 [40,000 x (2/10)] as SGST credit and ₹ 16,000 [80,000 x (2/10)] as eligible IGST credit.

Chennai unit will get - ₹ 48,000 [₹ 1,60,000 x (3/10)] as IGST credit. Kolkata centre will get - ₹ 16,000 [₹ 1,60,000 x (1/10)] as IGST credit. Bengaluru will get - ₹ 64,000 [₹ 1,60,000 x (4/10)] as IGST credit.

- (5) ISD mechanism is meant only for distributing the credit on common invoices pertaining to input services only and not goods (inputs or capital goods).
- (6) Eligible ITC of CGST [₹ 30,000], SGST [₹ 30,000] and IGST [₹ 10,000] will be distributed among the Chennai unit and Bengaluru centre in the ratio of their turnover of the last quarter [Section 20(2)(d) of the CGST Act, 2017 read with clause (a)(ii) of the explanation to the said section and rule 39(1)(b) of the CGST Rules, 2017].
- Ratio of the turnover of the Chennai unit and Bengaluru centre in last quarter, previous to the month during which ITC is to be distributed:

= 30 lakh : 40 lakh

= 3 : 4

Therefore,

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Chennai unit will get – ₹ 30,000 [₹ 70,000 x (3/7)] as IGST credit. Bengaluru unit will get – ₹ 40,000 [₹ 70,000 x (4/7)] as IGST credit.

Question 3

KPI Ltd., registered in the State of Himachal Pradesh (HP), has a manufacturing unit at Baddi (HP). The company manufactures two products: 'Xt' and 'St'. While 'Xt' is taxable, 'St' is exempt from GST. KPI Ltd. has furnished the following details:

S. No.	Particulars	IGST (₹)
(a)	Machinery 1 purchased on 1 st July for being used in manufacturing Xt and St	72,000
(b)	Machinery 2 purchased on 1 st July for being exclusively used in manufacturing product Xt	36,000
(c)	Machinery 3 purchased on 1 st July for being exclusively used in manufacturing product St	1,08,000
(d)	Machinery 4 purchased on 1 st October last year for being exclusively used in manufacturing product St. From 1 st July, such machinery will also be used for manufacturing product Xt.	1,44,000
(e)	Machinery 5 purchased on 1 st January for being exclusively used in manufacturing product Xt. From 1 st July, such machinery will also be used for manufacturing product St.	18,000
(f)	Machinery 6 purchased on 1 st July two years ago for being used in manufacturing Xt and St	1,08,000

Compute the following:

- Amount of input tax credit (ITC) credited to Electronic Credit Ledger for the month of July
- Amount of ineligible credit (T_{ie}) for the month of July
- Amount of aggregate value of common credit (T_c)
- Common credit for the month of July (T_m)

Note: All the conditions necessary for availing the ITC have been complied with. Make suitable assumptions wherever required. (RTP Nov '20)

Answer 3

S. No.	Particulars	ITC (₹)
(i)	Amount of ITC credited to Electronic Credit Ledger, for the month of July	
	Machinery 1 – 'A' [Note 1]	72,000
	Machinery 2 [Note 2]	36,000
	Machinery 3 [Note 3]	-
	Machinery 4 – 'A' [Note 4]	1,44,000
	Machinery 5 [Note 5]	-
	Machinery 6 – 'A' [Note 6]

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	ITC credited to Electronic Credit Ledger, for the month of July	2,52,000
(ii)	Amount of ineligible credit (T_{ie}) for the month of July [Note 7]	21,600
(iii)	Aggregate value of common credit (T_c) [Note 8]	
	Value of 'A' for Machinery 1 purchased on 1st July and used for effecting both taxable and exempt supplies	72,000
	Value of 'A' for Machinery 4 purchased on 1st October last year for being used for effecting exclusively exempt supplies and used for effecting both taxable and exempt supplies from 1st July	1,44,000
	Value of 'A' for Machinery 6 purchased on 1st July two years ago and used for effecting both taxable and exempt supplies	1,08,000
	Input tax claimed on Machinery 5 purchased on 1st January for being used for effecting exclusively taxable supplies and used for effecting both taxable and exempt supplies from 1st July [Note 9]	<u>18,000</u>
	Aggregate value of common credit (T _c) for the month of July – T _c [Note 9]	3,42,000
(iv)	Common credit for the month of July (T_m) [Note 10]	5,700

Notes:

- (1) ITC in respect of capital goods used commonly for effecting taxable supplies and exempt supplies denoted as 'A' shall be credited to the electronic credit ledger [Rule 43(1)(c) of the CGST Rules, 2017].
- (2) ITC in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero rated supplies shall be credited to the electronic credit ledger [Rule 43(1)(b) of the CGST Rules, 2017].
- (3) ITC in respect of capital goods used or intended to be used exclusively for effecting exempt supplies shall not be credited to electronic credit ledger [Rule 43(1)(a) of the CGST Rules, 2017].
- (4) When capital goods which were initially used exclusively for exempt supplies are subsequently used commonly for exempt supplies as well as taxable supplies, input tax in respect of the same denoted as 'A' shall be credited to the electronic credit ledger [Rule 43(1)(c) of the CGST Rules, 2017].
- (5) Machinery 5 is used for effecting both taxable and exempt supplies since 1st July. Prior to that, it was exclusively used for effecting taxable supplies. Therefore, ITC in respect of such machinery would have already been credited to the electronic credit ledger.
- (6) Machinery 6 is being used for effecting both taxable and exempt supplies from 1st July two years ago. Therefore, ITC in respect of such machinery would have already been credited to the electronic credit ledger.
- (7) When capital goods which were used exclusively for exempt supplies are subsequently used commonly for exempt supplies as well as taxable supplies, input tax in respect of the same is credited in the electronic credit ledger. The ineligible credit 'T_{ie}' attributable to the period during which such capital goods were used for making exempt

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supplies is computed @ 5% per quarter or part thereof and added to the output tax liability of the tax period in which such credit is claimed [Rule 43(1)(c) of the CGST Rules, 2017].

Thus, 'Tie' shall be computed as under-

$$= ₹ 1,44,000 \times 5\% \times 3 \text{ quarters}$$

$$= ₹ 21,600$$

- (8) The aggregate of the amounts of 'A' credited to the electronic credit ledger in respect of common capital goods whose useful life remains during the tax period, to be denoted as 'Tc', shall be the common credit in respect of such capital goods [Rule 43(1)(d) of the CGST Rules, 2017].

Where any capital goods which were used exclusively for effecting taxable supplies are subsequently also used for effecting exempt supplies, the input tax credit claimed in respect of such capital goods shall be added to arrive at the aggregate value of common credit 'Tc' [Proviso to rule 43(1)(d) of the CGST Rules, 2017].

- (9) ITC attributable to a month on common capital goods during their useful life (T_m) shall be computed in accordance with rule 43(1)(e) of CGST Rules, 2017 as under:

$$= T_c \div 60$$

$$= ₹ 3,42,000 \div 60$$

$$= ₹ 5,700$$

The useful life of any capital goods shall be considered as five years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods.

Question 4

Pvt. Ltd. manufactures taxable goods. The company is registered under GST in the State of West Bengal. The company has provided following information in relation to inward supplies received by it in the month of October:

S. No.	Invoices received for inward supplies	IGST (₹)
1.	Raw material - X	2,00,000
2.	Rent of the factory building	1,50,000
3.	Raw material - Y	1,30,000
4.	Car purchased for the use of the director	1,20,000
5.	Consumables	80,000
6.	Machinery for being used in the manufacturing process	1,50,000
7.	Raw material - Z	1,10,000
8.	Technical consultancy for improvement in the manufacturing process	60,000
9.	Raw material - W (imported from China)	50,000
Total		10,50,000

S. No.	Particulars	IGST (₹)
(i)	Balance in Form GSTR-2A on 28 th October	4,80,000

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	(Invoices at S. Nos. 1, 2 and 3 uploaded by the respective suppliers in their Form GSTR-1s)	
(ii)	Balance in Form GSTR-2A on 11 th November (Invoices at S. Nos. 1, 2, 3 and 4 uploaded by the respective suppliers in their Form GSTR-1s)	6,00,00 0
(iii)	Balance in Form GSTR-2A on 20 th November (Invoices at S. Nos. 1, 2, 3, 4 and 5 uploaded by the respective suppliers in their Form GSTR-1s)	6,80,00 0

Compute the ITC that can be claimed by Sunshine Pvt. Ltd. in its Form GSTR-3B for the month of October to be filed by 20th November.

Note: The due date of filing of Form GSTR-1 and Form GSTR-3B for the month of October are 11th November and 20th November respectively. Subject to the information given above, all the other conditions for availing ITC have been complied with.

(RTP May '21)

Answer 4

ITC to be claimed by Sunshine Pvt. Ltd. in its GSTR-3B for the month of October to be filed by 20th November will be computed as under-

Invoices	Amount of input tax involved in the invoices (₹)	Amount of ITC that can be availed (₹)
Balance in GSTR-2A on 11 th November [Note 1] (Invoices at S. Nos. 1, 2, 3 and 4 uploaded by the respective suppliers in their GSTR-1s)	6,00,000	4,80,000 [Note 2]
Invoices at S. Nos. 5, 6 7 and 8 not uploaded in GSTR-1	4,00,000	48,000 24,000 NIL [Note 3]
Invoice at S. No. 9	50,000	50,000 [Note 4]
Total	10,50,000	5,30,000

Notes:

- (1) ITC in respect of the invoices whose details have not been uploaded by the suppliers shall not ~~exceed 10% (as per amendment 5%)~~ be eligible input tax credit available to the recipient in respect of invoices or debit notes the details of which have been uploaded by the suppliers under section 37(1) of the CGST Act, 2017 as on the due date of filing of the returns in Form GSTR-1 of the suppliers for the said tax period. The taxpayer can ascertain the same from his auto populated Form GSTR 2A as available on the due date of filing of Form GSTR-1 under section 37(1) [Rule 36(4) of the CGST Rules, 2017 read with Circular No. 123/42/2019 GST dated

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11.11.2019].

- (2) 100% ITC can be availed on invoices uploaded by the suppliers in their Form GSTR-1. However, section 17(5) of the CGST Act, 2017 blocks ITC on motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons if they are not used for making the following taxable supplies, namely:—

- (A) further supply of such motor vehicles; or
- (B) transportation of passengers; or
- (C) imparting training on driving such motor vehicles

Since Sunshine Pvt. Ltd. is not using the car for any of the aforesaid mentioned purpose, ITC thereon will not be available.

Thus, 100% ITC will be available in respect of invoices at S.Nos. 1, 2 & 3.

- (3) In respect of invoices at S.Nos. 5, 6 7 and 8 not uploaded in Form GSTR-1s, **shall not be eligible for ITC has been restricted to 10% (as per amendment 5 %) respect of invoices uploaded in Form GSTR-1s, i.e. 10%(5%) of ₹ 4,80,000 in terms of rule 36(4) of the CGST Rules, 2017.**
- (4) The restriction of availment of ITC is imposed only in respect of those invoices, details of which are required to be uploaded by the suppliers under section 37(1) of the CGST Act, 2017 and which have not been uploaded. Therefore, full ITC can be availed in respect of IGST paid on imports which are outside the ambit of section 37(1) [Circular No. 123/42/2019 GST dated 11.11.2019].

As per amendment-

No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under section 37(1) unless,-

- (a) **the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in Form GSTR-1 or using the invoice furnishing facility (IFF); and**
- (b) **the details of such invoices or debit notes have been communicated to the registered person in Form GSTR-2B under rule 60(7).**

Thus, ITC can now be taken only for those invoices whose details are reflected in GSTR-2B i.e the respective suppliers (vendors) have filed the details of such invoices their GSTR-1. Earlier, ITC, in respect of invoices/debit notes not uploaded by the suppliers in their GSTR-1s/IFF, could be availed upto 5% of the eligible credit available in respect of invoices/debit notes the details of which had been furnished by the suppliers in their GSTR-1s/using IFF.

Question 5

RAM Company Ltd., a registered supplier of Prayagraj (Uttar Pradesh), 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):

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Serial No.	Items	GST paid in (₹)
(i)	Life insurance premium paid by the company for the life insurance cover of factory employees as per the policy of the company. There is no legal obligation to provide insurance cover for employees.	1,50,000
(ii)	In the month of September of previous financial year, RAM 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 upto 30th April (current financial year).	
(iii)	Raw materials purchased which are used for exempted goods supplied as 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%).	48,000
(vi)	Raw materials purchased from Neha Traders (Invoice of Neha Traders is received in the month of April but goods were received in month of June)	20,000
(vii)	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
(viii)	Goods used for setting up tele-communication towers	50,000

Other information:

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

Compute the amount of net ITC available to RAM Company Ltd. for the month of April with necessary explanations for the treatment of all the items in the table 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. (PYP 9 Marks Nov'22)

Answer 5

Computation of ITC available to RAM Company Ltd. for the month of April

S. No.	Particulars	ITC (₹)
(i)	Life insurance premium paid by the company for factory employees [ITC is blocked under section 17(5) since it is not obligatory for the employer to provide life insurance service to its employees under any law.]	Nil

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(ii)	Raw material sent to job worker [ITC taken in the month of September last year is valid since. Further, since 1 year period from of the date of receipt of inputs by the job worker has yet not lapsed in April, there will be no tax liability on such inputs.]	Nil
(iii)	Raw materials used for zero rated supply [ITC can be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply]	50,000
(iv)	Work contractor's service [ITC on works contract services supplied for construction of an immovable property is blocked. Repairs of building debited to P & L Account does not amount to 'construction' and it is not blocked under section 17(5), hence ITC is available]	30,000
(v)	Capital goods purchased in respect of which depreciation is claimed ⁸ on the tax component [ITC is not available when depreciation has been claimed on the tax component of the cost of capital goods under the Income-tax Act.]	Nil
(vi)	Goods purchased from Neha Traders [ITC is available assuming that that invoice is received in the month of April in the current financial year, but goods were received in the month of June in the preceding financial year. ⁹]	20,000
(vii)	Cars purchased for making further supply [Though ITC on motor vehicles used for further supply of such vehicles is not blocked, ITC on goods destroyed is blocked under section 17(5)]	Nil
(viii)	Goods used for setting telecommunication towers [ITC on goods used by a taxable person for construction of immovable property (other than plant and machinery) on his own account is blocked. Since plant & machinery excludes telecommunication tower, ITC is blocked under section 17(5). Further, such goods are not used in course or furtherance of business.]	Nil
	Total ITC available	1,00,000

⁸ under the Income-tax Act, 1961

⁹ It is also possible to assume that that invoice is received in the month of April in the current financial year, but goods are received in the month of June of the same financial year. In that case, the ITC with respect to said goods will be available in the month of June when goods will be received, and no ITC is available in April.

Question 6

M/s Diva Fashions (Proprietor Ms. Diva), a registered supplier in Ludhiana (Punjab) under GST law, has made the following supplies in the month of February 20XX:

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- (i) Supply of designer silk dresses packed in designer boxes to a boutique in Mumbai, (Maharashtra) as per contract entered with the boutique amounting to ₹ 25,00,000.
- (ii) Supply of 600 kits (at ₹ 1,000 each kit) amounting to ₹ 6,00,000 to Mrs. Arora in Amritsar (Punjab). Each kit consisted of 1 silk dupatta, 1 sari brooch and 1 lipstick.
- (iii) M/s Diva Fashions organizes a fashion show in Chandigarh. Zion Exports Ltd, a registered entity in Jaipur (Rajasthan) has sponsored the show for which M/s Diva Fashions received ₹ 7,50,000 from it.
- (iv) 200 kits are given as free gifts to customers on the occasion of 5th anniversary of M/s Diva Fashions. Each kit consists of 1 silk dupatta and 1 sari brooch. Cost of each kit is ₹ 350. The open market value of such kit of goods and of goods of like kind and quality is not available. Input tax credit has not been taken on the goods contained in the kit.
- (v) Professional services provided free of cost by Ms. Diva to her independent married sister to set up her own boutique in Delhi. Cost of providing such services is ₹ 1,00,000, but the open market value of such services and of services of like kind and quality is not available.
- (vi) M/s Diva Fashions enters into a contract on 1st February, 2021 for 3 years with Miss Shikha, a local model to act as a brand ambassador for their products for ₹ 1 lakh (exclusive of GST - 18% IGST, 9% CGST and SGST each) per annum. Miss Shikha terminated the contract on 2nd February 2023. As per the contract, M/s Diva Fashions received 25% of the total contract fees paid to Miss Shikha as the contract is terminated before 3 years, on 15th February, 2023. Miss Shikha had received the contract fee for 2 years at the time of termination of the contract.
Other information is given below -

- (a) All above amounts are exclusive of GST.
- (b) Mrs. Arora paid interest of ₹ 8,850 (inclusive of GST) for delay in making payment to M/s Diva Fashions.
- (c) Assume rates of GST as under:

S. No.	Particulars	Rate of IGST	Rate of CGST	Rate of SGST
1	Silk Dresses	18%	9%	9%
2	Designer Boxes	28%	14%	14%
3	Silk Dupatta	12%	6%	6%
4	Sari Brooch	18%	9%	9%
5	Lipstick	5%	2.5%	2.5%
6	Sponsorship received from Zion Exports Ltd.	28%	14%	14%
7	Professional services	18%	9%	9%

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From the above information, compute the total GST liability of M/s Diva Fashions for the month of February 20XX. Working notes should form part of your answer. (PYP 9 Marks May '23)

Answer 6

Computation of total GST liability of M/s Diva Fashions for the month of February, 20XX

Particulars	Amount (₹)	CGST (₹)	SGST (₹)	IGST (₹)
Supply of silk dresses in designer boxes [Since supply of silk dresses in designer boxes is naturally bundled, it is a composite supply which is treated as the supply of the principal supply (viz. silk dresses). Accordingly, rate of principal supply, i.e. silk dresses will be charged.]	25,00,000			4,50,000 [25,00,000 x 18%]
Supply of kits of silk dupatta, sari brooch and lipstick [Since supplies are not naturally bundled and a single price is being charged, it is a mixed supply. It is treated as supply of that particular supply which attracts highest tax rate (i.e., sari brooch).]	6,00,000	54,000 [6,00,000 x 9%]	54,000 [6,00,000 x 9%]	
Since sponsorship services are provided to a body corporate - Zion Exports Ltd., tax is payable under reverse charge by recipient.	7,50,000			Nil
Free gifts to customers [Not a supply as it is made without consideration and is also not covered in Schedule I because customers are not related persons.]	Nil			

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Professional services provided free of cost [Not a supply as it is made without consideration and is also not covered in Schedule I because sister being independent is not a related person.]	Nil			
Fee received for termination of contract [Being 'liquidated damages', they are merely compensation for loss due to breach of the contract and not the consideration for tolerating non-performance of contract.6]	Nil			
Interest received for delayed payment (excluding GST) [Includible in value of original supply. Further, since it is received in February itself, time of supply is when it is received i.e. February7.]	7,500 [8,850 x 100/118]	675 [7,500 x 9%]	675 [7,500 x 9%]	
GST liability		54,675	54,675	4,50,000

¹ Vide Circular No. 178/10/2022 GST dated 03.08.2022

¹ It has been most logically assumed that interest pertains to the supply of 600 kits made to Mrs. Arora. Hence, same rate of 18% is applied on it.

Question 7

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 (₹)
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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:

- 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).
- 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. (MTP 9 Marks May '20, Apr'21, PYP 7 Marks Nov'18)

Answer 7

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:

- 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)].
- ITC cannot be taken since invoice is missing and delivery challan is not a valid

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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 1916].

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.

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

Some examinees were unaware that the input tax credit in respect of raw materials used for zero rated outward supply can be availed in terms of section 16 of IGST Act, 2017. They also wrongly disallowed input tax credit in respect of work contractor's service, which is allowed in the given case vide section 17(5) of CGST Act, 2017 as the repair of building is debited to P & L Account and not capitalized along with the immovable property.

Question 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. (RTP Nov'19)**

Answer 8

- (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

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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 including when 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 notwithstanding the fact that the immovable property being constructed will be 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.

Question 9

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**
(RTP May'18)

Answer 9

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:

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- (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 fully 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 but a civil structure (excluded from “plant and machinery”) and the works contract service is not used for further supply of works contract service, ITC thereon will not be allowed.

Question 10

X, a manufacturer of roofing sheets, is having ₹ 1,60,000 as opening balance of ITC for June month. 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 making both taxable and exempt supplies.**
 - (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 exclusively 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 taxable turnover for the month of June is ₹ 60 lakh exclusive of tax.**

Compute the ITC credited for the month of June to the Electronic Credit Ledger 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 and provisions of rule 86B 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. (PYP 10 Marks May’19)

Answer 10

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

Working Note:

Particulars	Amount
GST on taxable turnover for the month of June [₹ 60,00,000 × 18%]	10,80,000

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Less: ITC available for June month in terms of rule 42		
Opening balance of ITC available in the Electronic Credit Ledger	₹ 1,60,000	
Add: ITC credited to the Electronic Credit Ledger for 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

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

Particulars	Amount (₹)
Input tax on raw materials [Note 1]	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
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 to be reversed [Note 6]	1,290

Notes:

- 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)].
- 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].
- Input tax on inputs used exclusively for making exempt supplies is not available as ITC and thus, not credited to the Electronic Credit Ledger in terms of rule 42.
- 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].
- 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].
- ITC attributable towards exempt supplies = Common credit x (Aggregate value of exempt supplies during the tax period / Total turnover in the State during the tax period) = ₹ 40,000 × ₹ 2,00,000 / ₹ 62,00,000 - (rounded off) = ₹ 1,290 (rounded off)

Question 11

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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 New registered person in 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 opening balances available with it for the tax period, is provided by the company:

CGST (₹)	SGST (₹)	IGST (₹)
50,000	30,000	1,00,000

Compute the 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. (PYP 9 Marks May'19)

Answer 11

Computation of 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	8,00,000	72,000	72,000	

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liable to CGST & SGST]				
Less: ITC available during the tax period for set off		(72,000) CGST	(10,000) IGST	(1,80,000)
[Refer Working Note Below]			(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 - 72,000)	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) as credit of CGST and SGST can be utilized only after IGST credit has been fully utilized.

Question 13

B & D Company, a partnership firm, registered 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

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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' (₹)	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	67,000	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 to be 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).

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Note: Make suitable assumptions wherever required. Stock is valued at cost price. (Old & New SM)(Same concept different figures RTP May'19)

Answer 13

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: Stock with invoice issued prior to one year	3,00,000
Stock of inputs on which ITC can be claimed	3,80,000

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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

Question 14

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 respectively.

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:

- Amount of ITC to be credited to Electronic Credit Ledger, for the month of October
- Amount of aggregate value of common credit (Tc)

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- (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 if opening balance of ITC is nil.

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. (Old & New SM, MTP 14 Marks Oct'22, Oct'23, RTP May'19)

Answer 14

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 (Tc) – 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 (Tc)	1,62,000
iii)	Common credit attributable to exempt supplies, for the month of October	
	Common credit for the month of October (Tm) [Note 9]	2,700
	Common credit attributable to exempt supplies, for the month of October (Te) – Note 10	1,080
iv)	Computation of GST liability of the company for October payable through Electronic Cash Ledger	

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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 'Tc' [Proviso to rule 43(1)(d)].
- (9) ITC attributable to a month on common capital goods during their useful life (Tm) shall be computed in accordance with rule 43(1)(e) as under:

$$= Tc \div 60$$

$$= ₹ 1,62,000 \div 60$$

$$= ₹ 2,700$$

The useful life of any capital goods shall be considered as five years from the date of invoice and the said formula shall be applicable during the useful life of the said

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capital goods

(10) The amount of common credit attributable towards exempted supplies, be denoted as 'Te', and shall be calculated as:

$$T_r = (E \div F) \times Tr^*$$

'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)].

$$T_r \times \frac{\text{Turnover of exempt supplies during the month of October}}{\text{Total turnover of XYZ Pvt.Ltd.during the month of October}} \\ = ₹ 2,700 \times \frac{10,00,000}{25,00,000} = ₹ 1,080$$

(11) Common credit attributable to the exempt supplies (Te) along with the applicable interest (which is to be ignored in this case) shall, during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit [Rule 43(1)(h)].

*Prior to the amendment vide Notification No. 16/2020 CT dated 23.03.2020 clause (f) of rule 43(1) provided that the amount of ITC, at the beginning of a tax period, on all common capital goods whose useful life remains during the tax period, be denoted as 'Tr' and shall be the aggregate of 'Tm' for all such capital goods. However, clause (f) has been omitted vide the said notification. Consequently, the term "Tr" becomes redundant in the formula provided in rule 43(1)(g). However, for the sake of computation of common credit attributable to exempt supply, value of 'Tm' has been used here. It may be noted that as per the erstwhile clause (f) of rule 43(1) value of 'Tr' was the aggregate of 'Tm.'

Question 15

Deluxe Enterprises is in possession of certain capital goods and purchases more of them as per the following particulars:

Particulars	Input tax on capital goods (Rs.)	Status of its use
Capital Goods A	12,000	Exclusively used for non-business purpose.
Capital Goods B	24,000	Exclusively used for zero- rated supplies.
Capital Goods C	60,000	Used both for taxable and exempt supplies.
Capital goods D (has been exclusively used for 2 years for exempted supplies)	1,20,000	Now there is change in use, both for taxable and exempt supplies.
Capital goods E (has been exclusively used for 3 years for taxable supplies).	1,80,000	Now there is change in use, both for taxable and exempt supplies.

Useful life of all the above capital goods is considered as 5 years.

Apportion the input tax credit of capital goods, while being informed that aggregate value of exempt supplies during the tax period being Rs. 6,00,000

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and total turnover during the tax period being Rs. 12,00,000. (MTP 8 Marks Oct '18)

Answer 15

Apportionment of common credit pertaining to capital goods

Particulars	ITC (Rs.)
Capital goods 'A' [Note-1]	Nil
Capital goods 'B' [Note-2]	24,000
Capital goods 'C' [Note-3]	60,000
Capital goods 'D' [Note-4]	72,000
	1,20,000
= Rs. 1,20,000 — Rs. 48,000 (Rs. 1,20,000 × 5% × 8 quarters)	
Capital goods 'E' [Note-5]	72,000
	NIL
= Rs. 1,80,000 — Rs. 1,08,000 (Rs. 1,80,000 × 5% × 12 quarters)	
Total common credit	2,04,000
Total ITC attributable to Common Capital Goods [C+D+E] [60,000+1,20,000+1,80,000]	3,60,000
Common credit for the tax period under rule 43(1)(e) of CGST Rules, 2017	3,400
	6,000
= 2,04,000 — 3,60,000 ÷ 60	
Common credit attributable to exempt supplies in a tax period in terms of rule 43(1)(g) of CGST Rules, 2017	1,700
	3,000
= (Turnover of exempt supplies/Total turnover) × Common credit	
= (6,00,000/12,00,000) × Rs. 3,400	6,000
Ineligible ITC to be added to output tax liability of current tax period in respect of Capital " 4	48,000
Goods D [Rs. 1,20,000 x 5% x 8 quarters]	

Notes: -

- Since capital goods "A" is exclusively used for non-business purposes, ITC is not available under rule 43(1)(a) of CGST Rules, 2017.
- For ITC purposes, taxable supplies include zero-rated supplies under rule 43(1)(b) of CGST Rules, 2017. Hence, full ITC of Rs. 24,000 is available.
- Capital goods "C" is commonly used for taxable and exempt supplies.

As per amendment- Capital goods "C" is commonly used for taxable and exempt supplies. Therefore, full ITC of GST paid on Capital Goods "C" shall be credited to the Electronic Credit Ledger as common ITC. And then, reversal of proportionate common ITC will be made during 5 years of useful life of the Capital Goods in terms of the provisions of rule 43(1)(e) and rule 43(1)(g) of the CGST Rules, 2017.

- Owing to change in use from exclusively exempt to both taxable and exempt, credit to be reduced @ 5% per quarter or part thereof in terms of rule 43(1)(c) of CGST Rules, 2017.

As per amendment- Owing to change in use from exclusively exempt to both taxable and exempt, full ITC of GST paid on Capital Goods "D" shall be credited to the Electronic Credit Ledger as common ITC. And then, ineligible ITC [i.e. Rs. 1,20,000 x 5% x 8 quarters = Rs. 48,000] shall be added to the

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output tax liability of the current tax period in terms of rule 43(1)(c) of CGST Rules, 2017. And then, reversal of proportionate common ITC will be made during remaining 3 years of useful life of the Capital Goods in terms of the provisions of rule 43(1)(e) and rule 43(1)(g) of the CGST Rules, 2017.

5. Owing to change in use from exclusively taxable to both taxable and exempt, credit to be reduced @ 5% per quarter or part thereof in terms of rule 43(1)(d) of CGST Rules, 2017.

As per amendment-Owing to change in use from exclusively taxable to both taxable and exempt, the full ITC of GST paid on Capital Goods "E", which was availed earlier would be added to the common ITC in terms of rule 43(1)(d) of CGST Rules, 2017. And then, reversal of proportionate common ITC will be made during remaining 2 years of useful life of the Capital Goods in terms of the provisions of rule 43(1)(e) and rule 43(1)(g) of the CGST Rules, 2017.

Question 16

Bhama Ltd. is registered under GST in the State of Maharashtra. It has its registered office at Mumbai. It is engaged in the business of production, manufacture and supply of fresh fruits, vegetables, fresh juices and fruit pulp etc. It has made the following intra-State supplies during the month of April:

S. No.	Particular	Amount in lakh (₹)
1.	Fresh fruits	1,100
2.	Vegetables	1,100
3.	Fresh juices	2,000
4.	Carbonated fruit drink	200

In respect of the above supply, the company has received the following inward supplies:

S. No.	Particular	Amount of purchase (₹ in lakh)	Amount of input tax credit thereon (₹ in lakh)		
			CGST	SGST	IGST
1.	Fresh fruits for further supply	800	Nil	Nil	Nil
2.	Vegetables for further supply	1,200	Nil	Nil	Nil
3.	Fruit pulp used for fruit juice and carbonated drink	200	20	20	Nil
4.	Sugar used for fruit juice and carbonated drink	100	6	6	Nil
5.	Preservatives for fruit juice and carbonated drink	100	Nil	Nil	12
6.	Water for fruit juice and carbonated drink	20	Nil	Nil	Nil
7.	Administrative expenses (common)	40	2	2	Nil

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8.	Marketing expenses (common)	50	Nil	Nil	10
9.	Purchase of machinery (capital goods) for fruit drink manufacture	40	Nil	Nil	8
10.	Motor vehicle for director official use	100	14	14	Nil

Further, for making the supplies of fruit juices, it has used the services of a Goods Transport Agency ("GTA") based in Ahmedabad which have charged ₹ 20 lakh as charges for its services. Such GTA did not exercise the option to itself pay GST on the services supplied by it and thus, did not charge any tax on its invoices. Rate of tax on GTA under reverse charge is 5%.

GST rate as applicable on outward supplies is as follows:

S. No.	Particular	CGST	SGST	IGST
1.	Fresh fruits	Nil	Nil	Nil
2.	Vegetables	Nil	Nil	Nil
3.	Fresh juices	6%	6%	12%
4.	Carbonated fruit drink	14%	14%	28%

Compute the output GST liability, available ITC and payment to be made from Electronic Cash and Credit Ledger by Bhama Ltd. for the month of April ignoring the provisions of rule 86B of the CGST Rules, 2017. Assume all the above amounts are exclusive of GST. (MTP 14 Marks March '23, PYP 14 Marks Jan'21)

Answer 16

Computation of ITC available with Bhama Ltd. for April

Particulars	ITC (₹ in lakh)			
	CGST	SGST	IGST	
I. Input tax credit on inputs, input services and capital goods				
Fruit pulp	Input tax (CGST & SGST/ IGST) paid on inputs, input services and capital goods used in the manufacture of taxable products viz., fresh juices & carbonated fruit drinks is available as input tax credit	20	20	
Sugar		6	6	
Preservatives				12
Administrative expenses		2	2	
Marketing expenses				10
Transportation charges for supply of fruit juices [Tax is payable by Bhama Ltd. @ 5% under reverse charge. Further, it is an inter-State supply since supplier is located in Ahmedabad and place of supply is Maharashtra (location of registered recipient).]				1
Machinery				8

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Motor vehicle [ITC on motor vehicle for transportation of persons with seating capacity of up to 13 persons is blocked for a supplier who is not engaged in further supply of such vehicles, transportation of passengers or imparting training on driving such vehicles.]	-	-	
Total	28	28	31
II. Input tax credit to be reversed on inputs and input services			
Common credit of CGST on administrative expenses being used commonly for taxable and exempt products = ₹ 2 lakh Exempt turnover = ₹ 2,200 lakh; Total turnover = ₹ 4,400 lakh Common credit attributable to exempt supply ₹ in lakh $[2 \times 2,200 / 4,400] = ₹ 1$ lakh Similar reversal for SGST credit	(1)	(1)	
Common credit of IGST on marketing expenses being used commonly for taxable and exempt products = ₹ 10 lakh; Common credit attributable to exempt supply ₹ in lakh $[10 \times 2200 / 4400] = ₹ 5$ lakh			(5)
Total ITC available for set off	27	27	26

Computation of net GST payable for the month of April

Particulars	Value ₹ [in lakh]	CGST ₹ [in lakh]	SGST ₹ [in lakh]	IGST ₹ [in lakh]
Intra-State sale of fresh fruits	1100	Nil	Nil	Nil
Intra-State sale of vegetables	1100	Nil	Nil	Nil
Intra-State sale of fresh juices	2000	120	120	
Intra-State sale of carbonated fruit drinks	200	28	28	
Total output tax liability		148	148	
Less: Payment from Electronic Credit Ledger				
IGST credit being set off against SGST liability as it can be set off against CGST and SGST liability in any order and in any proportion			(26)	
CGST and SGST credit set off against CGST and SGST liability respectively		(27)	(27)	
Net GST payable from Electronic Cash Ledger [A]		121	95	
GST payable on inward supply of GTA services under reverse charge through Electronic Cash Ledger [B]				1
[Tax payable under reverse charge, being not an output tax, cannot be set off against ITC and thus, will have to be paid in cash.]				

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Net GST payable through Electronic Cash Ledger [A] + [B]		121	95	1
Total GST payable by cash		217		

Note: In the above answer, tax payable from Electronic Cash Ledger has been computed by setting off the IGST credit against SGST liability. However, since IGST credit can be set off against CGST and SGST liability in any order and in any proportion, the same can be set off against CGST and/or SGST liabilities in different ways as well. In all such cases, net CGST and net SGST payable from Electronic Cash Ledger will differ though the total amount of net GST payable (₹ 217 lakh) in cash will remain the same.

Question 17

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

SI. No.	Particulars	Amount in ₹
	OUTWARD SUPPLY:	
(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 ₹ 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 Tamilnadu.	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 to ABC Ltd., Mumbai	30,000
(v)	Recovery agent services provided to Apex Finance Ltd., an NBFC located in Delhi	2,00,000
(vi)	Advance received during the month for future intra-State supply	9,00,000
	INWARD SUPPLY:	
(i)	Imported computer accessories from Korea and the goods landed in Mumbai Port. The goods reached at his registered premises on 3 rd January. IGST has been paid on imported goods on 28 th December of preceding year.	5,00,000
(ii)	Availed goods transport services from M/s Speed Trans of Kolkata, a Goods Transport Agency (GTA), with regard to transport of traded goods where rate of CGST/SGST @ 2.5% each IGST @ 5% was applicable. M/s Speed Trans has not exercised the option to itself pay GST on GTA services provided by it.	1,00,000

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(iii)	Apart from the above, received 15 invoices involving IGST of ₹ 1,00,000, during the current month	--
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Mr. Rishi provided the following additional information:

- (a) Turnover for the previous financial year was ₹ 21 lakh.
 - (b) He had availed services in an inter-State transaction with a taxable value of ₹ 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 1st January). However, tax due under the said transaction was paid to Government and credit availed in the month of transaction itself.
 - (c) Out of the 15 invoices as per above, 12 invoices involving IGST of ₹ 95,000 were uploaded by the suppliers in their GSTR-1 return and got reflected in GSTR-2B of Mr. Rishi.
 - (d) He had sent goods valued ₹ 1,00,000 to his job worker, in the State of Kerala, who further processed the said goods and made direct supply on 31st January from Kerala to a buyer in the State of Maharashtra at a price of ₹ 1,00,000. Mr. Rishi has declared the job worker's place of business / premises as his additional place of business or the job worker is registered.
 - (e) Out of advance received for future supply, ₹ 5,00,000 related to supply of goods and the rest related to service.
 - (f) Rates of CGST, SGST and IGST are 9%, 9% and 18% respectively for both inward and outward supply of goods and services unless otherwise provided.
 - (g) All the amounts 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 and SGST or IGST, as the case may be) for the month of January. Assessee wants to make the cash payment of GST under SGST head as far as possible.

(MTP 14 Marks Apr'23, PYP 14 Marks Nov'20)

Answer 17

Computation of net GST payable in cash for the month of January

S.N o.	Particulars	Amount (Rs.)	CGST (Rs.)	SGST (Rs.)	IGST (Rs.)
A.	GST liability on outward supply				
(i)	Computers supplied without consideration [Not a supply as it is made without consideration and is also not covered in Schedule I because computers have been supplied to an unrelated person and ITC has also not been availed on the same.]	Nil			
(ii)	Consignment of laptops supplied at the instruction of third person	6,00,00 0			1,08,000

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	[Since supply is a bill to ship to supply where the goods are delivered on the direction of a third person-ZX Computers, goods are deemed to be received by ZX Computers and thus, the place of supply is Tamil Nadu. Hence, it is an inter-State supply.]				[6,00,000 18%]
(iii)	Stock counting service to Mls XY	80,000	7,200	7,200	NIL
	Impex of Gujarat		[80,000 X 9%]	[80,000 X 9%]	
	[Intra-State supply as the place of supply is the location of recipient, viz. Mumbai. Godown at Mumbai being a fixed establishment is the location of recipient.]				
(iv)	Service apartment rented in Mumbai	30,000	2,700	2,700	
	[Taxable, since services of renting of residential dwelling to a registered person are not exempt. Intra-State supply since place of supply is Maharashtra as property is located in Mumbai.]		[30,000 X 9%]	[30,000 X 9%]	
(v)	Recovery agent services provided to an NBFC [Tax is payable by the NBFC under reverse charge.]	2,00,000	-	-	-
(vi)	Advance received for intra-State supply	4,00,000	36,000 [4,00,000 X 9%]	36,000 [4,00,000 X 9%]	
	[Tax on advance received for supply of goods of T 5,00,000 will be payable at the time of issuance of invoice.]				
(vii)	Finished goods sold from the premises of the job worker [Supply of goods by principal from the	1,00,000	9,000 [1,00,000 X 9%]	9,000 [1,00,000 X 9%]	

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	job worker's premises is regarded as supply by principal only irrespective of the location of job worker. Therefore, since the place of supply is the location where movement of goods terminates for delivery to recipient, i.e., Maharashtra, it is an intra-State supply.]				
	Total Tax liability on outward supplies		54,900	54,900	1,08,000
B.	GST liability on inward supplies under reverse Charge				
(i)	GTA services availed from M/s Speed Trans	1,00,000			5,000 [1,00,000 X 5%]
	[Tax is payable under reverse charge on the GTA services received by a registered person since GTA has not opted to pay tax itself. Further, it is an inter-State supply since supplier is located in Kolkata and place of supply is Maharashtra (location of registered recipient)]				
C.	Input tax credit				
	Import of computer accessories [Input tax, Inter alia, includes IGST charged on import of goods]	5,00,000 ¹			90,000 [5,00,000 X 18%]
	GTA services availed	1,00,000			5,000
	IGST on invoices received during the month [ITC can be claimed only on the invoices uploaded by supplier in Form GSTR-1 and reflected in GSTR-2B.]				95,000
	Less: Input tax reversed [Outward supply, tax on which is payable under reverse charge is considered as exempt supply for the purpose of reversal of ITC. = T 1,90,000 x 2,00,000 / 19,10,000 (T 1,90,000 x turnover of exempt supply / total turnover) [The condition for making the payment for the supply within 180 days so that the ITC availed				(19,895)

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	does not get added to the output tax liability does not apply to reverse charge supplies. Thus, ITC on T 4,00,000 will not be affected.]				
	Total ITC of IGST available for set off		-	-	1,70,105
D.	Computation of net GST payable in cash				
	Total tax liability on outward supplies		54,900	54,900	1,08,000
	Less: ITC of IGST		(54,900)	(7,205)	(1,08,000)
	Forward charge liability on outward supplies payable in cash after set off of ITC		-		
	Reverse charge liability on inward supplies payable in cash without set off of ITC [Tax payable under reverse charge, being not an output tax, cannot be set off against ITC and thus, will have to be paid in cash.]				5,000
	Total net GST liability payable in cash		-		5,000

1 It has been assumed that the value of imported computer accessories is inclusive of basic customs duty and social welfare surcharge and consequently, the IGST has been computed on the same.

Question 18

Keeping all the facts and figures of the above question unchanged, compute the GST liability of B & D Company payable from Electronic Credit Ledger and/or Electronic Cash Ledger, as the case may be, for the period covered under regular scheme. (RTP May '19)

Answer 18

Output tax liability of B & D Company under regular scheme

From 03.10.20XX, firm will pay tax under regular scheme on monthly basis in terms of sub-sections (1) and (7) of section 39 of the CGST Act, 2017 and will be eligible to avail ITC on inputs held in stock and capital goods as on 02.10.20XX in terms of section 18 of the CGST Act, 2017 as also on goods and services procured on or after 03.10.20XX and used in the course or furtherance of business in accordance with section 16 of the CGST Act, 2017. However, since common input services and capital goods are used in effecting taxable supplies as well as exempt supplies, ITC attributable to the exempt supplies will need to be added to the output tax liability of

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the month of October, 20XX in terms of section 17(2) read with rules 42 and 43 of the CGST Rules, 2017 respectively. Further, since all the sales are made within the State (eastern part of Maharashtra), CGST and SGST @ 9% each will be payable on the outward supplies.

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

Particulars	Value (₹)	CGST (₹)	SGST (₹)
Tax on outward supply of 'P' Taxable supplies from 03.10.20XX to 31.10.20XX chargeable to CGST and SGST 9% each [₹ 8,00,000 (Refer Working Note 4)]	6,25,000	56,250	56,250
Tax on inward supplies attracting reverse charge GTA services availed chargeable to CGST and SGST @ 2.5% each (₹ 1,40,000 / 7)	20,000	500	500
ITC reversal on input services [Refer Working Note 1 below]		363	363
ITC reversal on capital goods [Refer Working Note 2 below]		<u>126</u>	<u>126</u>
Total GST liability		57,239	57,239
Less: ITC [Refer Working Note 3 below]		56,739	56,739
Less: Tax paid in cash As per section 49(4) of the CGST Act, 2017 amount available in the electronic credit ledger may be used for making payment towards output tax. However, tax payable under reverse charge is not an output tax in terms of section 2(82) of the CGST Act, 2017. Therefore, tax payable under reverse charge cannot be set off against the input tax credit and thus, will have to be paid in cash.		500	500

Working Note 1

Particulars	Value (₹)	CGST (₹)	SGST (₹)
CGST & SGST @ 2.5% each paid under reverse charge on freight paid to GTA on 10.10.20XX (for the goods transported between 11.10.20XX & 20.10.20XX) will be available as ITC under regular scheme	20,00 0	500	500
CGST & SGST @ 9% each paid to Packing Agency on 09.10.20XX (for specialized packing to be carried out on 10.10.20XX on goods to be transported between 11.10.20XX & 20.10.20XX) will be available as ITC under regular scheme.	30,00 0	2,700	2,700
Total common credit		3,200	3,200

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Common credit on input services attributable to exempt supplies (rounded off) Common credit on input services availed during the period under regular scheme x (Exempt turnover made during the period under regular scheme / Total turnover during the period under regular scheme) = ₹ 3,200 x ₹ 80,000 / ₹ 7,05,000 Turnover of 'Q' (exempt turnover) from 03.10.20XX to 31.10.20XX - ₹ 80,000 [Refer Working Note 4] Total turnover from 03.10.20XX to 31.10.20XX - ₹ 7,05,000 [Refer Working Note 4]		363	363
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Working Note 2

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

Working Note 3

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

Working Note 4

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

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

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

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

Question 19

Paridhi Ltd. is a registered manufacturer engaged in taxable supply of goods. Paridhi Ltd. purchased the following goods during the month of January and provided the following information:

S. No.	Particulars	GST paid(₹)
1.	Capital goods purchased on which depreciation has been taken on full value including input tax thereon	15,000
2.	Goods purchased from Rupesh Enterprises (Rupesh Enterprises sent the invoice in the month of January, but goods were received in month of April)	20,000
3.	Car purchased for making further supply of such car. Such car is destroyed in accident while being used for test drive by potential customers	30,000
4.	Goods used for setting up telecommunication towers being immovable property	50,000
5.	Goods purchased from Sumo Ltd. (Full payment has been made by Paridhi Ltd. to Sumo Ltd. against such supply, but tax has been deposited by Sumo Ltd. in April)	10,000
6.	Truck purchased for delivery of output goods	80,000

Determine the amount of input tax credit (ITC) available to Paridhi Ltd. while filing GSTR-3B for the month of January by giving necessary explanations for treatment of various items as per the provisions of the CGST Act, 2017. You may assume that all the necessary conditions for availing the ITC have been complied with by Paridhi Ltd. (RTP May '21)

Answer 19

Computation of ITC available with Paridhi Ltd. in January

S.No.	Particulars	Amount (₹)
1.	Capital goods [Since depreciation has been claimed on the tax component of the value of the capital goods, ITC of such tax cannot be	Nil

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	availed in terms of section 16 of the CGST Act, 2017.]	
2.	Goods purchased from Rupesh Enterprises [ITC in respect of goods not received cannot be availed (Section 16 of the CGST Act, 2017). Since the goods have been received in the month of April, ITC thereon can be availed in April and not January even though the invoice for the same has been received in January.]	Nil
3.	Cars purchased for making further supply [Though ITC on motor vehicles used for further supply of such vehicles is not blocked, ITC on goods destroyed for whichever reason is blocked (Section 17(5) of the CGST Act, 2017).]	Nil
4.	Goods used for setting telecommunication towers [ITC on goods used by a taxable person for construction of immovable property on his own account is blocked even when such goods are used in the course or furtherance of business (Section 17 of the CGST Act, 2017).]	Nil
5.	Goods purchased from Sumo Ltd. [ITC can be claimed provisionally in January since all the conditions necessary for availing the same have been complied with (Section 16 of the CGST Act, 2017). However, the claim will get confirmed only when the tax charged in respect of such supply has been actually paid to the Government.]	10,000
6.	Trucks purchased for delivery of output goods [ITC on motor vehicles used for transportation of goods is not blocked (Section 17(5) of the CGST Act, 2017).]	80,000
	Total ITC available with Paridhi Ltd.	90,000

Question 20

Mr. Vijay, a registered supplier, receives 100 invoices (for inward supply of goods/ services) involving GST of ₹ 10 lakh, from various suppliers during the month of October. Compute the ITC that can be claimed by Mr. Vijay in his GSTR-3B for the month of October to be filed by 20th November in the following independent cases assuming that GST of ₹ 10 lakh is otherwise eligible for ITC:

Case I: Out of 100 invoices, 80 invoices involving GST of ₹ 6 lakh have been uploaded by the suppliers in their respective GSTR-1s filed on the prescribed due date therefor.

Case II: Out of 100 invoices, 95 invoices involving GST of ₹ 9.8 lakh have been uploaded by the suppliers in their respective GSTR-1s filed on the prescribed due date therefor. (RTP Nov '21)

Answer 20

Section 16(2) of the CGST Act, 2017 provides certain conditions for availing ITC wherein one of the conditions is that the taxpayer must be in possession of the tax invoice or other tax paying document in respect of which he is claiming the ITC. Rule 36 of the CGST Rules, 2017 lays down the documents and other conditions basis which the registered person can claim ITC. ~~Sub-rule (4) of rule 36 of the CGST Rules, 2017 stipulates that~~

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~~ITC 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 in GSTR-1, cannot exceed 5% of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers in GSTR-1.~~

As per amendment-

No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under section 37(1) unless,-

- the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in Form GSTR-1 or using the invoice furnishing facility (IFF); and**
- the details of such invoices or debit notes have been communicated to the registered person in Form GSTR-2B under rule 60(7).**

Thus, ITC can now be taken only for those invoices whose details are reflected in GSTR-2B i.e the respective suppliers (vendors) have filed the details of such invoices their GSTR-1. Earlier, ITC, in respect of invoices/debit notes not uploaded by the suppliers in their GSTR-1s/IFF, could be availed upto 5% of the eligible credit available in respect of invoices/debit notes the details of which had been furnished by the suppliers in their GSTR-1s/using IFF.

In accordance with the aforesaid provisions, given two cases have been analyzed as under:

Case I

ITC to be claimed by Mr. Vijay in his GSTR-3B for the month of October to be filed by 20th November will be computed as under-

Invoices	Amount of ITC involved in the invoices (₹)	Amount of ITC that can be availed (₹)
In respect of 80 invoices uploaded in GSTR-1	6 lakh	6 lakh [Refer Note 1 below]
In respect of 20 invoices not uploaded in GSTR-1	4 lakh	0.3 lakh [Refer Note 2 below] NIL
Total	10 lakh	6 lakh

Notes:

- In respect of invoices uploaded by the suppliers in their GSTR-1, full ITC can be availed.
- No ITC in respect of invoices not uploaded ~~has to be restricted to 5% of eligible ITC in respect of invoices uploaded in GSTR-1.~~ Thus, in respect of 20 invoices not uploaded in GSTR-1s, the ITC has been restricted to ₹ 0.3 lakh [5% of ₹ 6 lakh] **NIL**.

Case II

ITC to be claimed by Mr. Vijay in his GSTR-3B for the month of October to be filed by 20th November will be computed as under-

Invoices	Amount of ITC involved	Amount of ITC that can
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	in the invoices (₹)	be availed (₹)
In respect of 95 invoices uploaded in GSTR-1	9.8 lakh	9.8 lakh [Refer Note 1 below]
In respect of 5 invoices not uploaded in GSTR-1	0.2 lakh	0.2 lakh NIL [Refer Note 2 below]
Total	10 lakh	10 lakh

Notes:

- (1) In respect of invoices uploaded by the suppliers in their GSTR-1, full ITC can be availed.
- ~~(2) The ITC in respect of invoices not uploaded has to be restricted to 5% of eligible ITC in respect of invoices uploaded in GSTR-1. However, since in this case, the actual ITC [₹ 0.2 lakh] in respect of 5 invoices not uploaded in GSTR-1 does not exceed 5% of the eligible ITC in respect of invoices uploaded in GSTR-1s [₹ 0.49 lakh (5% of ₹ 9.8 lakh)], actual amount of ITC can be availed.~~

No ITC in respect of invoices not uploaded in GSTR-1.

Question 21

Motopower Pvt. Ltd., registered under GST, is engaged in the manufacture of 5 -seater luxury cars. The cars are manufactured in its factories located in the States of Rajasthan, Uttar Pradesh and Gujarat. It also enters into contracts for providing these cars on rent to corporate clients wherein the cost of fuel is included in the value of supply.

The company reports the following details for a tax period pertaining to its factory located in Gujarat:

Payments	(₹) (in lakh)	Receipts	(₹) (in lakh)
Raw material	4.50	Sales	30
Rent paid	1.00	Car rental income	0.50
Consumables	1.50	Income from services	2.50
Security services	0.70	Provided to Gujarat	
General insurance of cars	2.50	Government administration	
manufactured			
Works contract services	1.60		
Audit fee	0.50		
Bank charges	0.10		
Membership of Automobile Association	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 materials worth ₹ 0.50 lakh, purchased from a registered supplier located in Gujarat, were destroyed due to fire in the factory and thus, could not be used in

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the manufacturing process. Remaining raw material has been procured from various vendors located in Maharashtra.

- (ii) Rent has been paid for the factory building located in Rajasthan to its owner registered in Rajasthan.
- (iii) Payment for security services (services provided by way of supply of security personnel) for the tax period has been made to Safe and Secure Solutions Pvt. Limited, a company located in Gujarat and not registered under GST.
- (iv) General insurance services have been availed from Divided Insurance Company Ltd. registered in
- (v) Works contract services have been used by the company for construction of a foundation on which machinery to be used in the production process is to be mounted permanently.
- (vi) Audit fee is paid to M/s Pandya & Associates (registered in West Bengal with an aggregate turnover of ₹ 30 crores in the preceding financial year) for conducting the statutory audit of the company in the preceding financial year. The firm raises an e-invoice without IRN (Invoice Reference Number) for said services.
- (vii) Bank charges are towards various services availed by the company during a month with regard to its current account maintained with Manimani Bank, registered in Gujarat. The bank issued a consolidated tax invoice for all such services at the end of the month containing the details of tax charged, description of services, total value, GSTIN of the bank and Motopower Pvt. Ltd.
- (viii) The breakup of sales is as under: Sales in Gujarat – ₹ 14 lakh
Sales in States other than Gujarat – ₹ 6 lakh
Exports under Letter of Undertaking (LUT) – ₹ 10 lakh
- (ix) Car rental income pertains to renting of cars to Jamaze Travels Ltd., registered in Gujarat and cost of fuel is included in the value of said supply. Further, consumables, procured from registered suppliers located in Gujarat, include diesel (excise and VAT paid) worth ₹ 0.75 lakh used for running the cars so rented out to Jamaze Travels Ltd.
- (x) Services provided to Gujarat Government administration are under Health Training programme. 51% of the total expenditure for said programme is borne by Rajasthan Government.
- (xi) The opening balance of ITC with the company for the tax period is:

CGST - ₹ 0.50 lakh

SGST - ₹ 0.26 lakh

IGST - ₹ 0.35 lakh

Compute the total ITC available with Motopower Pvt. Ltd. for the given tax period and net GST payable [CGST, SGST or IGST, as the case may be] from Electronic Cash Ledger by Motopower Pvt. Ltd. for the given tax period.

Notes-

- (A) CGST, SGST & IGST rates on all inward and outward supplies are 9%, 9% and 18% respectively, except on renting of cars wherein CGST, SGST & IGST rates are 2.5%, 2.5% and 5% respectively.

It is important to note that credit of input tax charged on goods and services used in supplying the service of transport of passengers by any motor vehicle designed to carry passengers where the cost of fuel is included in the

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consideration charged from the service recipient, is not available except the credit of the input service in the same line of business.

- (B) The necessary conditions for availing ITC have been complied with by Motopower Pvt. Ltd., wherever applicable. You are required to make suitable assumptions, wherever necessary. (RTP Nov'22)

Answer 21

Computation of ITC available with Motopower Pvt. Ltd. for the given tax period

S. No.	Particulars	Value of supply ₹	ITC			Total ₹
			CGST*₹	SGST*₹	IGST*₹	
1.	Opening balance of ITC		50,000	26,000	35,000	1,11,000
2.	Raw Materials [₹ 4,50,000 – ₹ 50,000] [Refer Note 1]	4,00,000			72,000	72,000
3.	Rent paid for the factory building [Refer Note 2]	1,00,000	9,000	9,000		18,000
4.	Consumables procured from suppliers in Gujarat [₹ 1,50,000 – ₹ 75,000] [Refer Note 3]	75,000	6,750	6,750		13,500
4.	Security services [Refer Note 4]	70,000	Nil	Nil	Nil	Nil
5.	General insurance of cars manufactured [Refer Note 5]	2,50,000	22,500	22,500	-	45,000
6.	Works contract services [Refer Note 6]	1,60,000	14,400	14,400	-	28,800
7.	Audit fee [Refer Note 7]	50,000	Nil	Nil	Nil	Nil
8.	Bank charges [Refer Note 8]	10,000	900	900		1,800
9.	Membership of Automobile Association [Refer Note 9]	10,000	900	900		1,800
Total ITC available for the tax period			1,04,450	80,450	1,07,000	2,91,900

Computation of net GST payable

Particulars	Value of supply	CGST*	SGST*	IGST*	Total
		₹	₹	₹	₹
On intra-State sales in Gujarat	14,00,000	1,26,000	1,26,000		2,52,000
On inter-State sales other than Gujarat	6,00,000			1,08,000	1,08,000
On exports under LUT [Note 10]	10,00,000	Nil	Nil	Nil	Nil
Car rental income (Taxable @ 2.5% CGST and SGST each) [Note 11]	50,000	1,250	1,250	-	2,500

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Income from services Provided to Gujarat Government [Note 12]	2,50,000	22,500	22,500	-	45,000
Total output tax liability		1,49,750	1,49,750	1,08,000	4,07,500
Less: ITC available for being set off [Note 13 and Note 14]		(1,04,450)	(80,450)	(1,07,000)	(2,91,900)
Net GST payable from Electronic Cash Ledger		45,300	69,300	1,000	1,15,600

Notes:

- Credit of input tax paid on raw materials used in the course or furtherance of business is available in terms of section 16(1). However, ITC is not available on destroyed inputs in terms of section 17(5)(h).
- ITC on rent paid is available as the said service is used in the course or furtherance of business in terms of section 16(1).
- ITC on consumables, being inputs used in the course or furtherance of business, is available in terms of section 16(1). However, levy of GST 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 since VAT & excise paid are not covered in the definition of input tax under section 2(62). Moreover, credit of input tax charged on goods and services used in supplying the service of transport of passengers by any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, is not available except the credit of the input service in the same line of business. Thus, ITC on diesel will not be available.
- Tax on security services (services provided by way of supply of security personnel) provided by a non-body corporate to a registered person is payable under reverse charge. Since in the given case, security services have been provided by a body corporate - Safe and Secure Solutions Pvt. Limited to a registered person, GST on the same is payable under forward charge. However, since Safe and Secure Solutions Pvt. Limited is not registered under GST, it would not have charged GST on the said services and hence, no ITC is available.
- ITC on motor vehicles for transportation of persons is allowed in terms of section 17(5)(a) provided such vehicles are further supplied by the supplier. ITC is allowed on general insurance services relating to motor vehicles, ITC on which is allowed [Section 17(5)(ab)].
- Section 17(5)(c) blocks ITC 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, inter alia, machinery fixed to earth by foundation or structural support that are used for making outward supply and includes such foundation/structural support. Thus, in view of the above-mentioned provisions, ITC is available in respect of works contract service availed by Motopower Pvt. Ltd. as the same is used for construction of plant and machinery which is not blocked under section 17(5)(c).
- Audit fee are the services used in the course/ furtherance of business and thus, credit of input tax paid on such service will be available in terms of section 16(1). M/s Pandya

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& Associates is required to issue an e-invoice for audit services as e-invoicing is mandatory for the registered persons whose aggregate turnover in any of the preceding financial years exceed ₹ 20 crores. However, an e-invoice without IRN is not treated as an invoice as per rule 48(5) and hence, without a valid document, ITC cannot be claimed on such input services.

8. Bank charges are services used in the course/ furtherance of business and thus, credit of input tax paid on such service will be available in terms of section 16(1). However, ITC can be claimed only on the basis of valid documents. In case of a banking company, as per rule 54(2), a consolidated tax invoice issued for supply of services made during a month at the end of the month containing the details of tax charged, description of services, total value, GSTIN of the supplier and the recipient is deemed to be a tax invoice. Thus, ITC pertaining to the banking services received is allowed.
9. As per section 17(5)(b)(ii), ITC is blocked on membership of a club, health and fitness centre. The membership fee paid by a automobile company to Automobile Association is not covered under said section as it is distinct from membership of a club. Hence, ITC thereon is available.
10. 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].
11. Tax on services provided by way 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 is payable under reverse charge only when said service is provided by a non-body corporate to a body corporate and & an invoice charging GST @ 12% is not issued to service recipient. Since in the given case, said services are provided by a body corporate - Motopower Pvt. Ltd. to another body corporate – Jamaze Travels Ltd., GST is payable under forward charge by Motopower Pvt. Ltd. on the same.
12. Services provided to the Central Government, State Government, Union territory administration under any training programme for which 75% or more of the total expenditure is borne by the Central Government, State Government, Union territory administration are exempt from GST. However, in the given case, since the total expenditure borne by the Gujarat Government is less than 75%, services provided to it by Motopower Pvt. Ltd. are liable to GST.
13. 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].
14. 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.
15. Since the value of taxable supply other than zero-rated supply in the given tax period (₹ 14 lakh + ₹ 6 lakh+ ₹ 0.50 lakh+ ₹ 2.50 lakh) does not ₹ 50 lakh, provisions of rule 86B are not applicable and Motopower Ltd. can discharge its entire output tax liability of said period from electronic credit ledger.

***16.** CGST and SGST are chargeable on intra-State inward and outward supplies and IGST is chargeable on inter-State inward and outward supplies. Rate of CGST, SGST and IGST applied is 9%, 9% and 18% except in case of renting of cars wherein the

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rate of CGST and SGAT applied is 2.5% and 2.5% respectively.

Question 22

Gautam Pvt. Ltd., Coimbatore, Tamil Nadu, exclusively manufactures and sells product 'Alpha' which is exempt from GST vide notifications issued under relevant GST legislations. The company sells product 'Alpha' only within Tamil Nadu and it not registered under GST. Further, all the inward supplies 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 15% 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 'Alpha' on 1st July. The purchase price of such capital goods was ₹ 30 lakh exclusive of GST @ 18%.

However, effective from 1st November, exemption available on 'Alpha' 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 ₹ 60 lakh.

- The Board of Directors of Gautam Pvt. Ltd. wants to know whether they have to register under GST (after withdrawal of exemption notification)?**
- In case in the above question, Gautam Pvt. Ltd. is already registered with respect to certain taxable supplies being made by it along with manufacture of exempt product 'Alpha', other facts remaining the same, can it take input tax credit on additional machinery purchased exclusively for manufacturing 'Alpha'? If yes, then when and how much credit can be availed?**

Advice Gautam Pvt. Ltd. on the above issues with reference to the provisions of GST law.

(RTP Nov'23)

Answer 22

- Section 22(1) of the CGST Act, 2017 read with Notification No. 10/2019 CT dated 07.03.2019, inter alia, provides that every supplier who is exclusively engaged in intra-State supply of goods is liable to be registered under GST in the State/ Union territory from where he makes the taxable supply of goods only when aggregate turnover in a financial year exceeds ₹ 40,00,000.

However, the above provisions are not applicable to few specified States, i.e. States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand.

Further, a person exclusively engaged in the business of supplying goods and/or services that are not liable to tax or are wholly exempt from tax is not liable to registration in terms of section 23(1)(a) of the CGST Act, 2017.

In the given case, the turnover of the company for the half year ended on 30th September is ₹ 55 lakh which is more than the applicable threshold limit of ₹ 40 lakh. Therefore, as per section 22 of the CGST Act, 2017, the company will be liable to registration. However, since Gautam 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) of the CGST Act, 2017. 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.

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It is important to note here that in terms of section 2(6) of the CGST Act, 2017, the aggregate turnover limit of ₹ 40 lakh includes exempt turnover also. Therefore, turnover of 'Alpha' before 1st November will also 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) of the CGST Act, 2017.

- (b) Rule 43(1)(a) of the CGST Rules, 2017 disallows input tax credit on capital goods used or intended to be used exclusively for effecting exempt supplies.

However, as per section 18(1)(d) of the CGST Act, 2017, where an exempt supply of goods and/or services by a registered person becomes a taxable supply, such person gets entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable.

Rule 40(1)(a) of the CGST Rules, 2017 lays down that the credit on capital goods can be claimed after reducing the tax paid on such capital goods by 5% per quarter of a year or part thereof from the date of the invoice.

Therefore, in the given case, Gautam Pvt. Ltd. could not claim credit on machinery till the time the supply of product 'Alpha' 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 'Alpha' 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 [₹ 30,00,000 x 18%]	₹ 5,40,000
Credit to be reduced [₹5,40,000 x 5% x 2]	₹ 54,000
Amount of credit that can be taken [₹ 5,40,000 - ₹ 54,000]	₹4,86,000

Question 23

Sukhdev is a mining engineer. He has crossed the threshold limit for registration under the GST law and is duly registered in the State of Maharashtra. He effects the following transactions in the month of March, 2019 and wants you to compute the tax payable in cash. He has filed bond/ LUT to claim benefits from zero-rated supplies. The following are the particulars furnished by him.

Sl. No	Particulars	Value of supply in ₹
(a)	Sukhdev, being an operating member in mining and exploration services at Mumbai High, has provided certain services to the Joint Venture (JV) in which he is also a participant. He believes that the consideration received from	12,00,000

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	the JV is 'Cost Petroleum' and not taxable.	
(b)	He has purchased certain machinery from outside the State, to render services to the JV at Mumbai High.	6,00,000
(c)	He has obtained legal opinion from a local firm of advocates to enter into the contract with the JV, for providing services to it.	1,00,000
(d)	He has obtained accommodation from the State Government to locate his office close to the sea shore.	2,00,000
(e)	He gets a portion of the petroleum silt as part of the compensation while exploring the petroleum reserves in the Bombay High- which as per the contract with the Government is part of 'Cost Petroleum'.	6,00,000
(f)	He sells the petroleum silt to a SEZ Developer in Mumbai	6,80,000
(g)	Consideration is received towards transfer of tenancy rights, which according to Sukhdev is not liable to GST as it has suffered stamp duty.	8,00,000
(h)	On violation of the terms in production sharing agreement, Sukhdev has paid liquidated damages to the Government.	3,00,000
(i)	He has been assigned the right to collect royalty on behalf of Maharashtra Government, as 'Excess Royalty Collection Contractor'. He has noticed that the mining lease holders have short paid 2,00,000 as IGST from what had been exempted to him under the assignment.	--
(j)	He has sold self-fabricated machinery through his agent in Mumbai, that has been used for 2 years, the value of which is not available in the open market. The agent sells it immediately to an unrelated customer in Mumbai.	10,00,000
(k)	Opening Balance and brought forward tax credits are as follows:	
	- Electronic Cash Ledger - CGST	12,000
	- Electronic Credit Ledger - CGST	18,000
	- Electronic Credit Ledger - SGST	12,000
	- Electronic Credit Ledger - IGST	60,000
(l)	Supply value is exclusive of taxes. Supply of services are taxable at CGST 9%, SGST 9% and IGST 18% and supply of goods are taxable at CGST 2.5%, SGST 2.5% and IGST 5%. Determine the tax payable in cash. Provide suitable notes where required.	

(PYP 14 Marks Nov '19)

Answer 23

Computation of tax payable in cash

S. No.	Particulars	Amount (₹)	CGST (₹)	SGST (₹)	IGST (₹)
A.	GST liability on outward supply				

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(i)	Consideration for services provided as an operating member to the Joint Venture [The operating member is providing the mining and exploration service to the joint venture, and thus, the consideration received therefor is not cost petroleum and hence, is liable to tax.]	12,00,000	1,08,000	1,08,000	
(ii)	Compensation received in the form of petroleum silt, which, as per the contract with the Government, is part of cost petroleum [Cost petroleum is not a consideration for service to the Government and thus, is not taxable.]	6,00,000	Nil	Nil	
(iii)	Sale of petroleum silt to a SEZ developer [Supply to SEZ developer is a zero-rated supply and no tax is payable on the same if made under a bond/LUT.]	6,80,000			Nil
(iv)	Consideration for transfer of tenancy rights [Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable even though stamp duty has been paid on the same.]	8,00,000	72,000	72,000	
(v)	Sale of self-fabricated machinery ¹ [Since open market value of the machine is not available, the value will be 90% of the price charged for the supply of machinery by the agent to his unrelated customer.] ²	9,00,000	22,500	22,500	
Total tax liability on outward supplies			2,02,500	2,02,500	
B.	GST liability on inward supplies under reverse charge				
(i)	Legal services provided by a firm of advocates to Sukhdev, i.e. a business entity ³	1,00,000	9,000	9,000	

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(ii)	Renting of immovable property provided by the State Government to Sukhdev (a registered person)	2,00,000	18,000	18,000	
(iii)	Assignment, by the State Government, of the right to collect royalty from mining lease holders to the extent the exemption is not available				2,00,000
Total tax liability on inward supplies under reverse charge			27,000	27,000	2,00,000
C.	Input tax credit				
(i)	Opening balance		18,000	12,000	60,000
(ii)	Inter-State purchase of machinery	6,00,000			30,000
(iii)	Legal services	1,00,000	9,000	9,000	
(iv)	Renting of immovable property	2,00,000	18,000	18,000	
(v)	Assignment of right to collect royalty				2,00,000
Total ITC [ITC may be availed for making zero rated supply even if such a supply is an exempt supply. Sale of petroleum silt, being a non- taxable supply, is an exempt supply but since it is also a zero-rated supply, ITC can be availed for making such supply.]			45,000	39,000	2,90,000
D.	Computation of tax payable in cash				
	Total tax liability on outward supplies		2,02,500	2,02,500	
	Less: ITC of IGST		1,26,500	1,63,500	
	Less: ITC of CGST and SGST		45,000 (CGST)	39,000 (SGST)	

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Forward charge liability on outward supplies payable in cash after set off of ITC		31,000		
Reverse charge liability payable in cash without set off of ITC [Tax payable under reverse charge, being not an output tax, cannot be set off against ITC and thus, will have to be paid in cash.]		27,000	27,000	2,00,000
Total tax liability payable in cash [Since ₹12,000 (CGST) is available in Electronic Cash Ledger as opening balance, additional ₹ 46,000 (CGST) needs to be paid in cash.]		58,000	27,000	2,00,000
Payment of liquidated damages to the Government [Services provided by the Government by way of tolerating non-performance of a contract for which consideration in the form of liquidated damages is payable to the Government under such contract, is exempt from GST. Hence, no tax will be payable by Sukhdev on such input service.]	3,00,000	Nil	Nil	

Note: In terms of section 49B of the CGST Act, 2017, full (100%) IGST credit of ₹ 2,90,000 must be utilized first before using CGST or SGST credit. However, the said IGST credit can be set off against the CGST and SGST liability in any order and in any proportion. Thus, the final answer in each case would vary

Question 24

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.

Sl. No.	Particulars	Amount in lakh (₹)
	Turnover in the relevant month of each of the units:	
(1)	Mumbai (Maharashtra)	12.00
(2)	Bangalore (Karnataka)	60.00
(3)	Hyderabad (Andhra Pradesh)	36.00
(4)	Trivandrum (Kerala)	72.00

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(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
(7)	From the above, ITC exclusive to Trivandrum and Hyderabad units (CGST and SGST of ₹ 3.00 lakh each)	6.00
(8)	Rest of the credit 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 9% CGST and 9% SGST, which is charged and indicated separately	118.00

Also make your comments regarding the amount of ITC in credit notes, if exceeds the ITC from invoices and debit notes in a particular month for all or any of the units. (PYP 5 Marks Nov '20)

Answer 24

Computation of the amount of credit distributed¹⁴ by the ISD to various units of the company

Particulars	Mumbai Unit			Bangalore Unit			Hyderabad Unit			Trivandrum Unit		
	CG ST (₹)	SGS T (₹)	IGS T (₹)	CG ST (₹)	SGS T (₹)	IGS T (₹)	CG ST (₹)	SGS T (₹)	IGS T (₹)	CG ST (₹)	SG ST (₹)	IGS T (₹)
ITC exclusive to Bangalore unit available as IGST [ITC of IGST is distributed as IGST only.]						12						
ITC exclusive to Trivandrum and Hyderabad units [ITC of CGST and SGST is distributed as CGST and SGST to unit located in Kerala (Trivandrum unit) and as IGST to unit located in a different State (Hyderabad unit) in the ratio of 2:1.]									2	2	2	

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Common credit for all units [Balance credit of CGST and SGST (since supplies are received locally) of 15 lakh each (₹ 48 lakh – ₹ 12 lakh			2			10			6	6	6	
– ₹ 6 lakh) to be distributed among all four units in proportion of their turnover of the relevant month, i.e., 1:5:3:6. Further, ITC will be distributed to Mumbai, Bangalore and Hyderabad unit as IGST and to Trivandrum unit as CGST and SGST.]												
Additional ITC [₹ 6 lakh (₹ 50 lakh \times 12%)] on account of debit note received ¹⁶ from supplier to be distributed among all four units in proportion of their turnover of the relevant month, i.e., 1:5:3:6. [ITC of IGST is distributed as IGST only.]			0.4			2			1.2			2.4
ITC to be reduced on account of credit note received from supplier, exclusive to Kerala unit ¹⁷ 9% of (₹ 118 lakh ¹⁸ \times 100/118)										9	9	
Total ITC apportioned to each unit	0	0	2.4	0	0	2.4	0	0	9.2	-1	-1	2.4
Negative amount apportioned to Trivandrum unit shall be added to its output tax liability since ITC distributed to it by ISD is less than the amount reduced on account of credit note										1	1	

Question 25

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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 M/s Fly-by-Night. You have been approached by M/s Fly-by-Night to give your advice on the following questions 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?
(PYP 5 Marks Nov '20)

Answer 25

- (i) Yes, it is possible for the Department to restrict the utilization of credit which is already availed if there are reasons to believe that such ITC has been fraudulently availed or is ineligible.
- (ii) The restrictions can be imposed under the following circumstances: -
 - (a) ITC has been availed on the basis of tax invoices/valid documents -
 - issued by a non-existent supplier or by a person not conducting any business from the registered place of business; or
 - without receipt of goods or services or both; or
 - the tax in relation to which has not been paid to the Government
 - (b) Registered person availing ITC has been found non-existent or not to be conducting any business from the registered place of business; or
 - (c) Registered person availing ITC is not in possession of tax invoice/valid.

Question 26

ABC Ltd., a registered supplier, is engaged in the manufacture of dyeing machines. The company provides the following information pertaining to GST paid on the purchases made/input services availed by it during the month of September 20XX :

	Particulars	GST Paid ₹
(i)	Purchase of 10 apple i-pads which were given as gift to employees	1,85,000
(ii)	Payment for club membership availed by employees as per terms of employment	90,000
(iii)	Purchase of maxi cab for transport of its employees to and from home to office	70,000
(iv)	Purchase of calendars and diaries for distribution as new year compliments to customers and distributors	25,000
(v)	Works contract services availed for erection and installation of RO treatment plant in factory	35,000

Determine the amount of ITC available to ABC Ltd. for the month of September, 20XX by giving necessary explanations for treatment of various items. None of expenses incurred for staff was under statutory obligation and seating capacity of the maxi cab was excluding driver. Subject to the information given above, all the conditions necessary for availing the ITC have been fulfilled. (PYP 5 Marks Jan'21)

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Answer 26

Computation of ITC available with ABC Ltd. for the month of September, 2020

Particulars	GST paid (₹)
Apple i-pads given as gifts to the employees [ITC in respect of goods that are disposed of by way of gifts is blocked.]	Nil
Club membership availed by employees [ITC on membership of a club is blocked as ABC Ltd. is not under any statutory obligation to provide the same to its employees.]	Nil
Maxi cab for transport of employees [ITC on motor vehicles for transportation of persons with seating capacity of more than (or exceeding) 13 persons (including the driver) used for any purpose, is allowed.]	70,000
Calendars and diaries for distribution as compliments to customers and distributors [ITC in respect of goods that are disposed of by way of gifts is blocked.]	Nil
Works contract services for erection and installation of RO treatment plant in factory ⁴ [ITC on works contract service used for construction of a plant and machinery fixed to earth by foundation or structural support is allowed.]	35,000
Total ITC available	1,05,000

Question 27

On 25th August, 2023, M/s Agarwal & Agarwal Ltd., a registered supplier of textile products located in Bengaluru (Karnataka) purchased one machine for ₹ 12,39,000 including IGST, from one supplier of Maharashtra who issued invoice on the same date. M/s Agarwal & Agarwal Ltd. put the machinery to use on the same day and availed input tax credit for the eligible amount.

M/s Agarwal & Agarwal Ltd. sold this machine after using the machine in the process of manufacture of taxable goods for ₹ 7,50,000 excluding 18% IGST, to Mr. Suresh Kumar of Andhra Pradesh on 20th August 2024. During purchase as well as sale of the machinery, the 18% IGST rate applicable was 18%.

Is M/s Agarwal & Agarwal Ltd., required to pay GST? If yes, calculate the amount of tax payable under GST Laws at the time of sale of the machine. Also briefly state the relevant statutory provisions.

Note: Assume that there was no change in legal position after August, 2023. (PYP 5 Marks Nov '18)

Answer 27

As per section 18 of the CGST Act, 2017, if capital goods/ plant and machinery on which input tax credit (ITC) has been taken are supplied outward by a registered person, he must pay an amount that is higher of the following:

- (a) ITC taken on such goods reduced by 5% per quarter of a year or part thereof

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from the date of issue of invoice for such goods or

(b) tax on transaction value.

Accordingly, the amount payable on supply of machinery by M/s Agarwal & Agarwal Ltd. shall be computed as follows:

Particulars	₹
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 year 2017-18 = (₹ 1,89,000 × 5%) × 3 quarters	28,350
(ii) For the year 2018-19 = (₹ 1,89,000 × 5%) × 2 quarters	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 Ltd. is required to pay GST amounting to ₹ 1,41,750 at the time of sale of machinery.	

** In the above solution, amount payable towards disposal of machine has been computed on the basis of provisions of section 18(6) of the CGST Act, 2017 read with rule 40(2) of the CGST Rules, 2017 [wherein ITC to be reversed for the period of use of capital goods/machine has been computed @ 5% for every quarter or part thereof from the date of the issue of invoice].

However, the said amount can also be computed in accordance with the provisions of section 18(6) of the CGST Act, 2017 read with rule 44(6) of the CGST Rules, 2017 [wherein ITC involved in the remaining useful life (in months) of the capital goods/machine will be reversed on pro-rata basis, taking the useful life as 5 years].

Question 28

When lock down was announced due to corona virus, BCD Ltd. decided that it would sell its own branded groceries at 20% of the cost to any organisation who is providing free food and groceries to the poor and needy as its contribution to the nation. The details of the transaction from April, 2020 to September, 2020 during which it had done this are given below:

S.No.	Particulars	Amount in rupees
i	Total turnover (excluding GST) of branded groceries and food grains during the period as per the invoices issued and accounted for GST purposes (Actual value of the goods is ₹ 30 crores)	6 crore
ii	Tax paid on the security and maintenance services during the period	CGST-1.35 lakh SGST - 1.35 lakh
iii.	Tax paid on the rent paid on the warehouse for storage of goods and for undertaking packing etc.	CGST - 4.50 lakh SGST - 4.50 lakh

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iv	Tax paid on packing materials and printing charges on packing materials	CGST-11.15 lakh SGST-11.15 lakh
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What is the value to be adopted for the purpose of payment of GST?

Compute the admissible input tax credit and output tax liability and indicate whether any tax has to be paid in cash. Assume the rate of CGST and SGST as 2.50% each on the branded groceries and food grains and all sales are intra-State only. (PYP 4 Marks Jul'21)

Answer 28

Particulars	Amount (₹)	
Value of supply adopted for payment of GST [Transaction value, which is the price actually paid or payable for the supply, is adopted for purpose of payment of GST.]	6,00,00,000	
Output tax liability	CGST @ 2.5% (₹)	SGST@ 2.5% (₹)
Output tax liability on ₹ 6 crores [A]	15,00,000	15,00,000
Input tax credit	CGST (₹)	SGST (₹)
Security and maintenance	1,35,000	1,35,000
Warehousing rent	4,50,000	4,50,000
Packing and printing	<u>11,15,000</u>	<u>11,15,000</u>
Total input tax credit available [B]	17,00,000	17,00,000
Net tax payable in cash [A] - [B]	Nil	Nil

Question 29

Supermarket is a proprietary firm and a GST registered supplier in Ahmedabad, Gujarat. The details of supplies, purchases and expenses for the month of December 20XX of Supermarket are as given below:

Particulars	Amount (₹)
Details of outward supplies:	
(i) Intra-State	45,00,000
(ii) Inter-State	15,00,000
(iii) Exempt supplies under GST	6,00,000
Details of inward supplies:	
(i) Intra-State	40,00,000
(ii) Inter-State	10,00,000
(iii) Exempt supplies under GST	5,00,000

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Details of expenses:	
(i) Freight paid to GTA for intra-State transportation of goods [20% of the freight paid was towards transportation of goods not liable to GST.]	60,000
(ii) Telephone expenses	
[Out of the above, ₹ 18,000 was spent on landline installed in the sales outlet and ₹ 12,000 was spent on phones provided to employees in relation to the work of the firm.]	30,000
(iii) Premium paid on insurance taken on car used by proprietor of the firm in relation to the work of the firm (intra-State)	8,500
(iv) Outdoor catering service expenses incurred during Diwali celebrations in the sales outlet	40,000
(v) Monthly rent for the premises of sales outlet	60,000

It is further given that -

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

All the inward and outward supplies are made by Supermarket from / to registered place of business in Gujarat. Inward supplies of ₹ 50 lakh were used only for making taxable supplies and exempt inward supplies of ₹ 5 lakh were used only for making exempt outward supplies.

Wherever applicable for the purposes of reverse charge payable by Supermarket, CGST, SGST and IGST rates are 2.5%, 2.5% and 5% respectively. In all other cases, CGST, SGST and IGST rates are 9%, 9% and 18% respectively.

There is no opening balance in the electronic cash ledger or in electronic credit ledger.

Subject to the information as given above, 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 ITC available for apportionment;
- (3) ITC attributable to exempt supplies out of common ITC;

You are required to examine the applicability of rule 86B of the CGST Rules relating to utilisation of ITC and if applicable, calculate the amount of ITC available for utilisation towards payment of GST. However, there is no need to explain exceptions to rule 86B.

Make suitable assumptions, wherever required and working notes as may be needed.

Brief notes are required only to support the calculation and the numerical outputs required in the case of common ITC available for apportionment and applicability of rule 86B of the CGST Rules.

Ensure that every transaction in the Question is covered in the Answer for the purpose of calculation of numerical outputs. (PYP 14 Marks May'22)

Answer 29

Computation of ITC credited to Electronic Credit Ledger

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Particulars	Value (₹)	CGST (₹)	SGST (₹)	IGST (₹)
GST paid on intra-State inward supplies taxable @ 9%	40,00,000	3,60,000	3,60,000	
GST paid on inter-State inward supplies taxable @ 18%	10,00,000			1,80,000
Inward supplies exempt from GST [Since exempt, no GST is paid.]	5,00,000	--	--	--
Freight paid to GTA for intra-State of taxable goods ¹ @ 2.5% [Since rate of GST on GTA services is 2.5%, tax is payable under reverse charge.]	48,000 [60,000 × 80%]	1,200	1,200	--
GST on freight paid to GTA for intra-State of exempt goods ² @ 2.5% under reverse charge [ITC on input services used exclusively in relation to exempt supplies is not available.]	12,000 [60,000 × 20%]	--	--	
GST on telephone expenses ³ @ 9% [ITC of services used in the course or furtherance of business is available.]	30,000	2,700	2,700	
Premium paid on insurance taken on car used for firm's work [ITC is blocked u/s 17(5) on general insurance services relating to those motor vehicles which are ineligible for ITC.]	8,500	--	--	
Outdoor catering services [ITC on outdoor catering is blocked u/s 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.]	40,000	--	--	
GST on monthly rent for premises of sales outlet @ 9% ⁴ [ITC of services used in the course or furtherance of business is available.]	60,000	5,400	5,400	
ITC credited to the electronic ledger		3,69,300	3,69,300	1,80,000

(1) **Computation of common ITC available for apportionment**

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
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ITC credited to Electronic Credit Ledger	3,69,300	3,69,300	1,80,000
Less: ITC on taxable goods	3,60,000	3,60,000	1,80,000
Less: ITC on freight paid to GTA for transportation of taxable goods	1,200	1,200	
Common credit for apportionment	8,100	8,100	--

(2) Computation of ITC attributable towards exempt supplies

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
ITC attributable towards exempt supplies = Common credit x (Aggregate value of exempt supplies during the tax period / Total turnover during the tax period)			
[₹8,100 x (₹6,00,000 / ₹66,00,000)] ⁵	736	736	

(3) Computation of ITC available for utilization towards payment of tax in terms of rule 86B

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
Maximum amount of output tax liability that can be discharged from ECrL [99% of Output tax liability]	4,00,950 [45,00,000 × 9% × 99%]	4,00,950 [45,00,000 × 9% × 99%]	2,67,300 [15,00,000 × 18% × 99%]
[Since the value of taxable supply other than exempt supply in December 2021 (₹ 45 lakh + ₹ 15 lakh) exceeds ₹ 50 lakh, amount from electronic credit ledger which it can use to discharge its output tax liability of said month cannot exceed 99% of such tax liability in terms of rule 86B of the CGST Rules, 2017.]			
Amount of ITC available for utilization towards payment of tax [Since the ITC available in ECrL after reversal thereof is lower than the aforesaid amount, entire ITC can be utilised towards payment of GST.]	3,68,564 [3,69,300 - 736]	3,68,564 [3,69,300 - 736]	1,80,000

¹ It has been most logically presumed that remaining 80% of the freight has been paid exclusively on transportation of taxable outward supply of goods and GTA providing said services is registered in the State of Gujarat.

² It has been most logically presumed that freight has been paid on transportation of outward supply of exempt goods.

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In case it is assumed that freight has been paid on transportation of inward supply of exempt goods, amount of ITC available with regard to the same will change accordingly.

³ Telephone expenses have been considered to be in the nature of input services. Further, it has been assumed that the supplier is registered in the State of Gujarat.

⁴ It has been assumed that supplier of services of renting of premises is registered in the State of Gujarat.

⁵ Telephone expenses have been considered to be in the nature of input services.

However, it is also possible to consider the telephone expenses to be in the nature of capital goods to be reversed in accordance with provisions with rule 43 of the CGST Rules, 2017.

Question 30

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 two stage 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

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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.

(MTP 14 Marks Nov'21, Mar'21)

Answer 30

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:

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- (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
Work 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 include 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 exclude pipelines laid outside the factory premises and telecommunication towers.

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- (3) As per section 17(5), ITC on travel benefits extended to employees on home travel concession and membership of health and fitness centre is blocked unless it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

The question requires the examinees to compute the GST liability. In some cases, examinees did not include freight charges for working out value of taxable supply while computing output tax liability of Flowchem. Moreover, the answer was not supported by the appropriate explanatory notes. Even where explanatory notes were provided, the same were general in nature.

Question 31

'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:

- a) **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**
- b) **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.**
- c) **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**
- d) **Freight paid to goods transport agency (GTA) for inward transportation of taxable items – ₹ 1,00,000**
- e) **Freight paid to GTA for inward transportation of exempted items – ₹ 80,000**
- f) **Freight paid to GTA for inward transportation of non-taxable items - ₹ 20,000**
- g) **Monthly rent payable for the complex – ₹ 5,50,000 (one third of total space available is used for personal residential purpose).**
- h) **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**
- i) **Salary paid to the regular staff at the Store – ₹ 2,00,000**
- j) **GST paid on inputs used for personal purpose – ₹ 5,000**
- k) **GST paid on rent a cab service availed for transportation of employees, which is not obligatory under any law – ₹ 4,000**
- l) **GST paid on items given as free samples – ₹ 4,000**

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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 if opening balance of ITC is nil.

Note:

- (1) GTA has not exercised the option to pay tax itself. Tax is payable on such services @ 5%. Rate of GST in all other cases is 18% (Ignore CGST, SGST or IGST for the sake of simplicity).
- (2) All the inward supplies are procured 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. (RTP Nov'18)

Answer 31

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 ['C1'] is calculated as under-

$$C1 = T - (T1+T2+T3)$$

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

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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	4,000
[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.]	
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 service 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) [T_3] **	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

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T₄ = Input tax credit attributable to inputs and input services intended to be used exclusively for effecting taxable supplies

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 [T₄]	9,95,000

Computation of T₄,

$$\text{Common Credit } C_2 = C_1 - T_4$$

$$= ₹ 11,06,000 - ₹ 9,95,000 = ₹ 1,11,000$$

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

ITC attributable towards exempt supplies is denoted as 'D₁' and calculated as-

$$D_1 = (E \div F) \times C_2$$

were,

'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

$$= ₹ 15,00,000 \text{ (₹ 12,00,000 + ₹ 3,00,000)}$$

Total turnover in the State during the tax period

$$= ₹ 65,00,000 \text{ (₹ 42,00,000 + ₹ 12,00,000 + ₹ 3,00,000 + ₹ 8,00,000)}$$

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.

$$D_1 = (15,00,000 \div 65,00,000) \times 1,11,000$$

$$= ₹ 25,615 \text{ (rounded off)}$$

D. Computation of Eligible ITC out of common credit

Eligible ITC attributed for effecting taxable supplies is denoted as 'C₃', 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

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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%]	Nil
[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]	
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

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GST paid on rent a cab service 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

Question 32

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	
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

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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
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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 preceding financial year.

(MTP 9 Marks Mar'19)

Answer 32

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] [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.]	63,000
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

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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. [The activity is an export of service in terms of section 2(6) of the IGST Act, 2017 as- <ul style="list-style-type: none"> • the supplier of service is located in India; • the recipient of service is located outside India; • place of supply of service is 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	20,00,000	Nil
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 deposit in fixed deposits with a bank	4,00,000	Nil
[Exempt vide Notification No. 12/2017 CT (R) dated 28.06.2017]		
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

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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

Paper 5 – Indirect Tax Laws

Question 33

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.

(MTP 14 Marks May '20, Apr'21, MTP 8 Marks Apr'18, MTP 10 Marks Apr'19, RTP May'18)

Paper 5 – Indirect Tax Laws

Answer 33

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 (ancillary supply) 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

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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.

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.

Question 34

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:

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- 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.

- Consumables are procured from registered suppliers located in Kolkata and include diesel worth ₹ 0.25 lakh for running the generator in the factory.
- 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% payable under reverse charge.
- 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.
- 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.
- 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.
- Bank charges are towards company's current account maintained with a Private Sector Bank registered in West Bengal.
- The breakup of sales is as under: Sales in West Bengal – ₹ 7 lakh Sales in States other than West Bengal – ₹ 3 lakh Export under LUT – ₹ 5 lakh
- The 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) Total 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 -

- CGST, SGST & IGST rates to be 9%, 9% and 18% respectively, wherever applicable.
- 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.

(MTP 14 Marks Sep'23, MTP 10 Marks March '18 & Oct'18)

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Answer 34

S. No.	Particulars	ITC			
		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)]	7,650	7,650		15,300
	[₹ 3.5 - ₹ 1.5 - ₹ 0.80 - ₹ 0.30 - ₹ 0.05] = ₹ 0.85]				
	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	1,57,670

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

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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

Note:

- (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) GST is payable under reverse charge on transportation service received from GTA. 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

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- 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-
- IGST is utilised towards payment of IGST first and then CGST and SGST in any proportion and in any order.
 - 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.
 - 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.

Question 35

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

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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.

(PYP 10 Marks May '18, MTP 14 Marks Oct '20, Mar'22 ,MTP 10 Marks Aug'18)

Answer 35

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/ installments, ITC is allowed upon receipt of the last lot/ installment vide first proviso to section 16(2). Therefore, ABC Company Ltd. will be entitled to ITC of raw materials on receipt of second installment 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.

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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

		V a l u e r e c e i v e d (₹)		
	H i r i n g r e c e i p t	5 , 2 5 , 0 0 0		

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s f o r m a c h i n e			
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r s			
Gross GST liability			C.C.N. 110

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).

Question 36

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.		

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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.

(MTP 14 Marks Oct'21 & Apr'22, PYP 10 Marks Nov'18)

Answer 36

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	

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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 (rounded off)	10,938	15,938	11,768

Notes:

- 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.
 - 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.
 - 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.
- ITC on consumables, being inputs used in the course or furtherance of business, is available. However, since levy of GST on high-speed diesel has been deferred till a date to be notified by Government, there cannot be any ITC of the same.
- ITC on monthly rent is available as the said service is used in the course or furtherance of business.
- Services by employees to employer in the course of or in relation to his employment is not a supply in terms of section 7 read with Schedule III to the CGST Act. Therefore, since no GST is paid on such services, there cannot be any ITC on such services.
- ITC on life insurance service is available if the same is obligatory for an employer to provide to its employees under any law for the time being in force as per proviso to section 17(5)(b).
- Export of goods is a zero-rated supply in terms of section 16(1)(a) of the IGST Act. A zero-rated supply under LUT/bond is made without payment of IGST in terms of section 16(3)(a).
- Since export of goods is a zero-rated supply, there will be no apportionment of ITC and full credit will be available as per section 17(2).

Question 37

Ram Kumar, a registered supplier under GST in the State of Gujarat, provides the following information pertaining to the supplies made/received for the month of January:

SI. No.	Particulars	Amount in ₹
(i)	IGST of ₹ 90,000 paid in December on machinery imported from Japan [Goods landed in Gujarat port and reached at his registered premises on 31st January.]	

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(ii)	Availed services of transportation of raw material from GTA - M/s Ghoomghoom Transporters of Kolkata	1,00,000
(iii)	20 invoices involving IGST of ₹ 1,20,000 received during the current month [Only 16 invoices involving IGST of ₹ 1,00,000 were uploaded by the suppliers in their GSTR-1 statement and their details were reflected in his GSTR-2B. Supplies received against all the invoices were otherwise eligible for claiming ITC.]	--
(iv)	Supplied machinery (purchased from an unregistered supplier) free of cost to his brother for manufacturing goods in his factory in Punjab (Market value of supply was ₹ 16,32,000)	Nil
(v)	Supplied a consignment of 5 machines to M/s KK & Co. in the State of Gujarat at the instruction of third person being XX Enterprises of Tamilnadu.	6,00,000
(vi)	Provided stock counting service to Gungun Manufacturers registered with GST in the State of Gujarat. Stock counting was carried out at the godown located in Gujarat	1,10,000
(vii)	Direct Selling Agent (DSA) services provided to ICIDI Bank, registered in Delhi, for providing services relating to opening of bank account/credit card & loan products	2,00,000
(viii i)	Advance received during the month for future intra-State supply [Advance of ₹ 5,00,000 was related to supply of goods and the rest was related to service]	9,00,000
(ix)	Sent goods valued ₹ 80,000 to job worker, registered in the State of Kerala, who further processed the said goods and made direct supply on 31 st January from its premises in Kerala to a buyer in the State of Gujarat at a price of ₹1,00,000	--

Apart from the above information, Ram Kumar also availed inter-State services of ₹4,00,000, tax on which was payable under reverse charge, from Viral Shah Enterprises, Maharashtra. Payment for the same to Viral Shah Enterprises was not made till the current month (overdue for 181 days as on 1st January). However, tax due under the said transaction was paid to Government and credit availed in the month of transaction itself.

From the information given above, you are required to compute the net GST liability payable in cash from Electronic Cash Ledger (CGST and SGST or IGST, as the case may be) for the month of January assuming that Ram Kumar wishes to make the cash payment of GST under SGST head as far as possible and that his turnover for the previous financial year was ₹ 21 lakh.

Notes-

- (i) CGST, SGST & IGST rates on all inward and outward supplies were 9%, 9% and 18% respectively, except in case of services received from GTA where the rate of CGST/SGST @ 2.5% each and IGST @ 5% was applicable.
- (ii) All the amounts given are exclusive of taxes wherever applicable. The necessary conditions for availing ITC have been complied with by Ram Kumar, wherever applicable. (MTP 14 Marks Sep'22)

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Answer 37

Computation of net GST payable in cash from Electronic Cash Ledger for the month of January

S. No.	Particulars	Amount (₹)	CGST (₹)	SGST (₹)	IGST (₹)
A. GST liability on outward supply					
(i)	Machinery supplied without consideration [Not a supply as it is made without consideration and is also not covered in Schedule I because machinery has been supplied to an unrelated person (brother not being wholly dependent on Ram Kumar) and ITC has also not been availed on the same.]	Nil	-	-	-
(ii)	Consignment of machines supplied at the instruction of third person [Since supply is a bill to ship to supply where the goods are delivered on the direction of a third person- XX Enterprises, goods are deemed to be received by XX Enterprises and thus, the place of supply is Tamil Nadu. Hence, it is an inter-State supply.]	6,00,000			1,08,000 [6,00,000 × 18%]
(iii)	Stock counting service to Gungun Manufacturers of Gujarat [Intra-State supply as the place of supply is the location of recipient, viz. Gujarat.]	1,10,000	9,900 [1,10,000 × 9%]	9,900 [1,10,000 × 9%]	NIL
(iv)	Direct Selling Agent services provided by an individual (Ram Kumar) to a bank [Tax is payable by bank under reverse charge.]	2,00,000	-	-	-
(v)	Advance received for intra-State supply [Tax on advance received for supply of goods of ₹ 5,00,000 will be payable at the time of issuance of invoice.]	4,00,000	36,000 [4,00,000 × 9%]	36,000 [4,00,000 × 9%]	
(vii)	Finished goods sold from the premises of the job worker [Supply of goods by principal from the job worker's premises is regarded as supply by principal only irrespective of the location of job worker.]	1,00,000	9,000 [1,00,000 × 9%]	9,000 [1,00,000 × 9%]	

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	Therefore, since the place of supply is the location where movement of goods terminates for delivery to recipient, i.e., Maharashtra, it is an intra-State supply.]				
	Total tax liability on outward supplies		54,900	54,900	1,08,000
B.	GST liability on inward supplies under reverse charge				
(i)	GTA services availed from M/s Ghoomghoom Transporters [Tax is payable under reverse charge on the GTA services received by a registered person and on which tax is payable @ 5%. Further, it is an inter-State supply since supplier is located in Kolkata and place of supply is Gujarat (location of registered recipient).]	1,00,000			5,000 [1,00,000 × 5%]
C.	Input tax credit				
	Import of machinery [Input tax, inter alia, includes IGST charged on import of goods.]				90,000
	GTA services availed	1,00,000			5,000
	IGST on invoices received during the month [Full ITC can be claimed only on the invoices uploaded by supplier in Form GSTR-1 and the details of the same have been communicated to the registered person in Form GSTR-2B.]				95,000 + 5,000 =1,00,000
	Less: Input tax reversed [Outward supply, tax on which is payable under reverse charge is considered as exempt supply for the purpose of reversal of ITC.] = ₹ 1,95,000 x ₹ 2,00,000/ ₹ 19,10,000 (₹ 1,95,000 x turnover of exempt supply/ total turnover) [The condition for making the payment for the supply within 180 days so that the ITC availed does not get added to the output tax liability does not apply to reverse charge supplies. Thus, ITC on ₹ 4,00,000 will not be affected.]				(20,419)
	Total ITC available for set off		-	-	1,74,581

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D.	Computation of net GST payable in cash				
	Total tax liability on outward supplies		54,900	54,900	1,08,000
	Less: ITC of IGST		(54,900)	(11,681)	(1,08,000)
	Forward charge liability on outward supplies payable in cash after set off of ITC		-	43,219	
	Reverse charge liability on inward supplies payable in cash without set off of ITC [Tax payable under reverse charge, being not an output tax, cannot be set off against ITC and thus, will have to be paid in cash.]				5,000
	Total net GST liability payable in cash		-	43,219	5,000

Question 38

Oberoi Industries is a manufacturing company registered under GST. It manufactures two taxable products 'X' and 'Y' and one exempt product 'Z'. The turnover of 'X', 'Y' and 'Z' in the month of April, 20XX was ₹ 2,00,000, ₹ 10,00,000 and ₹ 12,00,000. Oberoi Industries is in possession of certain machines and purchases more of them. Useful life of all the machines is considered as 5 years. From the following particulars furnished by it, compute the amount to be credited to the electronic credit ledger of Oberoi Industries and amount of common credit attributable towards exempted supplies, if any, for the month of April, 20XX. (RTP Nov '18)

Particulars	GST paid (₹)
Machine 'A' purchased on 01.04.20XX for being exclusively used for non-business purposes	19,200
Machine 'B' purchased on 01.04.20XX for being exclusively used in manufacturing zero-rated supplies	38,400
Machine 'C' purchased on 01.04.20XX for being used in manufacturing all the three products - X, Y and Z	96,000
Machine 'D' purchased on April 1, 2 years before 01.04.20XX for being exclusively used in manufacturing product Z. From 01.04.20XX, such machine will also be used for manufacturing products X and Y.	1,92,000
Machine 'E' purchased on April 1, 3 years before 01.04.20XX for being exclusively used in manufacturing products X and Y. From 01.04.20XX, such machine will also be used for manufacturing product Z.	2,88,000

Answer 38

Particulars	₹	Ineligible credit (₹)	Amount to be credited to ECrL (₹)

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Machine 'A' [Since exclusively used for non-business purposes, ITC is not available under rule 43(1)(a) of CGST Rules, 2017]		19,200	
Machine 'B' [For ITC purposes, taxable supplies include zero-rated supplies under rule 43(1)(b) of CGST Rules, 2017. Hence, full ITC is available]			38,400
Machine 'C' [Commonly used for taxable and exempt supplies – Rule 43(1)(c) of the CGST Rules, 2017]	96,000		96,000
Machine 'D' [Owing to change in use from exclusively exempt to both taxable and exempt, common credit to be reduced by ITC @ 5% per quarter or part thereof in terms of proviso to rule 43(1)(c) of CGST Rules, 2017] = ₹ 1,92,000 – ₹ 76,800 (₹ 1,92,000 × 5% × 8 quarters) <i>As per amendment- Owing to change in use from exclusively exempt to both taxable and exempt, full ITC of GST paid on Capital Goods "D" shall be credited to the Electronic Credit Ledger as common ITC. And then, ineligible ITC [ie ₹ 1,92,000 × 5% × 8 quarters]= Rs. 76,800] shall be added to the output tax liability of the current tax period in terms of rule 43(1)€ of CGST Rules, 2017. And then, reversal of proportionate common ITC will be made during remaining 3 years of useful life of the Capital Goods in terms of the provisions of rule 43(1)€ and rule 43(1)(g) of the CGST Rules, 2017</i>	1,15,200 00 1,92,000		1,15,200 1,92,000
Machine 'E' [Owing to change in use from exclusively taxable to both taxable and exempt, common credit to be reduced by ITC @ 5% per quarter or part thereof in terms of proviso to rule 43(1)(d) of CGST Rules, 2017] = ₹ 2,88,000 – ₹ 1,72,800 (₹ 2,88,000 × 5% × 12 quarters) <i>As per amendment-Owing to change in use from exclusively taxable to both taxable and exempt, the full ITC of GST paid on Capital Goods "E", which was availed earlier would be added to the common ITC in terms of rule 43(1)(d) of CGST Rules, 2017. And then, reversal of proportionate common ITC will be made during remaining 2 years of useful life of the Capital Goods in terms of the provisions</i>	1,15,200 00 NIL	2,720	NIL

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<i>of rule 43(1)(e) and rule 43(1)(g) of the CGST Rules, 2017</i>			
Total common credit	3,26,400 5,76,000		
Common credit for the tax period (in the given case, a month) under rule 43(1)(e) of CGST Rules, 2017 = ₹ 5,76,000 ÷ 60	5,440 9,600		
Common credit attributable to exempt supplies in April, 20XX under rule 43(1)(g) of the CGST Rules, 2017 = (Turnover of exempt supplies/Total turnover) × Common credit = (12,00,000/24,00,000) × ₹ 5,440 (9,600) [Such credit, along with the applicable interest, shall be added to the output tax liability of Oberoi Industries]			4,800
Amount to be credited to the electronic credit ledger of Oberoi Industries for the month of April, 20XX			3,31,200
<i>Ineligible ITC to be added to output tax liability of current tax period in respect of Capital " 4</i> <i>Goods D [(₹ 1,92,000 × 5% × 8 quarters)=76,800]</i>			76,800

SECTION B

Question 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 (₹)
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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 1

Particulars	Credit distributed to all units (₹)			
	Total credit available	Mumbai	Jabalpur	Delhi
CGST paid on service 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: $(₹ 2,00,00,000 / ₹ 10,00,00,000) * ₹ 12,00,000 = ₹ 2,40,000$

Question 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 (₹)
vi.	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
vii.	Raw materials purchased for which invoice is missing but delivery challan is available	38,000
viii.	Raw materials purchased which are used for zero rated supply	50,000

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ix.	Works contractor's service used for repair of factory building which is debited in the profit and loss account of company	30,000
x.	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:

- (3) 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).
- (4) 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 2

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:

- (7) 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)].
- (8) ITC cannot be taken since invoice is missing and delivery challan is not a valid document to avail ITC [Section 16(2)(a)].
- (9) 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].

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(10) 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)].

(11) 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)].

(12) 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 1916].

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.

Question 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 after two months in the 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 3

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

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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.

Question 1

Xenon Pvt. Ltd., a registered supplier in Agra, is 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 Firozabad, 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 1

As per section 17(5), tax paid under sections 74, 129 and 130 is not available as ITC. Further, rule 36(3) also lays down that tax paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts cannot be availed as ITC by a registered person.

In the given case, Xenon Pvt. Ltd. has paid tax in pursuance of an order issued under section 74. Therefore, Freshbite Pvt. Ltd. cannot avail ITC of such tax.

Question 2

Flamingo Ltd. is an airlines providing passenger transportation services by air.

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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 2

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 as it will be considered as supply of an ancillary service to the passenger transportation services supplied by it (principal supply).

Question 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 3

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 07.03.2019 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.

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Question 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 exclusively procured for such supply, but thread and lining material for the collars are the ones which are used for other taxable products of the factory as well.

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 amount of eligible ITC in respect of procurement of thread and lining material.

Answer 4

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.

Question 5

Ceramy Ltd. has following units:

A: Factory in Tumkur, Karnataka; turnover of ₹ 27 crores in F.Y. 2020-23;

B: Service centre in Hyderabad, Telangana; turnover of ₹ 1 crore in F.Y. 2022-23;

C: Service centre in Chennai, Tamil Nadu; turnover of 2 crores in F.Y. 2022-23; Ceramy Ltd.'s corporate office functions as an ISD. It has to distribute ITC of ₹ 9 lakh for May, 2023. Of this, an invoice involving tax of ₹ 3 lakh pertains to technical consultancy for Tumkur unit.

Explain in brief in what manner should the ITC be distributed?

Answer 5

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 2020-21

- Tumkur unit will get (27 crore / 30 crore) x 6 lakh = ₹ 5.4 lakh;
- Hyderabad service centre will get (1 crore / 30 crore) x 6 lakh = ₹ 20,000; and

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- 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.

Question 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 6

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, Mohan Ltd. shall pay or reverse an amount equal to the ITC availed in respect of such supply (ITC of ₹ 24,000), proportionate to the amount not paid to the supplier, along with interest payable thereon under section 50, while furnishing the return in Form GSTR-3B for the tax period immediately following the period of 180 days from the date of the issue of the invoice will be added to its output tax liability with interest under section 50 [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.

Question 7

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

Answer 7

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

- The ISD is required to obtain a separate registration for distribution of credit.
- The credit can be distributed to the recipients of credit against an ISD invoice containing prescribed details.
- The amount of the credit distributed shall not exceed the amount of credit available for distribution.
- The credit related to an input service must be distributed only to the particular

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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.

Question 8

With reference to the provisions of section 17, examine the availability of ITC in the following independent cases:

- (iv) **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.**
- (v) **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.**
- (vi) **ABC Ltd. availed maintenance & repair services from “Jaggi Motors” for a truck used for transporting its finished goods.**

Answer 8

- (iv) 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

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MBF Ltd. and no depreciation has been claimed on the tax component.

- (v) 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 including when 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 notwithstanding the fact that the immovable property being constructed will be 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.

- (vi) 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.

Question 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 received the machinery 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 9

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:

- ITC taken on such goods reduced by 5% per quarter or part thereof from the date of issue of invoice for such goods or
- 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

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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	28,350
(ii) For the current year = (₹ 1,89,000 × 5%) × 2 quarters	18,900
Amount required to be paid by adding the reversal amount to the output tax liability) (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 by adding the same to the output tax liability.	

**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.

Question 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:

- iii. **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.**
- iv. **Works contract services availed for constructing a car parking shed in its premises**

Answer 10

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:

- (iii) 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

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manufacturer for making further supply of such cars will be allowed.

However, ITC on the cars fully destroyed in accident will not be allowed as the ITC on goods destroyed for whichever reason is specifically blocked under section 17(5)(h).

- (iv) 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 but a civil structure (excluded from “plant and machinery”) and the works contract service is not used for further supply of works contract service, ITC thereon will not be allowed.

Question 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 11

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	2,000
[Since used exclusively for taxable supply, full ITC is available under rule 43(1)(b)]	
Capital goods used exclusively for exempt supply	Nil
[Since used exclusively for exempt supply, ITC is not available under rule 43(1)(a)]	
Capital goods used for both taxable and exempt supply - Common credit (Tc)	4200
[Commonly used for taxable and exempt supplies – Rule 43(1)(c)]	
Total ITC credited to Electronic Credit Ledger for the month of September	6,200

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Common credit for the month of September (Tm) = $T_c \div 60 = 4,200 \div 60$ [Rule 43(1)(e)]	70
Common credit attributable to exempt supplies in a month (Te) = $(E \div F) \times Tr^*$ where, 'E' is the aggregate value of exempt supplies, made, during the tax period, and 'F' is the total turnover in the State of the registered person during the tax period [Rule 43(1)(g)] = $(40,000 / 1,10,000) \times ₹ 70$ (rounded off)	25.45
Amount to be added to the output tax liability for the month of September [Rule 43(1)(h)]	25.45

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 'Tr' and shall be the aggregate of 'Tm' for all such capital goods. However, clause (f) has been omitted vide the said notification. Consequently, the term "Tr" becomes redundant in the formula provided in rule 43(1)(g). However, for the sake of computation of common credit attributable to exempt supply, value of 'Tm' has been used here.

Question 12

X, a manufacturer of roofing sheets, is having ₹ 1,60,000 as opening balance of ITC for June month. He provides the following information pertaining to the goods and services procured during the month of June:

- (5) Input tax on raw materials is ₹ 40,000. The raw material is used for making both taxable and exempt supplies.
- (6) Input tax on catering services procured from 'Harvest Caterers' in connection with his housewarming ceremony is ₹ 10,000.
- (7) Input tax on raw materials used exclusively in manufacture of exempt supplies of ₹ 2 lakh is ₹ 20,000.
- (8) Input tax on cosmetic and plastic surgery of manager of the factory is ₹ 30,000.

Total taxable turnover for the month of June is ₹ 60 lakh exclusive of tax.

Compute the ITC credited for the month of June to the Electronic Credit Ledger 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 and provisions of rule 86B 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 12

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

Working Note:

Particulars	Amount
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GST on taxable turnover for the month of June [₹ 60,00,000 × 18%]		10,80,000
Less: ITC available for June month in terms of rule 42		
Opening balance of ITC available in the Electronic Credit Ledger	₹ 1,60,000	
Add: ITC credited to the Electronic Credit Ledger for 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

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

Particulars	Amount (₹)
Input tax on raw materials [Note 1]	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
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 to be reversed [Note 6]	1,290

Notes:

- (7) 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)].
- (8) 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].
- (9) Input tax on inputs used exclusively for making exempt supplies is not available as ITC and thus, not credited to the Electronic Credit Ledger in terms of rule 42.
- (10) 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].
- (11) 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].
- (12) ITC attributable towards exempt supplies = Common credit × (Aggregate value of exempt supplies during the tax period / Total turnover in the State during the tax

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period) = ₹ 40,000 × ₹ 2,00,000 / ₹ 62,00,000 - (rounded off) = ₹ 1,290 (rounded off)

Question 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:

ITC available on input services used commonly for 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.

Branch	Turnover of the last quarter (₹)	ITC specifically attributable 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

Answer 13

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

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proportion of their turnover of the last quarter.

- Ganganagar Branch, Rajasthan will get: ₹ 48,000 [$₹ 2,40,000 \times (\frac{₹ 10,00,000}{₹ 50,00,000})$] as IGST credit.
- Madhugiri Branch, Karnataka will get: ₹ 24,000 [$₹ 2,40,000 \times (\frac{₹ 5,00,000}{₹ 50,00,000})$] 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 [$₹ 2,40,000 \times (\frac{₹ 15,00,000}{₹ 50,00,000})$] as IGST credit.
- Mumbai Branch, Maharashtra will get:
 - ₹ 24,000 [$₹ 60,000 \times (\frac{₹ 20,00,000}{₹ 50,00,000})$] as CGST credit,
 - ₹ 24,000 [$₹ 60,000 \times (\frac{₹ 20,00,000}{₹ 50,00,000})$] as SGST credit and
 - ₹ 48,000 [$₹ 1,20,000 \times (\frac{₹ 20,00,000}{₹ 50,00,000})$] 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.

Question 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 New registered person in 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 opening balances available with it for the tax period, is provided by the company:

CGST (₹)	SGST (₹)	IGST (₹)
50,000	30,000	1,00,000

Compute the 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 14

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Computation of 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		(72,000) CGST	(10,000) IGST	(1,80,000)
[Refer Working Note Below]			(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 - 72,000)	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) as credit of CGST and SGST can be utilized only after IGST credit has been fully utilized.

Question 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.

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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 issued on the same day]	
- IGST @ 18%	36,000
Inputs valued at ₹ 50,000 procured on 13th September lying in stock:	
- IGST @ 18%	
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 assuming that conditions for availing ITC are fulfilled subject to the information given above.

You are also required to mention reasons for treatment of all above items.

Answer 15

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].

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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 19 th September last year [Invoice issued prior to one year, hence ITC cannot be availed]			NIL
Inputs held in stock since 12th September			9,000
Capital goods procured on 12th September	NIL	NIL	
Total ITC	12,000	12,000	9,000

Question 16

B & D Company, a partnership firm, registered 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

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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' (₹)	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	67,000	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 to be 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 16

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.

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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: Stock with invoice issued prior to one year		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

Question 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 respectively. XYZ Pvt. Ltd. has furnished the following details:

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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:

- (v) Amount of ITC to be credited to Electronic Credit Ledger, for the month of October
- (vi) Amount of aggregate value of common credit (Tc)
- (vii) Common credit attributable to exempt supplies, for the month of October
- (viii) GST liability of the company payable through Electronic Cash Ledger, for the month of October if opening balance of ITC is nil.

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 17

S.No	Particulars	ITC (₹)
v)	Amount of ITC credited to Electronic Credit Ledger, for the month of October	

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	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
vi)	Aggregate value of common credit (Tc) – 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 (Tc)	1,62,000
vii)	Common credit attributable to exempt supplies, for the month of October	
	Common credit for the month of October (Tm) [Note 9]	2,700
	Common credit attributable to exempt supplies, for the month of October (Te) – Note 10	1,080
viii)	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:

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- (12) 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)].
- (13) 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)].
- (14) 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)].
- (15) 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.
- (16) 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.
- (17) 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].
- (18) 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)].
- (19) 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 'Tc' [Proviso to rule 43(1)(d)].
- (20) ITC attributable to a month on common capital goods during their useful life (Tm) shall be computed in accordance with rule 43(1)(e) as under:

$$= Tc \div 60$$

$$= ₹ 1,62,000 \div 60$$

$$= ₹ 2,700$$

The useful life of any capital goods shall be considered as five years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods

- (21) The amount of common credit attributable towards exempted supplies, be denoted as 'Te', and shall be calculated as:

$$T_r = (E \div F) \times T_r^* \text{ where,}$$

'E' is the aggregate value of exempt supplies, made, during the tax period, and

'F' is the total turnover in the State of the registered person during the tax period

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[Rule 43(1)(g)].

$$T_{rx} \frac{\text{Turnover of exempt supplies during the month of October}}{\text{Total turnover of XYZ Pvt.Ltd.during the month of October}}$$

$$= ₹ 2,700 \times \frac{10,00,000}{25,00,000} = ₹ 1,080$$

(22) Common credit attributable to the exempt supplies (Te) along with the applicable interest (which is to be ignored in this case) shall, during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit [Rule 43(1)(h)].

*Prior to the amendment vide Notification No. 16/2020 CT dated 23.03.2020 clause (f) of rule 43(1) provided that the amount of ITC, at the beginning of a tax period, on all common capital goods whose useful life remains during the tax period, be denoted as 'Tr' and shall be the aggregate of 'Tm' for all such capital goods. However, clause (f) has been omitted vide the said notification. Consequently, the term "Tr" becomes redundant in the formula provided in rule 43(1)(g). However, for the sake of computation of common credit attributable to exempt supply, value of 'Tm' has been used here. It may be noted that as per the erstwhile clause (f) of rule 43(1) value of 'Tr' was the aggregate of 'Tm.'

Question 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:

- m) **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
- n) **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.**
- o) **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**
- p) **Freight paid to goods transport agency (GTA) for inward transportation of taxable items – ₹ 1,00,000**
- q) **Freight paid to GTA for inward transportation of exempted items – ₹ 80,000**
- r) **Freight paid to GTA for inward transportation of non-taxable items - ₹ 20,000**
- s) **Monthly rent payable for the complex – ₹ 5,50,000 (one third of total space**

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available is used for personal residential purpose).

- t) 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
- u) Salary paid to the regular staff at the Store – ₹ 2,00,000
- v) GST paid on inputs used for personal purpose – ₹ 5,000
- w) GST paid on rent a cab service availed for transportation of employees, which is not obligatory under any law – ₹ 4,000
- x) GST paid on items given as free samples – ₹ 4,000

Given the above available facts, you are required to compute the following:

- F. Input tax credit (ITC) credited to the Electronic Credit Ledger
- G. Common Credit
- H. ITC attributable towards exempt supplies out of common credit
- I. Eligible ITC out of common credit
- J. Net GST payable from Electronic Cash Ledger for the month if opening balance of ITC is nil.

Note:

- (5) GTA has not exercised the option to pay tax itself. Tax is payable on such services @ 5%. Rate of GST in all other cases is 18% (Ignore CGST, SGST or IGST for the sake of simplicity).
- (6) All the inward supplies are procured from registered suppliers.
- (7) Wherever applicable, the amounts given are exclusive of taxes.
- (8) Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled.

Answer 18

- F. 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 [‘C1’] is calculated as under-

$$C1 = T - (T1+T2+T3)$$

Were,

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]

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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	4,000
[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.]	
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

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Input tax exclusively attributable to exempt supplies [T2]	5,000
GST paid on rent a cab services availed for business purpose [ITC on rent a cab service is blocked under section 17(5)(b)(i) 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 T1, the same has not been considered again in computing T3.

ITC credited to the electronic credit ledger

$$C_1 = T - (T_1 + T_2 + T_3) = ₹ 11,57,000 - (₹ 38,000 + ₹ 5,000 + ₹ 8,000) = ₹ 11,06,000$$

G. Computation of Common Credit

$$C_2 = C_1 - T_4$$

where C_2 = Common Credit

T4 = Input tax credit attributable to inputs and input services intended to be used exclusively for effecting taxable supplies

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 [T4]	9,95,000

Computation of T_4 ,

$$\text{Common Credit } C_2 = C_1 - T_4$$

$$= ₹ 11,06,000 - ₹ 9,95,000 = ₹ 1,11,000$$

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

ITC attributable towards exempt supplies is denoted as 'D1' and calculated as-

$$D1 = (E \div F) \times C_2$$

were,

'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

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$$= ₹ 65,00,000 (₹ 42,00,000 + ₹ 12,00,000 + ₹ 3,00,000 + ₹ 8,00,000)$$

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.

$$D_1 = (15,00,000 \div 65,00,000) \times 1,11,000$$

$$= ₹ 25,615 \text{ (rounded off)}$$

I. Computation of Eligible ITC out of common credit

Eligible ITC attributed for effecting taxable supplies is denoted as 'C3', where-

$$C3 = C2 - D1$$

$$= ₹ 1,11,000 - ₹ 25,615$$

$$= ₹ 85,385$$

J. 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]	10,000
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.	

Note: While computing net GST liability, ITC credited to the electronic ledger can alternatively be computed as follows:

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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%]	Nil
[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]	
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 service 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

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Question 19

Vansh Shoppe is a retail 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
3)	Details of expenses:	
	Monthly rent payable for the shop	3,50,000
	Telephone expenses paid	50,000
	(₹ 30,000 for bills of land line phone installed at the shop and ₹ 20,000 towards mobile phone bills of the employees – Mobile phones are also 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) [service taxable @ 5%] for inward transportation of goods not leviable to GST	50,000
	Freight paid to goods transport agency (GTA) [service taxable under reverse charge @ 5%] 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 inward and outward supplies made by Vansh Shoppe are from/to registered suppliers 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 19

- 1) Computation of ITC credited to Electronic Credit Ledger

ITC of input tax attributable to inputs and input services intended to be used for

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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	10,000	Nil	Nil
[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)].			
Taxable Goods given as free samples	5,000	Nil	Nil
[ITC on goods disposed of by way of free samples is blocked under section 17(5)(h)]			
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

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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
Total output tax liability under forward charge		3,00,000
Less: ITC		2,96,750
Net GST payable [A]		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
Freight paid to GTA for inward transportation of non-taxable goods [₹ 50,000 x 2.5%]		1,250
Total tax liability under reverse charge [B]		5,000
Net GST liability [A] + [B]		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.

Question 20

Mr. Rajesh Surana has a proprietorship firm in the name of Surana & Sons in Jaipur. The firm, registered under GST in the State of Rajasthan, manufactures

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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	
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 preceding financial year.

Answer 20

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

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GST payable from Electronic Cash Ledger [A]	39,820
Add: GST payable on legal services under reverse charge [₹ 3,50,000 X 18%] [B] [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.]	63,000
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

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<p>Consultancy services provided to independent clients located in foreign countries.</p> <p>[The activity is an export of service in terms of section 2(6) of the IGST Act, 2017 as-</p> <ul style="list-style-type: none"> the supplier of service is located in India; the recipient of service is located outside India; place of supply of service is outside India (in terms of section 13(2) of the IGST Act, 2017); payment for the service has been received in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and supplier of service and recipient of service are not merely establishments of distinct person. <p>[Export of services is a zero rated supply in terms of section 16(1)(a) of the IGST Act, 2017. A zero rated supply can be supplied without payment of tax under a LUT in terms of section 16(3)(a) of that Act.]</p> <p>It is assumed that export has been made under LUT</p>	20,00,000	Nil
<p>Sale of building</p> <p>[Sale of building is neither a supply of goods nor a supply of services in terms of para 5 of Schedule III to the CGST Act, 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]</p>	1,20,00,000	Nil
<p>Interest received on deposit in fixed deposits with a bank</p>	4,00,000	Nil
<p>[Exempt vide Notification No. 12/2017 CT (R) dated 28.06.2017]</p>		
<p>Sale of shares</p> <p>[Shares are neither goods nor services in terms of section 2(52) and 2(102). Hence, sale of shares is neither a supply of goods nor a supply of services and hence, is not liable to any tax.]</p>	2,50,00,000	Nil
<p>Total GST payable on outward supply</p>		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	4,74,820

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Exempt turnover = ₹ 1,33,50,000 and total turnover = ₹1,94,00,000 [Refer note below]	
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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 ($₹ 2,50,000 / 2 \times 100 = ₹ 1,25,00,000$) and value of sale of shares ($1\% \text{ of } ₹ 2,50,00,000 = ₹ 2,50,000$), 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

Question 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.

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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 21

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

3) Computation of gross GST liability

Particulars	Value received (₹)	Rate of GST	GST payable (₹)
Hire 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	18%	3,600
Service charges for soil testing and seismic evaluation [Refer Note 2]	2,50,000	18%	45,000

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ss GST liability		,400
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Notes:

(iii) 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 (ancillary supply) will also be taxed at the rate applicable for hiring out of the excavator (principal supply), which is 12%.

(iv) 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%.

4) 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:

(ii) 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.

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.

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Question 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:

10. 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.

11. Consumables are procured from registered suppliers located in Kolkata and include diesel worth ₹ 0.25 lakh for running the generator in the factory.
12. 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% payable under reverse charge.
13. 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.
14. Audit fee is paid to M/s Goyal & Co., a firm of Chartered Accountants

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registered in West Bengal, for the statutory audit of the preceding financial year.

15. 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.
16. Bank charges are towards company's current account maintained with a Private Sector Bank registered in West Bengal.
17. 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
18. 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) Total 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 -

- (iii) CGST, SGST & IGST rates to be 9%, 9% and 18% respectively, wherever applicable.
- (iv) 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 22

S. No.	Particulars	ITC			
		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	7,650	7,650		15,300

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	[Refer Note 1(i)]				
	[₹ 3.5 - ₹ 1.5 - ₹ 0.80 - ₹ 0.30 - ₹ 0.05] = ₹ 0.85]				
	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	1,57,670

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

Note:

(12) (i) Credit of input tax (CGST & SGST/ IGST) paid on raw materials used in the

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course or furtherance of business is available in terms of section 16(1).

- (v) 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).
 - (vi) 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)].
 - (vii) ITC is not available on destroyed inputs in terms of section 17(5)(h).
- (13)** 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.
- (14)** GST is payable under reverse charge on transportation service received from GTA. 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.
- (15)** 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
- (16)** 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.
- (17)** 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).
- (18)** 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].
- (19)** 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].
- (20)** As per section 49(5) read with rule 88A, ITC of-
- a. IGST is utilised towards payment of IGST first and then CGST and SGST in any proportion and in any order.
 - b. CGST is utilised towards payment of CGST and IGST in that order. ITC of CGST

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shall be utilized only after ITC of IGST has been utilised fully.

c. 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.

(21) 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.

(22) CGST and SGST are chargeable on intra-State inward and outward supplies and IGST is chargeable on inter-State inward and outward supplies.

Question 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:

III. Service of hiring of machine 12%

IV. 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.

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Note: Opening balance of ITC is Nil.

Answer 23

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:

3) 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:

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

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10. 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).

11. 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.

12. 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.

4) 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).

Question 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

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(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 24

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	

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	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 (rounded off)	10,938	15,938	11,768

Notes:

8. (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.
 - (iv) 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.
 - (v) 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.
9. 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.
10. ITC on monthly rent is available as the said service is used in the course or furtherance of business.
11. 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.

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Therefore, since no GST is paid on such services, there cannot be any ITC on such services.

12. 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).
13. 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/bond is made without payment of IGST in terms of section 16(3)(a).
14. Since export of goods is a zero-rated supply, there will be no apportionment of ITC and full credit will be available as per section 17(2).

Question 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:

- (6) List price per valve is ₹ 1,00,000, exclusive of taxes.
- (7) 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 two stage inspection of ₹ 15,000 (for 10 valves) is directly paid by R Refinery to testing agency.
- (8) R Refinery requires a special packing for the valves. Cost of special packing is ₹ 10,000 (for 10 valves).
- (9) 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).
- (10) 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

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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 25

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

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Notes:

- (5) 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.

- (6) 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.
- (7) 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.

- (8) 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
Work 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:

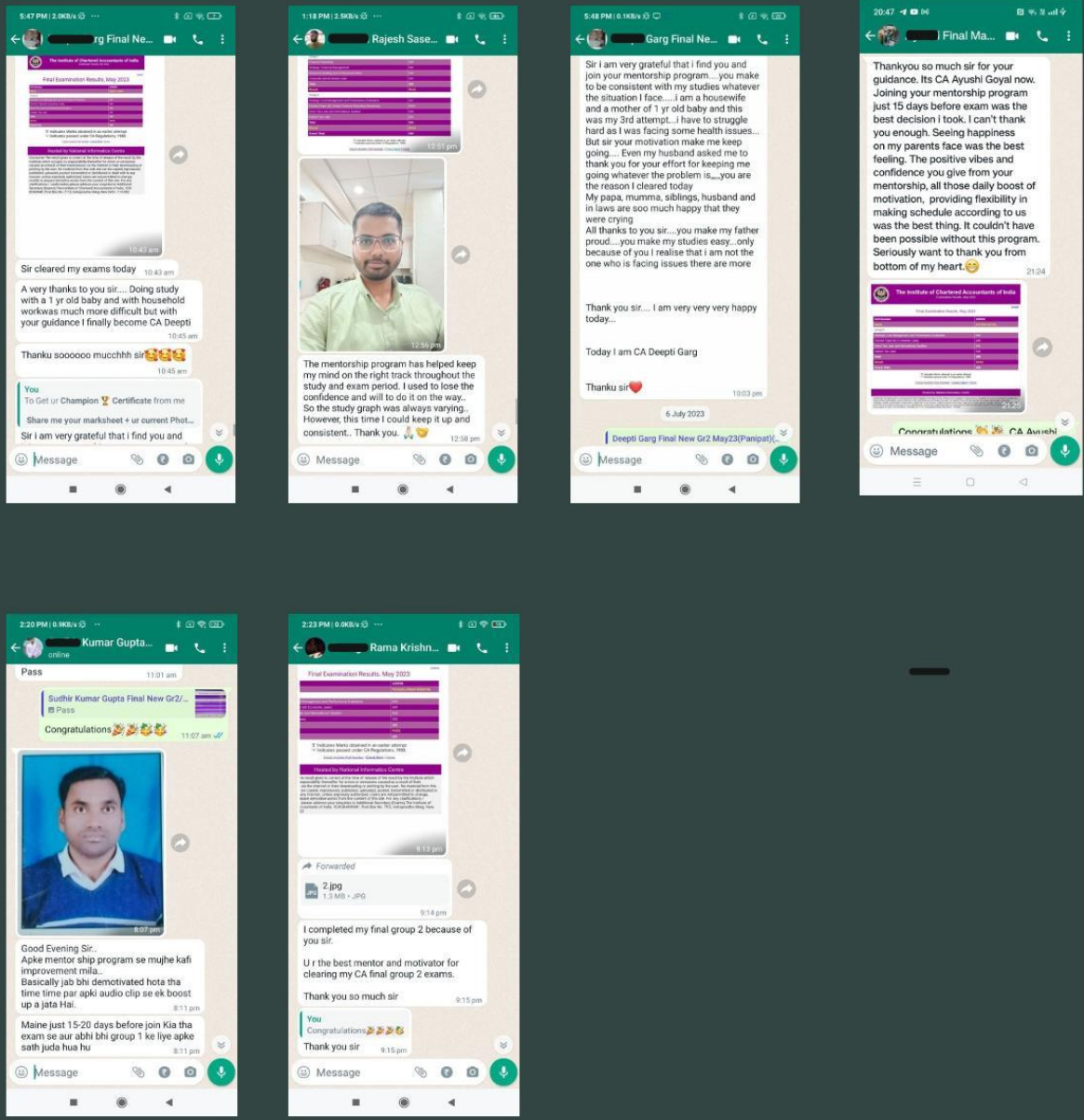
- (4) As per section 17(5), ITC on works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service, is blocked. Further, plant and machinery include foundation and structural supports used to fix the machinery to earth.

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- (5) 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 exclude pipelines laid outside the factory premises and telecommunication towers.
- (6) As per section 17(5), ITC on travel benefits extended to employees on home travel concession and membership of health and fitness centre is blocked unless it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

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Chapter 8 Registration

Attempts wise Distribution

Row Labels	Dec' 21	Jan' 22	Jul' 22	May' 18	Nov' 18	May' 19	May' 22	May' 23	Nov' 19	Nov' 20	Nov' 22	Nov' 23
MCQ												
MTP						Q1				Q5	Q4	
RTP						Q2, Q3						
QA												
MTP				Q7, Q8	Q9, Q10			Q1		Q6		Q13
PYP	Q4						Q5		Q2	Q3		
RTP									Q11, Q12			

SECTION A MULTIPLE CHOICE QUESTIONS (MCQ'S)

1. Which one of the following persons are not liable to obtain registration compulsorily under GST?

- Input Service Distributor.
- Persons who are required to deduct tax under section 51 of the CGST Act, 2017.
- Persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise.
- Person making inter-State supply of taxable services with aggregate turnover of Rs. 15 lakh in Delhi. **(MTP 1 Marks Apr'19)**

Ans: (d)

2. Which among the following cannot be a reason for cancellation of registration?

- There is a change in the constitution of business from partnership firm to proprietorship.
- The business has been discontinued.
- A composition taxpayer has not furnished returns for three consecutive tax periods.
- A registered person, other than composition taxpayer, has not furnished returns for three consecutive tax periods. **(RTP May '19)**

Ans: (d)

3. Which one of the following cannot be a reason for cancellation of GST registration?

- There is a change in the constitution of business from partnership firm to proprietorship.
- The business has been discontinued.
- A composition taxpayer has not furnished returns for three consecutive tax periods.

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- (d) A registered person, other than composition taxpayer, has not furnished returns for three consecutive tax periods. **(MTP 2 Marks Mar'19, RTP May'19)**

Ans: (d)

4. State which of the following statements is incorrect:

- (i) An agent, supplying taxable goods on behalf of principal, where invoice is issued in the name of principal, is required to get compulsorily registered under GST.
- (ii) Persons who are required to deduct tax under section 51 of the CGST Act, 2017, whether or not separately registered under CGST Act, are compulsory required to get registered under GST without any threshold limit.
- (iii) Every person supplying online information and database access or retrieval services from a place outside India to a registered person in India is compulsory required to get registered under GST without any threshold limit.
- (iv) Persons who supply services, other than supplies specified under sub-section (5) of section 9 of the CGST Act, 2017, through such electronic commerce operator who is required to collect tax at source under section 52 of the CGST Act, 2017, are compulsory required to get registered under GST without any threshold limit. Choose the most appropriate option.

- (a) (i), (ii)
- (b) (iii), (iv)
- (c) (i), (iii), (iv)
- (d) (i), (ii), (iii) and (iv) **(MTP 2 Marks Oct'22)**

Ans: (c)

5. Byomkesh Mukherjee & Sons, a registered person located in the state of West Bengal, is engaged in the supply of taxable goods. He desires to take part in a trade fair to be held in State of Gujarat for supply of such goods. He does not have fixed place of business in Gujarat. Which of the following statement(s) is correct in the context of obtaining registration in Gujarat?

- (a) He has to obtain registration as regular tax payer under section 22 of the CGST Act
- (b) He has to obtain registration as composition tax payer under section 10 of the CGST Act
- (c) He has to obtain registration as casual taxable person as defined under section 2(20) of the CGST Act
- (d) He is not required to obtain registration if his aggregate turnover does not exceed ₹ 40 lakh.

(MTP 2 Marks Oct '20)

Ans: (c)

QUESTIONS AND ANSWERS

Question 1

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

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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.

(MTP 5 Marks Apr'23, RTP May'18)

Answer 1

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 taxable supply of both goods and services is as under:-

- Z 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.
- Z 20 lakh for the rest of India.

Aggregate turnover includes the aggregate value of:

- all taxable supplies,
- all exempt supplies,
- exports of goods and/or services and
- 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 from Uttarakhand, the threshold limit for obtaining registration is T 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 (Rs.)	Cumulative turnover of February & March (Rs.)
Serving of cooked food and cold drinks/non alcoholic beverages in restaurant in Maharashtra	5,50,000	12,00,000 [Rs. 5,50,000 + Rs. 6,50,000]
Add: Sale of alcoholic liquor for human		

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consumption in Uttarakhand [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.]		
Add: Supply of packed food items from restaurant in Maharashtra	1,50,000	3,50,000 [Rs. 1,50,000 + Rs. 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 T 20 lakh in that month. However, since its aggregate turnover exceeds Z 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. It should obtain registration in Maharashtra.

Question 2

Dharma Dutta has taken voluntary registration and has not opted for the composition scheme of levy. He is aggrieved by the cancellation of his registration under GST, although he is filing Nil returns, as he has not conducted any business for the past 8 months. He wants to know the circumstances under which the proper officer can cancel registration on his own. (PYP 4 Marks Nov'19)

Answer 2

GST registration may be cancelled suo motu by GST Officer if the registered person:

-

- (i) does not conduct any business from the place of business
- (ii) violates the anti-profiteering provisions
- (iii) issues invoice/bill without supply of goods / services
- (iv) does not file his GST return for continuous period of six months
- (v) does not file his GST return consecutive 2 tax periods if he has opted for composition levy
- (v) has not commenced business within 6 months from date of registration
- (vi) has obtained the registration by means of fraud, willful misstatement or suppression of facts.

Note: Any four points may be mentioned.

Question 3

Decide with reason whether the registration is required under CGST Act, 2017 in the following independent cases:

- (i) **A casual taxable person (CTP) has provided inter-State supply of notified products being textiles hand printing amounting to ₹ 19.25 lakh 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**

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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 - ₹ 18 lakh.**
 - (2) **Exempt supplies made from Andhra Pradesh - ₹ 10 lakh.**
 - (3) **Both taxable and exempt supplies made from Tamilnadu - ₹ 5,00,000 and ₹ 6,00,000 respectively.(PYP 4 Marks Nov '20)**

Answer 3

I. A casual taxable person (CTP) is liable to be registered compulsorily under GST irrespective of the threshold limit.

However, CTPs making inter-State taxable supplies of notified products, when made by the craftsmen predominantly by hand even though some machinery may also be used in the process, have been exempted from obtaining registration if their aggregate turnover does not exceed ₹ 20 lakh [₹ 10 lakh for specified special category States].

Since, in the given case, the notified products were made by craftsmen by both hand and machines equally, they are not eligible for exemption and are required to obtain registration mandatorily.

II. For a supplier exclusively engaged in intra-State supply of goods, the threshold limit of turnover to obtain registration in the States of Delhi, Andhra Pradesh and Tamil Nadu is ₹ 40 lakh. Aggregate turnover includes value of all taxable and exempt supplies under same PAN.

Thus, aggregate turnover of Mr. Bantu doing trading business across India²⁰

$$= ₹ (18 \text{ lakh} + 10 \text{ lakh} + 5 \text{ lakh} + 6 \text{ lakh})$$

$$= ₹ 39 \text{ lakh.}$$

Therefore, Mr. Bantu is not liable for registration as his turnover does not exceed ₹ 40 lakh.

Question 4

Comment on the liability to get registered under the GST law in the given independent situations for the financial year 2023-24. Your answer should also include relevant provisions of law, notifications or circulars.

- (i) **Miss Riddhima is exclusively engaged in the export of readymade garments from the State of Rajasthan and her export turnover during the year is ₹ 17 lakh. Apart from export turnover, she has earned interest on bank FDR for ₹ 2 lakh also.**
- (ii) **Ajanta Enterprises is exclusively engaged in the trading of exempt goods under GST in the State of Haryana and has not taken the GST registration. During the year, its turnover from exempt supplies is ₹ 47 lakh and Ajanta Enterprises also sold old generator for ₹ 1.25 lakh during the year.**
- (iii) **Mr. P has presence in two States, one in Haryana and other in Rajasthan. He is registered in the State of Rajasthan even without crossing the threshold limit. His turnover during the year in Rajasthan is ₹ 32 lakh and in Haryana is ₹ 5 lakh. Is he mandatorily required to get registered in the State of Haryana also?**
- (iv) **Mr. John is engaged in the business of buying and selling of shares on his own account from the secondary market and his income from this activity is assessed as business income under the Income-tax Act 1961. During the year his total sales turnover from shares was ₹ 90 lakh. (PYP 4 Marks Dec'21)**

Answer 4

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- (i) Export of goods is treated as inter-State supply.
Miss Riddhima is liable to obtain registration compulsorily irrespective of the quantum of her aggregate turnover since she is engaged in making inter-State supply (exports) of goods⁵.
- (ii) Any person engaged exclusively in making exempt supplies is not liable to registration. However, Ajanta Enterprises is liable to get registered as it has also made a taxable supply along with exempt supplies during the year and its aggregate turnover (₹ 48.25 lakh) exceeds the threshold limit for registration.
- (iii) Since registration in GST is PAN based, once a supplier is liable to register, he has to obtain registration in each of the States/UTs in which he operates under the same PAN. Therefore, Mr. P is liable to get registered in Haryana also, provided he is not engaged exclusively in making exempt supplies from Haryana.
However, it is also possible to take a view that a person who is voluntarily registered in one State needs to obtain registration in other States from where he makes a taxable supply only if his aggregate turnover exceeds applicable threshold limit for registration. In that case, Mr P is not liable to obtain registration from Haryana since the aggregate turnover does not exceed the threshold limit for registration.
- (iv) A supplier is liable to obtain registration in a State/UT from where he makes a taxable supply of goods and/or services. Shares are excluded from the definition of goods as well as services. Hence, buying and selling of shares is not a supply of goods and/or services under GST law. Thus, Mr. John is not liable to obtain registration since he is not engaged in making a taxable supply of goods and/or services.
5 It has been assumed that the exporter of goods – Miss Riddhima – has availed the export benefits available under GST.

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

(iv) Some examinees were unaware that shares are excluded from the definition of goods/services. Hence, buying and selling of shares is not a supply of goods and/or services under GST law. Resultantly, Mr. John is not liable to obtain registration since he is not

Question 5

Comment on the given independent situations relating to GST procedures. Your Answer should include relevant provisions of law, as may be applicable:

Jugnoo Enterprises, a trader engaged in the buying and selling of medicines within the State of Delhi, is not registered under GST. It exceeded the turnover of ₹ 20 lakh on 15th July 20XX and also exceeded the turnover of ₹ 40 lakh on 14th February 20XX. It applied for registration under GST on 28th February and registration certificate was granted on 2nd March 20XX. Determine the date on which liability to register arises and the effective date of registration in this case.(PYP 2 Marks May '22)

Answer 5

Since Jugnoo Enterprises is engaged exclusively in intra-State taxable supply of goods in Delhi, it becomes liable to register when its aggregate turnover exceeds ₹ 40 lakh, i.e., on 14th February, 20XX.

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Further, since it has applied for registration within 30 days from the date of becoming liable to register, the effective date of registration is the date on which it becomes liable to register, i.e., 14th February, 20XX.

Question 6

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, Bengaluru, Karnataka or Manipur branch. Further, it believes that the determination of aggregate turnover is not required for the purpose of obtaining registration but is required for determining the eligibility for composition levy.

Determine the aggregate turnover of Rajesh Dynamics. You are also required to review the technical veracity of the arguments of Rajesh Dynamics. (MTP 6 Marks May'20, Apr'21)

Answer 6

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

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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	11,50,00 0
Aggregate turnover	33,00,00 0

Rajesh Dynamics is not liable to be registered in Chennai, Tamil Nadu, if his aggregate turnover in a financial year does not exceed ₹ 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.

Apart from this, 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.

Last but not the least, 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.

Question 7

Discuss the procedure for amendment of registration under CGST Act and rules thereto?

(MTP 4 Marks Mar'18)

Answer 7

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, 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. The proper officer shall not reject the application for amendment in the registration

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- particulars without giving the person an opportunity of being heard.
5. Any rejection or approval of amendments under SGST/UTGST shall be deemed to be rejection or approval under this Act also
 6. Any particulars of the application for registration shall not stand amended with effect from a date earlier than the date of submission of application for amendment on common portal except with order of Commissioner for reasons to be recorded in writing and subject to the conditions specified by Commissioner in the said order.
 7. Where a change in the constitution of any business results in change of PAN of a registered person, the said person shall apply for fresh registration. The reason for the same is that GSTIN is PAN based. Any change in PAN would warrant a new registration.

Question 8

Prakriti Enterprises – a sole proprietorship firm – started an air-conditioned restaurant in Indore, Madhya Pradesh in the month of January wherein the customers are served cooked food as well as cold drinks/non-alcoholic beverages. In February, the firm opened a liquor shop in Dehradun, Uttarakhand for trading of alcoholic liquor for human consumption.

Determine whether Prakriti Enterprises is liable to be registered under GST law with the help of the following information:

Particulars	January	February
	(Rs.)*	(Rs.)*
Cooked food and cold drinks/non-alcoholic beverages served in restaurant in Madhya Pradesh	6,16,000	7,28,000
Alcoholic liquor for human consumption sold in Uttarakhand		5,60,000
Interest received from banks on the fixed deposits	1,12,000	1,12,000
Packed food items supplied from restaurant in Madhya Pradesh	1,68,000	2,24,000

* excluding GST

You are required to provide reasons for treatment of various items given above. (MTP 6 Marks Apr'18)

Answer 8

As per section 22 of the CGST Act, 2017, a supplier is liable to be registered in the State/Union territory from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds Rs. 20 lakh.

However, if such taxable supplies are made from any of the specified special category States, namely, States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand, he shall be liable to be registered if his aggregate turnover in a financial year exceeds Rs. 10 lakh.

As per amendment Provided further that the Government may, at the request

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of a special category State and on the recommendations of the Council, enhance the aggregate turnover referred to in the first proviso from ten lakh rupees to such amount, not exceeding twenty lakh rupees and subject to such conditions and limitations, as may be so notified;

In the given question, since Prakriti Enterprises is engaged in making taxable supplies from Madhya Pradesh which is not a specified Special Category State, the threshold limit for obtaining registration is Rs. 20 lakh. The threshold limit is not reduced to Rs. 10 lakh in this case, as sale of alcoholic liquor for human consumption from Uttarakhand (one of the specified Special Category States) are non-taxable supplies in terms of section 9(1) of CGST Act, 2017.

As per section 2(6) of the CGST Act, 2017, aggregate turnover includes the aggregate value of:

- (i) all taxable supplies,
- (ii) all exempt supplies,
- (iii) exports of goods and/or services and
- (iv) all inter-State supplies of persons having the same PAN.

The above is computed on all India basis. Further, the aggregate turnover excludes central tax, State tax, Union territory tax, integrated tax and cess. Moreover, the value of inward supplies on which tax is payable under reverse charge is not taken into account for calculation of 'aggregate turnover'.

In the light of the afore-mentioned provisions, the aggregate turnover of Prakriti Enterprises is computed as under:

Computation of aggregate turnover of Prakriti Enterprises

Particulars	Turnover of January (Rs.)	Cumulative turnover of January & February (Rs.)
Serving of cooked food and cold drinks/non-alcoholic beverages in restaurant in Madhya Pradesh	6,16,000	13,44,000 [Rs. 6,16,000 + Rs. 7,28,000]
Add: Sale of alcoholic liquor for human consumption in Uttarakhand [Note-1]		5,60,000
Add: Interest received from banks on the Fixed Deposits [Note-2]	1,12,000	2,24,000 [Rs. 1,12,000 + Rs. 1,12,000]
Add: Supply of packed food items from restaurant in Madhya Pradesh	1,68,000	3,92,000 [Rs. 1,68,000 + Rs. 2,24,000]
Aggregate Turnover	8,96,000	25,20,000

Notes:

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1. As per section 2(47) of the CGST Act, 2017, exempt supply includes non- taxable supply. Thus, supply of alcoholic liquor for human consumption in Uttarakhand, being a non-taxable supply, is an exempt supply and is, therefore, includible while computing the aggregate turnover.
2. Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) is exempt vide *Notification No. 12/2017 CT (R) dated 28.06.2017*. Thus, interest received from banks on the fixed deposits is an exempt supply and is, therefore, includible while computing the aggregate turnover.

Prakriti Enterprises was not liable to be registered in the month of January since its aggregate turnover did not exceed Rs. 20 lakh in that month. However, since its aggregate turnover exceeds Rs. 20 lakh in the month of February, it should apply for registration within 30 days from the date on which it becomes liable to registration.

Question 9

What is the validity period of the registration certificate issued to a casual taxable person and non- resident taxable person? (MTP 4 Marks Aug '18)

Answer 9

In terms of section 27(1) read with proviso thereto, the certificate of registration issued to a “casual taxable person” or a “non-resident taxable person” shall be valid for a period specified in the application for registration or 90 days from the effective date of registration, whichever is earlier. However, the proper officer, at the request of the said taxable person, may extend the validity of the aforesaid period of 90 days by a further period not exceeding 90 days.

Question 10

Determine whether registration has to be obtained under GST in case of the following as per provisions contained under CGST Act, 2017.

- (1) **Fine oils is engaged in the business of machine oil as well as petrol and diesel. The total turnover on supply of machine oil is only Rs. 8 lakhs and in case of petrol and diesel is Rs. 8 crores.**
- (2) **Ramlal, an agriculturist, for supply of produce out of cultivation of land amounting to Rs. 21 lakhs. (MTP 6 Marks Oct '18)**

Answer 10

- 1) Supply of petrol and diesel is not leviable to GST, but supply of machine oil is taxable. In order to determine whether Fine oils is liable for registration, turnover of both the supplies, non taxable as well as taxable would be taken into account for the threshold of Rs 40 lakh. Here the turnover of machine oil, petrol and diesel exceeds Rs. 20 lakhs (Rs. 8.08 crores). Thus, Fine oils is liable for registration.
- 2) As per section 23 of the CGST Act, an agriculturist, to the extent of supply of produce out of cultivation of land is not liable for registration under GST. In the case of Mr. Ramlal, even though the turnover of produce out of cultivation has exceeded Rs. 20 lakhs, he will not be liable for registration.

Question 11

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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 goods supply of taxable	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 and notified hand-made goods) amounting to ₹ 4,00,000.
(RTP Nov'19)**

Answer 11

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 Arunachal Pradesh, Meghalaya, Puducherry, Sikkim, Telangana and Uttarakhand.
- (iii) ₹ 40 lakh for rest of India.

The threshold limit for a person exclusively making taxable supply of services or supply of both goods and services is as under:-

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- (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 to be 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

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Note: 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.

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) of the States of Himachal Pradesh, Uttarakhand and Tripura since 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 other than notified handicraft goods or notified hand-made products, section 24 requires compulsory registration irrespective of the quantum of aggregate turnover. Thus, Mahadev Enterprises will be liable to registration.

Question 12

SNP Pvt. Ltd., Coimbatore, Tamil Nadu, 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 supplies 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

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1st July. The purchase price of such 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 lakhs.

- (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.

(RTP Nov'19, MTP 5 Marks Mar'21, PYP 5 Marks Nov'18)

Answer 12

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

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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 relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable.

Rule 40(1)(a) of the CGST Rules, 2017 lays down that the credit on capital goods can be claimed after reducing the tax paid on such capital goods by 5% per quarter of a year or part thereof from the date of the invoice.

Therefore, in the given case, SNP Pvt. Ltd. could not claim credit on machinery till the time the supply of product 'Z' for which said machinery was being used was exempt. However, it can claim credit from 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 [$\text{₹ } 20,00,000 \times 18\%$]	₹ 3,60,000
Credit to be reduced [$\text{₹ } 3,60,000 \times 5\% \times 2$]	₹ 36,000
Amount of credit that can be taken [$\text{₹ } 3,60,000 - \text{₹ } 36,000$]	₹ 3,24,000

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

(ii) Majority of the examinees answered wrongly on the basis of section 18(1)(d) of the CGST Act. However, the question has to be answered on the basis of section 18(1)(a) which is relevant in the case when a person gets registered for the first time as in this case Happy Ltd. is not a registered person on account of manufacturing exclusively exempted goods.

Question 13

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 (₹)
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i.	Sale of diesel on which 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.

(MTP 5 Marks Sep '23, PYP 5 Marks May'18)

Answer 13

Computation of aggregate turnover of M/s Jayant Enterprises for the FY

Particulars	₹
Supply of diesel on which Sales Tax (VAT) is levied by Rajasthan Government [Note-1]	1,00,000
Supply of goods, after the completion of job work, from the place of Jayant Enterprises, directly by the principal [Note-2]	Nil
Export supply to England [Note-3]	5,00,000
Supply to its own additional place of business in Rajasthan ³² [Note-4]	Nil
Outward supply of services on which GST is to be paid by recipient under reverse charge [Note-5]	1,00,000
Aggregate turnover	7,00,000

Notes: -

- As per section 2(47), 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).
- 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.
- Export supplies are specifically includible in the aggregate turnover in terms of section 2(6).
- Supply made without consideration to units within the same State is a not a supply and hence not includible in aggregate turnover.
- 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

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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 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.

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

Most of the examinees provided elusive answers. The inclusion/exclusion of various supplies for calculating aggregate turnover for the purpose of registration under CGST Act, 2017 was not amply corroborated by legal provisions.

SECTION B

Question 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 goods supply of taxable	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: -**

- (3) **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.**
- (4) **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**

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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 and notified hand-made goods) amounting to ₹ 4,00,000.**

Answer 1

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:-

- (iv) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.
- (v) ₹ 20 lakh for the States of Arunachal Pradesh, Meghalaya, Puducherry, Sikkim, Telangana and Uttarakhand.
- (vi) ₹ 40 lakh for rest of India.

The threshold limit for a person exclusively making taxable supply of services or supply of both goods and services is as under:-

- (iii) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.
- (iv) ₹ 20 lakh for the rest of India.

As per section 2(6), aggregate turnover includes the aggregate value of:

- (v) all taxable supplies,
- (vi) all exempt supplies,
- (vii) exports of goods and/or services and
- (viii) all inter-State supplies of persons having the same PAN.

The above is to be 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 (Refer Note below)	-	21,00,000	40,000

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Aggregate Turnover	22,50,000	21,00,000	13,40,000
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Note: 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.

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.

- (3) 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) of the States of Himachal Pradesh, Uttarakhand and Tripura since 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.
- (4) (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.
- (d) 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.
- (e) In case of inter-State supplies of taxable goods other than notified handicraft goods or notified hand-made products, section 24 requires compulsory registration irrespective of the quantum of aggregate turnover. Thus, Mahadev Enterprises will be liable to registration.

Question 2

LMN Pvt. Ltd., Coimbatore, Tamil Nadu, exclusively manufactures and sells product 'X' which is exempt from GST vide a notification 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.**

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- (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 2

(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.

Question 3

SNP Pvt. Ltd., Coimbatore, Tamil Nadu, 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 supplies of the company are taxable

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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 such 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 lakhs.

(c) The Board of Directors of SNP Pvt. Ltd. wants to know whether they have to register under GST?

(d) 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 3

c) 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

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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).

- d) 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 relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable.

Rule 40(1)(a) of the CGST Rules, 2017 lays down that the credit on capital goods can be claimed after reducing the tax paid on such capital goods by 5% per quarter of a year or part thereof from the date of the invoice.

Therefore, in the given case, SNP Pvt. Ltd. could not claim credit on machinery till the time the supply of product 'Z' for which said machinery was being used was exempt. However, it can claim credit from 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 [$\text{₹ } 20,00,000 \times 18\%$]	₹ 3,60,000
Credit to be reduced [$\text{₹ } 3,60,000 \times 5\% \times 2$]	₹ 36,000
Amount of credit that can be taken [$\text{₹ } 3,60,000 - \text{₹ } 36,000$]	₹ 3,24,000

Question 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
	(₹)	(₹)

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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 4

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 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 from Uttarakhand, the threshold limit for obtaining registration is ₹ 20 lakh.

In the light of the afore-mentioned provisions, the aggregate turnover of Rishabh Enterprises is computed as under:

Computation of aggregate turnover of Rishabh Enterprises

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Particulars	Turnover of February	Cumulative Turn over 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 + 2,50,000]
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. It should obtain registration in Maharashtra.

Question 5

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 (₹)
vi.	Sale of diesel on which VAT is levied by Rajasthan Government.	1,00,000
vii.	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
viii.	Export of goods to England (U.K.)	5,00,000
ix.	Supply to its own additional place of business in Rajasthan.	5,00,000
x.	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.

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You are required to provide reasons for treatment of various items given above.

Answer 5

Computation of aggregate turnover of M/s Jayant Enterprises for the FY

Particulars	₹
Supply of diesel on which Sales Tax (VAT) is levied by Rajasthan Government [Note-1]	1,00,000
Supply of goods, after the completion of job work, from the place of Jayant Enterprises, directly by the principal [Note-2]	Nil
Export supply to England [Note-3]	5,00,000
Supply to its own additional place of business in Rajasthan ³² [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: -

6. 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).
7. 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.
8. Export supplies are specifically includible in the aggregate turnover in terms of section 2(6).
9. Supply made without consideration to units within the same State is a not a supply and hence not includible in aggregate turnover.
10. 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.

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(ii) ₹ 20 lakh for the 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: -

(iii) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.

(iv) ₹ 20 lakh for the rest of India.

Question 6

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, Bengaluru, Karnataka or Manipur branch. Further, it believes that the determination of aggregate turnover is not required for the purpose of obtaining registration but is required for determining the eligibility for composition levy.

Determine the aggregate turnover of Rajesh Dynamics. You are also required to review the technical veracity of the arguments of Rajesh Dynamics.

Answer 6

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

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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 exceed ₹ 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].

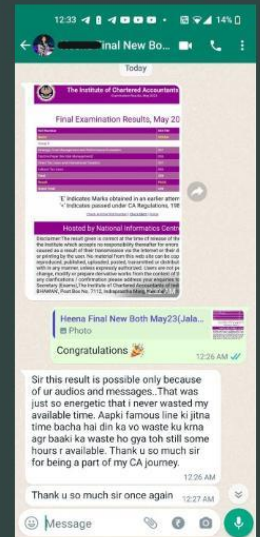
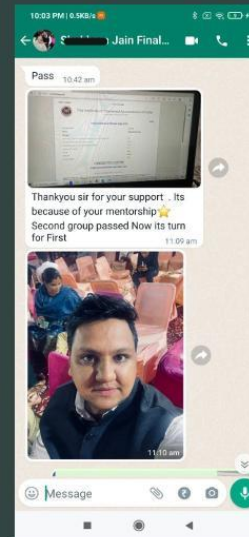
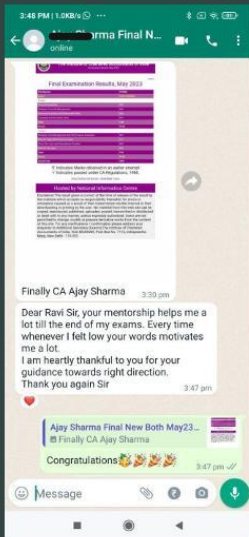
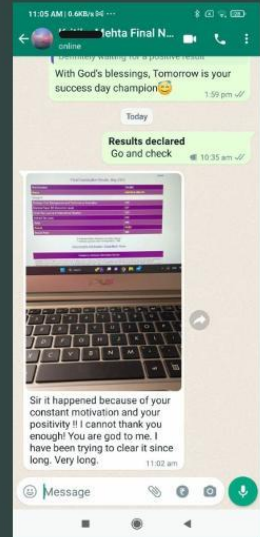
Rajesh Dynamics' argument that it is not liable to registration since the threshold exemption of ₹ 40 lakh is not being crossed either at Chennai, Tamil Nadu, Bengaluru, Karnataka or Manipur is not correct as firstly, the aggregate turnover to be considered in its case is ₹ 10 lakh and not ₹ 40 lakh and secondly, the same is computed on all India basis and not State-wise.

Apart from this, 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.

Last but not the least, 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.

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Chapter 9 Tax Invoice, Credit and Debit Notes

Attempts wise Distribution

Row Labels	Dec' 22	Jan' 22	Jul' 21	May' 18	Nov' 18	May' 19	May' 22	May' 24	Nov' 19	Nov' 20	Nov' 22	Nov' 24
MCQ												
MTP			Q2			Q4			Q1			
RTP						Q3						
QA												
MTP				Q5					Q6			
PYP							Q3, Q8					
RTP					Q4					Q1, Q7	Q2	

SECTION A

MULTIPLE CHOICE QUESTIONS (MCQ'S)

1. Which of the following statements is correct while issuing a tax invoice?
- Place of supply in case of inter-State supply is not required to be mentioned
 - The power of attorney holder can sign the tax invoice in case the taxpayer or his authorised representative has been travelling abroad
 - Quantity is not required to be mentioned in case of goods when goods are sold on "as is where is basis"
 - Description of goods is not required to be given in case of mixed supply of goods
 - (ii), (iii)
 - (i), (ii), (iii)
 - None of the above
 - All of the above (MTP 2 Marks Oct '19, Apr'22)

Ans: (c)

2. Whether Mr. X, a registered person, can issue single debit note or credit note for one or more invoices?
- No, for every invoice, separate debit note or credit note is required to be issued.
 - Yes, one debit note or credit note can be issued for one or more invoices.
 - No, however, single invoice can have more than one debit note or credit note.
 - Debit note or credit note can be issued irrespective of issue of invoice. (MTP 1 Mark Mar'21)

Ans: (b)

3. M/s. Wanderlust Travels (P) Ltd. purchased a bus chassis from M/s. Krishi Motors Ltd. for a consideration of ₹ 90.00 lakh on 01.10.20XX. M/s. Wanderlust Travels (P) Ltd. sent the bus chassis for body building to M/s. Bhagwant Fabricators and paid in advance the total consideration of ₹ 25.00 lakh on 15.10.20XX. M/s. Bhagwant Fabricators, after completing the bus body, informed M/s. Wanderlust

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Travels (P) Ltd. for carrying out the inspection of the work done on 05.11.20XX. M/s. Wanderlust Travels (P) Ltd. visited the work shop of M/s. Bhagwant Fabricators on 08.11.20XX and confirmed that the bus body was in accordance with the terms of the contract. The last date for issuing the invoice by M/s. Bhagwant Fabricators is:-

- (a) 15.10.20XX
- (b) 08.11.20XX
- (c) 08.12.20XX
- (d) 05.12.20XX (RTP May '19)

Ans: (c)

4. Which of the following statements is correct while issuing a tax invoice under GST Laws?

- (a) Place of supply in case of inter-State supply is not required to be mentioned.
- (b) The power of attorney holder can sign the tax invoice in case the taxpayer or his authorized representative has been travelling abroad.
- (c) Quantity is not required to be mentioned in case of goods when goods are sold on "as is where is basis".
- (d) HSN code for goods or services is required to be mentioned. (MTP 1 Marks Apr'19)

Ans: (d)

QUESTIONS AND ANSWERS

Question 1

Subhashini Ltd. agreed to provide consultancy services to Madhu Enterprises in the month of May for which it received an advance of ₹1,00,000 on 20th April from Madhu Enterprises. Subsequently, in the month of May, before supply of service, the said service contract has to be cancelled owing to some inadvertent circumstances. However, Subhashini Ltd. has issued the invoice for the advance received in April itself and has paid the GST thereon. You are the tax consultant of Subhashini Ltd. Please advise whether it can claim refund of tax paid or is it required to adjust its tax liability in its returns? (RTP Nov '20)

Answer 1

In case GST is paid by the supplier on advances received for a future event which got cancelled subsequently and for which invoice is issued before supply of service, the supplier is required to issue a "credit note" in terms of section 34 of the CGST Act, 2017. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34. There is no need to file a separate refund claim. However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a refund claim [Circular No. 137/07/2020 GST dated 13.04.2020]. Therefore, in the given case, Subhashini Ltd. is required to issue a credit note, declare its details in the return for the month during which such credit note has been issued and adjust the tax liability. However, if there is no output liability of Subhashini Ltd. against which the said credit note can be adjusted, it may proceed to file a refund claim.

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Question 2

Sanmati Industries, registered in the State of Maharashtra, receives a machinery for repair in its workshop located in Mumbai, Maharashtra from Titsubishi Ltd., an automobile manufacturing company based in Japan. The repair work was carried out by Sanmati Consultants for which it was paid in convertible foreign exchange. While raising the invoice for the said consideration, the accountant of Sanmati Consultants approaches you as to whether the Dynamic Quick Response (QR) code is mandatorily required on said invoice? You are required to advise him on the same. Note - Titsubishi Ltd. is not registered in India. Further, the aggregate turnover of Sanmati Consultants was ₹ 550 crores in the preceding financial year. (RTP Nov'22)

Answer 2

The place of supply for the services provided by Sanmati Consultants to Titsubishi Ltd. is as follows:

As per section 13(3)(a) of the IGST Act, 2017, in case where the services are supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, the place of supply of such services shall be the location where the services are actually performed. In the given case, for carrying out the repair work, machinery was required to be made physically available by Titsubishi Ltd. to Sanmati Consultants. Thus, the place of supply of services in this case is the location where the services are actually performed i.e., Maharashtra, India. Further, sixth proviso to rule 46 read with Notification No. 14/2020 CT dated 21.03.2020 provides that all invoices issued by a registered person whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds ₹ 500 crores, in respect of B2C supplies (supply of goods or services or both to an unregistered person) will mandatorily have a Dynamic QR code. Thus, the invoices issued by Sanmati Consultants to unregistered persons are mandatorily required to have a Dynamic QR Code. Accordingly, since Titsubishi Ltd. is not registered in India, invoice to be raised by Sanmati Consultants to it should mandatorily have a Dynamic Quick Response (QR) code. However, Circular No. 165/21/2021 GST dated 17.11.2021 has clarified that wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier in convertible foreign exchange, such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier. Thus, the Dynamic Quick Response (QR) code is NOT mandatorily required on the invoice to be issued by Sanmati Consultants to Titsubishi Ltd.

Question 3

Enumerate the suppliers to whom the Dynamic Quick Response (QR) code is not applicable when they issue an invoice to an unregistered person. (PYP 4 Marks May '22)

Answer 3

Dynamic Quick Response (QR) code is not applicable to following suppliers when they issue an invoice to an unregistered person:-

- (i) Insurer or banking company or financial institution including NBFC
- (ii) GTA (Goods transport agency) supplying services in relation to transportation of goods by road in a goods carriage
- (iii) Supplier of passenger transportation service

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- (iv) Person supplying services by way of admission to exhibition of cinematograph films in multiplex screens
- (v) Supplier of OIDAR (online information and database access or retrieval) services.
- (vi) In case of exports

Question 4

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 invoice 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. (RTP Nov'18)**

Answer 4

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 and 49, a registered person may not issue a tax invoice/bill of supply 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/bill of supply 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, inter alia, 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.

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Question 5

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. (MTP 4 Marks Mar'18, Aug'18, MTP 5 Marks Mar'22)

Answer 5

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. 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.

Question 6

Pari & Sons is an unregistered dealer of taxable supplies in Kerala. 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. (MTP 6 Marks Oct'19, MTP 4 Marks Oct'21, MTP 5 Marks Oct'20, PYP 5 Marks May'18)

Answer 6

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 (₹ 20 lakh).

Section 25(1) provides that a supplier whose aggregate turnover in a financial year

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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); otherwise it is the date of grant of registration in terms of rule 10(3).

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)].

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.

Question 7

Bhumika Caretakers, a registered person, provides the services of repair and maintenance of electrical appliances. On April 1, it has entered into an annual maintenance contract with Naveen for its Air Conditioner and Washing Machine.

As per the terms of contract, maintenance services will be provided on the first day of each quarter of the relevant financial year and payment for the same will also be due on the date on which service is rendered. During the year, it provided the services on April 1, July 1, October 1, and January 1 in accordance with the terms of contract. When should Bhumika Caretakers issue the invoice for the services rendered? (MTP 4 Marks Apr'18)

Answer 7

Continuous supply of service means, inter alia, supply of any service which is provided, or agreed to be provided continuously or on recurrent basis, under a contract, for a period exceeding 3 months with the periodic payment obligations. Therefore, the given situation is a case of continuous supply of service as repair and maintenance services have been provided by Bhumika Caretakers on a quarterly basis, under a contract, for a period of 1 year with the obligation for quarterly payment.

In terms of section 31 of the CGST Act, in case of continuous supply of service, where due date of payment is ascertainable from the contract (as in the given case), invoice shall be issued on or before the due date of payment.

Therefore, in the given case, Bhumika Caretakers should issue quarterly invoices on or before April 1, July 1, October 1, and January 1.

Question 8

Discuss the provisions relating to issue of an invoice/document in the following circumstances:

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- (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) **Miss Dhanvi provides continuous supply of services to her client, where the due date of payment for such services is not ascertainable. No advance has been received in this behalf.**
(MTP 5 Marks Apr'22)

Answer 8

- (i) As per section 31(3)(e) of the CGST Act, 2017, where advance payment is received against a supply for which receipt voucher has been issued, but subsequently no supplies are made and no tax invoice is issued in pursuance thereof, a refund voucher may be issued to the person who had made the advance payment.
- (ii) As per section 31(7) of the CGST Act, 2017, where the goods are sent on approval for sale or return and are removed before the supply takes place, the invoice shall be issued before or at the time of supply or 6 months from the date of removal, whichever is earlier.
- (iii) As per section 31(5)(b) of the CGST Act, 2017, in case of continuous supply of services, where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment.

SECTION B

Question 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:

- (iv) **Whether Jai is required to issue a tax invoice in all cases, even if he is selling the goods to the end consumers?**
- (v) **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?**
- (vi) **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 1

(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 and 49, a registered person may not issue a tax invoice/bill of supply if:

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- (iv) value of the goods supplied <₹ 200,
- (v) the recipient is unregistered; and
- (vi) the recipient does not require such invoice.

Instead, such registered person shall issue a Consolidated Tax Invoice/bill of supply 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, inter alia, 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.

Question 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 2

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. 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.,

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for the period beginning with October 3 till November 5. Further, the revised invoices can be issued for the said period till December 5.

Question 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 3

- (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

Question 4

Pari & Sons is an unregistered dealer of taxable supplies in Kerala. 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 4

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 (₹ 20 lakh).

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); otherwise it is the date of grant of registration in terms of rule 10(3).

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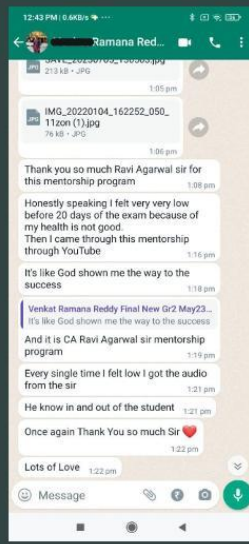
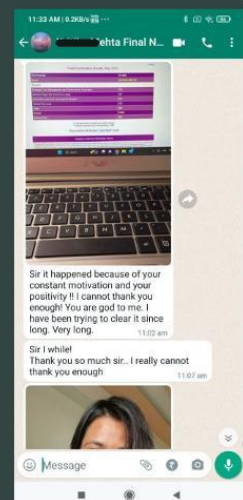
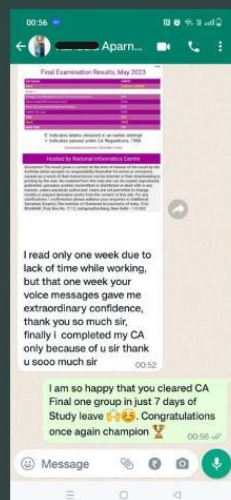
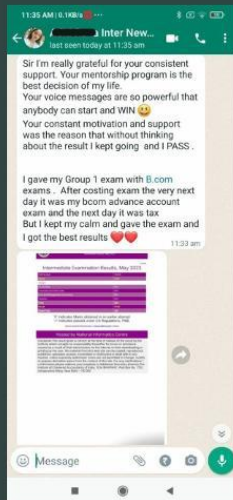
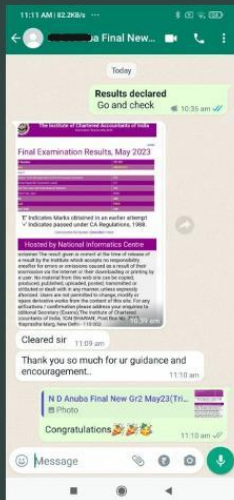
In the given case, since Pari & Sons have applied for registration on 27th August which is within 30 days from the date of becoming liable to registration (10th August), its effective date of registration is 10th August.

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)].

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.

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Chapter 10 Accounts and Records; E-way Bill

Attempts wise Distribution

Row Labels	Dec' 21	Jan' 21	Jul' 21	May' 18	Nov' 18	May' 19	May' 22	May' 23	Nov' 29	Nov' 20	Nov' 22	Nov' 23
MCQ												
MTP						Q2, Q3						
RTP						Q1						
QA												
MTP	Q9			Q2				Q4		Q3		Q1,Q 12
PYP	Q5	Q13	Q14			Q8	Q6	Q7				
RTP						Q10		Q11				

SECTION A

MULTIPLE CHOICE QUESTIONS (MCQ'S)

1. Which of the following statements are true with respect to accounts and records?
- (1) All accounts and records are to be retained for 6 years.
 - (2) Stock record is to be maintained by all registered dealers except the dealers registered under composition scheme.
 - (3) Stock record is to be maintained by all registered dealers including composition dealers.
 - (4) Monthly production records are to be maintained by all dealers except the dealers who have taken option for composition.
 - (5) Monthly production records are to be maintained by all dealers including composition dealers.
 - (6) Records are to be maintained at principal place of business.
 - (a) 1, 2, 5, 6
 - (b) 1, 3, 5
 - (c) 1, 3, 4
 - (d) 1, 2, 4, 6 (RTP May '19)

Ans: (a)

2. Which of the following statements are true w.r.t. accounts and records under GST laws?
- (a) All accounts and records are to be retained for 5 years.
 - (b) Stock record is to be maintained by all registered dealers except the dealers registered under composition scheme.
 - (c) Stock record is to be maintained by all registered dealers including composition dealers.
 - (d) Monthly production records are to be maintained by all dealers except the dealers who have taken option for composition. (MTP 1 Marks Apr'19)

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Ans: (b)

3. M/s Gyaan Publishing House, registered under GST in Delhi, is engaged in printing and selling of books as well as trading of stationery items. He has provided following information of a consignment which is to be supplied to Mumbai: -

- (i) Taxable value of supplies indicated on tax invoice: ₹ 35,000/-
- (ii) Value of exempted supplies: ₹ 8,000/-
- (iii) Value of goods to be sent to job worker on delivery challan: ₹ 15,000/-

Calculate the consignment value for the purpose of generating e-way bill for inter-State supply of goods. Assume rate of tax on taxable goods to be 18%.

- (a) ₹ 35,000/-
- (b) ₹ 50,000/-
- (c) ₹ 56,300/-
- (d) ₹ 64,300/- (MTP 2 Marks Mar'19)

Ans: (c)

QUESTIONS AND ANSWERS

Question 1

Manu Services Ltd. is a supplier of management consultancy services registered in Haryana. It has approached you to ascertain the period for which the books of accounts or other records need to be maintained? (MTP 5 Marks Sep '23)

Answer 1

Every registered person required to keep and maintain books of account or other records in accordance with the provisions of section 35(1) shall retain them until the expiry of 72 months from the due date of furnishing of annual return for the year pertaining to such accounts and records.

However, a registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later

Question 2

Explain the provisions relating to period of retention of accounts as provided under section 36 of CGST Act, 2017? (MTP 5 Marks Apr'18)

Answer 2

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Section 36 of the CGST Act explains the provisions relating to period of retention of accounts as under: -

Every registered person required to keep and maintain books of account or other records 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 1 year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later.

Question 3

When is an e-way bill required to be generated? (MTP 5 Marks May '20 & Apr'21, PYP 5 Marks May'19)

Answer 3

As per rule 138 of the CGST Rules, 2017, whenever there is a movement of goods of consignment value exceeding Rs. 50,000:

- (i) in relation to a supply; or
- (ii) for reasons other than supply; or
- (iii) due to inward supply from an unregistered person, e-way bill needs to be generated prior to the commencement of transport of goods.

Further, in the following situations, e-way bill needs to be issued even if the value of the consignment is less than Rs. 50,000:

- (i) Where goods are sent by a principal located in one State/ Union territory to a job worker located in any other State/Union territory, the e-way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment.
- (ii) Where specified handicraft goods are transported from one State/ Union territory to another State/ Union territory by a person who has been exempted from the requirement of obtaining registration under section 24 of the CGST Act, 2017, the e-way bill shall be generated by the said person irrespective of the value of the consignment.

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

Question requires the examinees to explain the records as per rule 56(2) and 56(4) of CGST Rules, 2017, which the supplier opting for composition scheme need not maintain. However, examinees ended up in writing general answers instead of being adequately substantiated by legal provisions.

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Question 4

M/s. Drithi Manufacturers, registered in West Bengal, sold air-conditioner to a retail seller in Bhubaneswar, at a value of ₹ 49,000 (excluding GST leviable @ 18%). Now, it wants to send the consignment of air-conditioning machine to the retail seller in Bhubaneswar. You are required to advise M/s. Drithi Manufacturers on the following issues along with suitable explanations:

- (i) **Whether e-way bill is mandatorily required to be generated?**
- (ii) **What will be the consequence for non-issuance of e-way bill? (MTP 5 Marks Mar'23, PYP 5 Marks Jan'21)**

Answer 4

- (i) E-way bill is mandatorily required to be generated whenever there is a movement of goods of consignment value exceeding ₹ 50,000, inter alia, in relation to a supply. Consignment value of goods includes the central tax, State/Union territory tax, integrated tax and cess charged, if any.
Thus, the consignment value of goods, in the given case, will be ₹ 57,820 [₹ 49,000 + (₹ 49,000 × 18%)].
Since in the given case 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 generated in respect of movement of goods from West Bengal to Bhubaneswar.
- (ii) Non-issuance of e-way bill may result in the following consequences:
 - (a) imposition of penalty of ₹ 10,000/- or tax sought to be evaded (wherever applicable), whichever is greater
 - (b) detention and seizure of goods and the conveyance used to transport the said goods and the same will be released only on payment of appropriate tax and penalty .
 - (c) confiscation of goods and the conveyance used to transport the said goods if the tax and penalty is not paid within 14 days of detention or seizure.

Question 5

List any four records required to be maintained by an agent under the CGST Rules, 2017.

(PYP 4 Marks Dec '21)

Answer 5

Every agent shall maintain accounts depicting the-

- (a) particulars of authorization received by him from each principal to receive or supply goods or services on behalf of such 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.

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EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

Few examinees ended up writing general and vague answers rather than the answers based on legal provisions.

Question 6

Comment on the given independent situations relating to GST procedures. Your Answer should include relevant provisions of law, as may be applicable:

GoToDress is a chain of stores dealing in readymade garments through five showrooms in Delhi. It has a single GSTIN for all its showrooms in Delhi and has a principal place of business at Karol Bagh, Delhi. One of the consultants has suggested GoToDress to maintain books of accounts of all of its five showrooms at principal place of business at Karol Bagh, Delhi for better administration and control. Give your comment on the above advice according to the provisions of GST law. (PYP 2 Marks May '22)

Answer 6

The suggestion of the consultant is not correct.

Every registered person is required to keep and maintain, his books of accounts at his principal place of business.

Where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business.

Question 7

Decide with reason whether e-way bill is required to be issued under CGST Act, 2017 in the following independent cases:

SV Electricals Ltd., a registered supplier of electronic goods, is required to send from Delhi, a consignment of parts of LED TV to be replaced under warranty at various client locations in Gurugram (Haryana). The value of consignment declared in delivery challan accompanying the goods is ₹ 65,000. SV Electricals Ltd. claims that since movement of goods to Gurugram (Haryana) 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 SV Electricals Ltd.

Tree Ltd. registered in Kerala, sends goods to its job worker Woods & Co. in Tamil Nadu, which is also registered under GST. Value of the consignment was ₹ 37,500 (including GST). (PYP 4 Marks May '23)

Answer 7

The claim made by SV Electricals Ltd. is not correct. SV Electricals Ltd. needs to issue e-way bill.

E-way bill is mandatorily required to be issued whenever there is a movement of goods for reasons other than supply, provided the consignment value exceeds ₹ 50,000.

In case of inter-State transfer of goods by principal to job-worker, e-way bill is mandatorily required to be issued irrespective of the value of the consignment.

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Paper 5 – Indirect Tax Laws

Thus, e-way bill is required to be issued in case of transfer of goods by Tree Ltd. registered in Kerala to Woods & Co. in Tamil Nadu.

Question 8

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 though required to be maintained by a normal tax-payer as enumerated in rule 56.

OR

The supplier opting for composition levy need not maintain certain records as per rule 56(2) and 56(4) of the CGST Rules, 2017. Explain. (PYP 5 Marks May '19)

Answer 8

Following records are not required to be maintained by a supplier who has opted for composition scheme as per rule 56(2) and (4), but are required to be maintained by a normal tax payer:

- (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.

Question 9

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%). 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?**
- (MTP 5 Marks Oct'21)**

Answer 9

- (a) Rule 138(1) 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

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₹ 50,000. Further, explanation 2 to rule 138(1) stipulates that the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes CGST, SGST/UTGST, IGST and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

Accordingly, in the given case, the consignment value will be as follows:

$$= ₹ 48,000 \times 118\%$$

$$= ₹ 56,640.$$

Since the movement of goods is in relation to supply of goods and the consignment value exceeds ₹ 50,000, e-way bill is mandatorily required to be issued in the given case.

- (b) An e-way bill contains two parts namely, Part A to be furnished by the registered person who is causing movement of goods of consignment value exceeding ₹ 50,000/- and part B (transport details) is to be furnished by the person who is transporting the goods.

Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or a public conveyance, by road, the said person shall generate the e-way bill on the common portal after furnishing information in Part B [Rule 138(2)].

Where the goods are transported by railways or by air or vessel, the e-way bill shall be generated by the registered person, being the supplier or the recipient, who shall, either before or after the commencement of movement, furnish, on the common portal, the information in Part B [Rule 138(2A)].

Where the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in Part A [Rule 138(3)].

- (c) 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)].

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). 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), 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), 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

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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.

Question 10

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.

(MTP 5 Marks Oct '22, MTP 4 Marks Mar'21 & Nov '21, RTP May'19)

Answer 10

The goods to be moved to another State for replacement under warranty is not a 'supply'. However, rule 138(1), 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.

Question 11

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.

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You are required to advise Beauty Cosmetics Ltd. with regard to issuance of e-way bill(s).

(MTP 4 Marks Mar'22, RTP May '23 & May '19)

Answer 11

Beauty Cosmetics Ltd. would be required to prepare two separate e-way bills since each invoice value exceeds ₹ 50,000 and each invoice is considered as one consignment for the purpose of generating e-way bills.

The FAQs on E-way Bill issued by CBIC clarify that if multiple invoices are issued by the supplier to one recipient, that is, for movement of goods of more than one invoice of same consignor and consignee, multiple e-way bills have to be generated. In other words, for each invoice, one e-way bill has to be generated, irrespective of the fact whether same or different consignors or consignees are involved. Multiple invoices cannot be clubbed to generate one e-way bill. However, after generating all these e-way bills, one consolidated e-way bill can be prepared for transportation purpose, if goods are going in one vehicle.

Question 12

Essel Groups has started making taxable supplies and gets registered under GST law. You are required to advice it about the accounts and records required to be maintained by it as required under section 35(1). (5 Marks Oct '23)

Answer 12

Section 35(1) of the CGST Act 2017 stipulates that a true and correct account of following is to be maintained:

- (a) production or manufacture of goods;
- (b) inward and outward supply of goods or services or both;
- (c) stock of goods;
- (d) input tax credit availed;
- (e) output tax payable and paid
- (f) such other particulars as may be prescribed.

Question 13

Whether the transporters, who are not registered under the GST, are required to maintain any records under the provisions of CGST Act, 2017? Also explain, if any other unregistered persons who are required to maintain records under GST. (PYP 2 Marks Jan'21)

Answer 13

The transporters, who are not registered under GST, shall obtain a unique enrollment number on GST common portal and maintain records of goods transported, delivered and goods stored in transit by them along with GSTIN of the registered consignor and consignee for each of his branches. Every owner or operator of warehouse/godown/any other place used for storage of goods, even if unregistered, is also required to maintain records under GST.

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Question 14

Decide with reason whether e-way bill is required to be issued under CGST Act, 2017 in the following independent cases:

- (a) Square Ltd., registered in Andhra Pradesh, sends goods to its job worker Cube & Co. in Karnataka, which is also registered under GST. Value of the consignment was ₹ 45,000 (including GST). (PYP 2 Marks July 21)
- (b) Mr. Bheeshma of Telangana started doing business in notified handicraft products as a casual taxable person. He got his first order of ₹ 30,000 from Tamil Nadu which he transports. He is not registered under GST since he has a threshold limit of ₹ 20 lakh. (PYP 2 Marks Jul'21)

Answer 14

- (a) E-way bill is mandatorily required to be issued in case of inter-State transfer of goods by principal to job-worker, irrespective of the value of the consignment.
In view of the same, e-way is mandatorily required to be issued in the given case.
- (b) E-way bill is mandatorily required to be issued in case of inter-State transfer of handicraft goods by a person exempted from obtaining registration.
In view of the same, e-way bill is mandatorily required to be issued in the present case.

SECTION B

Question 1

Mala Services Ltd. is a supplier of management consultancy services registered in Haryana. It has approached you to ascertain the period for which the books of accounts or other records need to be maintained?

Answer 1

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.

Question 2

Essel Groups has started making taxable supplies and gets registered under GST law. You are required to advice it about the accounts and records required to be maintained by it as required under section 35(1).

Answer 2

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;

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- (c) stock of goods;
- (d) input tax credit availed;
- (e) output tax payable and paid
- (f) such other particulars as may be prescribed.

Question 3

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 though required to be maintained by a normal tax-payer as enumerated in rule 56.

Answer 3

Following records are not required to be maintained by a supplier who has opted for composition scheme as per rule 56(2) and (4), but are required to be maintained by a normal tax payer:

- (III) 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.
- (IV) Details of tax: Account, containing the details of tax payable (including tax payable under reverse charge), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.

Question 4

ABC Manufacturers Ltd. engages Raghav & Sons as an agent to sell goods on its behalf wherein the invoice for supply or procurement on behalf of ABC Manufacturers Ltd. is issued by Raghav & Sons in its own name. For the purpose, ABC Manufacturers Ltd. has supplied the goods to Raghav & Sons located in Haryana. Enumerate the accounts required to be maintained by Raghav & Sons as per rule 56(11).

Answer 4

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.

Question 5

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%). It wants to send the consignment of such toys to the retail seller in Gujarat.

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You are required to advise Sindhi Toys Manufacturers on the following issues:

- (d) Whether e-way bill is mandatorily required to be generated in respect of such movement of goods?**
(e) If yes, who is required to generate the e-way bill?
(f) What will be the consequences for non-issuance of e-way bill?

Answer 5

(a) Rule 138(1) provides that e-way Bill is mandatorily required to be generated if the goods are moved, inter alia, in relation to supply and the consignment value exceeds ₹ 50,000. Further, explanation 2 to rule 138(1) stipulates that the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes CGST, SGST/UTGST, IGST and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods. Accordingly, in the given case, the consignment value will be as follows:

$$= ₹ 48,000 \times 118\%$$

$$= ₹ 56,640.$$

Since the movement of goods is in relation to supply of goods and the consignment value exceeds ₹ 50,000, e-way bill is mandatorily required to be issued in the given case.

(b) An e-way bill contains two parts namely, Part A to be furnished by the registered person who is causing movement of goods of consignment value exceeding ₹ 50,000/- and part B (transport details) is to be furnished by the person who is transporting the goods.

Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or a public conveyance, by road, the said person shall generate the e-way bill on the common portal after furnishing information in Part B [Rule 138(2)].

Where the goods are transported by railways or by air or vessel, the e-way bill shall be generated by the registered person, being the supplier or the recipient, who shall, either before or after the commencement of movement, furnish, on the common portal, the information in Part B [Rule 138(2A)].

Where the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in Part A [Rule 138(3)].

Where the consignor or the consignee has not generated the e-way bill and the aggregate of the consignment value of goods carried in the conveyance is more than ₹ 50,000/, the transporter, except in case of transportation of goods by railways, air and vessel, shall, in respect of inter-State supply, generate the e-way bill on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated e-way bill on the common portal prior to the movement of goods [Rule 138(7)].

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). If e-way bills, wherever required, are not issued in accordance with the provisions contained in rule 138, the same will be

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considered as contravention of rules.

As per section 122(1)(xiv), 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), 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.

Question 6

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 6

The goods to be moved to another State for replacement under warranty is not a 'supply'. However, rule 138(1), inter alia, stipulates that every registered person who causes movement of goods of consignment value exceeding ₹ 50,000:

- (iv) in relation to a supply; or
- (v) for reasons other than supply; or
- (vi) 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.

Question 7

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

Paper 5 – Indirect Tax Laws

transported to Prasanna 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 7

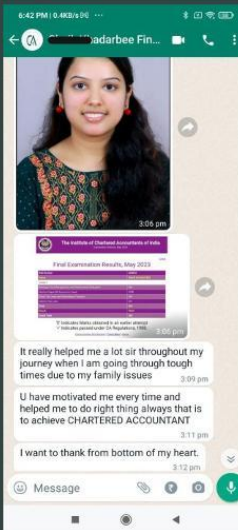
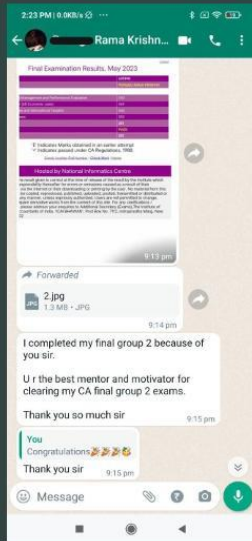
Beauty Cosmetics Ltd. would be required to prepare two separate e-way bills since each invoice value exceeds ₹ 50,000 and each invoice is considered as one consignment for the purpose of generating e-way bills.

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.

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Chapter 11 Payment Of Tax

Attempts wise Distribution

Row Labels	Dec' 22	Jan' 21	Jul' 21	May' 18	Nov' 18	May' 19	May' 22	May' 23	Nov' 19	Nov' 20	Nov' 22	Nov' 23
QA												
MTP			Q5					Q2, Q3				
PYP		Q6			Q9		Q7			Q4	Q1	
RTP						Q8						

SECTION A

QUESTIONS AND ANSWERS

Question 1

BSA Corporation is a Public Sector Undertaking registered in Karnataka. For entertainment events in Bengaluru and at Mumbai, BSA has given contract to Mr. A, a renowned artist, registered person in Maharashtra, to perform on contemporary Bollywood songs. BSA Corporation agreed to pay ₹ 12,39,000 and ₹ 18,29,000, inclusive of GST, for Mumbai and Bengaluru events respectively. BSA Corporation seeks your advice regarding amount of TDS to be deducted assuming GST rate @ 18% (CGST @ 9%, SGST @ 9%, IGST @18%)

(PYP 5 Marks Nov'22)

Answer 1

A Public Sector Undertaking is required to deduct tax @ 2% (on inter-State supplies) from payment made to the supplier of taxable services where the total value of such supply, excluding tax indicated in the invoice, under a contract, exceeds ₹ 2,50,000.

Value of supplies excluding tax are
 ₹ 10,50,000 (₹ 12,39,000 × 100/118) and
 ₹ 15,50,000 (₹ 18,39,000 × 100/118)

Further, in the given case, since the location of supplier is Maharashtra and place of supply of services provided by Mr. A to BSA Corporation is the location of recipient, viz. Karnataka, said services provided at both Mumbai and Bengaluru events are inter -State supplies.

Accordingly, in the given case, BSA Corporation is required to deduct tax as follows:

- (i) ₹ 10,50,000 × 2% = ₹ 21,000 (IGST)
- (ii) ₹ 15,50,000 × 2% = ₹ 31,000 (IGST)

Question 2

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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 & registered in Mumbai. Total contract value is ₹ 2,72,000 (inclusive of GST)**
- (2) Supply of air conditioner to GST department located & registered in Delhi. Total contract value is ₹ 2,55,000 (exclusive of GST)**
- (3) Supply of generator renting service to Municipal Corporation of Jaipur (not exempt under GST law). Total contract value is ₹ 3,50,000 (inclusive of GST) (MTP 4 Marks March '23)**

Answer 2

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	3,12,500	3,125	3,125	

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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.]	$\left[\frac{3,50,000 \times 100}{112} \right]$			
Total		3,125	3,125	5,100

Question 3

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, respectively as under:

S. No	Particulars	Total contract value (inclusive of GST) (₹)	Payment due in October (₹)
(i)	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
(ii)	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

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?
(MTP 4 Marks Apr'23)**

Answer 3

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:

Tax to be deducted

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S. No.	Particulars	Total Contract Value (Rs.)	Payment due (Rs.)	CGST(Rs.)	SGST(Rs.)	IGST(Rs.)
(i)	Interior decoration of Andhra Bhawan located in Delhi (Note-1)	12,39,000	12,39,000			
(ii)	Supply of printed books and printed post cards to a West Delhi Post Office (Note-2)	9,72,000				

Notes:

- 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. 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.
- 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:

$$= Z \frac{2,72,000 \times 100}{118}$$

$$= T \text{ ₹ } 2,30,509 \text{ (rounded off)}$$
 Since the total value of taxable supply under the contract does not exceed ₹ 2,50,000, tax is not required to be deducted.
 The answer will remain unchanged even if Manihar Enterprises is registered under composition scheme. Tax will be deducted in all cases where it is required to be deducted under section 51 of the CGST Act, 2017 including the scenarios when the supplier is registered under composition scheme.

Question 4

- 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 ₹ 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.**
- 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.**
- If the private sector entity undertakes works contract, for the above Department**

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in New Delhi. What would be the position of tax deduction when the contract value is ₹5,00,000?

- (iv) The disbursing officer has not paid the tax deducted in the month of February 2019, amounting to ₹ 2,00,000 under CGST and 2,00,000 under SGST to the Government's account on the relevant due date, but has paid it on 14th 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? (PYP 4 Marks Nov'20)

Answer 4

- (i) Certain specified persons are required to deduct tax from the payment made to the supplier of taxable goods and/or services, where the total value of such supply [excluding GST] under a contract, exceeds ₹ 2,50,000. However, the tax is not liable to be deducted at source when supply of goods and/or services has taken place between one specified person to another specified person. Since both Central Government Department and PSU are the specified persons, tax is not deductible in case of supply of goods between them.
- (ii) Central Government Department is mandatorily required to deduct IGST @ 2% since a private entity is not the specified person.
- (iii) Since, in the given case, the location of supplier and place of supply is in the same State, i.e., Delhi and location of recipient is in UP, Central Government Department is not required to deduct TDS although the total value of supply under the contract is more than ₹ 2,50,000¹⁹.
- (iv) Failure to deposit TDS with the Government and failure to furnish TDS return within the stipulated time period will result in following consequences:
- Interest @ 18% p.a. on the amount of tax deducted shall be payable.
 - Late fee of ₹ 100 per day for the period of delay in furnishing return, or ₹ 5,000, whichever is lower, shall be payable. Equal amount of late fee will be payable under the respective State law.
 - Applicable penalty will also be levied.

Question 5

Shubi Enterprises is entitled for exemption from tax under GST law. However, it collected tax from its buyers worth Rs. 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 Shubi Enterprises the consequences of collecting tax, but not depositing the same with Government as provided under section 76 of the CGST Act, 2017.

(MTP 5 Marks Apr'21)

Answer 5

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 show cause notice (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

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thereupon such person shall pay the amount so determined along with interest at the rate specified under section 50 of the CGST Act, 2017 from the date such amount was collected by him to the date such amount is paid by him to the Government.

Question 6

From the following information of independent cases, your expert advice, with appropriate reasoning, is sought on the applicability of TDS/TCS provisions of the CGST Act, 2017. You shall also quantify the amount of TDS/TCS, as the case be, if the same is applicable.

- (i) **Top Fashions, a designer cloth dealer and registered in the State of West Bengal, effected supply through 'QUICK DEAL', an electronic commerce operator. Net value of taxable intra-State supplies effected for the month of October 2019 was ₹ 1,50,000.**
- (ii) **M/s Super Builders, a registered supplier in Tamil Nadu, was awarded a works contract by Government of Tamil Nadu amounting to ₹ 4,30,000. Of this, value of exempt supply was ₹ 1,00,000.**
- (iii) **Tasty Caterers, a registered supplier of Kerala, provided catering services in Kochi, Kerala to Government of Andhra Pradesh for its annual training camp held for its staff. Value of said services was ₹ 4,50,000. (PYP 4 Marks Jan'21)**

Answer 6

- (i) An electronic commerce operator (ECO) is required to collect TCS - an amount @ 1% (CGST 0.5% and SGST @ 0.5%) of the net value of taxable supplies made through it by other suppliers.
 $= ₹ 1,50,000 \times 0.5\%$
 $= ₹ 750$ (CGST) & $₹ 750$ (SGST)
- (ii) A State Government is required to deduct tax from the payment made to the supplier of taxable goods and/or services, where the total value of such supply [excluding GST] under a contract, exceeds ₹ 2,50,000. TDS to be deducted in the given intra-State supply (since place of supply and location of supplier is in Tamil Nadu) is as follows:
 $= ₹ (4,30,000 - 1,00,000) \times 1\%$
 $= ₹ 3,300$ (CGST)
 $₹ 3,300$ (SGST)
- (iii) Since, in the given case, the location of supplier and place of supply are in the same State, i.e., Kerala and location of recipient is in Andhra Pradesh, Andhra Pradesh Government is not required to deduct TDS although the total value of supply under the contract is more than ₹ 2,50,000.

Note: In above question, it has been assumed that the value given is exclusive of GST, wherever applicable, since the rate of tax is not given in the question.

Question 7

Agni Limited filed GST return (under section 39) for the month of January 2021 on 11th April 2021. Original due date for the said return was 20th February 2021. Details of tax assessed as payable for the said month are given below:

Particulars	CGST (₹)	SGST (₹)
Output tax payable	1,80,000	1,80,000

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Tax payable under reverse charge	40,000	40,000
Input tax credit available for utilization	70,000	70,000

- (i) Compute the net tax payable in cash while filing the said return as well as the interest payable for the delayed remittance of tax.
- (ii) Assuming that the company has an ITC balance of ₹ 2,50,000 each under CGST and SGST for the said month, compute the interest payable, if entire tax due for the said month was paid through the Electronic Credit Ledger to the extent possible as per the provisions of Act. (PYP 5 Marks May'22)

Answer 7

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 shall be levied only on tax paid through electronic cash ledger.

In the given case, since return is filed belatedly, net tax payable in cash and interest thereon is computed as follows:

Particulars	CGST (₹)	SGST (₹)
Output tax payable	1,80,000	1,80,000
Less: Credit of CGST and SGST be utilized for payment of CGST and SGST respectively	70,000	70,000
Net tax (A)	1,10,000	1,10,000
Tax under reverse charge is payable in cash (B)	40,000	40,000
Total tax payable in cash [(A) + (B)]	1,50,000	1,50,000
Interest payable @ 18% per annum (rounded off)	3,699 [1,50,000 × 18% × 50/365]	3,699 [1,50,000 × 18% × 50/365]

- (ii) In the above case, if ITC available is ₹ 2,50,000 of CGST and SGST each, output tax payable in cash shall be nil (CGST as well as SGST). However, remaining ITC available cannot be utilised for payment of tax payable under reverse charge as it is not an output tax. Therefore, interest on delayed payment of tax will be as follows:

Particulars	CGST (₹)	SGST (₹)
Interest payable @ 18% per annum (rounded off)	986 [40,000 × 18% × 50/365]	986 [40,000 × 18% × 50/365]

Question 8

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, respectively as under:

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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 & registered 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?

(RTP May'19)

Answer 8

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As per section 51 read with section 20 of the IGST Act, 2017 and Notification No. 50/2018 CT 13.09.2018, 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	9,72,000		--		

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	Delhi Post Office (Note-6)					
(vii)	Maintenance of street lights in Municipal area of East Delhi (Note-7)	3,50,000	3,50,000	--		

Notes:

- Being an inter-State supply of goods, supply of stationery to Fisheries Department, Kolkata is subject to IGST @ 18%. Therefore, total value of taxable supply [excluding IGST] under the contract is as follows:
 $= ₹ 2,60,000 \times 100 / 118$
 $= ₹ 2,20,339$ (rounded off)
 Since the total value of supply under the contract does not exceed ₹ 2,50,000, tax is not required to be deducted.
- Being an intra-State supply of services, supply of car rental services to Municipal Corporation of Delhi is subject to CGST and SGST @ 9% each. Therefore, total value of taxable supply [excluding CGST and SGST] under the contract is as follows:
 $= ₹ 2,95,000 \times 100 / 118$
 $= ₹ 2,50,000$
 Since the total value of supply under the contract does not exceed ₹ 2,50,000, tax is not required to be deducted.
- Being an inter-State supply of goods, supply of heavy machinery to PSU in Uttarakhand is subject to IGST @ 18%. Therefore, total value of taxable supply [excluding IGST] under the contract is as follows:
 $= ₹ 5,90,000 \times 100 / 118$
 $= ₹ 5,00,000$
 Since the total value of supply under the contract exceeds ₹ 2,50,000, PSU in Uttarakhand is required to deduct tax @ 2% of ₹ 25,000, i.e. ₹ 500.
- Being an intra-State supply of goods, supply of taxable goods to National Housing Bank, Delhi is subject to CGST and SGST @ 9% each. Therefore, total value of taxable supply [excluding CGST and SGST] under the contract is as follows:
 $= ₹ 6,49,000 \times 100 / 118$
 $= ₹ 5,50,000$
 Since the total value of supply under the contract exceeds ₹ 2,50,000, National Housing Bank, Delhi is required to deduct tax @ 2% (1% CGST + 1% SGST) of ₹ 50,000, i.e. ₹ 1,000.
- 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.
- 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:

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$$= ₹ 2,72,000 \times 100 / 118$$

$$= ₹ 2,30,509 \text{ (rounded off)}$$

Since the total value of taxable supply under the contract does not exceed ₹ 2,50,000, tax is not required to be deducted.

7. Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply provided to, inter alia, local authority by way of any activity in relation to any function entrusted to a Municipality under article 243W of the Constitution is exempt from GST. Thus, maintenance of street lights (an activity in relation to a function entrusted to a Municipality) in Municipal area of East Delhi involving replacement of defunct lights and other spares where the value of supply of goods is not more than 25% of the value of composite supply is a service exempt from GST. Since tax is liable to be deducted from the payment made or credited to the supplier of taxable goods or services or both, no tax is required to be deducted in the given case as the supply is exempt.

The answer will remain unchanged even if Manihar Enterprises is registered under composition scheme. Tax will be deducted in all cases where it is required to be deducted under section 51 of the CGST Act, 2017 including the scenarios when the supplier is registered under composition scheme.

Question 9

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

She furnishes return on monthly basis. 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. In order to optimize the interest liability as per GST provisions, she is willing to make any transfer from the cash ledger between any of the major or minor heads as the case may be. 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.**

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(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. (PYP 5 Marks Nov'18)

Answer 9

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:

$$₹ 75,000 \times 18\% \times 31/365 = ₹ 1,147 \text{ (rounded off)}$$

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	
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 - ₹47 shortfall amount has been transferred from cash ledger balance in minor head penalty of major head CGST.

Note 3 - ₹47 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.

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

Large number of examinees wrongly allowed cross utilization among major and minor head of the amount available under electronic cash ledger.

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SECTION B

Question 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

She furnishes return on monthly basis. 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. In order to optimize the interest liability as per GST provisions, she is willing to make any transfer from the cash ledger between any of the major or minor heads as the case may be. She wants to pay the tax on 20th April.

Other information:

- (v) Date of collection of GST was 18th February.
- (vi) No other transaction after this up to 20th April.
- (vii) Ignore penalty and late fee for this transaction.
- (viii) 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 1

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:

$$₹ 75,000 \times 18\% \times 31/365 = ₹ 1,147 \text{ (rounded off)}$$

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.

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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	
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 - ₹47 shortfall amount has been transferred from cash ledger balance in minor head penalty of major head CGST.

Note 3 - ₹47 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.

Question 2

A makes intra-State supply of goods valued at ₹ 50,000(excluding taxes) 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%) and every person involved in the aforesaid supplies are registered tax payers. 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 2

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

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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, which shall be allocated to Central Government and Karnataka Government in specified manner.

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 provided the SGST credit shall be utilised towards payment of IGST only where the balance of CGST credit is not available for payment of IGST. [Section 49(5) of the CGST Act, 2017].

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 shall first be utilised towards payment of IGST and the amount remaining, if any, may be utilised towards the payment of CGST and SGST/UTGST, as the case may be, in any order and in any proportion. Here, there is no payment to be made with respect to IGST so its credit balance will be directly utilised for making payment of CGST or SGST, in any order. Central Government will transfer IGST of ₹ 4,455 utilised in the

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payment of SGST to Telangana Government.

Question 3

Can one use input tax credit for payment of interest, penalty or payment of GST under reverse charge?

Answer 3

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 or GST payment under reverse charge.

Question 4

M/s 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 4

As per provisions of section 49(10) read with rule 87(13) of CGST Rules, 2017, "A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for integrated tax, central tax, State tax or Union territory tax or cess in FORM GST PMT-09".

It is important to note that only amounts available under Electronic Cash Ledger can be transferred to the respective heads using Form GST PMT-09 and not otherwise.

Accordingly, contention of the Accountant Mr. X of M/s PPC & Co., is not valid for transfer of ₹ 42,500 from head IGST to respective CGST & SGST in Electronic Credit Ledger.

Question 5

ABC Ltd. has 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 with the help of above information.

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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 5

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, ABC Ltd. has filed its return belatedly and as per the above provisions, interest is payable on the tax component paid through Electronic Cash Ledger only. A point relevant to note here is that tax payable on reverse charge basis also carries interest for the period of delay in remittance of tax and input tax credit cannot be used to pay the same (i.e. tax payable under reverse charge has to be paid in cash).

Accordingly, interest under section 50 payable for the tax paid through Electronic Cash Ledger is computed as below:

$$\text{IGST: } 218,000 * 18\% * 60 / 365 = 6,450$$

$$\text{CGST: } 262,000 * 18\% * 60 / 365 = 7,752$$

$$\text{SGST: } 262,000 * 18\% * 60 / 365 = 7,752$$

Further, if entire tax payable for January is paid through Electronic Credit ledger, except for the taxes to be paid under reverse charge basis, then interest under section 50 is applicable only on the remittance of tax under reverse charge basis and not for tax payable on forward charge basis. Interest payable is given as below:

$$\text{IGST: } 18,000 * 18\% * 60 / 365 = 533 \text{ (rounded off)}$$

$$\text{CGST: } 32,000 * 18\% * 60 / 365 = 947 \text{ (rounded off)}$$

$$\text{SGST: } 32,000 * 18\% * 60 / 365 = 947 \text{ (rounded off)}$$

Question 6

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. It furnishes return on monthly basis.

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Answer 6

Payment of taxes is governed as per the provisions laid in section 49 read with section 49A and 49B of CGST Act, 2017 along with rule 88A of CGST Rules, 2017

Also, section 49(8) of CGST Act, stipulates that every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:

- self-assessed tax, and other dues related to returns of previous tax periods;
- self-assessed tax, and other dues related to the return of the current tax period;
- 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: -

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- 1 after utilization of IGST credit towards output IGST liability, balance has been utilized equally amongst CGST & SGST
- 2 Input tax credit cannot be utilized for discharging tax liability under reverse charge basis, thus payable vide electronic cash ledger.

Since, M/s Zinc & Co., have defaulted in payment of taxes for the month of February and the same has been paid during July, interest is payable as per the provisions of section 50 of the CGST Act, 2017

Question 7

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 7

Rule 86 of CGST Rules provides that where a registered person has claimed refund of any unutilized amount (i.e. ITC) from the electronic credit ledger in accordance with the provisions of section 54, the amount to the extent of the claim shall be debited in the said ledger.

If the refund so filed is rejected, either fully or partly, the amount so debited to the extent of rejection, shall be re-credited to the electronic credit ledger by the proper officer.

In the present case, M/s Neptune & Co., have made zero-rated supply with payment of IGST for ₹ 10,14,000 and the refund for the same has been rejected by the proper officer. Therefore, contention of Mr. A is not sustainable as debit entry in the Electronic Credit Ledger has not been made as per sub-rule (3) of Rule 86 towards “refund of any unutilized amount”.

Supply made during May by M/s Neptune & Co. is on payment of IGST and therefore provisions laid out in sub-rule (4) of Rule 86 shall not be applicable.

Question 8

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, respectively as under:

S. No.	Particulars	Total contract value (inclusive of GST) (₹)	Payment due in October (₹)
(viii)	Supply of stationery to Fisheries Department, Kolkata	2,60,000	15,000
(ix)	Supply of car rental services to Municipal Corporation of Delhi	2,95,000	20,000

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(x)	Supply of a heavy machinery to Public Sector Undertaking located & registered in Uttarakhand	5,90,000	25,000
(xi)	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
(xii)	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
(xiii)	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
(xiv)	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 8

As per section 51 read with section 20 of the IGST Act, 2017 and Notification No. 50/2018 CT 13.09.2018, 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:

- (g) a department or establishment of the Central Government or State Government; or
- (h) local authority; or
- (i) Governmental agencies; or

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- (j) 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
- (k) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860, or
- (l) 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 (₹)
(viii)	Supply of stationery to Fisheries Department, Kolkata (Note-1)	2,60,000	15,000	--		
(ix)	Supply of car rental services to Municipal Corporation of Delhi (Note-2)	2,95,000	20,000	--		
(x)	Supply of a heavy machinery to Public Sector Undertaking located in Uttarakhand (Note-3)	5,90,000	25,000			500
(xi)	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	
(xii)	Interior decoration of Andhra Bhawan located in Delhi (Note-5)	12,39,000	12,39,000	--		
(xiii)	Supply of printed books and printed post cards to a West Delhi Post Office (Note-6)	9,72,000		--		
(xiv)	Maintenance of street lights in Municipal area of East Delhi (Note-7)	3,50,000	3,50,000	--		

Notes:

8. Being an inter-State supply of goods, supply of stationery to Fisheries

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Department, Kolkata is subject to IGST @ 18%. Therefore, total value of taxable supply [excluding IGST] under the contract is as follows:

$$= ₹ 2,60,000 \times 100 / 118$$

$$= ₹ 2,20,339 \text{ (rounded off)}$$

Since the total value of supply under the contract does not exceed ₹ 2,50,000, tax is not required to be deducted.

9. Being an intra-State supply of services, supply of car rental services to Municipal Corporation of Delhi is subject to CGST and SGST @ 9% each. Therefore, total value of taxable supply [excluding CGST and SGST] under the contract is as follows:

$$= ₹ 2,95,000 \times 100 / 118$$

$$= ₹ 2,50,000$$

Since the total value of supply under the contract does not exceed ₹ 2,50,000, tax is not required to be deducted.

10. Being an inter-State supply of goods, supply of heavy machinery to PSU in Uttarakhand is subject to IGST @ 18%. Therefore, total value of taxable supply [excluding IGST] under the contract is as follows:

$$= ₹ 5,90,000 \times 100 / 118$$

$$= ₹ 5,00,000$$

Since the total value of supply under the contract exceeds ₹ 2,50,000, PSU in Uttarakhand is required to deduct tax @ 2% of ₹ 25,000, i.e. ₹ 500.

11. Being an intra-State supply of goods, supply of taxable goods to National Housing Bank, Delhi is subject to CGST and SGST @ 9% each. Therefore, total value of taxable supply [excluding CGST and SGST] under the contract is as follows:

$$= ₹ 6,49,000 \times 100 / 118$$

$$= ₹ 5,50,000$$

Since the total value of supply under the contract exceeds ₹ 2,50,000, National Housing Bank, Delhi is required to deduct tax @ 2% (1% CGST + 1% SGST) of ₹ 50,000, i.e. ₹ 1,000.

12. 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

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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.

13. 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:

$$= ₹ 2,72,000 \times 100 / 118$$

$$= ₹ 2,30,509 \text{ (rounded off)}$$

Since the total value of taxable supply under the contract does not exceed ₹ 2,50,000, tax is not required to be deducted.

14. Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply provided to, inter alia, local authority by way of any activity in relation to any function entrusted to a Municipality under article 243W of the Constitution is exempt from GST. Thus, maintenance of street lights (an activity in relation to a function entrusted to a Municipality) in Municipal area of East Delhi involving replacement of defunct lights and other spares where the value of supply of goods is not more than 25% of the value of composite supply is a service exempt from GST. Since tax is liable to be deducted from the payment made or credited to the supplier of taxable goods or services or both, no tax is required to be deducted in the given case as the supply is exempt.

The answer will remain unchanged even if Manihar Enterprises is registered under composition scheme. Tax will be deducted in all cases where it is required to be deducted under section 51 of the CGST Act, 2017 including the scenarios when the supplier is registered under composition scheme.

Question 9

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.

- (4) **Supply of computer stationery to Public Sector Undertaking (PSU) located & registered in Mumbai. Total contract value is ₹ 2,72,000 (inclusive of GST)**
- (5) **Supply of air conditioner to GST department located & registered in Delhi. Total contract value is ₹ 2,55,000 (exclusive of GST)**
- (6) **Supply of generator renting service to Municipal Corporation of Jaipur (not exempt under GST law). Total contract value is ₹ 3,50,000 (inclusive of GST)**

Answer 9

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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.

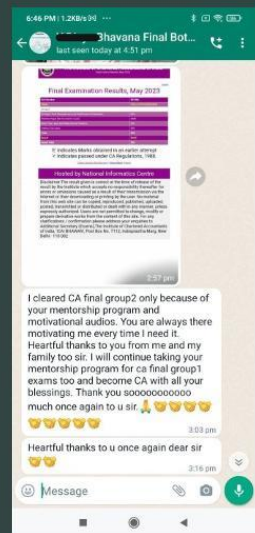
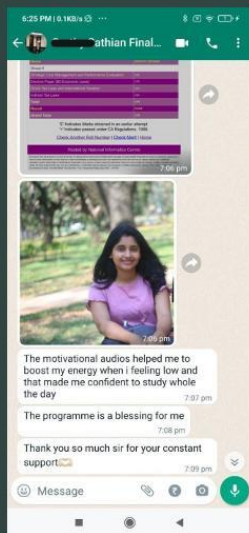
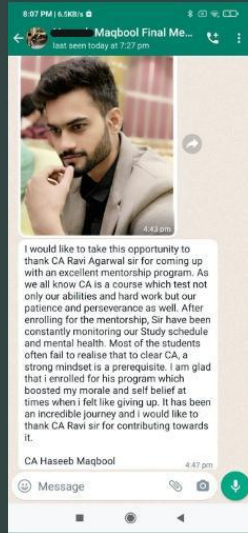
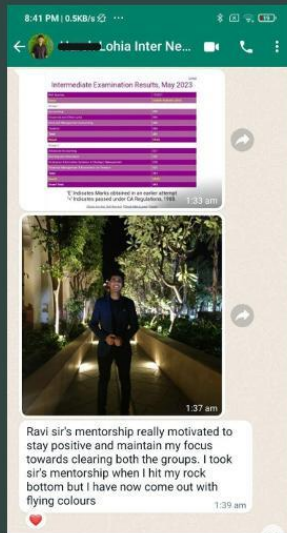
Since in the given case, Yash Shoppe is supplying goods and services exclusively to Government departments, agencies, local authority and persons notified under section 51 of the CGST Act, 2017, applicability of TDS provisions on its various receivables is examined in accordance with the above-mentioned 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% (₹)
4)	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]	-	-	
5)	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
6)	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

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Chapter 12 Electronic Commerce Transactions

Attempts wise Distribution

Row Labels	Nov' 18	Nov' 19	Nov' 23
QA			
MTP			Q2, Q4
PYP	Q3		
RTP		Q1	

SECTION A QUESTIONS AND ANSWERS

Question 1

AB Pvt. Ltd., Pune, Maharashtra, 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 it is 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.? (MTP 6 Marks Mar'18, Aug'18, RTP Nov'19)

Answer 1

As per section 22, 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 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.

Section 2(45) 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

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for registration under section 22(1) as its turnover is less than ₹20 lakh, is a service notified under section 9(5). Thus, AB Pvt. Ltd. will be entitled for threshold exemption for registration and will not be required to obtain registration even though it supplies services through ECO.

In the second case, AB Pvt. Ltd. sells readymade garments through ECO. Such supply cannot be notified under section 9(5) as only supplies of services are notified under that section. Therefore, in the second case, AB Pvt. Ltd. will not be entitled for threshold exemption and will have to compulsorily obtain registration in terms of section 24(ix).

Question 2

State whether the provisions pertaining to tax collected at source under section 52, 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 (MTP 4 Marks Sep'23)**

Answer 2

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.

Question 3

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

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

D.T. Ltd. claims that cab service is provided by Mr. Jorawar Singh and hence, he is liable to pay GST under the provisions of Goods and Service tax laws.

With reference to the provisions of IGST Act, 2017, determine who is liable to pay GST in this case?

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

(PYP 5 Marks Nov'18)

Answer 3

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

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

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digital products over digital or electronic network.

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

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

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

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

Question 4

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? (MTP 4 Marks Oct'23)

Answer 4

No, as per the provisions under section 52, 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.

SECTION B

Illustration Question 1

Nishpaksh Associates is a supplier selling its own products through a web site hosted by it. Does it fall under the definition of an “electronic commerce operator”? Whether Nishpaksh Associates is required to collect TCS on such supplies?

Answer 1

As per the definitions in sections 2(44) and 2(45), Nishpaksh Associates will come under the definition of an “electronic commerce operator”.

However, according to section 52, 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 TCS as per the provisions of this section. These transactions will be liable to GST at the prevailing rates.

Thus, Nishpaksh Associates is not required to collect TCS on the supplies made by it through its own website.

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Illustration Question 2

If Sitcom Technologies Ltd. purchases goods from different vendors and thereafter sells them on its own website under its own billing. Is TCS required to be collected on such supplies?

Answer 2

No. According to section 52, TCS is required to be collected on the net value of taxable supplies made through ECO by other suppliers where the consideration is to be collected by the ECO. In this case, there are two transactions - Sitcom Technologies Ltd. purchases the goods from the vendors, and thereafter those goods are sold through its own website.

For the first transaction, GST is leviable, and will need to be paid to vendor, on which credit is available to Sitcom Technologies Ltd. The second transaction is a supply on own account of Sitcom Technologies Ltd., and not by other suppliers and there is no requirement to collect TCS. The transaction will attract GST at the prevailing rates.

Question 3

Starkart Limited owns and operates a web portal in the name of “Starkart” and is registered with the jurisdictional GST authorities in Delhi as an electronic commerce operator and is liable to collect tax at source under section 52. Starkart provides listing service to various sellers for selling the goods to ultimate customers. Besides this, Starkart also sells its own products through the same web portal.

For the listing services provided to sellers, Starkart charges a listing fee at the rate of 10% of turnover of goods sold by the seller in a particular month. Such listing fee is recovered from the seller irrespective of any return of goods sold through Starkart. The customers can choose from wide range of goods listed on the web portal and place an online order for goods.

The payment is made by the customers through the payment gateway in online mode only. At the time of monthly settlement, Starkart makes the payment to the sellers after adjusting the tax collection at source at the applicable rates.

The invoice for goods sold on Starkart is issued by the seller in the name of customers and tax is charged on the basis of location of seller and customer. The goods are shipped directly by the seller to the customer and there is no responsibility of shipping the goods on Starkart for such third-party sellers.

In case of return of goods by the customer, the shipping is arranged by Starkart. It charges a fee equivalent to 20% of the value of goods returned as cancellation charges and refunds the balance amount to the customer.

Further, 10% of the value of goods returned is collected from the seller by Starkart as handling charges for return of goods.

In the month of January, Pulkit, a resident of Rajasthan, purchased following goods from Starkart:

- a. Laptop having a value of ₹ 50,000 and a printer having a value of ₹ 10,000. Both the products are sold by Infocom Limited, a seller listed on Starkart and registered under GST in the State of Uttar Pradesh.
- b. Mobile phone having a value of ₹ 30,000 sold by Starkart in its own capacity.

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- c. CCTV camera system having a value of ₹ 1,00,000 sold by Secure World, listed on Starkart and registered under GST in the State of Gujarat.

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

The opening balance of input tax credit for the relevant tax period for Starkart, Infocom Limited and Secure World is nil. Further, there is no other inward or outward supply transaction for Starkart, Infocom Limited and Secure World in January apart from the aforementioned transactions. Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled.

GST is applicable on all inward and outward supplies at the following rates unless otherwise specified:

CGST - 9%, SGST - 9%, IGST - 18%

Compute the net tax liability (including amount collected as TCS) of Starkart Limited and net GST payable in cash (after set-off of credits, if any) of Infocom Limited and Secure World, for the month of January.

Answer 3

Computation of net tax liability (including amount collected as TCS) of Starkart Limited for January:

Particulars	₹
TCS to be collected from Infocom Limited on supply of Laptop and a printer to Pulkit [Starkart is an ECO since it owns and operates a web portal through which Infocom Limited supplies goods. Further, IGST is applicable on said inter-State transaction since supplier - Infocom Limited is located in the State of Uttar Pradesh and place of supply is Rajasthan [i.e. where movement of goods terminates in terms of section 10(1)(a) of the IGST Act, 2017]. Thus, Starkart will collect TCS @ 1% of [₹ 50,000 + ₹ 10,000]	600
GST to be paid by Starkart on supply of mobile phone made on its own account @ 18% (IGST) of ₹ 30,000. IGST is applicable on said inter-State transaction since supplier - Starkart is located in Delhi and place of supply is Rajasthan [i.e. where movement of goods terminates in terms of section 10(1)(a) of the IGST Act, 2017]. Since supply has been made by Starkart on its own account, no TCS needs to be collected.	5,400
TCS to be collected from Secure World on supply of CCTV camera system to Pulkit [ECO - Starkart is liable to collect TCS on this transaction. Further, IGST is applicable on said inter-State transaction since supplier - Secure World is located in the State of Gujarat and place of supply is Rajasthan [i.e. where movement of goods terminates in terms of section 10(1)(a) of the IGST Act, 2017]. Thus, Starkart will collect TCS @ 1% of ₹ 1,00,000]	1,000
Listing services provided by Starkart to Infocom Limited and Secure Limited @ 10% of turnover for the month of January. Turnover of Infocom Limited and Secure Limited is ₹ 60,000 and ₹ 1,00,000 respectively. IGST @ 18% on (₹ 1,60,000 × 10%) is applicable on said inter- State transaction since supplier – Starkart is located in Delhi and place of supply is Uttar Pradesh and Gujarat respectively [i.e. location of recipient in terms	2,800

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of section 12(2) of the IGST Act, 2017]	
Total GST liability (including TCS) of Starkart for January	9,880

Computation of net GST payable in cash by Infocom Limited for the month of January

Particulars	₹
Gross GST liability [18% of turnover for January (₹ 50,000 + ₹ 10,000)]	10,800
Less: ITC of GST payable on listing services received from [(10% of ₹ 60,000) × 18%]	(1,080)
Net GST payable from Electronic Cash Ledger	9,720
Less: TCS credited to Electronic Cash Credit Ledger	(600)
Net GST payable in cash	9,120

Computation of net GST payable in cash by Secure World for the month of January

Gross GST Liability [18% of turnover for January (₹ 1,00,000)]	18,000
Less: ITC of GST payable on listing services received from [(10% of ₹ 1,00,000) × 18%]	(1,800)
Net GST payable from Electronic Cash Ledger	9,720
Less: TCS credited to Electronic Cash Credit Ledger	(1,000)
Net GST payable in cash	15,200

Question 4

Whether the rate of tax of 1% notified under section 52 is CGST or SGST or a combination of both CGST and SGST?

Answer 4

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%.

Question 5

Is every e-commerce operator required to collect tax on behalf of actual supplier?

Answer 5

Yes, every e-commerce operator is required to collect tax where consideration with respect to the supply made through it is being collected by the e-commerce operator.

However, no TCS is required to be collected in the following cases:-

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- (i) on supply of services notified under section 9(5) of the CGST Act, 2017.
- (ii) on exempt supplies
- (iii) on supplies on which the recipient is required to pay tax on reverse charge basis.

Question 6

State whether the provisions pertaining to tax collected at source under section 52, will be applicable in below mentioned scenarios -

- (c) **Fitan sells watch on its own through its own website**
- (d) **ABC limited who is dealer of Fitan brand sells watches through Slipkart, an electronic commerce operator**

Answer 6

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

- (c) 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.
- (d) If ABC limited who is dealer of Fitan brand sells watches through Slipkart, then the provision of TCS will be applicable to Slipkart.

Question 7

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 7

As per section 52(1), 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.

Question 8

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 8

No, as per the provisions under section 52, 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

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recipient of the services i.e. X. Hence, the present transactions shall not trigger the TCS provisions under section 52.

Question 9

Sumitra Nandan books a Hotel – Hillpoint Residency - via Zitcom Technologies Ltd. – an ECO - who in turn is integrated with another ECO-Techsuper Ltd. who has agreement with Hillpoint Residency. You are required to determine who is required to collect TCS in the given case.

Answer 9

The given case is a case of multiple e-commerce model wherein a customer orders supplies via ECO-1 who in turn is integrated with ECO-2 who has agreement with the supplier. In this case, ECO-1 will not have any GST information of the supplier. TCS is to be collected by that e-Commerce operator who is making payment to the supplier for the particular supply happening through it, which is in this case will be ECO-2. Thus, in the given case, TCS is to be collected by ECO-Techsuper Ltd. who is making payment to Hillpoint Residency for the supply happening through it,

Question 10

AB Pvt. Ltd., Pune, Maharashtra, 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 it is 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 10

As per section 22, 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 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.

Section 2(45) 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

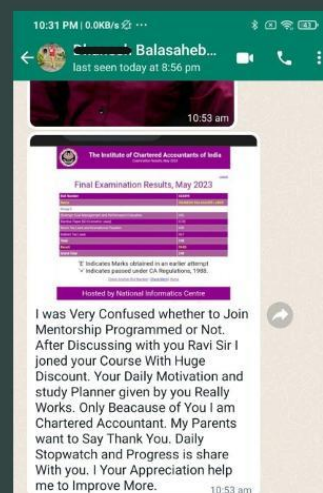
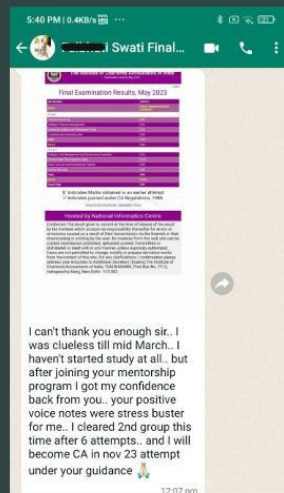
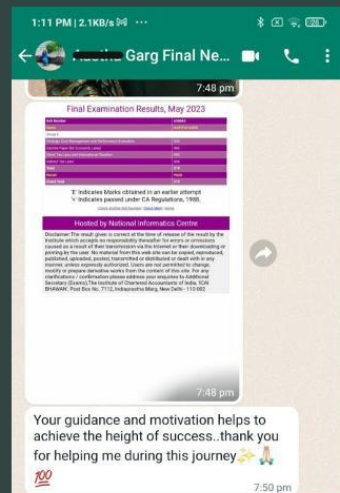
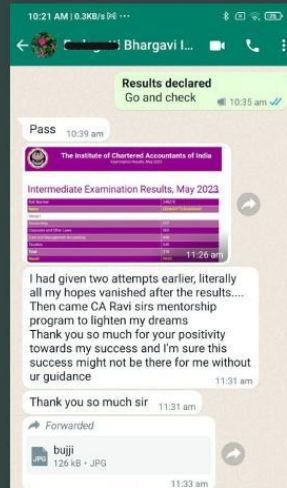
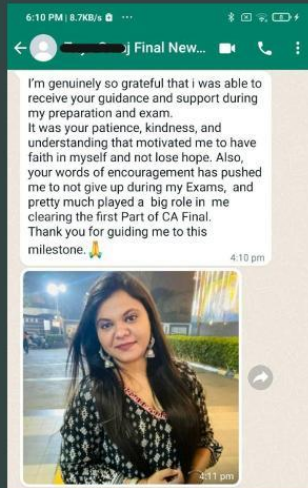
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presumed that Hi-Tech Indya is an ECO which is required to collect tax at source under section 52. However, house-keeping services provided by AB Pvt. Ltd., which is not liable for registration under section 22(1) as its turnover is less than ₹20 lakh, 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).

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Chapter 13 Returns

Attempts wise Distribution

Row Labels	Dec' 21	Jan' 22	Jul' 22	May' 18	Nov' 18	May' 19	May' 23	May' 23	Nov' 19	Nov' 20	Nov' 22	Nov' 24
QA												
MTP				Q6	Q7							
PYP				Q5							Q4	
RTP	Q2					Q1		Q3				

SECTION A QUESTIONS AND ANSWERS

Question 1

Explain the provisions of section 39(9) of the CGST Act, 2017 with reference to rectification of returns. (RTP May'19)

Answer 1

As per section 39(9) of the CGST Act, 2017, if any registered person after furnishing a return discovers any omission or incorrect particulars therein, he shall rectify such omission or incorrect particulars ~~in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest.~~

As per amendment-he shall rectify such omission or incorrect particulars in such form and manner as may be prescribed, subject to payment of interest under this Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year to which such details pertain, or the actual date of furnishing of relevant annual return, whichever is earlier.

However, section 39(9) does not permit rectification of error or omission discovered on account of scrutiny, audit, inspection or enforcement activities by tax authorities. Further, no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

Question 2

Padmavati Traders, registered in Karnataka, is engaged in supply of taxable goods. Its turnover in the preceding financial year was ₹230 lakh and was furnishing its GST return on monthly basis. In the beginning of April month in the current financial year, it sought advice from its tax consultant, Dua Consultants, whether it can furnish its GST returns on quarterly basis from now onwards. Dua Consultants advised Padmavati Traders that it cannot furnish its return on quarterly basis as the GST law does not provide for quarterly return under any circumstances. Discuss the technical veracity of the advice given by Dua Consultants. (RTP Nov'21)

Answer 2

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No, the advice given by Dua Consultants is not valid in law. With effect from 01.01.2021, a quarterly return has been introduced under GST law where the payment of tax is to be made on monthly basis. The scheme is known as Quarterly Return Monthly Payment (QRMP) Scheme. The scheme has been introduced as a trade facilitation measure and in order to further ease the process of doing business. It is an optional return filing scheme, introduced for small taxpayers having aggregate annual turnover (PAN based) of upto ₹ 5 crore in the current and preceding financial year to furnish their Form GSTR-1 and Form GSTR-3B on a quarterly basis while paying their tax on a monthly basis through a simple challan. Thus, the taxpayers need to file only 4 GSTR-3B returns instead of 12 GSTR-3B returns in a year. Similarly, they would be required to file only 4 GSTR-1 returns since Invoice Filing Facility (IFF) is provided under this scheme. Opting of QRMP scheme is GSTIN wise. Distinct persons can avail QRMP scheme option for one or more GSTINs. It implies that some GSTINs for a PAN can opt for the QRMP scheme and remaining GSTINs may not opt for the said scheme. Since the aggregate turnover of Padmavati Traders does not exceed ₹ 5 crores in the preceding financial year, it is eligible for furnishing the return on quarterly basis till the time its turnover in the current financial year does not exceed ₹ 5 crore. In case its aggregate turnover crosses ₹ 5 crore during a quarter in the current financial year, it shall no longer be eligible for furnishing of return on quarterly basis from the first month of the succeeding quarter and needs to opt for furnishing of return on a monthly basis, electronically, on the common portal, from the first month of the quarter, succeeding the quarter during which its aggregate turnover exceeds ₹ 5 crore.

Question 3

Answer the following questions elaborating the relevant provisions of section 44:

- (a) **Who is required to furnish the annual return and what is the due date for furnishing the same?**
- (b) **What is the prescribed form for furnishing annual return/statement?**
- (c) **Who is required to furnish a self-certified reconciliation statement? (RTP May'23)**

Answer 3

- (a) All registered persons are required to file an annual return. However, following persons are not required to file annual return:
 - (i) Casual taxable persons
 - (ii) Non-resident taxable person
 - (iii) Input service distributors
 - (i) Persons authorized to deduct/collect tax at source under section 51/52.

The Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section. The department of the Central/State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force, are exempt from the requirement of furnishing an annual return including self-certified reconciliation statement.

The annual return for a financial year needs to be filed by 31st December of the next financial year.

- (b) The annual return is to be filed electronically in Form GSTR-9 through the common portal.

However, a person paying tax under the composition scheme is required to file the annual return in Form GSTR-9A.

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Further, an ECO required to collect tax at source is required to file an annual statement referred to in section 52(5) in Form GSTR-9B (yet to be notified). The statement for a financial year needs to be filed by 31st December of the next financial year.

- (c) All registered persons are required to file furnish a self-certified reconciliation statement alongwith annual return if their aggregate turnover during a financial year exceeds ₹ 5 crores. Such registered persons should furnish, electronically, the annual return along with a copy of self-certified reconciliation statement, duly certified, in Form GSTR-9C. A Self-certified reconciliation statement will reconcile the value of supplies declared in the return furnished for the financial year with the audited annual financial statement.
- However, following persons are not required to file self-certified reconciliation statement:
- Casual taxable persons
 - Non-resident taxable person
 - Input service distributors
 - Persons authorized to deduct/collect tax at source under section 51/52, and

Question 4

Mr. Mahendra, a registered person, came to know about QRMP (Quarterly Return-Monthly Payment) scheme but was unable to make a decision whether to opt for the same or not. Describe the eligibility criteria and benefits of QRMP Scheme to help Mr. Mahendra make a decision regarding the same.

(PYP 4 Marks Nov'22)

Answer 4

Eligibility criteria for QRMP scheme

Registered persons,

- other than supplier of online information and database access or retrieval services (OIDAR) located in non-taxable territory and providing such services to a non-taxable online recipient and whose aggregate annual turnover (PAN based) is up to ₹ 5 crore in the preceding financial year.
- who have opted to furnish quarterly returns under QRMP scheme
- who have furnished the last return due on the date of exercising such option are eligible to opt for QRMP scheme.

Benefits of QRMP scheme

- It is a trade facilitation measure and eases the process of doing business.
- It will significantly reduce the compliance burden on such taxpayers as now the taxpayers need to file GSTR-3B returns and Form GSTR-1 - on quarterly basis only 4 times a year.

Question 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.

(PYP 5 Marks May'18)

Answer 5

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

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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), no rectification of details furnished in GSTR-1 shall be allowed after 30th day of November following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

The question requires the examinees to advise regarding course of action in case of discovery of error in details furnished in GSTR-1. Most of the examinees were found to be ignorant of the concept of rectification of error/omission in the subsequent return and thereby mentioned wrong answer.

Returns

Question 6

Discuss the provisions of return Form GSTR-3B as contained in sub rules (5) and (6) of rule 61 of CGST Rules, 2017. (MTP 5 Marks Apr'18)

Answer 6

Provisions of return Form GSTR-3B as contained in sub rules (5) and (6) of rule 61 of the CGST Rules, 2017 are as under:

FORM GSTR-3B is notified as the form for return by the Commissioner when the due dates for furnishing GSTR-1 and GSTR-2 get extended. GSTR-3B is a simple return containing summary of outward and inward supplies liable to reverse charge, eligible ITC, payment of tax etc. Thus, GSTR-3B does not require invoice-wise data of outward supplies. GSTR-3B can be submitted electronically through the common portal, either directly or through a notified Facilitation Centre. Where GSTR-3B is furnished, after the due date for furnishing GSTR-2—

- Part A of GSTR-3 is auto populated on the basis of information furnished through GSTR-1, GSTR-2 and based on other liabilities of preceding tax periods. Part B of the GSTR-3 is electronically generated on the basis of the return in GSTR-3B furnished in respect of the tax period;
- the registered person can modify Part B of GSTR-3 based on the discrepancies, if any, between GSTR-3B and GSTR-3 and discharge his tax and other liabilities, if any;
- where the amount of ITC in GSTR-3 exceeds the amount of ITC in terms of GSTR-3B, the additional amount gets credited to the electronic credit ledger of the registered person.

Question 7

M/s. Sahu & Co. a registered firm has filed its GST Return in GSTR-1 for the month of February declaring an outward supply of Rs. 300 lakhs. The return was filed within the due date of its filing. However, on a subsequent reconciliation of the return with the books of accounts it was found that 5 invoices having a total value of Rs. 20 lacs towards supply made to local parties were inadvertently omitted to be reported. Sahu & Co. have approached you for an advice as to the course of action to be adopted to rectify the omission. (MTP 4 Marks Oct'18)

Answer 7

As per GST law, the mechanism of filing revised returns for any correction of errors/omissions has been done away with. The rectification of errors/omissions is allowed in the subsequent Returns. However, no rectification is allowed after

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furnishing the return for the month of September following the end of the financial year to which such details pertain or furnishing of the relevant annual return, whichever is earlier.

Hence, the omission in the month of Feb can be included in the Return for the month when the omission is noticed. The tax and interest @ 18% due on the turnover omitted to be reported for the month of Feb has to be paid along with the taxes for the month in which the omission is noticed. However, such rectification will be allowed only within the prescribed period as mentioned above.

SECTION B

Question 1

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

Answer 1

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. The department of the Central/State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force, are exempt from the requirement of furnishing the annual return.

Question 2

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

Answer 2

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 whose registration under GST has been cancelled. The final return has to be filed within three months of the date of cancellation or the date of cancellation order, whichever is later.

Question 3

Do input service distributors (ISDs) need to file separate statement of outward supplies (GSTR-1) with their return? Discuss.

Answer 3

No, the ISDs need to file only a return in Form GSTR-6 and the return has the details of credit received by them from the service provider and the credit distributed by them to the recipient units. Since their return itself covers these aspects, there is no requirement to file separate statement of outward supplies.

Question 4

Is it compulsory for a taxpayer to file return by himself? Explain.

Answer 4

No. A registered taxpayer can also get his return filed through a Goods and Services Tax Practitioner (GSTP) as authorised by him subject to confirmation of registered person over mail or SMS each time when return filed by GSTP.

Question 5

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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 5

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), no rectification of details furnished in GSTR-1 shall be allowed after 30th day of November following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

Question 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 6

The understanding of B Ltd. is incorrect. For arriving at the late fee payable on account of delayed filing of GST return, the computation of late fee is made separately for CGST and SGST/UTGST. This is because the provisions of late fee on delayed filing of return are prescribed in both CGST Act and SGST/UTGST Act although a common return is filed for both the laws.

Question 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 7

In terms of section 39(9), any rectification in the return (under section 39) furnished by the registered person is allowed only when the error or omission is discovered on account of reasons other than scrutiny, audit, inspection, or enforcement activity by the tax authorities.

In the present case, since the incorrect disclosure has been highlighted to A Ltd. by the tax authorities during the process of scrutiny, the rectification of the incorrect disclosure cannot be made by A Ltd. on its own.

Question 8

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ABC Ltd. applied for cancellation of GST registration in the month of March. In the month of September, the consultant of ABC Ltd. suggested to furnish the final return in said month. He 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 8

No, the advice of the consultant is not correct.

In terms of section 45 read with rule 81, every registered person who is required to furnish GSTR-3B and whose registration has been cancelled is required to file a final return within three months of the date of cancellation or date of order of cancellation, whichever is later.

In the given case, the registration of the company has not been cancelled. Therefore, requirement of filing final return will arise only when the registration of the company gets cancelled.

Question 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 9

In terms of section 51(5) read with rule 66, the deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in GSTR-7 of the deductor, after validation. Similarly, rule 87(9), inter alia, provides that any amount deducted under section 51 shall be credited to the electronic cash ledger of the deductee.

Therefore, in the present case, A Ltd., can take credit of TDS amount deducted by XYZ Ltd. in its electronic cash ledger and use the same for payment of tax, interest, penalty, late fee or any other amount.

Question 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 10

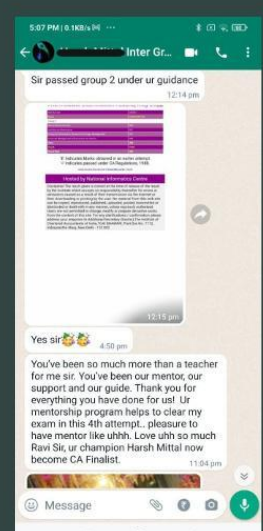
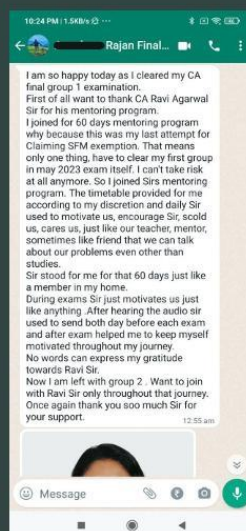
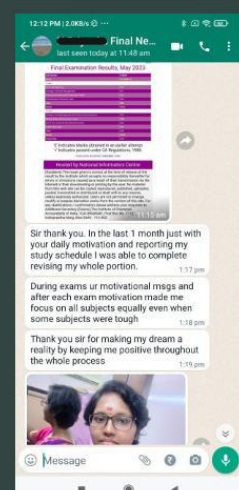
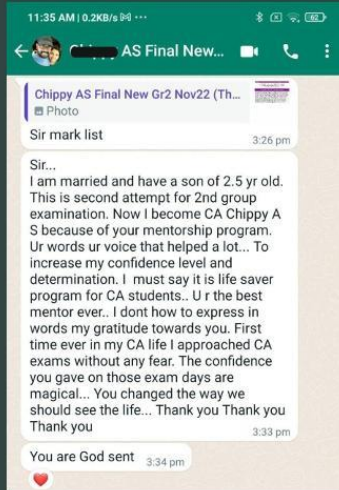
In terms of section 48(2), a registered person may authorise an approved GSTP to furnish the details of outward supplies under section 37, the details of inward supplies under section 38 and the return under section 39 or annual return under section 44 or final return under section 45 and to perform 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 itself to disclose the activities carried out by it for any of the registered person during a tax period.

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Chapter 14 Import And Export Under GST

Attempts wise Distribution

Row Labels	May' 23	Nov' 19	Nov' 20	Nov' 22	Nov' 23
MCQ					
MTP		Q2			
RTP		Q1			
QA					
PYP				Q3	
RTP	Q2		Q1	Q5	Q4

SECTION A

MULTIPLE CHOICE QUESTIONS (MCQ'S)

1. George Ltd., India, has received an order for supply of services amounting to \$ 5,00,000 from a US based client. George Ltd., India is unable to supply the entire services from India and asks Harry Inc., Mexico (who is not an establishment of George Ltd.) to supply a part of the services, i.e. 40% of the total contract value to the US client. George Ltd. raised the invoice for entire value of \$ 5,00,000, but the US client paid \$ 3,00,000 to George Ltd. and \$ 2,00,000 directly to Harry Inc., Mexico which is approved by a special order of RBI. George Ltd. also paid IGST@ 18% on the services imported from Harry Inc. Mexico. Assuming all the conditions of section 2(6) of the IGST Act, 2017 are fulfilled, determine the value of export of services assuming that the amounts given above are exclusive of GST.
- \$ 3,00,000
 - \$ 5,00,000
 - \$ 3,90,000
 - \$ 5,90,000 (MTP 2 Marks Oct'22, RTP Nov'19)

Ans: (b)

2. State whether the following statements are true or false:
- Zero rated supply means supply of any goods or services or both which attracts nil rate of tax.
 - Exempt supply means export of goods or services or both, or supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.
 - Non-taxable supply means supply of goods or services or both which is not leviable to tax under CGST Act, 2017 but leviable to tax under the Integrated Goods and Services Tax Act, 2017.
 - ITC may be availed for making zero rated supply of exempt goods.
 - False, False, False, True
 - True, False, False, False
 - True, True, False, False
 - False, False, False, False (MTP 2 Marks Oct'19)

Ans: (a)

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QUESTIONS AND ANSWERS

Question 1 (Includes concepts of Tax Invoice, Credit & Debit Notes)

An international trade exhibition is going to be held in United States of America in January. Aayaat Niryat Export House (ANEH) has participated in it. It intends to send 100 units of taxable goods manufactured by it to USA for display in the said exhibition.

ANEH is of the view that the activity of sending the goods out of India for exhibition is a zero-rated supply. However, its tax advisor does not concur with its view. Examine whether the view of ANEH is correct.

Assuming that ANEH could not sell any goods at the exhibition and brings back entire 100 units to India (i) in February, (ii) in August,

Discuss the requirement to issue invoice, if any, in each of the above independent cases.

Would your answer be different if ANEH sells an aggregate of 65 units of the taxable goods in USA exhibition on different dates in January and remaining 35 units are brought back on 31st January. The tax advisor of ANEH advises ANEH that the export of 65 units qualify as zero-rated supply and it should apply for refund of the unutilized ITC in respect of the same. Examine the technical veracity of the tax advisor's advice. (RTP May'20)

Answer 1

No, the view of ANEH that the activity of sending the goods out of India for exhibition is a zero-rated supply, is not correct. As per section 7 of the CGST Act, for any activity or transaction to be considered a supply, it must satisfy twin tests namely-

- (i) it should be for a consideration by a person; and
- (ii) it should be in the course or furtherance of business.

The exceptions to the above are the activities enumerated in Schedule I of the CGST Act which are treated as supply even if made without consideration. Further, section 2(21) of the IGST Act defines "supply", wherein it is clearly stated that it shall have the same meaning as assigned to it in section 7 of the CGST Act.

Section 16 of the IGST Act defines "zero rated supply" as any of the following supplies of goods or services or both, namely: -

- (a) export of goods or services or both; or
- (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

Thus, only such "supplies" which are either "export" or are "supply to SEZ unit/ developer" would qualify as zero-rated supply.

In view of the above provisions, *Circular No. 108/27/2019 GST dated 18.07.2019* clarified that the activity of sending/ taking the goods out of India for exhibition or on consignment basis for export promotion, except when such activity satisfies the tests laid down in Schedule I of the CGST Act, do not constitute supply as the said activity does not fall within the scope of section 7 of the CGST Act as there is no consideration at that point in time. Since such activity is not a supply, the same cannot be considered as "zero rated supply" as per the provisions contained in section 16 of the IGST Act.

The said circular further clarified that the activity of sending/taking goods out of India for exhibition is in the nature of "sale on approval basis" wherein the goods are sent/taken outside India for the approval of the person located abroad and it is only when the said goods are approved that the actual supply from the exporter located in India to the importer located abroad takes place.

The activity of sending/ taking specified goods is covered under the provisions of

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section 31(7) of the CGST Act, 2017 read with rule 55 of CGST Rules, 2017. As per said provisions, in case of the goods being sent or taken on approval for sale, the invoice shall be issued before/at the time of supply or 6 months from the date of removal, whichever is earlier. The goods which are taken for supply on approval basis can be moved from the place of business of the registered supplier to another place within the same State or to a place outside the State on a delivery challan.

In view of the said provisions, ANEH is not required to issue invoice at the time of taking the goods out of India since the activity of merely sending/ taking the taxable goods out of India is not a supply. However, the goods shall be accompanied with a delivery challan. Further,

- (i) In case the entire quantity of goods (100 units) sent to USA is not sold but brought back by ANEH in February, i.e. within the stipulated period of 6 months from the date of removal, no tax invoice is required to be issued as no supply has taken place in such a case.
- (ii) In case, the entire quantity of goods (100 units) sent to USA is not sold and brought back by ANEH in August, i.e. after 6 months from the date of removal, a tax invoice is required to be issued for entire 100 units of taxable goods in accordance with the provisions contained in section 12 [determining time of supply of goods] and section 31 [tax invoice] of the CGST Act, 2017 read with rule 46 [tax invoice] of the CGST Rules, 2017 within the time period stipulated under section 31(7) of the CGST Act, 2017.

However, if an aggregate of 65 units of the goods is sold in USA exhibition by ANEH on different dates in January (i.e. within the stipulated period of 6 months), a tax invoice would be required to be issued for these units, at the time of each of these sales, in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules. When the goods are sold in exhibition, actual supply from the exporter in India to the importer located abroad takes place and this supply qualifies as export. Export of goods is a zero-rated supply in terms of section 16(1)(a) of the IGST Act, 2017.

If the remaining 35 units are brought back on 31st January, i.e. within the stipulated period of 6 months from the date of removal, no tax invoice is required to be issued as no supply has taken place in such a case.

Further, tax advisor's advice is technically correct. Since the activity of sending / taking specified goods out of India is not a zero-rated supply, execution of a bond/Letter of Undertaking (LUT), as required under section 16 of the IGST Act, is not required.

However, the sender can prefer refund claim even when the specified goods were sent / taken out of India without execution of a bond/LUT, if he is otherwise eligible for refund as per the provisions of contained in section 54(3) of the CGST Act, 2017 read with rule 89(4) of the CGST Rules, 2017 in respect of zero-rated supply of 65 units.

Question 2

Jankinandan Associates, a proprietorship firm in Lucknow registered under GST, manufactures three taxable products 'Zeta', 'Sigma' and 'Omega'. The following information has been provided by Jankinandan Associates for a particular tax period.

- (i) **'Omega' and 'Zeta' are sold in the domestic market as well as exported outside India. The domestic turnover (excluding export sales) of 'Zeta' and 'Omega' are ₹ 21 lakh and ₹ 15 lakh respectively. Export turnover of 'Zeta' with payment of IGST (not eligible to avail benefit of merchant**

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exports under Notification No. 41/2017) is ₹ 3.75 lakh. 'Omega' worth ₹ 15 lakh is exported.

- (ii) Tax on 'Sigma' is payable under reverse charge. 'Sigma' is being sold only domestically and the domestic turnover of 'Sigma' is ₹ 9 lakh.
- (iii) The firm is also engaged in providing taxable consultancy services. Consultancy services of ₹ 30 lakh have been provided to unrelated clients located in foreign countries. In all cases, consideration has been received in convertible foreign exchange.
- (iv) The firm sold the shares held by it for ₹ 375 lakh which were earlier purchased at a price of ₹ 360 lakh.
- (v) Due to shortage of funds, it sold one of its factory buildings for ₹ 180 lakh (excluding stamp duty of ₹ 3.50 lakh, being 2% of value). The entire consideration is received post issuance of completion certificate; building was occupied thereafter.
- (vi) The firm earned an interest of ₹ 6 lakh on the money invested in fixed deposits with Gaba Bank.

The details of the inputs/input services availed by the firm during the said tax period are as under:

- (i) The firm received legal services from an advocate in relation to product 'Zeta' for a consideration of ₹ 5.25 lakh.
- (ii) Remaining inputs and input services availed during the tax period worth ₹ 52.50 lakh and ₹ 22.50 lakh respectively have been commonly used for supply of goods and services mentioned above.

You are required to compute the net GST liability of Jankinandan Associates, payable from Electronic Credit Ledger and/or Electronic Cash Ledger, as the case may be, for the given tax period using the above-mentioned information.

Note: All the above transactions are exclusive of GST, wherever applicable. Assume that rates of GST on inward and outward supply of goods and services are 12% and 18% respectively (Ignore bifurcation of 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 Jankinandan Associates was ₹ 72 lakh in the preceding financial year. Unless otherwise mentioned, exports are made under letter of undertaking. (RTP May'23)

Answer 2

- (i) Computation of GST payable on outward supply

Particulars	Value (₹)	GST (₹)
Turnover of 'Zeta' [liable to GST @ 12%]	21,00,000	2,52,000
Turnover of 'Sigma' [Tax on 'Sigma' is payable under reverse charge by the recipient of such goods]	9,00,000	Nil
Turnover of 'Omega' [liable to GST @ 12%]	15,00,000	1,80,000
Export of 'Zeta' with payment of IGST @ 12%	3,75,000	45,000

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Export of 'Omega' [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.]	15,00,000	Nil
Consultancy services provided to independent clients located in foreign countries. [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.]	30,00,000	Nil
Sale of shares [Shares are neither good 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.]	3,75,00,000	Nil
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]	1,80,00,000	Nil
Interest received on investment in fixed deposits with a bank [Exempt vide Notification No. 12/2017 CT (R) dated 28.06.2017]	6,00,000	Nil
Total GST payable on outward supply		4,77,000

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

Particulars	(₹)
Common credit on inputs and input services [Tax on inputs - ₹ 6,30,000 (₹ 52,50,000 x 12%) + Tax on input services - ₹ 4,05,000 (₹ 22,50,000 x 18%)]	10,35,000

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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) = ₹ 10,35,000 x ₹ 1,87,75,000 / ₹ 2,78,50,000 Exempt turnover = ₹ 1,87,75,000 and total turnover = ₹ 2,78,50,000 [Refer note below]	6,97,742
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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 (₹ 9,00,000), value of sale of building (₹ 3,50,000 / 2 x 100 = ₹ 1,75,00,000) and value of sale of shares (1% of ₹ 3,75,00,000 = ₹ 3,75,000), which comes out to be ₹ 1,87,75,000.

Total turnover = ₹ 1,94,00,000 (₹ 21,00,000 + ₹ 9,00,000 + ₹ 15,00,000 + ₹ 3,75,000 + ₹ 15,00,000 + ₹ 30,00,000 + ₹ 1,75,00,000 + ₹ 6,00,000 + ₹ 3,75,000)

(iii) Computation of ITC available in the Electronic Credit Ledger of the Jankinandan Associates for the tax period

Particulars	(₹)
Common credit on inputs and input services	10,35,000
Add: Legal services used in the manufacture of taxable product 'Zeta'	94,500
ITC available in the Electronic Credit Ledger	11,29,500
Less: Common credit attributable to exempt supplies during the tax period [As calculated in above table]	6,97,742
Net ITC available	4,31,758

(iv) Computation of net GST liability of Jankinandan Associates for the tax period

Particulars	(₹)
GST payable on outward supply [As computed earlier]	4,77,000
Less: Input tax credit (ITC) [As computed earlier]	4,31,758
GST payable from Electronic Cash Ledger [A]	45,242
Add: GST payable on legal services under reverse charge [₹ 5,25,000 X 18%] [B] [Tax on legal services provided by an advocate to a	94,500

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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 (Jankinandan Associates) 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.]	1,39,742

Question 3

The details of transactions of J Ltd., Vadodara (Gujarat), a registered taxable person, during the month of February, 20XX, are as under:

S. No.	Particulars
1.	Purchased goods from a manufacturer in Maharashtra as a merchant exporter (on payment of 0.1% IGST) and exported the same directly to an importer of Spain under LUT. FOB value is ₹ 7,00,000. Invoice for the supply to J Ltd. was received on 5/2/XX and payment was made on 8/2/XX.
2.	Imported goods from China with CIF value of ₹ 5,00,000. The goods were sold for ₹ 5,10,000 as high sea sales to an Indian party on 21/2/XX.
3.	Purchased goods from a party in Taiwan. Sold the goods to a party in Turkey without bringing the goods to India. Purchase value was ₹ 5,00,000 and the sale price was ₹ 7,00,000. J Ltd paid sales commission of ₹ 50,000 to Mrs. T, their agent in connection with this transaction. The transaction was completed in the third week of February. (The figures in rupees have been given after conversion though transaction was in convertible foreign currency).
4.	J Ltd. has agreed to provide technical services to Mr. K of Ahmedabad who is an unregistered person in connection with the manufacturing operations to be undertaken by him for a consideration of ₹ 5,00,000 and has received an advance of ₹ 1,00,000 for the same on 2/2/XX.
5.	It has imported raw materials from China. CIF value of the goods for the purpose of Customs included ₹ 1,00,000 as ocean freight paid by J Ltd. The value for the purpose of levy of IGST worked out by Customs was ₹ 6,00,000. Clearance of the goods took place on 4/2/XX.

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6.	Locally purchased taxable raw material stored in the factory got spoiled due to rainwater in the factory and became unusable. J Ltd. claimed and received on insurance amount of ₹ 60,000 for the same. Value of the raw material at the time of receipt was ₹ 70,000. Raw material was purchased from a party in Gujarat on 3/2/XX and payment was made on 7/2/XX.
7.	Company purchased a three-wheeler having capacity of 2 persons including driver (engine capacity 20CC) at a cost of ₹ 2,50,000 which is being used for transportation of staff of company from residence to factory and back. The vehicle was received on 5/2/XX and payment was made on the same date.
8.	It has paid inward transportation expense of ₹ 30,000 to Mr. Z, a tempo owner who has not issued any consignment notes. He has issued a consolidated bill only on 3/2/XX and payment was made on 4/2/ XX.
9.	It has supplied goods of value of ₹ 50,00,000 to V Ltd. Padra, Gujarat (includes ₹ 10,00,000 supplied to SEZ unit of V Ltd).
10.	It has purchased goods from X Impex Ltd. Kadi, Gujarat for use as raw materials in its factory. The value of the goods ₹ 30,00,000. Invoice is dated 2/2/20 XX.
11.	It has availed supply of manpower security services from Y Ltd. Vadodara, Gujarat, a registered taxable person. The amount paid is ₹ 1,00,000. The invoice was received on 1/2/20 XX and payment was made on the same day.

Assume the CGST and SGST rates to be 9% each and IGST rate to be 18% except the supply received as a merchant exporter. Ignore compensation cess. J Ltd. had an opening balance of ITC of CGST of ₹ 20,000 and SGST of ₹ 20,000 as on 1/2/20 XX. In respect of all the inward supplies, suppliers have uploaded their invoices in respective Form GSTR-1 and the supplies are reflected in GSTR-2A/2B. All the figures given above are exclusive of GST, wherever applicable.

Work out the admissible ITC and GST liability [CGST, SGST or IGST, as the case may be] payable in cash, by J Ltd, Vadodara (Gujarat), for February, 20 XX.

Ensure that all the items in the table are covered in your answer. Provide supporting explanatory notes for your conclusion wherever required. (PYP 14 Marks Nov'22)

Answer 3

I. Computation of admissible ITC for February, 20 XX				
Particulars	Value (₹)	CGST (₹)	SGST (₹)	IGST (₹)
Opening balance		20,000	20,000	
Goods purchased as merchant exporter [Merchant exporter is eligible to take ITC of IGST paid @ 0.1%. ¹]	7,00,000	--	--	700

Paper 5 – Indirect Tax Laws

Goods imported from China [No ITC since tax is not payable. In case of high sea sales, IGST is paid by the last high sea sales buyer who files the bill of entry for home consumption.]	Nil	--	--	--
Goods purchased from Taiwan [No ITC since tax is not payable as goods do not become part of the landmass of the country.]	Nil	--	--	--
Sales commission paid to agent - Mrs. T ² [Since service provider - Mrs. T is an intermediary in the given transaction, place of supply is location of Mrs. T, i.e. outside India. Thus, tax is not payable under reverse charge on said services.]	50,000	--	--	--
Imported raw material from China [Input tax, inter alia, includes IGST charged on import of goods. ³]	6,00,000			1,08,000 [6,00,000 × 18%]
Raw material spoiled ⁴ [ITC is blocked under section 17(5) on destroyed goods.]	--	--	--	--
Three-wheeler purchased ⁵ [ITC on a three-wheeler with engine capacity of 20cc is allowed as it is not a motor vehicle and is used in course or furtherance of business ⁶ .]	2,50,000	22,500 [2,50,000 × 9%]	22,500 [2,50,000 × 9%]	--
Inward transportation from Mr. Z [Services of transportation of goods without issue of consignment note is not covered under services of GTA and hence exempt. Thus, no ITC is available.]	--	--	--	--
Raw material purchased from X Impex Ltd., Gujarat [ITC on goods used in course or furtherance of business is allowed.]	30,00,000	2,70,000 [30,00,000 × 9%]	2,70,000 [30,00,000 × 9%]	
Manpower security services from Y Ltd. [Since security services are provided by a body corporate, tax on the same is not payable under reverse charge.]	1,00,000	9,000 [1,00,000 × 9%]	9,000 [1,00,000 × 9%]	
Total ITC available		3,21,500	3,21,500	1,08,700

II. Computation of GST liability payable in cash, by J Ltd.

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GST payable on outward supplies				
Export of goods to Spain under LUT [No IGST is payable.]	7,00,000			Nil
High sea sales of goods imported from China [Neither treated as supply for goods nor as supply of services.]	Nil	--	--	--
Goods purchased from Taiwan sold in Turkey without bringing into India [Neither treated as supply for goods nor as supply of services.]	Nil	--	--	--
Advance received for the technical services to be provided to Mr. K [Tax on the services to be provided is payable at the time of receipt of advance.]	1,00,000	9,000 [1,00,000 × 9%]	9,000 [1,00,000 × 9%]	
Goods supplied to SEZ unit of V Ltd. [Supply to SEZ unit is a zero-rated supply7.]	10,00,000			Nil
Supply of goods to V Ltd., Gujarat	40,00,000	3,60,000 [40,00,000 × 9%]	3,60,000 [40,00,000 × 9%]	
Total output tax		3,69,000	3,69,000	Nil
Less: ITC* [Credit of IGST can be utilized towards payment of CGST and SGST liability in any order and in any proportion. Credit of CGST and SGST can be utilized only after IGST credit has been fully utilized. Thereafter, credit of CGST and SGST is utilized for payment of CGST and SGST liability respectively. CGST credit cannot be utilized for payment of SGST and vice versa.]		54,350 (IGST)	54,350 (IGST)	
		3,14,650 (CGST)		
			3,14,650 (SGST)	
Net GST payable		Nil	Nil	Nil
Add: GST payable on inward supplies				
Imported raw material from China	6,00,000			1,08,000 [6,00,000 × 18%]
Total net GST payable in cash		Nil	Nil	1,08,000

*Note: ITC of IGST can be utilized towards payment of CGST and SGST in any proportion and in any order. Therefore, there can be multiple ways of setting off of IGST credit against CGST and SGST. However, total amount of net GST payable in

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cash will be same in each case.

1. In the absence of the value of supply of goods purchased as a merchant exporter, FOB value of export of such goods has been taken as their purchase price for computing the ITC amount.
2. Since the transaction was undertaken in convertible foreign exchange, it is logical to infer that Mrs. T is located outside India.
3. It has been assumed that the contract for import of goods from China is on CIF basis.
4. Insurance amount received is an actionable claim. Thus, it is treated neither as supply of goods nor as supply of services.
5. It has been assumed that purchase of three-wheeler is an intra-State supply. Alternatively, it is also possible to assume that purchase of three-wheeler is an inter-State supply. In that case, IGST of ₹ 45,000 will be available as ITC.
6. It has been assumed that the depreciation has not been claimed on GST paid on said capital goods, under the Income-tax Act, 1961.
7. It has been assumed that goods have been supplied to SEZ without payment of tax.

Question 4

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. (RTP Nov'23)

Answer 4

AXT Ltd.'s view is partially correct.

Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption (high sea sale) is neither treated as supply of goods nor supply of services in terms of paragraph 8(b) of Schedule III to the CGST Act.

Thus, GST is not leviable on high sea sales. Therefore, AXT Ltd.'s view that GST is payable on a high-sea sale transaction at the time of sale, is not correct.

As per section 14 of the Customs Act, 1962, the value for the purpose of charging customs duty on imported goods is the value at the time of importation, i.e. at the time of filing of the bill of entry. Further, IGST on imported goods is also levied at the time of filing of bill of entry. Therefore, in case of high sea sales, the assessable value of imported goods for levying customs duty and IGST is determined on the basis of the price paid by the last high sea sales buyer who files the bill of entry for home consumption.

Therefore, AXT Ltd.'s view that basic customs duty is payable at the time of filing the bill of entry for import of goods is correct.

Question 5

Elaborate the difference between zero rated supplies and exempt supplies. (MTP 6 Marks Apr'23, RTP Nov'22)

Answer 5

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The difference between zero rated supplies and exempted supplies is as follows:

Exempted Supplies	Zero rated supplies
Exempt supply means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax and includes non-taxable supply.	Zero-rated supply means (i) export of goods and/or services or (ii) supply of goods and/or services to SEZ unit/SEZ developer.
No tax is payable on the outward exempted supplies, however, the input supplies used for making exempt supplies are to be taxed	No tax is payable on the outward supplies; Input supplies are also to be tax free (by way of refund of ITC)
Credit of input tax needs to be reversed, if taken. No ITC is allowed on the exempted supplies.	Credit of input tax may be availed for making zero-rated supplies, even if such supply is an exempt supply. ITC is allowed on zero rated supplies.
Value of exempt supplies, for apportionment of ITC, shall include 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.	Value of zero-rated supplies shall be added along with the taxable supplies for apportionment of ITC.
Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under the CGST or IGST Act shall not be liable to registration.	A person exclusively making zero rated supplies needs to register as refund of unutilized ITC or IGST paid shall have to be claimed.
A registered person supplying exempted goods and/or services shall issue, instead of a tax invoice, a bill of supply.	Normal tax invoice shall be issued.

SECTION B

Question 1

Explain how imports are taxed under GST.

Answer 1

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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.

Question 2

Describe how exports are taxed under GST.

Answer 2

Exports of goods and services are zero rated. The exporter can export under bond/LUT without payment of IGST and claim refund of ITC. In case of notified class of persons or notified goods or services, he may pay IGST at the time of export and claim refund thereof.

Question 3

Is it necessary to execute a bond for effecting zero rated supplies? Elucidate.

Answer 3

No. The facility to export under LUT has been extended to all zero rated suppliers (barring a few exceptions such as those who have been prosecuted for an offence involving tax of ₹ 2.5 crore) vide Notification No. 37/2017 CT dated 4.10.2017. The other conditions for executing LUT have been specified in Circular No. 8/8/2017 GST dated 4.10.2017 as amended.

Question 4

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 4

As per the definition of export of goods provided under section 2(5), export of goods means taking goods out of India to a place outside India.

Since in the given case, the goods remain in India, i.e. with C Ltd. located in Karnataka, the transaction between A Ltd. and B Ltd. cannot be treated as export of goods under GST.

Question 5

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 5

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.

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Hence, A Ltd. can take credit of ₹ 2,00,000 even if the outward zero rated supply is exempt from GST. However, the credit would not be available in respect of the inputs and input services, the credit on which is blocked under section 17(5) of the CGST Act.

Question 6

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 6

Circular No. 48/22/2018 GST has clarified on this issue as under:

As per section 7(5)(b), the supply of goods and/or services to a SEZ unit/developer is treated as a supply of goods and/or services in the course of inter-State trade or commerce. Whereas, as per section 12(3)(c), the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply are in the same State/ Union territory, it would be treated as an intra-State supply.

It is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision. In the instant case, section 7(5)(b) is a specific provision relating to supplies of goods and/or services made to a SEZ unit/developer, which states that such supplies shall be treated as inter-State supplies.

Further, proviso to section 8(2) also lays down that intra-State supply of services do not include supply of services to a SEZ unit/developer. It is, therefore, clarified that services of short-term accommodation, conferencing, banqueting etc., provided to a SEZ unit/developer shall be treated as an inter- State supply.

Question 7

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 7

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 unregistered person receiving OIDAR service in taxable territory, 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].

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Therefore, being an OIDAR service provided by a supplier located outside India and received by a non-taxable online 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.

Question 8

‘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 8

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.

Question 9

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 9

AXT Ltd.’s view is partially correct.

Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption (high sea sale) is neither treated as supply of goods nor supply of services in terms of paragraph 8(b) of Schedule III to the CGST Act.

Thus, GST is not leviable on high sea sales. Therefore, AXT Ltd.’s view that GST is payable on a high-sea sale transaction at the time of sale, is not correct.

As per section 14 of the Customs Act, 1962, the value for the purpose of charging customs duty on imported goods is the value at the time of importation, i.e. at the time of filing of the bill of entry. Further, IGST on imported goods is also levied at the time of

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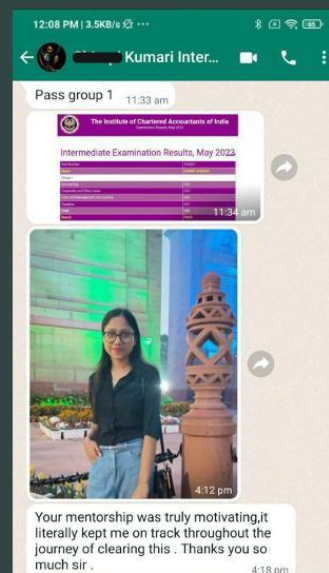
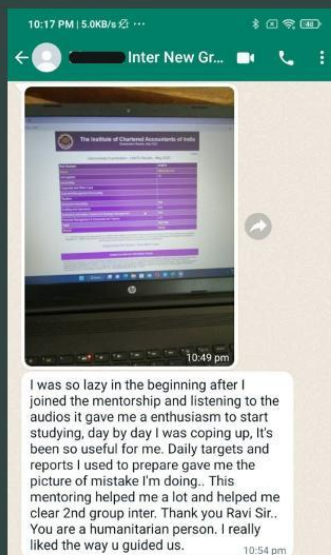
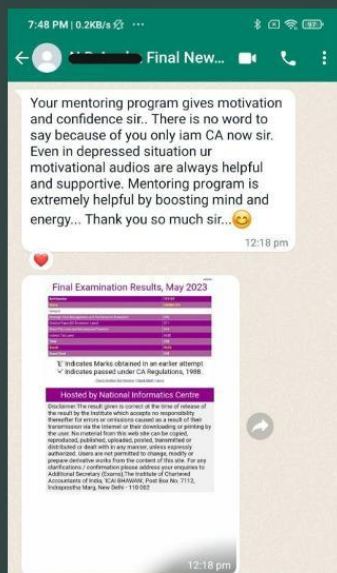
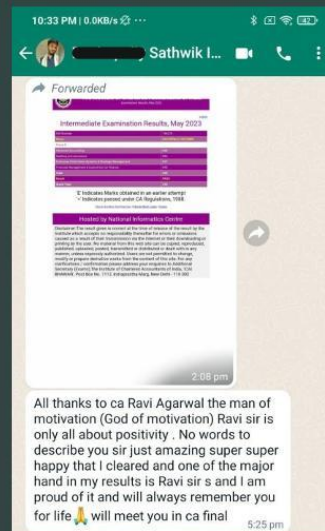
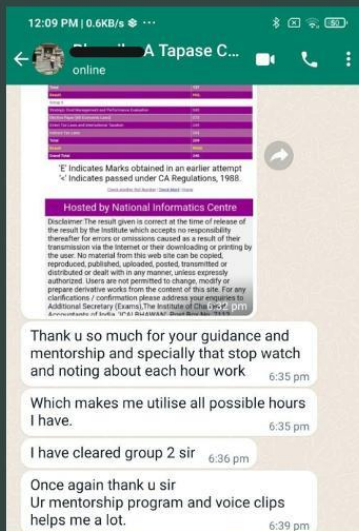
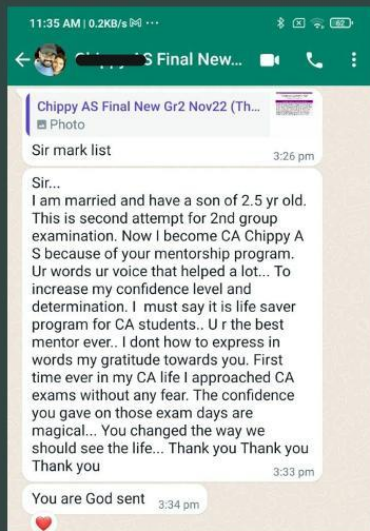
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filing of bill of entry. Therefore, in case of high sea sales, the assessable value of imported goods for levying customs duty and IGST is determined on the basis of the price paid by the last high sea sales buyer who files the bill of entry for home 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.

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Chapter 15 REFUNDS

Attempts wise Distribution

Row Labels	Dec' 22	Jan' 21	Jul' 21	May' 18	Nov' 18	May' 19	May' 22	May' 23	Nov' 19	Nov' 20
MCQ										
MTP						Q1, Q4			Q2, Q3	
QA										
MTP							Q11		Q10, Q13	
PYP	Q4, Q6		Q3			Q12		Q5	Q2	
RTP						Q7, Q9			Q8	Q1

SECTION A MULTIPLE CHOICE QUESTIONS (MCQ'S)

1. As per section 54 of the CGST Act, 2017, any person claiming refund of any tax, interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of _____ from the 'relevant date'.
- 2 years
 - 3 years
 - 4 years
 - 18 months (MTP 1 Marks Apr'19)

Ans: (a)

(As per amendment of May 22:

In case of deficiency in refund application, limitation period of 2 years for making refund claim to exclude the time period from the date of filing of the refund claim till the date of communication of the deficiencies [Rule 90(3)]

2. Mr. Prabhu Deva, registered under GST in Mumbai, is in the business of trading of marble handicraft items domestically as also exporting the same. His annual turnover and input tax details are as follows:

	Turnover	Tax paid on	input tax
Taxable goods	1,25,00,000/-	12,50,000/-	
Exported goods	75,00,000/-	5,50,000/-	
Exempt goods	50,00,000/-	5,00,000/-	

Mr. Prabhu Deva exported the goods under LUT without payment of IGST. Now, Mr. Prabhu Deva seeks your help in calculating the amount of refund of ITC, which he is eligible to claim.

- 18,00,000/-

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- (b) 6,75,000/-
- (c) 5,40,000/-
- (d) 6,90,000/- (MTP 2 Marks Oct'19)

Ans: (b)

3. M/s. Raman Plastics is a manufacturer of plastic toys. It is registered person under GST in Shimla, Himachal Pradesh.

It procures its raw materials from Punjab. During the month of April-2023, it purchased material of Rs. 35.00 Lakh and paid IGST thereon amounting to Rs. 6.30 Lakh. It supplied 30% of its production in the State of Jammu and Kashmir, whereas the 70% of its production was supplied taxable @ 0.1% to a merchant exporter during the month of Apr-2023.

The returns for the month of April, 2023 were duly filed in time. The last date upto which the taxpayer can claim refund of input tax credit on account of inverted duty structure is

- (a) 20-Apr-2025
- (b) 20-May-2025
- (c) 31-Mar-2026
- (d) 20-Apr-2024 (MTP 1 Mark Oct'19)

Ans: (b)

4. A registered person can claim refund of unutilised input tax credit on zero rated supplies without payment of tax or the credit accumulated on account of inverted tax rate structure:

- (a) at the end of the tax period, but before the expiry of 2 years from the relevant date.
- (b) before the expiry of the tax period.
- (c) before the expiry of 3 years from the relevant date.
- (d) before the expiry of 18 months from the relevant date. (MTP 2 Marks Mar'19)

Ans: (a)

QUESTIONS AND ANSWERS

Question 1

Synotex Pvt. Ltd. manufactures taxable goods, 'Q' and exempt goods 'S'. Product 'S' is sold in international markets without payment of tax under letter of undertaking. The company is registered under GST in the State of Maharashtra. The company provides the following information in relation to various supplies made by it during a tax period:

- (a) Product 'S' has been exported to UK for £ 12,000
- (b) Product 'Q' has been supplied to Betty Enterprises within India for ₹ 20,00,000 Note: The above amounts are exclusive of taxes, wherever applicable.

The company provides the following information in relation to tax paid on inward supplies received during the said tax period:

- (a) GST of ₹ 5,00,000 has been paid on inputs
- (b) GST of ₹ 2,40,000 has been paid on capital goods
- (c) GST of ₹ 2,00,000 has paid on input services
- (d) All the above inputs, input services and capital goods are used in the manufacturing process

Following additional information is also provided:

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- (i) Value of product 'S' exported to UK in Indian rupees is ₹ 12,00,000. However, value of such product when supplied domestically by the company in similar quantities is ₹ 10,00,000.
- (ii) Betty Enterprises is a 100% export-oriented undertaking. It has claimed the ITC on goods supplied to it by Synotex Pvt. Ltd.
- (iii) The balance in the electronic credit ledger of Synotex Pvt. Ltd. at the end of the tax period for which the refund claim is being filed after GSTR-3B for the said period has been filed is ₹ 5,80,000.
- (iv) The balance in the electronic credit ledger of Synotex Pvt. Ltd. at the time of filing the refund application is ₹ 3,00,000.

**Compute the amount refundable to Synotex Pvt. Ltd. for the tax period.
(RTP Nov'20)**

Answer 1

Export of product 'S'

Export of goods is a zero rated supply in terms of section 16(1)(a) of the IGST Act, 2017. Section 16(2) of the IGST Act, 2017 stipulates that subject to the provisions of section 17(5) of the CGST Act, 2017, ITC may be availed for making zero-rated supplies even if such supply may be an exempt supply. As per section 54(3)(i) of the CGST Act, 2017, a registered person may claim refund, of any unutilised ITC at the end of any tax period in the case of zero rated supply made without payment of tax.

Therefore, in the given case, Synotex Pvt. Ltd. will be eligible to claim ITC for export of exempt product 'S' in terms of section 16(2) of the IGST Act, 2017 and will thus, be able to claim refund of unutilized ITC in terms of section 54(3)(i) of the CGST Act, 2017.

As per rule 89(4) of the CGST Rules, 2017, refund of unutilized ITC in case of zero rated supply without payment of tax under letter of undertaking is granted in accordance with the following formula:

Here, Net ITC = ₹ 7,00,000 [Net ITC includes ITC on inputs and input services but not ITC on capital goods].

Turnover of zero-rated supply of goods (Product 'S') = ₹ 12,00,000 [Lower of the value of zero rated supply of goods (₹ 12,00,000) or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier (₹ 15,00,000)].

Adjusted total turnover = ₹ 32,00,000 [₹ 20,00,000 + ₹ 12,00,000] Thus, refund amount under rule 89(4)

= ₹ 7,00,000 x ₹ 12,00,000 / ₹ 32,00,000 = ₹ 2,62,500.

Circular No. 125/44/2019 GST dated 18.11.2019 provides that amount refundable to the applicant is least of the following amounts:

- (a) Maximum refund amount as per the formula in rule 89(4) of the CGST Rules [₹ 2,62,500]
- (b) Balance in the electronic credit ledger at the end of the tax period for which the refund claim is being filed after GSTR-3B for the said period has been filed [₹ 5,80,000]
- (c) Balance in the electronic credit ledger at the time of filing the refund application [₹ 3,00,000]

Thus, amount refundable to Synotex Pvt. Ltd. of unutilized ITC is ₹ 2,62,500.

Supply of product 'R' to Betty Enterprises, a 100% EOU

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

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exports, the application of refund can be filed by the supplier of deemed export supplies only in cases where the recipient does not avail of ITC on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund [Third proviso to rule 89(1) of the CGST Rules, 2017]. Therefore, since in the given case, Betty Enterprises (recipient) is claiming ITC, Synotex Pvt. Ltd. (supplier of deemed exports) cannot claim refund of ITC. Therefore, amount refundable to Synotex Pvt. Ltd. is ₹ 2,62,500.

Question 2

The following particulars are furnished by Delight Exporters, Karnataka, which is duly registered under the GST law. The entity has also filed bond/LUT in order to export goods without payment of any taxes. You are required to calculate the refund amount in respect of input tax credit on inputs and input services relating to goods exported in the relevant tax period.

Sl. No.	Particulars of supply	Value of supply in ₹
1.	Turnover - excluding supply of services, but includes exempt supplies of ₹ 8,00,000 and inward supplies of ₹ 2,00,000	76,00,000
2.	Zero-rated supply of goods under bond/LUT	12,00,000
3.	Export services under bond/LUT	48,00,000
4.	Non-zero-rated supply of services	10,00,000
5.	Payments received towards zero-rated supply, which includes ₹ 12,00,000 against which services are yet to be supplied.	48,00,000
6.	Advance received in the past, against which zero-rated supplies have been made in the current tax period	14,00,000
7.	Turnover on which suppliers have claimed refund under rule 89(4A) and rule 89(4B) -Goods -Services	6,00,000 6,00,000
8.	ITC on inputs and input services during the tax period including those under rule 89(4A) and rule 89(4B)	12,00,000
9.	ITC relating to rule 89(4A) and rule 89(4B)	2,40,000

(PYP 5 Marks Nov'19)

Answer 2

In case of zero-rated supply of goods and services without payment of tax under bond/LUT, refund of ITC relating to goods and services exported is granted as per the following formula:

$$\text{Refund Amount} = \frac{(\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services})}{\text{Adjusted Total Turnover}} \times$$

Net ITC

Accordingly, the amount of refund shall be computed as follows:

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Particulars	₹
Net ITC excluding ITC availed for which refund is claimed under rule 89(4A) and 89(4B) (₹ 12,00,000 - ₹ 2,40,000)	9,60,000
Turnover of zero-rated supply of goods excluding turnover of supplies in respect of which refund is claimed under 89(4A) and 89(4B)	6,00,000
Turnover of zero rated supply of services [Aggregate of payments received during the relevant period and services where supply has been completed for which payment had been received in advance in any prior period reduced by advances received for which the supply of services has not been completed during the relevant period] [₹ 48 lakh + 14 lakh - ₹ 12 lakh] ⁹	50,00,000
Adjusted total turnover = Turnover in a State excluding turnover of services + Turnover of zero-rated supply of services determined as above + Non-zero-rated supply of services – [Exempt supplies other than zero-rated supplies + Turnover of supplies in respect of which refund is claimed under 89(4A) and 89(4B)] [₹ 76 lakh - ₹ 2 lakh + ₹ 50 lakh + ₹ 10 lakh - (₹ 8 lakh ¹⁰ + ₹ 6 lakh + ₹ 6 lakh)]	1,14,00,000
Refund of ITC for zero rated supply of goods and zero rated supply of services [₹ 9,60,000 x (₹ 56,00,000 / ₹ 1,14,00,000)]	4,71,579 (rounded off)

Note: The above answer is based on the following assumptions made with regard to the information given in the table in the question:

- Turnover at Sl. No. 1 [₹ 76 lakhs] includes the turnover of zero-rated supply of goods given at Sl. No. 2 [₹ 12 lakhs].
- Turnover of zero-rated supply of goods given at Sl No. 2 [₹ 12 lakhs] includes turnover of supplies of goods in respect of which refund has been claimed under rule 89(4A) and 89(4B) [₹ 6 lakh]
- Turnover of zero-rated supply of services computed as per rule 89(4)(D) [₹ 50 lakh] includes the turnover of supplies of services in respect of which the refund is claimed under rule 89(4A) and 89(4B) [₹ 6 lakh].

However, the above question can also be answered on the basis of alternate assumptions e.g., the turnover of zero rated supply of goods given at Sl. No. 2 [₹ 12 lakh] excludes turnover of supplies of goods in respect of which refund has been claimed under rule 89(4A) and 89(4B) [₹ 6 lakh] or the turnover at Sl. No. 1 [₹ 76 lakh] does not include the turnover of zero rated supply of goods given at Sl. No. 2 [₹ 12 lakh] and turnover of supplies of goods in respect of which refund has been claimed under rule 89(4A) and 89 (4B) [₹ 6 lakh].

Question 3

DF Ltd. exported goods valued ₹ 50 lakh and received refund of integrated tax paid amounting to ₹ 9 lakh on 16th August, 2020. He could realise export proceeds to the extent of ₹ 25 lakh, but did not realise the balance export proceeds within the prescribed time limit of 9 months and has applied for extension of time to RBI. There is no dispute about the supply of the goods as

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regards quality, time of supply and fulfilment of terms and conditions of sale. He wants you to inform him of the consequences under GST law in case RBI does not give him the extension. (PYP 4 Marks Jul'21)

Answer 3

Where any applicant has received the refund of integrated tax paid on export of goods but could not realise the sale proceeds of such exported goods within the prescribed time limit (or extended time period), he shall deposit the amount so refunded along with interest of 18% within 30 days of the expiry of the said period (or extended time period), to the extent of non-realisation of sale proceeds.

However, if the RBI writes off the requirement of such realization on merits, recovery shall not be made. In view of the aforesaid provisions, DF Ltd. has to deposit the refund of integrated tax of ₹ 4.5 lakh (to the extent of non-realisation of export proceeds of ₹ 25 lakh) along with interest @ 18% within 30 days of the expiry of the prescribed time-limit. In case of failure to do so, the amount will be recovered in accordance with the provisions relating to recovery of erroneous refund and also penalty can be imposed.

Question 4

Jai and Co, a registered supplier under GST, is engaged in weaving yarn into fabrics and has provided the following information:

Nature of various intra-State supplies during April 2021	Value of supply (excluding GST) (₹)
Outward supply of fabrics (Tax rate of CGST and SGST is 2.5% each)	30,00,000
Inward supply of rayon yarn (Tax rate of CGST and SGST is 6% each)	24,00,000
Inward supply of services for processing the yarn (Tax rate of CGST and SGST is 2.5% each)	4,00,000
Inward supply of machineries for weaving the processed yarn into fabrics (Tax rate of CGST and SGST is 9% each)	45,00,000
The concern has not provided any supply other than the outward supply referred above.	
ITC in respect of all types of inward supplies as given above was claimed in the relevant GSTR 38 as well reflected in GSTR 2A.	
Other applicable conditions for claiming the refund are duly complied with.	

You are required to compute the 'maximum refund amount' eligible under rule 89(5) of CGST Rules, 2017 for inverted duty structure. Also provide working notes for your calculation. Note - No refund has been claimed under rule 89(3) or rule 89(4) of the CGST Rules, 2017. (PYP 5 Marks Dec'21)

Answer 4

Maximum refund amount under rule 89(5) of the CGST Rules, 2017 on account of inverted duty structure, is computed as follows –

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Maximum Refund Amount	=	Turnover of inverted rated supply of goods and services × Net ITC	-	Tax payable on such inverted rated supply of goods and services
		Adjusted Total Turnover		

where Net ITC means ITC availed only on inputs

= ₹ [(24,00,000 × 6%) × 30,00,000 / 30,00,000] - [30,00,000 × 2.5%] (each for CGST and SGST) = ₹ 69,000

Thus, maximum refund amount is ₹ 69,000 each for CGST and SGST.

Note: Refund of tax paid on input services and capital goods is not a part of refund of accumulated ITC on account of inverted duty structure.

Question 5

EverYoung Manufacturers LLP, a registered supplier under GST is engaged in manufacturing of ayurvedic cosmetic products within the State of Gujarat. It provides the following information for the month of January, 2023

Particulars for the month of January, 2023	Rate of CGST	Rate of SGST	Value of supply (excluding GST)
Outward supply of skin care products	2.5%	2.5%	50,00,000
Outward supply of skin care products	6%	6%	50,000
Inward supply of Inputs for skin care products	6%	6%	35,00,000
Inward supply of Input services	2.5%	2.5%	5,00,000
Inward supply of capital goods	9%	9%	25,00,000

Other information:

- ITC in respect of all types of inward supply as given above was claimed in the relevant GSTR 3B and the same was also reflected in GSTR 2B.
 - All other conditions for claiming the refund are duly complied with.
 - No refund was claimed for the month of January 2023.
- You are requested to compute the 'Maximum refund amount' eligible for inverted duty structure. Working notes should form part of your answer. (PYP 5 Marks May'23)

Answer 5

Particulars
In the case of refund on account of inverted duty structure, refund of ITC is granted as per the following formula:

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$\text{Amount} = \frac{\text{Turnover of inverted rated Supply of goods and services}}{\text{Adjusted Total Turnover}} \times \text{Maximum Refund}$	
Net ITC -	
$\text{Tax Payable on Such inverted rated supply of goods and Services} \times \frac{\text{Net ITC}}{\text{ITC availed on inputs and input Services}}$	
(i) Turnover of inverted rated supply of goods and services = 50,00,000 (product having rate less than 6% to be considered)	
(ii) Adjusted Total Turnover 50,00,000 + 50,000 = 50,50,000	
(iii) Net ITC: means ITC available only on Inputs 3500000 @ 12% = 4,20,000 ITC of Input service and Capital Goods not to be considered.	
(iv) Tax payable on such inverted rated supply of goods and services 2,50,000 [(50,00,000 × 5%)	
(v) ITC availed on inputs [(35,00,000×12%) = 4,20,000	
(vi) ITC availed on input services [(5,00,000×5%)] = 25,000	
$\text{'Maximum refund amount' eligible in the given case} = \frac{50,00,000 \times 4,20,000 - 2,50,000}{50,50,000}$	$\frac{4,20,000}{4,45,000}$
= ₹ 1,79,887 (rounded off) (Total under CGST and SGST)	
Or	
₹ 89,943.50+89,943.50 each (under CGST and SGST)	

Question 6

State the exceptions to the principle of unjust enrichment as applicable to refund claims.

(PYP 4 Marks Dec'21)

Answer 6

The principle of unjust enrichment is applicable in all cases of refund except in the following cases:-

- Refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports.
- 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.
- refund of tax paid on a supply which is not provided, either wholly or partially, and

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- for which invoice has not been issued.
- (d) 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.
- (e) if the incidence of tax or interest paid has not been passed on to any other person.
- (f) such other class of persons who has borne the incidence of tax as the Government may notify.

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

Few examinees ended up writing general and vague answers rather than the answers based

Question 7

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) of the IGST Act, 2017.

The company has made the following supplies during a tax period:

	Particulars	
(i)	Export of product 'A' to UK for \$ 10,000. Assessable value under customs in Indian rupees. [Export duty is payable 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%] *not notified as a product, in respect of which refund of unutilised ITC shall not be allowed under section 54(3)(ii)	10,00,000
(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:

	Particulars	(₹)
(i)	On inputs	3,50,000
(ii)	On input service	1,50,000
(iii)	On capital goods	1,20,000

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Determine the maximum amount of refund admissible to Kailash Global (P) Ltd. for the given tax period. (RTP May'19)

Answer 7

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)]	90,000
Supply of goods to Export Oriented Unit [Note (iii)]	Nil
Export of exempt supplies [Note (iv)]	1,07,143
Total refund claim admissible	1,97,143

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) 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 –

$$\text{Maximum Refund Amount} = \frac{\text{Turnover of inverted rated supply of goods \& services} \times \text{Net ITC}}{\text{Adjusted Total Turnover}} - \text{Tax payable on such inverted rated supply of goods \& services} \times \frac{\text{Net ITC}}{\text{ITC availed on inputs and input services}}$$

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:

- the turnover in a State/ Union territory, as defined under section 2(112), excluding turnover of services; &
- the turnover of zero-rated supply of services determined in terms of specified manner and non-zero-rated supply of services, excluding:
 - the value of exempt supplies other than zero-rated supplies; and
 - the turnover of supplies in respect of which refund is claimed under sub-rule

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(4A) or sub-rule (4B) or both, if any, during the relevant period.

“Relevant period” means the period for which the claim has been filed. Tax payable on inverted rated supply of goods = ₹ 10,00,000 × 5% = ₹ 50,000

Here, Net ITC = ₹ 3,50,000,

Adjusted Total Turnover = ₹ 28,00,000 [₹ 7,00,000 + ₹ 10,00,000 + ₹ 5,00,000 + ₹ 6,00,000] and Turnover of inverted rated supply of goods = ₹ 10,00,000

Thus, maximum refund amount under rule 89(5) = ₹ 3,50,000 × 10,00,000 / ₹ 28,00,000 – (₹ 50,000 × ₹ 3,50,000 / (₹ 3,50,000 + ₹ 1,50,000)) = ₹ 90,000

(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:

$$\text{Refund Amount} = \frac{(\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services})}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$$

“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 = ₹ 5,00,000 and Adjusted Total Turnover = ₹ 28,00,000 (as computed in point ii above)

Thus, maximum refund amount under rule 89(4) = ₹ 5,00,000 × ₹ 6,00,000 / ₹ 28,00,000 = ₹ 1,07,143.

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Question 8

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 (Goods)	18%
B	350,000	5%	54,000 (Goods)	18%
C	100,000	18%	10,000 (Service)	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.

(RTP Nov'18, MTP 5 Marks Apr'19)

Answer 8

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). Further rate of tax on input used in the product C is carrying same rate of tax on output supplies hence it is not the case of inverted duty structure. Therefore, no refund on the Product C.

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 –

$$\text{Maximum Refund Amount} = \frac{\text{Turnover of inverted rated supply of goods and services} \times \text{Net ITC}}{\text{Adjusted Total Turnover}} - \text{tax payable on such inverted rated supply of goods and services} \times \frac{\text{Net ITC}}{\text{ITC availed on inputs and input services}}$$

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- ◆ 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.

Question 10

State few cases where refundable amount shall be paid to the applicant, instead of being credited to Consumer Welfare Fund under CGST Act, 2017. (MTP 5 Marks Oct'18, PYP 5 Marks May'18)

Answer 10

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 —

- refund of tax paid on export of goods and/or services or on inputs or input services used in making such exports;
- refund of unutilized ITC in case of zero-rated supplies made without payment of tax or accumulated ITC on account of inverted duty structure;
- refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;
- refund of tax paid on a transaction treating it to be an intra-State supply, but which is subsequently held to be an inter-State supply or vice-versa;
- the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or
- the tax or interest borne by notified class of applicants.

Question 11

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? (MTP 4 Marks Apr'22, Apr'21)

Answer 11

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.

Question 12

Wye Ltd. provides the following details for the month of September 20XX for

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computation of refund claim under rule 89(4) of the CGST Rules, 2017. Compute the eligible claim under the said rule assuming that other conditions are fulfilled.

Particulars	Amount (Rs.)
Opening balance of ITC	5,00,000
ITC availed during the period, which includes the claim for refund made of Rs.5,00,000 eligible under rule 89(4A)/89(4B) of the CGST Rules, 2007	25,00,000
Zero rated supply of goods made during the period without payment of tax under bond/ LUT, which include the supply of Rs. 1,00,00,000 for which refund claim is made under rule 89(4A)/89(4B) of the CGST Rules, 2017	6,00,00,000
Supply of goods other than zero rated supply	3,00,00,000

(MTP 3 Marks May'20, PYP 5 Marks May'19)

Answer 12

As per rule 89(4) of the CGST Rules, 2017, in case of zero-rated supply of goods without payment of tax under bond/LUT, refund of ITC is granted as per the following formula:

$$\frac{\text{Refund Amount}}{\text{(Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services)} \times \text{Net ITC}} = \text{Adjusted Total Turnover}$$

Net ITC excludes ITC availed for which refund is claimed under rule 89(4A)/ (4B) of the CGST Rules, 2017. Further, turnover of zero-rated supply of goods and adjusted total turnover exclude turnover of supplies in respect of which refund is claimed under 89 (4A)/ (4B).

Accordingly, turnover of zero-rated supply of goods = Rs. 5,00,00,000 [Rs. 6,00,00,000 – Rs. 1,00,00,000];

Net ITC = Rs. 20,00,000 [Rs. 25,00,000 – Rs. 5,00,000] and
Adjusted Total Turnover = Rs. 8,00,00,000 [Rs. 6,00,00,000 + Rs. 3,00,00,000 – Rs. 1,00,00,000]

Thus, maximum refund amount under rule 89(4)
= Rs. 20,00,000 × Rs. 5,00,00,000 / Rs. 8,00,00,000 = Rs. 12,50,000.

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

Most of the examinees wrongly computed either "adjusted total turnover" or "net input tax credit" resulting into incorrect computation of refund claim under rule 89(4) of the CGST

Question 13

A taxable person has mistakenly paid CGST and SGST for an inter-State supply. Subsequently, when he discovers the same, can he adjust the IGST liability against the wrongly paid CGST and SGST?

(MTP 3 Marks Oct'19)

Answer 13

Section 77, *inter alia*, stipulates that a registered person who has paid the Central tax and State tax or, as the case may be, the central tax and the Union territory tax on

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a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed. The IGST liability cannot be adjusted against the CGST and SGST wrongly paid.

SECTION B

Question 1

Is there any time limit for sanctioning of refund under section 54?

Answer 1

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.

Question 2

Discuss the provisions relating to refund of the amount of advance tax deposited by a casual taxable person under section 27(2).

Answer 2

The amount of advance tax deposited by a casual taxable under section 27(2), shall be refunded only when such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39 [Section 54(13)]. Further, refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him [Fourth proviso to rule 89(1)].

Question 3

In case of refund under exports of goods, whether BRC/FIRC is necessary for granting refund?

Answer 3

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.

However, in case of non-realization of consideration in terms of FEMA, the exporter shall deposit the amount so refunded to the extent of non realization of sale proceed along with interest within 30 days [Rule 96B].

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Question 4

When is a deficiency memo issued in respect of a refund claim made under section 54?

Answer 4

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.

Further the time period, from the date of filing of the refund claim in FORM GST RFD-01 till the date of communication of the deficiencies by the proper officer, shall be excluded from the period of two years as specified under Section 54(1), in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.

Question 5

State the exceptions to the principle of unjust enrichment as applicable to refund claims.

Answer 5

The principle of unjust enrichment is applicable in all cases of refund except in the following cases:-

- (g) Refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports.
- (h) 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.
- (i) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued.
- (j) 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.
- (k) if the incidence of tax or interest paid has not been passed on to any other person.
- (l) such other class of persons who has borne the incidence of tax as the Government may notify.

Question 6

Kailash Global (P) Ltd. supplies various goods in domestic and international markets. It is engaged in both manufacturing and trading of goods. The company is registered under GST in the State of Karnataka. The company exports goods without payment of tax under letter of undertaking in accordance with the provisions of section 16(3) of the IGST Act, 2017.

The company has made the following supplies during a tax period:

	Particulars	

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(v)	Export of product 'A' to UK for \$ 10,000. Assessable value under customs in Indian rupees. [Export duty is payable 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
(vi)	Domestic supplies of taxable product 'B'* during the period [excluding tax @ 5%] [Inputs used in manufacturing of such goods are taxable @18%] *not notified as a product, in respect of which refund of unutilised ITC shall not be allowed under section 54(3)(ii)	10,00,000
(vii)	Supply of goods to Export Oriented Unit [excluding tax @ 18%] [ITC has been claimed by the recipient]	5,00,000
(viii)	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:

	Particulars	(₹)
(iv)	On inputs	3,50,000
(v)	On input service	1,50,000
(vi)	On capital goods	1,20,000

Determine the maximum amount of refund admissible to Kailash Global (P) Ltd. for the given tax period.

Answer 6

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)]	90,000
Supply of goods to Export Oriented Unit [Note (iii)]	Nil
Export of exempt supplies [Note (iv)]	1,07,143
Total refund claim admissible	1,97,143

Notes:

- (v) 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) of the IGST Act, 2017.

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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.

(vi) 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 –

$$\text{Maximum Refund Amount} = \frac{\text{Turnover of inverted rated supply of goods \& services} \times \text{Net ITC}}{\text{Adjusted Total Turnover}} - \text{Tax payable on such inverted rated supply of goods \& services} \times \frac{\text{Net ITC}}{\text{ITC availed on inputs and input services}}$$

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:

- (c) the turnover in a State/ Union territory, as defined under section 2(112), excluding turnover of services; &
- (d) the turnover of zero-rated supply of services determined in terms of specified manner and non-zero-rated supply of services, excluding:
 - (iii) the value of exempt supplies other than zero-rated supplies; and
 - (iv) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.

“Relevant period” means the period for which the claim has been filed. Tax payable on inverted rated supply of goods = ₹ 10,00,000 × 5% = ₹ 50,000

Here, Net ITC = ₹ 3,50,000,

Adjusted Total Turnover = ₹ 28,00,000 [₹ 7,00,000 + ₹ 10,00,000 + ₹ 5,00,000 + ₹ 6,00,000] and Turnover of inverted rated supply of goods = ₹ 10,00,000

Thus, maximum refund amount under rule 89(5) = ₹ 3,50,000 × 10,00,000 / ₹ 28,00,000 – (₹ 50,000 × ₹ 3,50,000 / (₹ 3,50,000 + ₹ 1,50,000)) = ₹ 90,000

(vii) 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

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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.

- (viii) 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:

$$\text{Refund Amount} = \frac{(\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services})}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$$

“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 = ₹ 5,00,000 and Adjusted Total Turnover = ₹ 28,00,000 (as computed in point ii above)

Thus, maximum refund amount under rule 89(4) = ₹ 5,00,000 x ₹ 6,00,000 / ₹ 28,00,000 = ₹ 1,07,143.

Question 7

Super Engineering Works, a registered supplier in Haryana, is engaged in supply of taxable goods within the State. Given below are the details of the turnover and applicable GST rates of the final products manufactured by Super Engineering Works as also the input tax credit (ITC) availed on inputs used in manufacture of each of the final products and GST rates applicable on the same, during a tax period:

Products	Turnover* (₹)	Output GST Rates	ITC availed (₹)	Input GST Rates
A	500,000	5%	54,000 (Goods)	18%
B	350,000	5%	54,000 (Goods)	18%
C	100,000	18%	10,000 (Service)	18%

***excluding GST**

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Determine the maximum amount of refund of the unutilized input tax credit that Super Engineering Works is eligible to claim under section 54(3)(ii) 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 7

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). Further rate of tax on input used in the product C is carrying same rate of tax on output supplies hence it is not the case of inverted duty structure. Therefore, no refund on the Product C.

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 –

$$\text{Maximum Refund Amount} = \frac{\text{Turnover of inverted rated supply of goods and services} \times \text{Net ITC}}{\text{Adjusted Total Turnover}} - \text{tax payable on such inverted rated supply of goods and services} \times \frac{\text{Net ITC}}{\text{ITC availed on inputs and input services}}$$

where,-

- D) "Net ITC" means input tax credit availed on inputs during the relevant period;
- E) 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.
- F) 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:

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Tax payable on inverted rated supply of Product A = ₹ 5,00,000 × 5% = ₹ 25,000

Net ITC = ₹ 108000 (₹ 54,000 + ₹ 54,000) [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 - 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:

$$= [(\text{₹ } 5,00,000 \times \text{₹ } 108000) / \text{₹ } 9,50,000] - (\text{₹ } 25,000 \times 108,000 / 118,000)$$

$$= \text{₹ } 33,961 \text{ (rounded off)}$$

Question 8

With reference to section 54(3), mention the cases where refund of unutilised input tax credit is allowed.

Answer 8

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:

- (iii) Zero rated supplies made without payment of tax: Supply of goods or services or both for authorised operations to an SEZ developer/unit or export of goods or services or both qualifies as zero rated supplies.
- (iv) 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.

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.

Question 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.

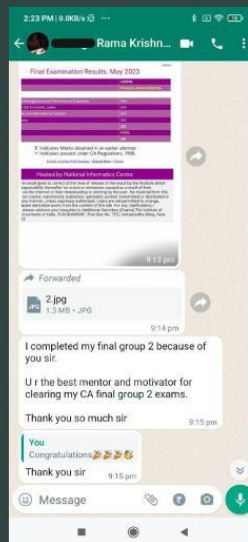
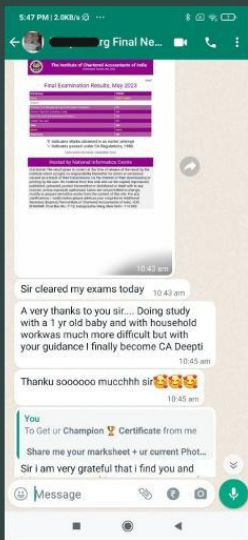
Answer 9

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 —

- (g) refund of tax paid on export of goods and/or services or on inputs or input services used in making such exports;
- (h) refund of unutilized ITC in case of zero-rated supplies made without payment of tax or accumulated ITC on account of inverted duty structure;

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Chapter 16 Job Work

Attempts wise Distribution

Row Labels	Dec' 22	Jan' 22	Jul' 22	May' 18	Nov' 18	May' 19	May' 22	May' 23	Nov' 19	Nov' 20	Nov' 22	Nov' 23
MCQ												
RTP									Q1			
QA												
MTP	Q3			Q4		Q2						Q1
PYP							Q5					

SECTION A MULTIPLE CHOICE QUESTIONS (MCQ'S)

1. M/s. Lex Corp. (P) Ltd. is a registered manufacturer of fruit juices. It purchases plastic bottles and cardboard and sends the same for affixing stickers on plastic bottles and manufacturing boxes from cardboard to a registered job worker, M/s. Hammer Industries (P) Ltd. These raw materials are sent directly from the place of business of supplier to the premises of job worker. M/s. Lex Corp. (P) Ltd. booked input tax credit on purchase of such items. The following transactions took place in this regard:

Value of goods sent to job worker	Input tax paid on such goods	Date of purchase of goods by M/s Lex Corp. (P) Ltd.	Date of Receipt of goods by M/s Hammer Industries (P) Ltd.	Date of goods received back from M/s Hammer Industries (P) Ltd.
₹ 50,000	₹ 6,000	10-07-2022	15-07-2022	12-07-2023
₹ 2,00,000	₹ 24,000	25-09-2022	27-09-2022	13-10-2023
₹ 8,00,000	₹ 96,000	22-12-2022	25-12-2022	16-08-2023
₹ 10,00,000	₹ 1,20,000	21-01-2023	25-01-2023	23-01-2024
₹ 3,50,000	₹ 42,000	24-02-2023	26-02-2023	28-02-2024

Determine the total amount to be added to the output tax liability of M/s. Lex Corp. (P) Ltd. in case of violation of section 143 of the CGST Act, 2017. Ignore the different point of times when the amount is added to the output tax liability. (RTP Nov'19)

- (a) ₹ 2,88,000/- + Interest @ 18%
 (b) ₹ 2,88,000/- + Interest @ 24%
 (c) 1,62,000/- + Interest @ 24%
 (d) 1,62,000/- + Interest @ 18%

Ans: (d)

QUESTIONS AND ANSWERS

Question 1

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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? (MTP 4 Marks Oct'23)

Answer 1

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.

Accordingly, Genie Engineers have correctly availed the ITC in respect of the moulds delivered to their job worker and not brought back even after completion of four years.

Question 2

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.

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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?**
(MTP 9 Marks Mar'19)

Answer 2

- (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). However, when goods are manufactured for Solid Pipes, it is manufacture by Sudama Industries Ltd on own account as the pipes are manufactured from their 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 and selling 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, the activity of 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.

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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 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) is liable to pay for the raw material and therefore, the value thereof should not be included in its job charges even though the same has been incurred by Plasto Manufacturers (recipient of job work service).

Question 3

Nandeeshwar Manufacturers, a registered person, sends certain category of yarn for processing to the job worker in January. 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's premises in the month of March. The balance quantity of yarn and waste material is sent back by the job worker to Nandeeshwar Manufacturers in April.

The accountant of job worker is of the opinion that since the job worker is using his own material also in the processing, the supply being made by it to Nandeeshwar Manufacturers is in the nature of supply of goods as well as services. Do you agree with the opinion of accountant of the job worker?

(MTP 4 Marks Oct'21)

Answer 3

No, the opinion of the accountant of the job worker is not 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. Any processing activity carried on any other person's goods is treated as supply of service in terms of Schedule II. Circular No. 38/12/2018 GST dated 26.03.2018 has also clarified 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. These goods are not supply per se, but are being used in the processing activity carried out by it.

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

Question 4(Includes concepts of Supply under GST)

Alok Pvt. Ltd., a registered manufacturer, sent steel cabinets worth Rs. 50 lakhs under a delivery challan to M/s Prem Tools, a registered job worker, for job work on 28.01.20XX. The scope of job work included mounting the steel cabinets on a metal frame and sending the mounted panels back to Alok Pvt. Ltd. The metal frame is to be supplied by M/s Prem Tools. M/s Prem Tools has agreed to a consideration of Rs. 5 lakhs 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 Rs. 45,000. M/s Prem Tools sent the steel cabinets mounted on the metal frame to Alok Pvt. Ltd. on 03.12.20XX. 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.

(MTP 7 Marks Mar'18)

Answer 4

As per para 3 of Schedule II to the CGST Act, any treatment or process which is applied to another person's goods is a supply of services and accordingly is subject to GST rate applicable for services.

In the given case, M/s Prem Tools (job worker) undertakes the process of mounting the steel cabinets of Alok Pvt. Ltd. (principal) on metal frames. In view of para 3 of Schedule II to the CGST Act cited above, the mounting activity classifies as service even though metal frames are also supplied as a part of the mounting activity.

Accordingly, the job charges will be chargeable to rate of 18%, which is the applicable rate for services.

Further, the value of steel cabinets will not be included in the value of taxable supply made by M/s Prem Tools as the supply of cabinets does not fall within the scope of supply to be made by M/s Prem Tools. M/s Prem Tools is only required to mount the steel cabinets, which are to be supplied by Alok Pvt. Ltd., on metal frames, which are to be supplied by it.

As regards sale of waste generated during the job work, since M/s Prem Tools is registered, the tax leviable on the supply will have to be paid by it in terms of section 143(5) of the CGST Act. Such supply will be treated as supply of goods and subject to GST rate applicable for metal waste.

Accordingly, the GST liability of M/s Prem Tools will be computed as under:

Particulars	Amount (Rs.)
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

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Question 5

Octa Manufacturers, Jalandhar, a registered supplier, instructs its supplier Dawson Ltd. to send a CNC machine directly to the job worker, J Enterprises, outside its factory to carry out certain operations on the goods. The CNC machine was sent by the supplier on 7th March 2018 and was received by the job worker on 10th March. J Enterprises carried out the job work and returned the CNC machine to the principal, Octa Manufacturers on 1st March 2023.

- (i) **Can Octa Manufacturers retain the ITC availed by them on the CNC machine?**
- (ii) **Would your Answer be the same if in place of CNC machine, jigs and fixtures were supplied to the job worker which were returned to the principal on 1st March 2023.**
(PYP 4 Marks May'22)

Answer 5

I. The capital goods directly sent to a job worker are required to be returned to the principal within 3 years from the date of receipt of such capital goods by the job worker. In such a case, principal can avail the credit of tax paid on such capital goods.

Octa Manufacturers is entitled to take and retain ITC on capital goods – CNC machine directly sent to the job worker for the job work– J. Enterprises - without being brought into its premises since said machine was returned within specified time period of 3 years from the date its receipt by J. Enterprises.

II. The aforesaid time period of 3 years does not apply to moulds and dies, jigs and fixtures or tools sent out for job work.
Hence, in that case also, Octa Manufacturers is entitled to take and retain ITC in respect of moulds and dies etc.

SECTION B

Question 1

Under what circumstances, can the principal directly supply goods from the premises of job worker without declaring the premises of job worker as his additional place of business?

Answer 1

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 (i) where the job worker is a registered taxable person or (ii) where the principal is engaged in supply of such goods as may be notified by the Commissioner.

Question 2

What happens when the inputs or capital goods are not received back or supplied from the place of business of job worker within prescribed time period?

Answer 2

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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 along with interest. Further, if the job worker is registered, when the processed goods are sent back by it to the principal, the same shall also be considered as a supply over and above the charges for job work.

Question 3

Who is responsible for the maintenance of proper accounts related to job work?

Answer 3

It is completely the responsibility of the principal to maintain proper accounts of job work related inputs and capital goods.

Question 4

Genie Engineers had a mould delivered directly to a job worker from the supplier for making certain precision parts for use in the factory of Genie 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 4

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.

Accordingly, Genie Engineers have correctly availed the ITC in respect of the moulds delivered to their job worker and not brought back even after completion of four years.

Question 5

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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:

- (v) Is there any difference between the manufacture of plastic pipes by Sudama Industries Ltd. for Plasto Manufacturers and for Solid Pipes?**
- (vi) Whether Sudama Industries can use its own material even when it is manufacturing the plastic pipes on job-work basis?**
- (vii) 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?**
- (viii) Whether Sudama Industries should include the value of free of cost plastic and moulds supplied by Plasto Manufacturers in its job charges?**

Answer 5

- (v) 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). However, when goods are manufactured for Solid Pipes, it is manufacture by Sudama Industries Ltd on own account as the pipes are manufactured from their 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 and selling of pipes on own account is a supply of goods.

- (vi) 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.
- (vii) 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

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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, the activity of 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.

- (viii) 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 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) is liable to pay for the raw material and therefore, the value thereof should not be included in its job charges even though the same has been incurred by Plasto Manufacturers (recipient of job work service).

Question 6

Alok Pvt. Ltd., a registered manufacturer, sent steel cabinets worth ₹ 50 lakh under a delivery challan to M/s Prem Tools, a registered job worker, for job work on 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

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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 6

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 a service even though the metal frames are also supplied as a part of the mounting activity. Accordingly, the job charges will be chargeable to GST at a 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

Question 7

Bedi Manufacturers, a registered person, instructs its supplier to send the capital goods directly to Rajesh Enterprises, who is a job worker, outside its factory premises for carrying out certain operations on the goods. The goods were sent by the supplier on 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.

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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 7

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.

Question 8

Nandeeshwar Manufacturers, a registered person, sends certain category of yarn for processing to the job worker in January. 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's premises in the month of March. The balance quantity of yarn and waste material is sent back by the job worker to Nandeeshwar Manufacturers in April.

The accountant of job worker is of the opinion that since the job worker is using his own material also in the processing, the supply being made by it to Nandeeshwar Manufacturers is in the nature of supply of goods as well as services.

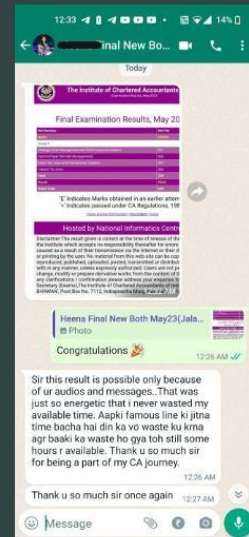
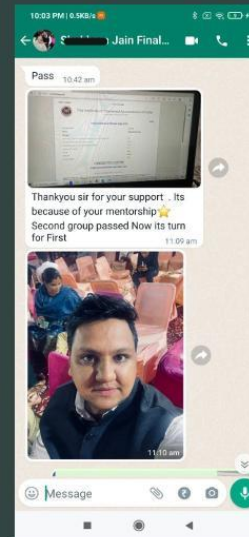
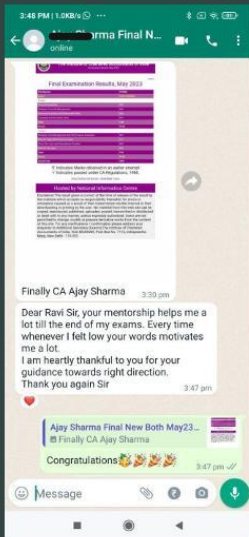
Do you agree with the opinion of accountant of the job worker?

Answer 8

No, the opinion of the accountant of the job worker is not 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. Any processing activity carried on any other person's goods is treated as supply of service in terms of Schedule II. Circular No. 38/12/2018 GST dated 26.03.2018 has also clarified that the job worker, in addition to the goods received from the principal, can use his own goods for providing the services

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Paper 5 – Indirect Tax Laws

Chapter 17 Assessment And Audit

Attempts wise Distribution

Row Labels	Dec' 21	Jan' 21	Jul' 21	May' 18	Nov' 18	May' 19	May' 22	May' 23	Nov' 19	Nov' 20	Nov' 22	Nov' 23
MCQ												
MTP								Q2				
RTP												Q1
QA												
MTP				Q5	Q3					Q4		
PYP			Q1		Q9			Q2				
RTP	Q7				Q6			Q8				

SECTION A MULTIPLE CHOICE QUESTIONS (MCQ'S)

1. **Guruji & Associates is engaged in retail business of selling wedding outfits in the State of West Bengal. It has affected supplies to the customers in the State of Uttar Pradesh and Haryana. It's total turnover during the current financial year is ₹ 15,00,000. Owing to low profit margins in the business, it has decided to shut down the business in the next financial year.**

The proper officer has collected evidence of the inter-State supply of wedding outfits effected by Guruji & Associates during the current financial year. Now, the proper officer wants to make the assessment as it was liable to obtain registration but did not get itself registered under GST.

You are required to assist the proper officer by determining which assessment can be done in this case under the CGST Act, 2017.

- (a) Self-assessment
- (b) Provisional Assessment
- (c) Assessment of unregistered persons
- (d) Special assessment **(RTP Nov'23, Nov'19)**

Ans:(c)

2. **The time-limit for issuance of order of best judgment assessment under CGST Act, 2017 is:**

- (a) 5 years from the date specified for furnishing of the annual return for the financial year to which the tax not paid relates.
- (b) 4 years from the date specified for furnishing of the annual return for the financial year to which the tax not paid relates.
- (c) 3 years from the date specified for furnishing of the annual return for the financial year to which the tax not paid relates.
- (d) None of the above **(MTP 2 Marks Mar'19, Nov'21, MTP 1 Mark Apr'23)**

Ans:(a)

QUESTIONS AND ANSWERS

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Question 1

Explain the provisions relating to assessment of unregistered persons by the proper officer under section 63 of the CGST Act, 2017. (PYP 5 Marks Jul'21)

Answer 1

Notwithstanding anything to the contrary contained in section 73 or section 74 of the CGST Act, 2017, where a taxable person–

- fails to obtain registration even though liable to do so; or
- whose registration has been cancelled for any of the specified reasons*, but who was liable to pay tax,

the proper officer may proceed to assess the tax liability of said taxable person to the best of his judgement for the relevant tax periods.

*Specified reasons for cancellation are as under

- (a) registered person has contravened such provisions of the CGST Act or the rules made there under as may be prescribed; or
- (b) a person paying tax under composition levy under section 10 of the CGST Act has not furnished returns for three consecutive tax periods; or
- (c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or
- (d) any person who has taken voluntary registration under sub-section (3) of section 25 of the CGST Act has not commenced business within six months from the date of registration; or
- (e) registration has been obtained by means of fraud, willful misstatement or suppression of facts:

The assessment order shall be issued by proper officer within a period of 5 years from the due date for furnishing the annual return for the financial year to which non-payment of tax relates.

However, no such assessment order shall be passed without giving the person an opportunity of being heard

Question 2

What are the powers available to proper officers for scrutiny of returns under GST. The proper officer while conducting scrutiny of returns under Section 61 of the CGST Act, 2017, detected discrepancy in the return filed by M/s R Kumar Pvt. Ltd. (registered under GST). Explain the recourse that may be taken by the proper officer in case proper explanation is not furnished by M/s R Kumar Pvt. Ltd.

(PYP 5 Marks May'23)

Answer 2

The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed.

In case no satisfactory explanation is furnished by registered person, the proper officer may take recourse to any of the following provisions, namely:

- (a) proceed to conduct audit under section 65 of the CGST Act
- (b) proceed to conduct special audit to be conducted by a Chartered Accountant or a Cost Accountant under section 66 of the CGST Act
- (c) undertake procedures of inspection, search and seizure under section 67 of the CGST Act.
- (d) initiate proceeding for determination of tax and other dues under section 73/74 of the CGST Act.

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Question 3

Explain in what cases, assessment order passed by proper officer may be withdrawn under CGST Act, 2017? (MTP 5 Marks Oct'18, Oct'21, Oct'19, PYP 5 Marks May'18, PYP 5 Marks Nov'22)

Answer 3

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 60 days of the service of the best judgment assessment order. However, the liability for payment of interest under section 50(1) of the CGST Act, 2017 or for payment of late fee under section 47 of the CGST Act, 2017 shall continue.

However, where the registered person fails to furnish a valid return within 60 days of the service of the assessment order, he may furnish the same within a further period of 60 days on payment of an additional late fee of ₹ 100 for each day of delay beyond 60 days of the service of the said assessment order and in case he furnishes valid return within such extended period, the said assessment order shall be deemed to have been withdrawn, but the liability to pay interest under section 50(1) or to pay late fee under section 47 shall continue.

(ii) **Summary Assessment**-As per section 64(2) of the CGST Act, 2017, a taxable person against whom a summary assessment order has been passed can apply for its withdrawal to the jurisdictional Additional/ Joint Commissioner within 30 days of the date of receipt of the order.

If the said officer finds the order erroneous, he can withdraw it and direct the proper officer to carry out determination of tax liability in terms of section 73 or 74 of the CGST Act. The Additional/ Joint Commissioner can follow a similar course of action on his own motion if he finds the summary assessment order to be erroneous.

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

The requirement of the question is to explain the cases where assessment order passed by proper officer may be withdrawn under CGST Act, 2017. Most of the examinees got confused and ended up in writing lengthy vague answers on the basis of Income Tax Act, 1961.

Question 4

Explain the difference between Audit by Tax Authorities under section 65 and Special Audit under section 66 of the CGST Act, 2017. (MTP 4 Marks May'20, Nov'21, PYP 5 Marks Nov'18)

Answer 4

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.

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Special Audit under section 66 of the CGST Act, 2017: -

1. The registered person can be directed to get his records including books of account examined and audited by a chartered accountant or a cost accountant during any stage of scrutiny, inquiry, investigation or any other proceedings; depending upon the complexity of the case. Any officer not below the rank of Assistant Commissioner may order special audit, with the prior approval of the Commissioner, if he is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits.
2. Audit is to be completed within 90 days. However, the Assistant Commissioner can extend this period by a further period of 90 days.

Question 5

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. (MTP 5 Marks Apr'18)

Answer 5

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 Accountant nominated 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.

Question 6

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 12th January, 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 25th January thereafter paying the tax on provisional basis in respect of said consignment on 19th February.

Consequent to the final assessment order passed by the Assistant Commissioner of Central Tax on 21st March, a tax of ₹ 1,80,000 becomes due on the consignment. Kulbhushan & Sons pays the tax due on 9th April. 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 21st March, a tax of ₹ 4,20,000 becomes refundable on the consignment, refund of which is applied by Kulbhushan & Sons on 9th April and tax was refunded to it on 5th June, determine the interest receivable, if any, by Kulbhushan & Sons in the given case.

(RTP Nov'18)

Answer 6

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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 25th January under provisional assessment is 20th February.

In view of the provisions of section 60(4), in the given case, Kulbhushan & Sons is liable to pay following interest in respect of the consignment of goods supplied:

$$= ₹ 1,80,000 \times 18\% \times 48/365$$

$$= ₹ 4,261 \text{ (rounded off)}$$

If, in the given case, it is assumed that consequent to the final assessment order passed on 21st March, 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 (05th June) within 60 days from the date of receipt of application of refund (09th April), interest is not payable to Kulbhushan & Sons on tax refunded.

Question 7

Prithviraj Ltd., registered under GST in Uttar Pradesh, is served a notice for audit by the tax authority under GST law on 10th July. The records and other documents as sought by the tax authority have been made available by Prithviraj Ltd. on 25th July. The tax authority visits the office of Prithviraj Ltd. located in Noida, Uttar Pradesh on 8th August for conducting audit.

Determine the time-limit within which the audit under section 65 of the CGST Act, 2017 is required to be completed assuming that no extension is permitted in the given case.

(RTP Nov'21)

Answer 7

As per section 65(4) of the CGST Act, 2017, audit shall be completed within a period of 3 months from the date of commencement of the audit. Further, commencement of audit means the later of the following:

- (a) the date on which the records and other documents, called for by the tax authorities, are made available by the registered person, or
- (b) the actual institution of audit at the place of business of the taxpayer. Accordingly, in the given case, date of commencement of audit is later of:
 - (a) the date on which the records and other documents, are made available by Prithviraj Ltd., i.e. 25th July, or
 - (b) the actual institution of audit at the place of business of Prithviraj Ltd., i.e. 8th August. Thus, date of commencement of audit is 8th August.

Hence, audit shall be completed within 3 months from the date of commencement of

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the audit (8th August).

Question 8

Robert & Sons is engaged in the supply of taxable goods. It enters into a contract to supply a consignment of said 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 7th January, an order allowing payment of tax on provisional basis was passed by the proper officer 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.

Robert & Sons complies with the same and supplies the goods on 29th January thereafter paying the tax on provisional basis in respect of said consignment on 19th February. Consequent to the final assessment order passed by the proper officer on 18th March, a tax of ₹ 1,80,000 becomes due on the consignment. Robert & Sons pays the tax due on 9th April.

Determine the interest payable, if any, by Robert & Sons in the above case. (RTP May'23)

Answer 8

Section 60(4) 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 25th January under provisional assessment is 20th February.

In view of the provisions of section 60(4), in the given case, Robert & Sons is liable to pay following interest in respect of the consignment of goods supplied:

$$= ₹ 1,80,000 \times 18\% \times 48/365$$

$$= ₹ 4,261 \text{ (rounded off)}$$

Question 9

Divy Trader obtained permission for provisional assessment and supplied three consignments of furniture on 28th April, 20XX. The tax payment on provisional basis was made in respect of all the three consignments on 20th May, 20XX. Consequent to the final assessment order passed by the Assistant Commissioner on 21st June, 20XX, a tax of ₹ 1,20,000 and ₹ 1,50,000 became refundable on 1st and 3rd consignments, whereas a tax of ₹ 1,20,000 became due on 2nd consignment. Divy Trader applies for the refund of the tax on 1st and 3rd consignments on 12th July, 2018 and pays the tax due on 2nd consignment on the same day. Tax was actually refunded to it of 1st consignment on 8th September, 20XX, whereas of 3rd consignment on 18th September, 20XX. Customers of Divy Trader who purchased the consignments have not taken Input Tax Credit (ITC). Determine the interest payable and receivable, if any, under CGST Act, 2017 by Divy Trader. (PYP 5 Marks Nov'18)

Answer 9

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Where tax becomes due consequent to order of final assessment, interest is payable @ 18% p.a., from the first day after the due date of payment of tax in respect of the goods supplied under provisional assessment till the date of actual payment, whether such amount is paid before/after the issuance of order for final assessment.

In the given case, due date for payment of tax on goods cleared on 28.04.2018 under provisional assessment is 20.05.20XX.

Thus, interest payable in respect of 2nd consignment
 $= ₹ 1,20,000 \times 18\% \times 53 [21.05.20XX - 12.07.20XX]/365$
 $= ₹ 3,136$ (rounded off)

Further, section 56 of CGST Act, 2017 provides that where tax becomes refundable consequent to the order of final assessment, interest is receivable @ 6% p.a. from the date immediately after the expiry of 60 days from the date of receipt of refund application till the date of refund of such tax.

In the given case, since refund of tax of 1st consignment has been paid on 08.09.20XX which is within 60 days from the date of receipt of application of refund (12.07.20XX), interest is not receivable on tax refunded in respect of 1st consignment.

However, interest receivable in respect of 3rd consignment is as follows:
 60 days from the date of receiving the refund application expire on 10.09.20XX.
 $= ₹ 1,50,000 \times 6\% \times 8 [11.09.20XX - 18.09.20XX]/365$
 $= ₹ 197$ (rounded off).

SECTION B

Question 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 1

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.

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Question 2

Is summary assessment order to be necessarily passed against the registered person?

Answer 2

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.

Question 3

Whether principal of natural justice is must to be followed before passing assessment order against the unregistered person?

Answer 3

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.

Question 4

Explain in what cases, assessment order passed by proper officer may be withdrawn under CGST Act, 2017?

Answer 4

Assessment order passed by the proper officer may be withdrawn in following cases:-

(iii) **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 60 days of the service of the best judgment assessment order. However, the liability for payment of interest under section 50(1) of the CGST Act, 2017 or for payment of late fee under section 47 of the CGST Act, 2017 shall continue.

However, where the registered person fails to furnish a valid return within 60 days of the service of the assessment order, he may furnish the same within a further period of 60 days on payment of an additional late fee of ₹ 100 for each day of delay beyond 60 days of the service of the said assessment order and in case he furnishes valid return within such extended period, the said assessment order shall be deemed to have been withdrawn, but the liability to pay interest under section 50(1) or to pay late fee under section 47 shall continue.

(iv) **Summary Assessment**-As per section 64(2) of the CGST Act, 2017, a taxable person against whom a summary assessment order has been passed can apply for its withdrawal to the jurisdictional Additional/ Joint Commissioner within 30 days of the date of receipt of the order.

If the said officer finds the order erroneous, he can withdraw it and direct the proper officer to carry out determination of tax liability in terms of section 73 or 74 of the CGST Act. The Additional/ Joint Commissioner can follow a similar course of action on his own motion if he finds the summary assessment order to be erroneous.

Question 5

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Explain the difference between Audit by Tax Authorities under section 65 and Special Audit under section 66 of the CGST Act, 2017.

Answer 5

Audit by Tax authorities under section 65 of the CGST Act, 2017:-

3. 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.
4. 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:-

3. 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.
4. Audit is to be completed within 90 days. However, the Assistant Commissioner can extend this period by a further period of 90 days.

Question 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 6

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:

- (v) conduct audit of the registered person; or
- (vi) direct the registered person to get his records including books of account examined and audited by a Chartered Accountant or a Cost Accountant nominated for this purpose by the Commissioner; or.
- (vii) exercise the powers of inspection, search and seizure with respect to the registered person, or
- (viii) proceed to determine the tax and other dues of the registered person under Sections 73 or 74 of the Act.

Question 7

Write a brief note on Summary Assessment in certain special cases as per section 64 of the CGST Act, 2017.

Answer 7

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As per section 64 of the CGST Act, 2017, summary assessments can be initiated to protect the interest of revenue with the previous permission of Additional/Joint Commissioner when the proper officer has evidence that a taxable person has incurred a liability to pay tax under the Act, and any delay by him in passing an assessment order may adversely affect the interest of revenue.

Additional/Joint Commissioner may withdraw summary assessment order on an application filed by taxable person within 30 days from the date of receipt of order or on his own motion, if he finds such order to be erroneous and may instead follow the procedures laid down in section 73 or section 74 to determine the tax liability of such taxable person.

Where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

Question 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 12th January, 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 25th January thereafter paying the tax on provisional basis in respect of said consignment on 19th February.

Consequent to the final assessment order passed by the Assistant Commissioner of Central Tax on 21st March, a tax of ₹ 1,80,000 becomes due on the consignment.

Kulbhushan & Sons pays the tax due on 9th April. Determine the interest payable, if any, by Kulbhushan & Sons in the above case.

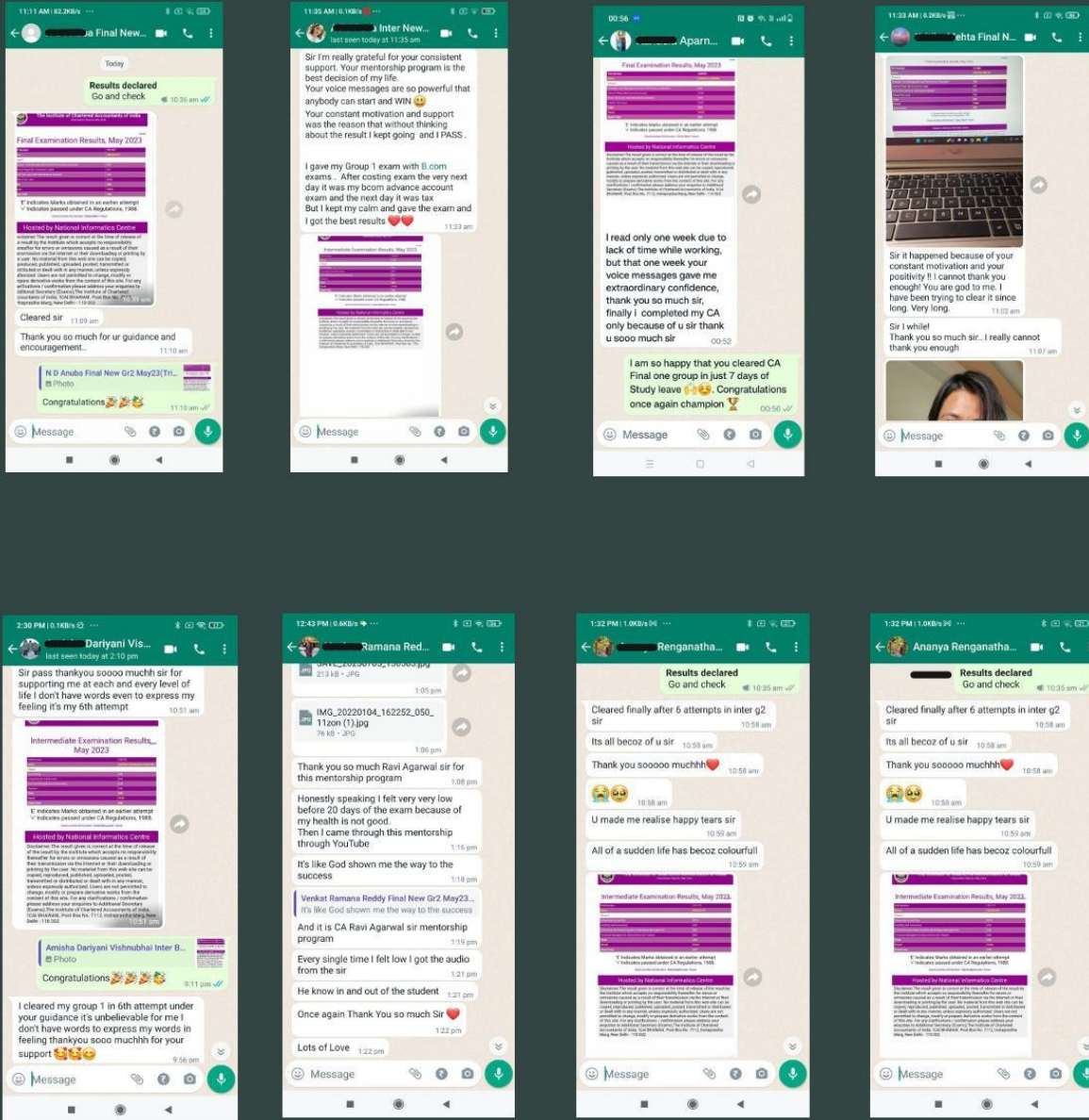
Assuming all the other facts remaining the same, if consequent to the final assessment order passed on 21st March, a tax of ₹ 4,20,000 becomes refundable on the consignment, refund of which is applied by Kulbhushan & Sons on 9th April and tax was refunded to it on 5th June, determine the interest receivable, if any, by Kulbhushan & Sons in the given case.

Answer 8

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

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Chapter 18 Inspection, Search, Seizure And Arrest

Attempts wise Distribution

Row Labels	Dec' 21	Jan' 21	Jul' 21	May' 18	Nov' 18	May' 19	May' 22	May' 23	Nov' 19	Nov' 20	Nov' 22	Nov' 23
MCQ												
MTP						Q3, Q4	Q1			Q5	Q2	
QA												
MTP			Q4	Q3						Q6	Q1	
PYP							Q2					
RTP												Q5

SECTION A

MULTIPLE CHOICE QUESTIONS (MCQ'S)

1. During access to any business premises under section 71 of the CGST Act, 2017, which of the following records can be inspected by the officers:

- (i) Trial balance
- (ii) Statements of annual financial accounts, duly audited, wherever required;
- (iii) Cost audit report
- (iv) Income-tax audit report

Choose the most appropriate option.

- (a) (i) and (ii)
- (b) (i), (ii) and (iv)
- (c) (ii), (iii) and (iv)
- (d) (i), (ii), (iii) and (iv) (MTP 2 Marks Mar'22)

Ans: (d)

2. During access to any business premises under section 71 of the CGST Act, 2017, which of the following records can be inspected by the officers:

- (i) Trial balance
- (ii) Statements of annual financial accounts, duly audited, wherever required;
- (iii) Cost audit report
- (iv) Income-tax audit report

Choose the most appropriate option.

- (a) (i) and (ii)
- (b) (i), (ii) and (iv)
- (c) (ii), (iii) and (iv)
- (d) (i), (ii), (iii) and (iv) (MTP 2 Marks Oct'22)

Ans: (d)

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3. A registered person, who is under investigation for an offence under Chapter XIX of the CGST Act, 2017, needs to retain the books of accounts/other records pertaining to such investigation until the expiry of:

- (a) 72 months from the due date of furnishing of annual return for the year pertaining to such accounts and records.
- (b) 1 year after final disposal of such investigation.
- (c) (a) or (b), whichever is later
- (d) None of the above **(MTP 2 Marks Mar'19)**

Ans: (c)

4. Inspection under CGST Act, 2017 can be ordered if the taxable person has:

- (a) suppressed any transaction of supply of goods or services
- (b) suppressed stock of goods in hand
- (c) contravened any provision of the GST law to evade tax
- (d) All of the above **(MTP 2 Marks Mar'19)**

Ans: (d)

5. If a taxable person has done the following act, inspection can be ordered:

- (i) **Suppression of any transaction of supply of goods or services**
- (ii) **Suppression of stock of goods in hand**
- (iii) **Contravention of any provision of the GST law to evade tax**

- (a) (i) and (ii)
- (b) (ii) and (iii)
- (c) (i) and (iii)

(d) (i), (ii) and (iii) **(MTP 1 Mark Oct'20, Oct'21, MTP 2 Marks Sep'23)**

Ans: (d)

QUESTIONS AND ANSWERS

Question 1

Discuss the power of the officer under GST law of access to business premises under section 71 of the CGST Act, 2017. (MTP 4 Marks Sep'22)

Answer 1

Any officer under this Act, authorized by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

Every person in charge of place referred above shall, on demand, make available to the officer so authorized or the audit party deputed by the proper officer or a cost

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accountant or chartered accountant nominated under section 66-

- (i) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;
- (ii) trial balance or its equivalent;
- (iii) statements of annual financial accounts, duly audited, wherever required;
- (iv) cost audit report, if any, under section 148 of the Companies Act, 2013 (18 of 2013);
- (v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 (43 of 1961); and
- (vi) any other relevant record, for the scrutiny by the officer or audit party or the chartered accountant or cost accountant within a period not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant.

Question 2

List the safeguards provided in section 67 of the CGST Act, 2017 in respect of the power of search or seizure. (PYP 5 Marks May'22)

Answer 2

The safeguards provided in section 67 of the CGST Act, 2017 in respect of the power of search or seizure are as under:

- (i) Seized documents/goods/things should not be retained beyond the period necessary for their examination.
- (ii) Photocopies/extracts of the documents can be taken by the person from whose custody documents are seized.
- (iii) In case of seized goods, where a notice is not issued within 6 months [extendible for further 6 months] of their seizure, goods shall be returned to the person from whose possession they were seized.
- (iv) An inventory of seized goods is required to be made by the seizing officer.
- (v) Certain specified categories of goods such as perishable, hazardous etc. can be disposed of immediately after seizure.
- (vi) Searches and seizures shall be carried out in accordance with the provisions of Code of Criminal Procedure. Instead of sending copies of any record made in the course of search to the nearest magistrate, it has to be sent to the Principal Commissioner / Commissioner of CGST

Question 3

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. (MTP 5 Marks Mar'18, Oct'22)

Answer 3

The access to any place of business of a registered person is allowed to a proper officer who authorized by an officer of the rank of Joint Commissioner or higher for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue. 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.

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It is the duty of the persons in charge of such premises to furnish the required documents within fifteen working days from the day when such demand is made. 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.

Question 4

State the circumstances when the proper officer can authorize 'arrest' of any person under the CGST Act. (MTP 4 Marks Mar'21)

Answer 4

The Commissioner can authorize an 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) and the tax evaded / input tax credit wrongly availed or utilized or refund wrongly taken exceeds ₹ 2 crore. 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.

Question 5

Discuss the precautions to be observed while issuing summons under GST law. (RTP Nov'23)

Answer 5

The following precautions should generally be observed when summoning a person under GST law: -

- (i) A summon should not be issued for appearance where it is not justified. The power to summon can be exercised only when there is an inquiry being undertaken and the attendance of the person is considered necessary.
- (ii) Normally, summons should not be issued repeatedly. As far as practicable, the statement of the accused or witness should be recorded in minimum number of appearances.
- (iii) Respect the time of appearance given in the summons. No person should be made

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to wait for long hours before his statement is recorded except when it has been decided very consciously as a matter of strategy.

- (iv) Preferably, statements should be recorded during office hours; however, an exception could be made regarding time and place of recording statement having regard to the facts in the case.

Question 6

Explain the safeguards provided under section 69 of CGST Act, 2017, to a person who is placed under arrest? (MTP 4 Marks Oct'20, Oct'23)

Answer 6

Section 69 of CGST Act, 2017 provides following safeguards to a person who is placed under arrest:

- 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.
- 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.
- All arrest must be in accordance with the provisions of the Code of Criminal Procedure relating to arrest in terms of section 69(3) of CGST Act, 2017.

SECTION B

Question 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 1

The access to any place of business of a registered person is allowed to a proper officer who authorized by an officer of the rank of Joint Commissioner or higher for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue. 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 within fifteen working days from the day when such demand is made. 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.

- the records prepared and maintained by the registered person and declared to the proper officer in the prescribed manner.
- trial balance or its equivalent.
- statements of annual financial accounts, duly audited.
- cost audit report, if any.
- the income-tax audit report, if any.

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(xii) any other relevant record.

Question 2

Explain the safeguards provided under section 69 to a person who is placed under arrest.

Answer 2

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).

Question 3

Who can order for carrying out 'inspection' and under what circumstances?

Answer 3

As per section 67, an 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 to evade tax:

- 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/go down/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.

Question 4

Who can order for search and seizure under the provisions of the CGST Act?

Answer 4

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 empowered to authorize any officer to carry out search and seizure can himself also carry out search and seize such goods, documents or books or things.

Question 5

Describe the powers that can be exercised by an officer during a valid search.

Answer 5

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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. In case where it is not practicable to seize any such goods, the officer can issue an order restricting the owner of the goods to not remove / part / deal with the goods except with his prior permission. The officer can also dispose of goods seized which are specified by the Government in a notification having regard to the nature of such goods.

Question 6

Discuss the responsibilities of the person to whom summons has been issued.

Answer 6

A person who is issued summons 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 summons upon any matter which is the subject matter of examination and to produce such documents and other things as may be required.

Question 7

Explain the meaning of 'arrest'.

Answer 7

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 a lawful warrant.

Question 8

State the circumstances when the proper officer can authorize 'arrest' of any person under the CGST Act.

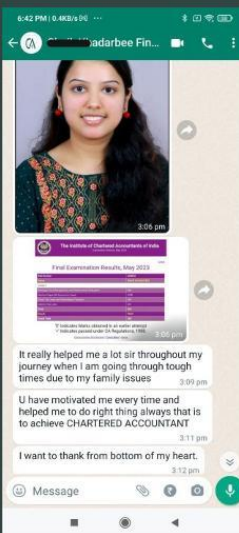
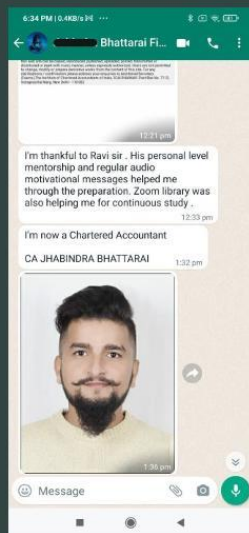
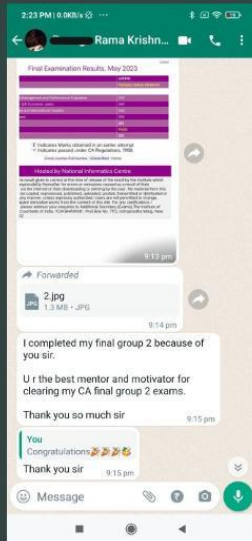
Answer 8

The Commissioner can authorize an 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) and the tax evaded / input tax credit wrongly availed or utilized or refund wrongly taken exceeds ₹ 2 crore. 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.

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Chapter 19 Demands And Recovery

Attempts wise Distribution

Row Labels	Dec' 21	Jan' 21	Jul' 21	May' 18	Nov' 18	May' 19	May' 22	May' 23	Nov' 19	Nov' 20	Nov' 22	Nov' 23
MCQ												
MTP						Q1						
QA												
MTP				Q10				Q4				
PYP	Q6		Q5, Q8		Q7			Q9	Q3			
RTP							Q1			Q2		

SECTION A MULTIPLE CHOICE QUESTIONS (MCQ'S)

1. Rochester Private Limited has been issued a show cause notice (SCN) on 31.08.2023 under section 73(1) of the CGST Act, 2017 on account of short payment of tax during the period between 01.07.2019 and 31.12.2019. As per section 73(1), in the given case, SCN can be issued latest by_.

- (a) 31.12.2023
- (b) 30.09.2023
- (c) 30.06.2023
- (d) 31.12.2022 (MTP 2 Marks Mar'19)

Ans: (b)

QUESTIONS AND ANSWERS

Question 1

Mr. Arihant is engaged in supply of taxable goods and is registered in the State of Orissa. A demand notice under GST law of ₹ 50 lakh is served on him on 5th April. On 10th April, despite having knowledge of said notice, Mr. Arihant transferred his ancestral property located in Punjab in the name of his wife Soma for a consideration of ₹ 2 lakh without taking any permission from the authorities under GST. The value for the purpose of stamp duty valuation was ₹ 80 lakh. Subsequently, he filed a reply to said demand notice on 15th April stating that he would not be able to pay the amount of tax demanded in the notice due to his distressed financial situation. Determine the validity of the act of transferring of property by Mr. Arihant to his wife Soma, under the provisions of the GST law. (RTP May'22, MTP 5 Marks Apr'23)

Answer 1

Section 81 of the CGST Act, 2017 stipulates that where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode

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of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person.

However, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

In view of the above provisions, in the given case, transfer of property by Mr. Arihant to his wife Soma is void and the property will still be considered in the hands of Mr. Arihant under GST law for the purpose of recovery of dues under GST from him.

Question 2

Inoba Bhave is engaged in supply of taxable services. He supplies some services in the month of April and collects IGST of ₹ 15,50,000 on said supply on 18th April. However, he fails to pay the tax so collected within 30 days from the due date of payment of such tax. No Show Cause Notice (SCN) has been issued to him so far. Inoba Bhave decides to discharge his tax liability, before the SCN is issued to him. He is of the view that no penalty is leviable if the payment of tax is made before issue of SCN. Therefore, he self-assesses his tax liability at ₹ 15,50,000 and pays the same on 26th June. Determine the interest and penalty, if any, payable by Inoba Bhave. (RTP May'20)

Answer 2

Due date for payment of tax collected on 18th April is 20th May. However, since tax is actually paid on 26th June, interest @ 18% p.a. is payable for the period for which the tax remains unpaid [37 days] in terms of section 50 of CGST Act, 2017 read with *Notification No. 13/2017 CT dated 28.06.2017*. Amount of interest is: = ₹ 15,50,000 × 18% × 37/365 = ₹ 28,282 (rounded off)

As per section 73(11) of the CGST Act, 2017, where self-assessed tax/any amount collected as tax is not paid within 30 days from due date of payment of tax, then, *inter alia*, option to pay such tax before issuance of SCN to avoid penalty, is not available. Consequently, penalty equivalent to (i) 10% of tax, viz., ₹ 1,55,500 or (ii) ₹ 10,000,

whichever is higher, is payable in terms of section 73(9) of the CGST Act, 2017.

Therefore, penalty of ₹ 1,55,500 will have to be paid by Inoba Bhave.

Question 3

A taxpayer has suppressed certain facts resulting in short payment of tax. The mistake is pointed out by the Department, but no show cause notice (SCN) has been issued. As per the taxpayer, suppression is accepted at ₹ 12,00,000 and he agrees that the suppression has taken place in the month of January, 2024. He clears the dues on 20th April, 2024. However, the Department, on verification, identifies additional suppression of ₹ 2,00,000 in the same month of January, 2024. SCN is issued and the taxpayer represents before the proper officer, which results into an adverse order against the taxpayer. The order is passed on 25.05.2024 and the taxpayer complies with the adverse adjudication order on 27.06.2024.

Determine the tax, interest and penalty payable at each stage. (PYP 5 Marks Nov'19)

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Answer 3

Note: In the given question, suppression accepted at ₹ 12 lakh may be assumed to be either the value or the tax amount. Further, where the amount of ₹ 12 lakh is assumed to be the value of suppression, rate for tax payable would also need to be assumed. Further, as per explanation 2 to section 74 of the CGST Act, 2017, the expression “suppression” means non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer. Therefore, the question can be answered either by assuming that the information has been suppressed in the return/statement/report filed IN the month of January (interest would become payable from 21st January in this case) or by assuming that suppression activity has taken place in January and the same has been reported in the return/statement/report filed IN the month of February (interest would become payable from 21st February in this case).

In view of the above assumptions, following alternative answers are possible:

Alternative 1- Where amount of ₹ 12 lakh is assumed to be the value of suppression and tax rate assumed to be 18%

Tax, interest and penalty payable before the issue of the SCN: In case of short payment of tax by reason of suppression of facts, if the taxpayer pays such short-paid tax and applicable interest before the issuance of show cause notice, penalty equal to 15% of such tax is payable.

Value suppressed = ₹ 12,00,000 Tax @ 18% = ₹ 2,16,000

Interest = ₹ 2,16,000 × 18% × 90/365 = ₹ 9,587 (rounded off) [From 21st January to 20th April]¹²

OR

Interest = ₹ 2,16,000 × 18% × 59/365 = ₹ 6,285 (rounded off) [From 21st February to 20th April]¹³

Penalty = ₹ 2,16,000 × 15% = ₹ 32,400

Tax, interest and penalty payable after the adjudication order: In case of short payment of tax by reason of suppression of facts, if the taxpayer pays such short-paid tax and applicable interest after 30 days of communication of the adjudication order penalty equal to 100% of such tax is payable.

Value suppressed = ₹ 2,00,000 Tax @ 18% = ₹ 36,000

Interest = ₹ 36,000 × 18% × 158/365 = ₹ 2,805 (rounded off) [From 21st January to 27th June]

OR

Interest = ₹ 36,000 × 18% × 127/365 = ₹ 2,255 (rounded off) [From 21st February to 27th June]

Penalty = ₹ 36,000 × 100% = 36,000

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Alternative 2- Where amount of ₹ 12 lakh is assumed to be the suppressed amount of tax

Tax, interest and penalty payable before the issue of the SCN: In case of short payment of tax by reason of suppression of facts, if the taxpayer pays such short-paid tax and applicable interest before the issuance of show cause notice, penalty equal to 15% of such tax is payable.

Tax payable = ₹ 12,00,000

Interest = ₹ 12,00,000 × 18% × 90/365 = ₹ 53,260 (rounded off) [From 21st January to 20th April]

OR

Interest = ₹ 12,00,000 × 18% × 59/365 = ₹ 34,915 (rounded off) [From 21st February to 20th April]

Penalty = ₹ 12,00,000 × 15% = ₹ 1,80,000

Tax, interest and penalty payable after the adjudication order: In case of short payment of tax by reason of suppression of facts, if the taxpayer pays such short-paid tax and applicable interest after 30 days of communication of the adjudication order penalty equal to 100% of such tax is payable.

Tax payable = ₹ 2,00,000

Interest = ₹ 2,00,000 × 18% × 158/365 = ₹ 15,584 (rounded off) [From 21st January to 27th June]

OR

Interest = ₹ 2,00,000 × 18% × 127/365 = ₹ 12,526 (rounded off) [From 21st February to 27th June]

Penalty = ₹ 2,00,000

Question 4

Mr. Jagjeevan has filed Form GSTR 3B 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 ₹ 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. (PYP 4 Marks Nov'20, MTP 4 Marks Apr'23)

Answer 4

The decision of the adjudicating authority is not correct in law.

The provisions of section 73(11) of the CGST Act, 2017 can be invoked only when the provisions of section 73 are invoked and the provisions of section 73 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.

Thus, penalty under the provisions of section 73(11) is not payable in such cases

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although a general penalty may be imposed since the tax has been paid late in contravention of the provisions of the CGST Act, as clarified vide Circular No. 76/50/2018 GST dated 31.12.2018.

The time-limit for issuance of SCN is 2 years and 9 months and time-limit for passing the adjudication order is within 3 years from:

- (i) the due date of filing annual return for the financial year to which the demand pertains or
- (ii) the date of erroneous refund, as the case may be.

Question 5

Discuss the amount of tax and penalty to be paid, if any, in the following independent cases where show cause notices are issued under section 74 of the CGST Act, 2017.

S.No.	Date on which credit was taken wrongly	Amount of input tax credit taken wrongly (₹ in lakh)	Present status
1	31 st January, 2021	200	Adjudication order passed on 26 th July, 2023 demanding the entire amount of credit with interest and imposing amount equal to the credit as penalty.
2	30 th June, 2021	250	Adjudication order passed on 26 th August, 2023 demanding the entire amount of credit with interest and imposing amount equal to the credit as penalty.
3	30 th October, 2021	120	Show cause notice has been issued on 5 th September, 2023 demanding the entire amount of credit with interest and proposing penalty equal to 100% of the credit taken.
4	30 th January, 2022	50	Statement of the Managing Director has been recorded on 6 th September, 2023 wherein he has admitted the non-receipt of the inputs and availing the credit wrongly.

Note: In all the cases, assessee wants to pay the amount on 20-09-2023. (PYP 5 Marks Jul'21)

Answer 5

S. No.	Date on which credit was taken wrongly	Amount of ITC wrongly taken (₹ in lakh)	Tax & penalty under section 74

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1	31st January 2021	200	Adjudication order is passed on 26 th July, 2023 and payment is made on 20.09.2023 i.e., after 30 days of the communication of the adjudication order ⁵ . Therefore, entire amount of ITC wrongly availed which is ₹ 200 lakh and equal amount of penalty i.e., ₹ 200 lakh shall be payable.
2	30th June 2021	250	Adjudication order is passed on 26 th August, 2023 and payment is made on 20.09.2023 i.e., within 30 days of the communication of the adjudication order ⁶ . Therefore, entire amount of ITC wrongly availed which is ₹ 250 lakh and 50% of the penalty imposed i.e., ₹ 125 lakh shall be payable.
3	30th October 2021	120	Show cause notice is issued on 5 th September 2023 and payment is made on 20.09.2023 i.e., within 30 days of issue of show cause notice. Therefore, entire amount of ITC wrongly availed which is ₹ 120 lakh and 25% of the penalty imposed i.e., ₹ 30 lakh shall be payable.
4	30th January 2022	50	Alternative-I: It is assumed that payment has been made within 30 days of issue of show cause notice. Entire amount of ITC wrongly availed which is ₹ 50 lakh and 25% of the penalty imposed i.e., ₹ 12.5 lakh shall be payable. Alternative-II: It is assumed that show cause notice has not yet been issued. Payment made on 20.09.2023 is before issuance of show cause notice. Therefore, amount of ITC admitted to be taken wrongfully which is ₹ 50 lakh and penalty equal to 15% of such ITC i.e., ₹ 7.5 lakh shall be payable.

⁵ It is assumed that adjudication order is communicated the same day on which it is passed.

⁶ It is assumed that adjudication order is communicated the same day on which it is passed.

Question 6

In the month of March 2021, during the course of Departmental GST audit under section 65 of the CGST Act, 2017 of Always Right Private Limited, audit team observed that input tax credit claimed by the company was blocked under section 17(5) of the CGST Act, 2017. Audit memo was given to the company for submission of reply on the audit observations mentioned in the memo. Company submitted its reply contending that the said credit was not blocked under section 17(5) and

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had been rightly claimed. Department was not satisfied with the reply submitted by the company. Audit team served a show cause notice under section 74 of the CGST Act, 2017 and transferred the matter to adjudicating officer and also started recovery process under sections 78 and 79 of the CGST Act, 2017 for recovery of the input tax credit wrongly availed.

You are required to comment whether action of the Department to recover the amount is justified with the reference to the legal provisions of the GST law.

(PYP 4 Marks Dec'21)

Answer 6

The action of the Department to initiate the recovery proceedings without adjudication order being passed is not valid.

Recovery proceedings can be initiated under GST law if a taxable person fails to pay any amount payable in pursuance of an order passed under this law within a period of 3 months (or reduced period by proper officer) from the date of service of such order.

However, in the given case, the recovery proceedings have been initiated only after serving the show cause notice and transferring the matter to the adjudicating officer. The adjudication order has not yet been passed in the given case.

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

Although the conclusion has been correctly stated by most of the examinees, the correct legal provisions could not be produced by them. They missed stating that recovery proceeding cannot be initiated without adjudication order.

Question 7

Mr. Anant Kumar Gupta self-assessed his tax liability as ₹ 90,000 for the month of April 20XX but failed to make the payment.

Subsequently the Department initiated penal proceedings against Mr. Anant Kumar Gupta for recovery of penalty under section 73 of CGST Act, 2017 for failure to pay GST and issued show cause notice on 10-08-2018 which was received by Mr. Anant Kumar Gupta on 14-08-20XX.

Mr. Anant Kumar Gupta deposited the tax along with interest on 25/08/20XX and informed the department on the same day.

Department is contending that he is liable to pay a penalty of ₹ 45,000 (i.e. 50% of 90000).

Examine the correctness of the stand taken by the Department with reference to the provisions of the CGST Act, 2017, explain the relevant provisions in brief. (PYP 5 Marks Nov'18)

Answer 7

Due date for payment of tax for the month of April, 20XX is 20.05.20XX.

As per section 73 of the CGST Act, 2017, where self-assessed tax is not paid within 30 days from due date of payment of such tax, penalty equivalent to 10% of tax or ₹ 10,000, whichever is higher, is payable. Thus, option to pay tax within 30 days of issuance of SCN to avoid penalty, is not available in case of self-assessed tax.

Since in the given case, Mr. Anant Kumar Gupta has not paid the self-assessed tax

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within 30 days of due date [i.e. 20.05.2018], penalty equivalent to:

- (i) 10% of tax, viz., ₹ 9,000 (10% of ₹ 90,000) or
- (ii) ₹ 10,000,

whichever is higher, is payable by him. Thus, penalty payable is ₹ 10,000.

Hence, the stand taken by the Department that penalty will be levied on Mr. Anant Kumar Gupta is correct, but the amount of penalty ₹ 45,000 is not correct.

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

In most of the cases, answers were incorrect as examinees were not aware that the option to pay tax within 30 days of issuance of show cause notice to avoid penalty is not available in case of self-assessed tax.

Question 8

Discuss the validity of the following independent cases under the provisions of CGST Act, 2017:

- (i) **CGST officer had issued a notice under section 74(1) against which appeal was preferred by the assessee. Appellate Authority concluded that the notice issued under section 74(1) was not sustainable for the reason that charges of fraud had not been established. Now the officer wishes to determine the tax payable by treating the said notice as if it was issued under section 73(1). Is the action of the officer valid?**
- (ii) **CGST officer issued an adjudication order which did not specify payment of interest on the tax short paid by the registered person. So, the assessee contends that interest cannot be demanded as the said order is silent on the same. Is the contention of the assessee correct? (PYP 4 Marks Jul'21)**

Answer 8

- (i) **Valid.** As per section 75 of the CGST Act, 2017, if the Appellate Authority concludes that the notice issued under section 74(1) is not sustainable for the reason that the charges of fraud has not been established, the proper officer can determine the tax payable by deeming as if the notice was issued under section 73(1).
- (ii) **Incorrect.** As per section 75 of the CGST Act, 2017, the interest on the tax short paid or not paid shall be payable whether or not the same is specified in the order determining the tax liability.

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

Many examinees simply mentioned the conclusions and did not substantiate their answers with proper reasoning.

Question 9

M/s Blue Berry Traders, a registered person under GST, issued a tax invoice on 1st August, 2022 to M/s Blue Lagoon Traders without any underlying supply of goods or services amounting to Input Tax Credit (ITC) involved of ₹ 30 lakh.

M/s Blue Lagoon Traders avails ITC on the basis of the said tax invoice. The department issued a show cause notice to M/s Blue Lagoon Traders on 1st April, 2023 specifying the amount of tax along with interest payable thereon u/s 50 and applicable penalty. M/s Blue Lagoon Traders paid the amount of tax along

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with interest payable thereon u/s 50 specified in the show cause notice on 15th April, 2023 and also along with applicable penalty.

Explain the relevant provision in brief and determine the amount of penalty to be paid by M/s Blue Berry Traders and M/s Blue Lagoon Traders under CGST Act, 2017 in respect of above referred transaction.

(PYP 4 Marks May'23)

Answer 9

Since M/s Blue Berry Traders issued an invoice without any supply of goods or services in violation of the provisions of GST law, it shall be liable to pay a penalty of higher of the following-

- (a) ₹ 10,000 or
 - (b) Amount of ITC passed on,
- So, in given case, penalty is higher of:

- (a) ₹ 10,000, or
 - (b) ₹ 30 lakh
- i.e. ₹ 30 lakh

each under CGST and SGST

Where any person chargeable with tax due to wrongful availment and utilization of ITC by reason of fraud etc. pays the said tax along with interest payable under section 50 and a penalty equivalent to 25% of such tax within 30 days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

Thus, M/s Blue Lagoon Traders has to pay penalty of ₹ 7,50,000 (₹ 30 lakh x 25%) each under CGST and SGST.

Question 10

Discuss briefly the time limit for issue of show cause notice as contained under sections 73 and 74.

(MTP 5 Marks Apr'18)

Answer 10

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 within 2 years and 9 months 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 within 4 years and 6 months from the date of erroneous refund.

SECTION B

Question 1

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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 1

It is mandatory to pay amount, collected from other person representing tax under GST law, to the Government. Every person who has collected from any other person any amount as representing the tax under GST law, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

For any such amount not so paid, proper officer may issue SCN for recovery of such amount and penalty equivalent to amount specified in notice.

The proper officer shall, after considering the representation, if any, made by the person on whom SCN is served, determine the amount due from such person and thereupon such person shall pay the amount so determined alongwith interest at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.

Question 2

Discuss briefly the time limit for issue of show cause notice as contained under sections 73 and 74.

Answer 2

The provisions relating to 'relevant date' as contained in CGST Act, 2017 are as under:

(iii) 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 within 2 years and 9 months from the date of erroneous refund.

(iv) 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 within 4 years and 6 months from the date of erroneous refund.

Question 3

Is there any time limit prescribed for adjudication of the cases under CGST Act, 2017? If yes, discuss the same.

Answer 3

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 or within 3 years from the date of erroneous refund. [Section 73(10)].

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- (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 or within 5 years from the date of erroneous refund. [Section 74(10)].

Question 4

A person is chargeable with tax in case of fraud. He decides to pay the amount of demand alongwith interest before issue of notice. Is there any immunity available to such person?

Answer 4

Yes. Person chargeable with tax, shall have an option to pay the amount of tax along with interest and penalty equal to 15% per cent of the tax involved, as ascertained either on his own or ascertained by the proper officer, and on such payment, no notice shall be issued with respect to the tax so paid [Section 74(6)].

Question 5

Briefly discuss the modes of recovery of tax available to the proper officer.

Answer 5

The proper officer may recover the dues in following manner:

- (a) Deduction of dues from the amount owned by the tax authorities payable to such person.
- (b) Recovery by way of detaining and selling any goods belonging to such person;
- (c) Recovery from other person, from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central or a State Government;
- (d) Distrain any movable or immovable property belonging to such person, until the amount payable is paid. If the dues not paid within 30 days, the said property is to be sold and with the proceeds of such sale the amount payable and cost of sale shall be recovered.
- (e) Through the Collector of the district in which such person owns any property or resides or carries on his business, as if it was an arrear of land revenue.
- (f) By way of an application to the appropriate Magistrate who in turn shall proceed to recover the amount as if it were a fine imposed by him.
- (g) By enforcing the bond/instrument executed under this Act or any rules or regulations made thereunder.
- (h) CGST arrears can be recovered as an arrear of SGST and vice versa [Section 79].

Question 6

Enlist the circumstances for which a show cause notice can be issued by the proper officer under section 73. 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 6

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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 within 2 years and 9 months 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.

Question 7

Subharti Enterprises collected GST on the goods supplied by it from its customers on the belief that said supply is taxable. However, later it discovered that goods supplied by it are exempt from GST.

The accountant of Subharti Enterprises advised it that the amount mistakenly collected by Subharti Enterprises representing as tax was not required to be deposited with Government. Subharti Enterprises has approached you for seeking the advice on the same. You are required to advise it elaborating the relevant provisions.

Answer 7

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

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such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.

The proper officer shall, after considering the representation, if any, made by the person on whom show cause notice (SCN) is served, determine the amount due from such person and thereupon such person shall pay the amount so determined.

The person who has collected any amount as representing the tax, but not deposited the same with the Government shall in addition to paying the said amount determined by the proper officer shall also be liable to pay interest thereon. Interest is payable at the rate specified under section 50. Interest is payable from the date such amount was collected by him to the date such amount is paid by him to the Government.

The proper officer shall issue an order within 1 year [excluding the period of stay order] from the date of issue of the notice. The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

Question 8

Anant & Co. self-assessed its CGST 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 ₹ 90,000) under the CGST Act.

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 8

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 under CGST Act. Equivalent amount of penalty is payable under SGST/UTGST Act.

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 under CGST Act is not correct.

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Question 8

Enlist the circumstances for which a show cause notice can be issued by the proper officer under section 73 of the CGST Act, 2017. Specify the time limit for issuance of such show cause notice as also the time period for issuance of order by the proper officer under section 73. (RTP May'19, Old & New SM)

Answer 8

As per section 73 of the CGST Act, 2017, a show cause notice can be issued by the proper officer if it appears to him that:

- tax has not been paid; or
- tax has been short paid; or
- tax has been erroneously refunded; or
- input tax credit has been wrongly availed or utilized, for any reason other than the reason of fraud or any 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) of the CGST Act, 2017, the due date of filing annual return for a financial year is 31st day of December following the end of such financial year.

Question 9

Narmada Enterprises, a registered person, pays CGST and SGST on a transaction considered by it to be an intra-State supply. However, subsequently said transaction is held to be an inter-State supply. Examine the recourse available with Narmada Enterprises. (RTP Nov'20)

Answer 9

Section 77(1) of the CGST Act, 2017 stipulates that a registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid.

Further, section 19(2) of the IGST Act, 2017 provides that a registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable. Thus, in the given case, Narmada Enterprises shall be refunded the amount of taxes so paid and it shall not be required to pay any interest on the amount of IGST payable by it on the transaction wrongly considered by it earlier as intra-State transaction.

As per amendment- It is clarified that the term “subsequently held” in said sections covers both the cases where the inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or where the inter-State or intra-State supply made by a taxpayer is subsequently found/ held as intra-State or inter-State respectively by

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the tax officer in any proceeding, for instance, scrutiny/ assessment/ audit/ investigation, or as a result of any adjudication, appellate or any other proceeding. Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above-mentioned situations, provided the taxpayer pays the required amount of tax in the correct head.

Question 1

Discuss briefly the procedure for issue of adjudication order under section 74(9) & (11) and the time limit for passing adjudication order under section 74(10) of the CGST Act, 2017.

(MTP 5 Marks Aug'18)

Answer 1

The procedure for issue of adjudication order under section 74 of CGST Act, 2017 is as under: -

Where a show cause notice/statement is issued to a person chargeable with tax, he may furnish a representation to the proper officer in his defence, if he is of the view that he is not so liable to pay whole/part of the amount mentioned in the show cause notice.

The proper officer after considering the representation, if any, made by the person chargeable with tax, pass an order determining the amount of tax, interest and penalty due from such person [Section 74(9)].

Where any person served with an adjudication order pays the tax along with interest payable thereon under section 50 and a penalty equivalent to 50% of such tax within 30 days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded [Section 74(11)].

As per section 74(10) of CGST Act, 2017, the proper officer shall issue the adjudication order within 5 years from the due date for furnishing of Annual Return for the financial year to which the tax not paid/short paid/input tax credit wrongly availed/utilised relates to or within 5 years from the date of erroneous refund.

Question 2

Briefly discuss the modes of recovery of tax available to the proper officer.

(MTP 5 Marks Oct'18, MTP 4 Marks Oct'19, Old & New SM)

Answer 2

The proper officer may recover the dues in following manner:

- Deduction of dues from the amount owned by the tax authorities payable to such person.
- Recovery by way of detaining and selling any goods belonging to such person;
- 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;
- 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.
- 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.
- By way of an application to the appropriate Magistrate who in turn shall proceed to

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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].
- [Note: Any of the above five points may be mentioned.]

Question 3

On 05.07.20XX, a show cause notice for Rs. 5,00,000 was issued to Mr. Janak Singhal demanding short payment of GST of Rs. 4,50,000 for the month of January, 20XX and also interest of Rs. 50,000.

Mr. Janak Singhal raised objections and after personal hearing on 30.08.20XX, adjudicating authority passed the final order for Rs. 3,50,000 for GST, without any reference with regard to payment of interest.

Mr. Janak Singhal deposited the tax of Rs. 3,50,000 on 02.09.20XX and informed the department on the same day. Subsequently, on 15.09.20XX, department demanded payment of interest of Rs. 60,000 on GST of Rs. 3,50,000.

Mr. Janak Singhal is not ready to pay any interest. His contention is that he is not liable for interest because he deposited all the amount specified in the final adjudication order.

Examine with a brief note the validity of the action taken by the Department with reference to provisions of the CGST Act, 2017. (MTP 4 Marks Oct'19, MTP 5 Marks Oct'20)

Answer 3

As per section 75 of the CGST Act, 2017, the interest on the tax short paid has to be paid whether or not the same is specified in the order determining the tax liability.

Thus, in view of the same, Mr. Janak Singhal will have to pay the interest even though the same is not specified in the final adjudication order. His contention that he is not liable for interest because he deposited all the amount specified in the final adjudication order is not valid in law.

However, the amount of interest demanded in the order cannot be in excess of the amount specified in the notice.

Therefore, in the given case, Department cannot demand the interest in excess of the amount specified in the notice, which will be Rs. 50,000.

Question 4

Rahul Associates has been issued a show cause notice (SCN) on 31.12.2023 under section 73(1) of CGST Act on account of short payment of tax during the period between 01.07.2019 and 31.12.2019. It has been given an opportunity of personal hearing on 15.01.2024. Advice Rajul Associates as to what should be the written submissions in the reply to the show cause notice issued to it.

(MTP 5 Marks Oct'21, MTP 4 Marks Mar'18, MTP 5 Marks Nov'21, RTP May'18, Old SM)

Answer 4

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) of the CGST Act is not sustainable.
- ii. The SCN under section 73(1) of the CGST Act can be issued at least 3 months prior to the time limit specified for issuance of order under section 73(10) of the CGST Act. The adjudication order under section 73(10) of the CGST Act has to be issued within 3

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years from the due date for furnishing of annual return for the financial year to which the short - paid tax relates to.

The due date for furnishing annual return for a financial year is on or before the 31st day of December following the end of such financial year [Section 44]. Thus, SCN under section 73(1) of the CGST Act can be issued within 2 years and 9 months from the due date for furnishing of annual return for the financial year to which the short-paid tax relates to.

- iii. The SCN has been issued for the period between 01.07.2019 to 31.12.2019 which falls in the financial year (FY) 2017-18. Due date for furnishing annual return for the FY 2019-20 is 31.12.2020 and 3 years' period from due date of filing annual return lapses on 31.12.2023. Thus, SCN under section 73(1) of the CGST Act ought to have been issued latest by 30.09.2023.
- iv. Since the notice has been issued after 30.09.2021, the entire proceeding is barred by limitation and deemed to be concluded under section 75(10) of the CGST Act.

Question 5

Raksha 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 Raksha Enterprises advised it that the amount mistakenly collected by Raksha Enterprises representing as tax was not required to be deposited with Government. Raksha Enterprises has approached you for seeking the advice on the same. You are required to advise it elaborating the relevant provisions. (MTP 5 Marks Apr'22, Oct'23, MTP 6 Marks Apr'19, RTP Nov'18, Old & New SM)

Answer 5

The provisions of section 76 of the CGST Act, 2017 make it mandatory on Raksha 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

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is payable at the rate specified under section 50 of the CGST Act, 2017. Interest is payable from the date such amount was collected by him to the date such amount is paid by him to the Government. The proper officer shall issue an order within 1 year [excluding the period of stay order] from the date of issue of the notice. The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

Question 6

Richmond has self-assessed tax liability under IGST Act, 2017, as Rs. 80,000. He fails to pay the tax within 30 days from the due date of payment of such tax.

Determine the interest and penalty payable by him explaining the provisions of law, with the following particulars available from his records:

Date of collection of tax 18th December, 20XX Date of payment of tax 26th February, 20XX No Show Cause Notice (SCN) has been issued to him so far, while he intends to discharge his liability, even before it is issued to him, on the assumption that no penalty is leviable on him as payment is made before issue of SCN. (MTP 4 Marks Aug'18)

Answer 6

Due date for payment of tax collected on 18.12.20XX is 20.01.20XX. However, since tax is actually paid on 26.02.20XX, interest @ 18% p.a. is payable for the period for which the tax remains unpaid [37 days] in terms of section 50 of CGST Act, 2017 read with Notification No. 13/2017 CT dated 28.06.20XX. Amount of interest is:

= Rs. 80,000 × 18% × 37/365 = Rs. 1,460 (rounded off)

As per section 73(11) of CGST Act, 2017, where self-assessed tax/any amount collected as tax is not paid within 30 days from due date of payment of tax, then, *inter alia*, option to pay such tax before issuance of SCN to avoid penalty, is not available.

Consequently, penalty equivalent to

- I. 10% of tax, viz., Rs. 8,000 or
- II. Rs. 10,000, whichever is higher, is payable in terms of section 73(9) of CGST Act, 2017. Therefore, penalty of Rs. 10,000 will have to be paid by Richmond.

Question 7

Bharat & 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 Bharat & Co. for recovery of penalty under section 73 of the CGST Act, 2017 for failure to pay GST and issued show cause notice on 10th August which was received by Bharat & Co. on 14th August.

Bharat & 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.

(MTP 5 Marks Oct'22, MTP 5 Marks Mar'22 & Mar'23, May'20, Mar'21, PYP 5 Marks May'23, Old & New SM)

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Answer 7

Due date for payment of tax for the month of April is 20th May.

As per section 73 of the CGST Act, 2017, where self-assessed tax is not paid within 30 days from due date of payment of such tax, penalty equivalent to 10% of tax or ₹ 10,000, whichever is higher, is payable. Thus, option to pay tax within 30 days of issuance of SCN to avoid penalty, is not available in case of self-assessed tax.

Since in the given case, Bharat & 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,

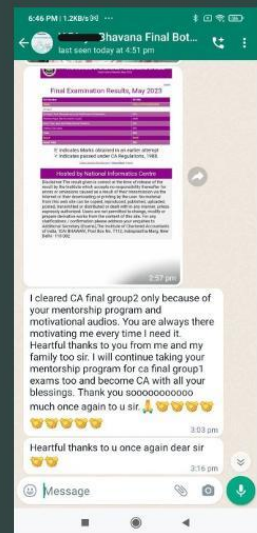
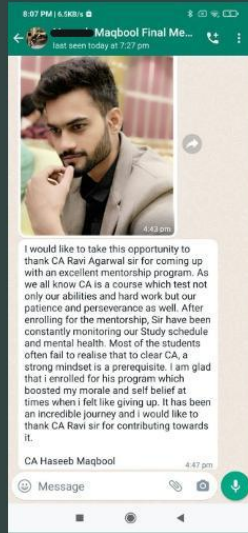
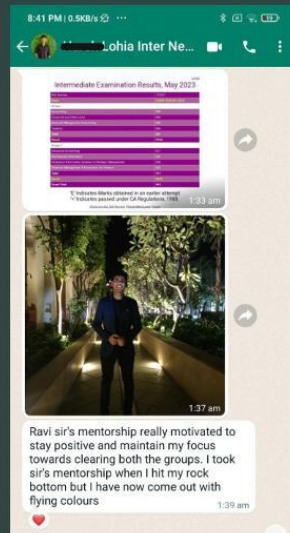
whichever is higher, is payable by him. Thus, penalty payable is ₹ 10,000.

Hence, the stand taken by the Department that penalty will be levied on Bharat & Co. is correct, but the amount of penalty of ₹ 45,000 is not correct.

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Chapter 20 Liability To Pay In Certain Cases

Attempts wise Distribution

Row Labels	Dec' 21	Jan' 21	Jul' 21	May' 18	Nov' 18	May' 19	May' 22	May' 23	Nov' 19	Nov' 20	Nov' 22	Nov' 23
MCQ												
MTP							Q1					
QA												
MTP	Q5			Q6, Q8	Q7	Q4						
PYP			Q2									
RTP					Q3		Q1					

SECTION A

MULTIPLE CHOICE QUESTIONS (MCQ'S)

1. Mr. Sohan, a registered person under GST, was the proprietor of M/s Food Paradise Restaurant. He died and left behind his wife and son, on 15th August. His son – Mr. Rohan - wants to continue the business of the deceased father. The GST consultant of M/s Food Paradise Restaurant gives advice to Mr. Rohan as to how he can continue the business of his deceased father. Which of the following options is correct in accordance with the provisions of GST law?

- Mr. Rohan should apply for a new registration under GST in the name M/s Food Paradise Restaurant under his own PAN w.e.f. the date of succession and file Form GST ITC 02 for transfer of ITC to the new entity.
- Mr. Rohan can get the authorized signatory changed by approaching to the Proper Officer and can continue the same business.
- Mr. Rohan should close the old firm and start new business under different name.
- Mr. Rohan should do the business with his mother as the new proprietor of the M/s Food Paradise Restaurant, and Mr. Rohan should act as a manager.

(MTP 1 Mark Apr'22, Oct'21)

Ans: (a)

QUESTIONS AND ANSWERS

Question 1

Mr. Ajit Basu is the director of Dharma Private Limited of Kolkata for past 5 years. He resigned from the company on 1st April of the current financial year. He receives a notice of demand on 5th July for the recovery of tax dues of Dharma Private Limited pertaining to the preceding financial year as the said dues cannot be recovered from the company owing to its poor financial condition. Mr. Ajit Basu is of the view that the tax dues of Dharma Private Limited cannot be recovered from him as he is no more a director in the company. You are required to advise him on the same taking into count the relevant provisions of the GST law. (RTP May'22)

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Answer 1

Section 89 of the CGST Act, 2017 stipulates that notwithstanding anything contained in the Companies Act, 2013, where any tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of such tax, interest or penalty unless he proves 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. Thus, in the given case, since Mr. Ajit Basu was the director of Dharma Private Limited during the preceding financial year for which the demand is raised, he shall, jointly and severally, be liable for the payment of the tax dues unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Question 2

Discuss the liability of partners of firm to pay tax, interest and penalty under section 90 of the CGST Act, 2017. (PYP 4 Marks Jul'21)

OR

With reference to section 90 of the CGST Act, 2017, briefly discuss the liability of the partners of a firm to pay tax. (PYP 4 Marks May'22)

Answer 2

Where any firm is liable to pay any tax, interest or penalty under the CGST Act 2017, the firm and each of the partners of the firm are jointly and severally liable for such payment.

Where any partner retires from the firm, he or the firm, is required to intimate the date of retirement of the said partner to the Commissioner by a notice in writing and such partner would 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 would continue until the date on which such intimation is received by the Commissioner.

Question 3

Discuss the liability to pay tax in case of an amalgamation/merger, under section 87.

(MTP 5 Marks Oct'21, Apr'19, Sep'22, RTP Nov'18, Nov'19)

Answer 3

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.

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For the purposes of the CGST Act, 2017, the said two or more companies shall be treated as distinct companies for the period up to the date of the said order. The registration certificates of the said companies shall be cancelled with effect from the date of the said order.

Question 4

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). (MTP 4 Marks Mar'19, Mar'22)

Answer 4

As per provision of Section 93(1), save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under CGST Act, dies, then:

- Business is continued after his death: if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act.
- Business is discontinued after his death: if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

Question 5

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.

(MTP 5 Marks Nov'21)

Answer 5

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].

Question 6

With reference to the provisions of CGST Act, 2017, explain the liability of partners of firm to pay tax? (MTP 5 Marks Mar'18, Aug'18, Apr'22)

Answer 6

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Section 90 of the CGST Act explains the liability of partners of firm to pay tax as under: -

Partners of the firm jointly and severally liable to pay any tax, interest or penalty of the firm: Notwithstanding any contract to the contrary and any other law for the time being in force, where any firm is liable to pay any tax, interest or penalty under this Act, the firm and each of the partners of the firm shall, jointly and severally, be liable for such payment.

Retiring partner liable to pay any tax, interest or penalty of the firm due up to the date of his retirement: Where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing and such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date.

However, if no such intimation is given within 1 month from the date of retirement, the liability of such partner shall continue until the date on which such intimation is received by the Commissioner.

Question 7

Explain the provisions relating to liability for GST in case of company in liquidation (section 88 of the CGST Act, 2017). (MTP 4 Marks Oct'18, PYP 5 Marks May'18)

Answer 7

The provisions relating to liability for GST in case of company in liquidation provided under section 88 of the CGST Act, 2017 are:-

- Where any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as a liquidator/receiver of assets of a company shall give the intimation of his appointment to the Commissioner within 30 days of his appointment.
- The commissioner shall ascertain the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.
- He shall communicate the details to the liquidator within 3 months of the receipt of intimation of appointment of liquidator.
- When any private company is wound up and any tax, interest or penalty determined under the CGST Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of such company at any time during the period for which the tax was due shall, jointly and severally, be liable for the payment of such tax, interest or penalty.
- However, director shall not be liable if he proves to the satisfaction of the Commissioner that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Question 8

With reference to the provisions of CGST Act, 2017, explain the liability of directors of private company? (MTP 5 Marks Apr'18)

Answer 8

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The provisions relating to liability of directors of private company are contained in section 89 of the CGST Act. It provides that notwithstanding anything contained in the Companies Act, 2013, where any tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of such tax, interest or penalty unless he proves 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.

Where a private company is converted into a public company and the tax, interest or penalty in respect of any supply of goods or services or both for any period during which such company was a private company cannot be recovered before such conversion, then, above provisions shall apply to any person who was a director of such private company in relation to any tax, interest or penalty in respect of such supply of goods or services or both of such private company. However, this exception does not apply to any personal penalty imposed on such director.

SECTION B

Question 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 1

Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person upto the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.

Thus, in the given case, Avataar Industries and Rolex Manufacturers shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay GST, interest or any penalty [determined before sale, but still unpaid] due from Avataar Industries upto the time of such transfer.

Question 2

ABC Manufacturers Ltd. engages Raghav & Sons as an agent to sell goods on its behalf. Raghav & Sons sells goods to Swami Associates on behalf of ABC Manufacturers Ltd. Determine the liability to pay GST payable on such goods as per the provisions of section 86.

Answer 2

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As per provisions of Section 86, where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall, jointly and severally, be liable to pay the tax payable on such goods under this Act.

Thus, in the given case, ABC Manufacturers Ltd. and Raghav & Sons shall, jointly and severally, be liable to pay GST payable on such goods.

Question 3

A person, liable to pay GST, interest and penalty under GST law, dies. Determine the person liable to pay the GST, interest and penalty due from such person under GST law determined after his death if the business carried on by such person is continued after his death by his legal representative.

Answer 3

Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies, then if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

Question 4

In the question 3. above, would your answer be different if the business carried on by the person who has died, is discontinued after his death.

Answer 4

Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies, then if a business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

Question 5

What happens to the GST liability when the estate of a taxable person is under the control of Court of Wards?

Answer 5

Where the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable is under the control of the Court of Wards/Administrator General/Official Trustee/Receiver or Manager appointed under any order of a Court, the tax, interest or penalty shall be levied and recoverable from such Court of Wards/Administrator General/Official Trustee/Receiver or Manager to the same extent as it would be determined and recoverable from a taxable person.

Question 6

Discuss the liability to pay tax in case of an amalgamation/merger, under section 87.

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Answer 6

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.

Question 7

Discuss the liability to pay tax, interest or penalty on death of a person liable to pay tax, interest or penalty as per the provisions of section 93(1).

Answer 7

As per provision of Section 93(1), save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under CGST Act, dies, then:

- Business is continued after his death: if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act.
- Business is discontinued after his death: if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act,

whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

Question 8

With reference to the provisions of CGST Act, 2017, explain the liability of partners of firm to pay tax?

Answer 8

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

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the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing and such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date.

However, if no such intimation is given within 1 month from the date of retirement, the liability of such partner shall continue until the date on which such intimation is received by the Commissioner.

Question 9

Explain the provisions relating to liability for GST in case of company in liquidation (section 88).

Answer 9

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.

Question 10

Discuss the liability of the retiring partner of a firm to pay any tax, interest or penalty, if any, leviable on the firm under CGST/ IGST/ SGST Act.

Answer 10

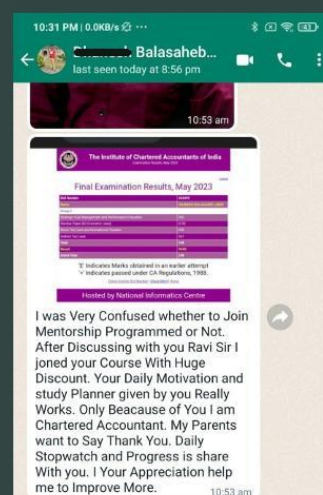
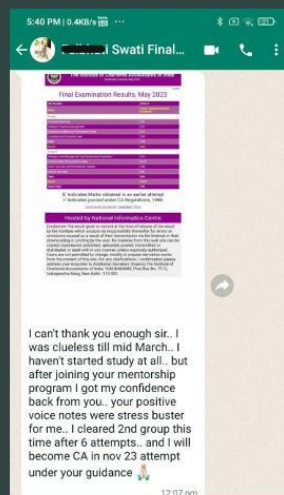
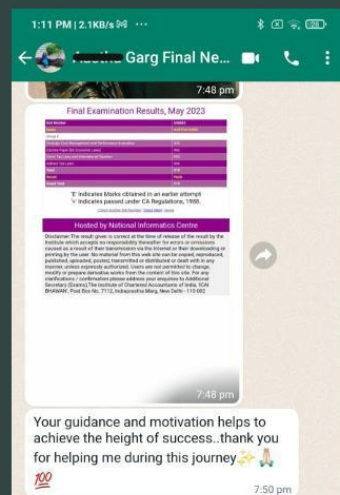
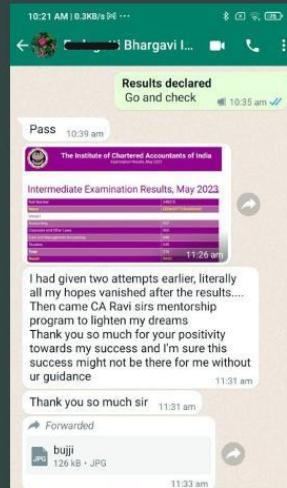
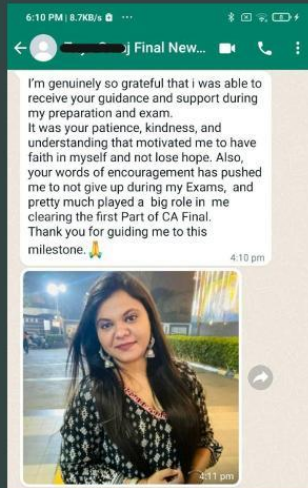
Where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing. Such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on 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].

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Chapter 21 Offences And Penalties And Ethical Aspects Under Gst

Attempts wise Distribution

Row Labels	Dec' 21	Jan' 21	Jul' 21	May' 18	Nov' 18	May' 19	May' 22	May' 23	Nov' 19	Nov' 20	Nov' 22	Nov' 23
MCQ												
MTP	Q1					Q5, Q6	Q2	Q3		Q7		
RTP						Q4						
QA												
MTP				Q8	Q2, Q23				Q4, Q17, Q20	Q3	Q5	Q6, Q7
PYP	Q16	Q15							Q13, Q14		Q18, Q19	
RTP	Q10			Q21, Q22	Q9		Q11			Q1	Q12	

SECTION A

MULTIPLE CHOICE QUESTIONS (MCQ'S)

1. Minimum and maximum limit for amount for compounding of offences under section 138 of the CGST Act, 2017 are:

- Minimum: Higher of 50% of tax involved, or ₹ 10,000; Maximum: Higher of 150% of tax involved, or ₹ 30,000
- Minimum: Lower of 50% of tax involved, or ₹ 10,000; Maximum: Higher of 150% of tax involved, or ₹ 30,000
- Minimum: Higher of 50% of tax involved, or ₹ 10,000; Maximum: Lower of 150% of tax involved, or ₹ 30,000
- Minimum: Lower of 50% of tax involved, or ₹ 10,000; Maximum: Lower of 150% of tax involved, or ₹ 30,000 **(MTP 2 Marks Nov'21)**

Ans: (a)

2. D & Co., registered under GST in Rajasthan, issued an invoice of ₹ 5,00,00,000 (excluding GST) to P & Co. without supplying any goods or services, at the advice of its accountant – Mr. Sunil. GST @ 18% was charged in this invoice. P & Co. availed the ITC on the basis of said invoice and utilised it in the same month. Determine the amount of penalty leviable in this case.

- D & Co.: ₹ 90,00,000; P & Co.: ₹ 90,00,000; Mr. Sunil: Nil
- D & Co.: ₹ 90,00,000; P & Co.: ₹ 90,00,000; Mr. Sunil: ₹ 90,00,000
- D & Co.: Nil; P & Co.: Nil; Mr. Sunil: ₹ 90,00,000
- D & Co.: ₹ 10,000; P & Co.: ₹ 10,000; Mr. Sunil: Nil **(MTP 2 Marks Mar'22, Sep'22)**

Ans: (b)

3. '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 with an

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intention to evade payment of tax due and has not maintained proper records. In this regard, which of the following statements is true? Choose the most correct option.

- (a) 'X' is punishable with imprisonment up to 6 months or with fine or both and the said offence is bailable.
- (b) 'X' is punishable with imprisonment up to 1 year or with fine or both and the said offence is bailable.
- (c) 'X' is punishable with imprisonment up to 1 year or with fine or both and the said offence is not bailable.
- (d) 'X' is punishable with imprisonment up to 6 months or with fine or both and the said offence is not bailable. **(MTP 2 Marks Mar'23)**

Ans: (a)

4. Mr. Topinath, an unregistered person in Delhi, who has an aggregate turnover of ₹ 16 lakh sells mobile phones to Mr. Gopinath, a person registered under GST in Uttar Pradesh. Whether any penalty is leviable on Mr. Topinath, for such supply and if yes, what is the maximum amount of penalty that can be levied on Mr. Topinath:-

- (a) No penalty since there is no default on part of Mr. Topinath as his turnover is below threshold limit.
- (b) Yes; an amount equivalent to the tax evaded or ₹ 10,000/-, whichever is lower.
- (c) Yes; an amount equivalent to the turnover or ₹ 10,000/-, whichever is higher.
- (d) Yes; an amount equivalent to the tax evaded or ₹ 10,000/-, whichever is higher. **(RTP May'19)**

Ans: (d)

5. Shagun started supply of goods in Vasai, Maharashtra from 01.01.20XX. Her turnover exceeded ₹ 20 lakh on 25.01.20XX. However, she didn't apply for registration. Determine the amount of penalty, if any, that may be imposed on Shagun under section 122(1) of the CGST Act, 2017 on 31.03.20XX, if the tax evaded by her, as on said date, on account of failure to obtain registration is ₹ 1,26,000:

- (a) ₹ 10,000
- (b) ₹ 1,26,000
- (c) ₹ 12,600
- (d) None of the above **(MTP 2 Marks Mar'19)**

Ans: (b)

6. Sukanya, a registered supplier, failed to pay the GST amounting to Rs. 5,000 for the month of January, 20XX. The proper officer imposed a penalty on Sukanya for failure to pay tax. Sukanya believes that it is a minor breach and in accordance with the provisions of section 126 of the CGST Act, 2017, no penalty is imposable for minor breaches of tax regulations. In this regard, which of the following statements is true?

- (a) Penalty is leviable on Sukanya since the breach is considered as a 'minor breach' only if amount of tax involved is less than Rs. 5,000
- (b) Penalty is not leviable on Sukanya since the breach is considered as a 'minor breach' if amount of tax involved is upto Rs. 5,000
- (c) Penalty is leviable on Sukanya since the breach is considered as a 'minor breach' only if amount of tax involved is Nil.
- (d) None of the above. **(MTP 2 Marks Apr'19, MTP 1 Mark, Oct'19)**

Ans: (a)

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7. In which of the following cases, compounding of offence is not allowed under section 138 of the CGST Act, 2017?

- a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of section 132(1) of the CGST Act, 2017.
- a person who has been convicted for an offence under GST law by a Court.
- a person who has been accused of committing an offence under GST law which is also an offence under any other law for the time being in force.
- All the cases covered in (a), (b) and (c) above **(MTP 1 Mark May'20, Apr'21)**

Ans: (d)

QUESTIONS AND ANSWERS

Question 1

Examine the implications as regards the bailability and quantum of punishment on prosecution, in respect of the following cases pertaining to the period December, 2017 under CGST Act, 2017;

- 'M' collects Rs. 245 lakh as tax from its clients and deposits Rs. 241 lakh with the Central Government. It is found that he has falsified financial records and has not maintained proper records.
- 'N' collects Rs. 550 lakh as tax from its clients but deposits only Rs. 30 lakh with the Central Government. Further, the amount of Rs. 520 lakh collected as tax is not paid to the Government beyond 3 months from the due date of payment of tax.

What will be the implications with regard to punishment on prosecution of 'M' and 'N' for the offences? What would be the position, if 'M' and 'N' repeat the offences? It may be assumed that offences are proved in the court.

(MTP 6 Marks Oct'18, Old & New SM, RTP May'20)

Answer 1

- 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 Rs. 200 lakh. Therefore, failure to deposit Rs. 4 lakh collected as tax by 'M' will not be punishable with imprisonment.

Further, falsification of financial records by 'M' 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.

- 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 Rs. 500 lakh in terms of section 132(1)(d)(i) of the CGST Act, 2017. Since the amount of tax evaded by 'N' exceeds Rs. 500 lakh (Rs. 550 lakh - Rs. 30 lakh), 'N' is liable to imprisonment upto 5 years and with fine. Further, the imprisonment shall be minimum 6 months in the absence of special and adequate

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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 'M' and 'N' repeat the offence, they shall be punishable for second and for every subsequent offence with imprisonment upto 5 years and with fine in terms of section 132(2) of the CGST Act, 2017. Such imprisonment shall also be minimum 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment.

Question 2

From the details given below determine the maximum amount of fine in lieu of confiscation leviable under section 130 of CGST, Act, 2017 on:

- 1) The goods liable for confiscation.
- 2) On the conveyance used for carriage of such goods. Details are as follows:

Cost of the goods for owner before GST	15,00,00 0
Market Value of Goods	20,00,00 0
GST on such goods	3,60,000

You are also required to explain relevant legal provisions in brief. (MTP 4 Marks Oct'18, PYP 5 Marks May'18)

Answer 2

- (1) 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 = Rs. 20,00,000 - Rs. 3,60,000 = Rs. 16,40,000
The aggregate of fine and penalty shall not be less than the amount of penalty leviable under section 129(1).
- (2) 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 = Rs. 3,60,000

Question 3

Shagun started supply of services in Vasai, Maharashtra from 01.01.20XX. Her turnover exceeded ₹ 20 lakh on 25.01.20XX. However, she didn't apply for registration. Determine the amount of penalty, if any, that may be imposed on Shagun on 31.03.20XX, if the tax evaded by her, as on said date, on account of failure to obtain registration is ₹ 1,26,000. (MTP 4 Marks Oct'20)

Answer 3

Where the aggregate turnover of a supplier making supply of services from a State/UT exceeds ₹20 lakh in a financial year, he is liable to be registered in the said State/UT. The said supplier must apply for registration within 30 days from the date on which he becomes liable to registration. However, in the given case, although Shagun became liable to registration on 25.01.20XX, she didn't apply for registration within 30 days of becoming liable to registration.

Section 122(1)(xi) of the CGST Act, 2017 stipulates that a taxable person who is liable to be registered under the CGST Act, 2017 but fails to obtain registration shall be liable to pay a penalty of:

- (a) ₹ 10,000 or
- (b) an amount equivalent to the tax evaded [₹ 1,26,000 in the given case], whichever is higher.

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Thus, the amount of penalty that can be imposed on Shagun is ₹ 1,26,000.

Question 4

Mr. X, an unregistered person under GST purchases the goods supplied by Mr. Y who is a registered person without receiving a tax invoice from Mr. Y and thus helps in tax evasion by Mr. Y. What disciplinary action may be taken by tax authorities to curb such type of cases and on whom?

Suppose, in the above case, a disciplinary action is taken against Mr. X and an adhoc penalty of Rs. 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? (MTP 5 Marks Oct'19)

Answer 4

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 Rs. 25,000/-;

Mr. Y – Penalty under section 122(1), which will be higher of following, namely

- (i) Rs. 10,000/- or
- (ii) 100% of tax evaded.

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—

- (i) 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,
- (ii) 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,
- (iii) the nature of the breach is to be specified clearly in the order imposing the penalty,
- (iv) the provisions of the law under which the penalty has been imposed is to be specified.

Since SCN issued to Mr. X suffers from lack of clarity about nature of breach which has taken place and about provision of law under which penalty has been imposed, SCN issued by department may be challenged.

Question 5

State the types of offence (cognizable or non-cognizable), prosecution, arrest and bail implications, if any, in respect of the following independent cases pertaining to June:

- (i) **'Bhaskar' fraudulently avails input tax credit of ₹ 200 lakh without any invoice or bill. However, he is yet to utilize the same.**
- (ii) **'Raghav' fraudulently obtains the refund of tax of ₹ 550 lakh. The said tax has been recovered from the buyer also.**

Note: Assume that in above cases, offence, if any, has been committed for the first time. (MTP 4 Marks Sep'22)

Answer 5

Person	Offence	Prosecution	Arrest	Bail
'Bhaskar'	Non-cognizable offence	Upto 1 year and with	No arrest [Section 69(1)]	Bailable Offence [Section 132(4)]

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	[Section 132(1)(c) read with section 132(4)]	fine [Section 132(1)(c)(iii)]		
'Raghav'	Non-cognizable offence [Section 132(1)(e) read with section 132(4)]	Upto 5 years and with fine [Section 132(1)(e)(i)]	No arrest [Section 69(1)]	Bailable Offence [Section 132(4)]

Question 6

Adi Private Limited, registered under GST in Uttar Pradesh, instructed Mahesh Transporters to deliver certain taxable goods to Mahavir Enterprises in Uttar Pradesh on 10th January 2022. The value of the goods is ₹ 6,80,000 which are chargeable to CGST and SGST each @ 9%. While the goods were in transit, proper officer intercepted the goods and the truck in which goods were being transported. However, the driver of the truck failed to tender any document in relation to the goods in movement. The proper officer, after conducting the physical verification of the goods and the truck, decided to seize the goods and the truck and issued a notice specifying the penalty payable by Adi Private Limited after giving it an opportunity of being heard.

You are required to determine the amount of total penalty payable under GST law if Adinath Private Limited does not come forward for the payment of penalty. (MTP 4 Marks Sep'23)

Answer 6

When owner of goods does not come forward for the payment of penalty, detained/seized goods and conveyance (used as a means of transport for carrying said goods) and related documents are released on payment of penalty equal to higher of the following:

- (i) 50% of value of goods or
- (ii) 200% of the tax payable on such goods.

Equivalent amount of penalty under SGST Act is also leviable.

In view of the same, the amount of penalty payable if Adi Private Limited does not come forward for the payment of penalty is as follows:

- (i) 50% of value of goods [₹ 3,40,000 (50% of ₹ 6,80,000)]
or
- (ii) 200% of the tax payable on such goods [₹ 1,22,400 (200% of ₹ 6,80,000 × 9%)] whichever is higher, i.e. ₹ 3,40,000.

Equivalent amount of penalty under SGST Act is also payable.

Question 7

When shall the particulars relating to any proceedings or prosecution be published under GST laws? Discuss the relevant provisions. (MTP 4 Marks Sep'23)

Answer 7

When the Commissioner/authorized officer is of opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings or prosecution under the CGST Act in respect of such person, it may cause to be published such name and particulars.

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

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has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

Question 8

Whether action can be taken for transportation of goods without valid documents or if goods are attempted to be removed without proper record in books? If yes, explain the related provisions under the CGST Act, 2017. (MTP 5 Marks Mar'18)

Answer 8

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 (i.e. invoice and a declaration) 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 Rs. 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 Rs. 25,000/- whichever is lesser.

Question 9

Answer the following questions: (RTP Nov'18)

- (1) **Radhaswamy owns and supplies certain goods costing ₹ 30,00,000 in a conveyance hired from Manikaran Transporters. Market value of said goods is ₹ 40,00,000 and tax chargeable thereon is ₹ 4,80,000.**

The goods supplied by Radhaswamy and the conveyance [owned by Manikaran Transporters] used for carriage of such goods are confiscated since Radhaswamy has supplied said goods in contravention of the provisions of the CGST Act, 2017 with an intent to evade payment of tax.

However, the proper officer intends to give an option to Radhaswamy and Manikaran Transporters to pay in lieu of confiscation, a fine leviable under section 130 of the CGST, Act, 2017.

Determine the maximum amount of the fine in lieu of confiscation on:

- (a) **the goods liable for confiscation.**
 (b) **the conveyance used for carriage of such goods.**
- (2) **Raghuraman is a registered supplier in Madhya Pradesh. He failed to pay the GST amounting to ₹ 7,400 for the month of January, 20XX. The proper officer imposed a penalty on Raghuraman for failure to pay tax. Raghuraman believes that it is a minor breach and in accordance with the provisions of section 126 of the CGST Act, 2017, no penalty is imposable for minor breaches of tax regulations. Examine the correctness of Raghuraman's claim.**

Answer 9

- (1)

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(a) In case of goods liable for confiscation, the maximum amount of fine leviable in lieu of confiscation in terms of first proviso to section 130(2) of the CGST Act, 2017 is the market value of the goods confiscated, less the tax chargeable thereon.

Therefore, in the given case, maximum fine leviable:

$$= ₹ 40,00,000 - ₹ 4,80,000 = ₹ 35,20,000$$

(b) In case where conveyance used for carriage of such goods is liable for confiscation, the maximum amount of fine leviable in lieu of confiscation in terms of third proviso to section 130(2) of the CGST Act, 2017 is equal to tax payable on the goods being transported thereon.

Therefore, in the given case, maximum fine leviable = ₹ 4,80,000

(2) No, Raghuraman's claim is not tenable in law. Section 126(1) of the CGST Act, 2017 provides that no officer shall impose any penalty under CGST Act, 2017, inter alia, for minor breaches of tax regulations or procedural requirements. Further, explanation to section 126(1) of the CGST Act, 2017 stipulates that a breach shall be considered a 'minor breach' if the amount of tax involved is less than ₹ 5,000. In the given case, breach made by Raghuraman is not a 'minor breach' since the amount involved is not less than ₹ 5,000. So, penalty is imposable under the CGST Act, 2017.

Question 10

Answer the following questions: (RTP Nov'21)

(i) **Nirmal Private Limited, registered in Vasai, Maharashtra, is engaged in supply of taxable goods and services. In the month of April, it sold goods worth ₹ 5,00,000 (excluding GST) to Suraksha Enterprises and collected tax @ 28% on said goods from the buyer. However, the actual rate of tax applicable in the given case was 18%.**

Nirmal Private Limited deposited the tax @ 18% on these goods to the Government on the due date and retained the remaining tax collected.

Determine the amount of penalty, if any, that may be imposed on Nirmal Private Limited in the month of October in the given case ignoring interest payable, if any.

Answer 10

(i) Section 122(1)(iv) of the CGST Act, 2017 stipulates that a taxable person who collects any tax in contravention of the provisions of the CGST Act, but fails to pay the same to the Government beyond a period of 3 months from the date on which such payment becomes due shall be liable to pay a penalty of:

(a) ₹ 10,000

or

(b) an amount equivalent to the tax evaded whichever is higher.

In the given case, since Nirmal Private Limited has collected tax at a wrong rate (i.e. 28%), but fails to deposit the full tax collected to the Government i.e. it deposits only tax @ 18% thereby retaining the remaining tax collected, the amount of penalty that can be imposed on Nirmal Private Limited is as follows:

(a) ₹ 10,000

or

(b) an amount equivalent to the tax evaded [₹ 50,000 (₹ 5,00,000 × 28%) - (₹ 5,00,000 × 18%)],

whichever is higher, i.e. ₹ 50,000.

Question 11

State the prosecution, arrest and bail implications, if any, in respect of the following independent cases pertaining to June:

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- (i) 'Ashuram' fraudulently avails input tax credit of ₹ 200 lakh without any invoice or bill. However, he is yet to utilize the same.
- (ii) 'Bahubali' fraudulently avails the refund of tax of ₹ 550 lakh. The said tax has been recovered from the buyer also.
- (iii) 'Chintamani' knowingly supplies false information sought by the CGST Officer. The amount of tax involved is ₹ 250 lakh.
- (iv) 'Deendayal' collects ₹ 650 lakh as tax in January from its clients but has deposited only ₹ 50 lakh with the Central Government till date. Note: Assume that in all above cases, offence, if any, has been committed for the first time. (RTP May'22, MTP 4 Marks Sep'22)

Answer 11

Person	Offence	Prosecution	Arrest	Bail
'Ashuram'	Non-cognizable offence [Section 132(1)(c) read with section 132(4)]	Up to 1 year [Section 132(1)(c)(iii)]	No arrest [Section 69(1)]	Bailable Offence [Section 132(4)]
'Bahubali'	Non-cognizable offence [Section 132(1)(e) read with section 132(4)]	Up to 5 years [Section 132(1)(e)(i)]	No arrest [Section 69(1)]	Bailable Offence [Section 132(4)]
'Chintamani'	Non-cognizable Offence [Section 132(1)(f) read with section 132(4)]	Up to 3 years [Section 132(1)(f)(ii)]	No arrest [Section 69(1)]	Bailable Offence [Section 132(4)]
'Deendayal'	Cognizable offence [Section 132(1)(d) read with section 132(5)]	Up to 5 years [Section 132(1)(d)(i)]	Arrest can be ordered by Commissioner without arrest warrant [Section 69(1)]	Non-Bailable [Section 132(5)]

Question 12

Adinath Private Limited, registered under GST in the State of Uttar Pradesh, instructed Ashok Transporters to deliver certain taxable goods to Mahavir Enterprises in Maharashtra on 10th January 2022. The value of the goods is ₹ 6,80,000 which are chargeable to GST @ 18% IGST. While the goods were in transit, proper officer intercepted the goods and the truck in which goods were being transported, under section 68. However, the driver of the truck failed to tender any document in relation to the goods in movement. The proper officer, after conducting the physical verification of the goods and the truck, decided to seize the goods and the truck and issued a notice under section 129(3) specifying the penalty payable by Adinath Private Limited after giving it an opportunity of being heard.

You are required to determine the amount of penalty payable if Adinath Private Limited does not come forward for the payment of penalty. Further, discuss the suitable course of action for Ashok Transporters if it intends to get its truck released. (RTP Nov'22)

Answer 12

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As per section 129(1)(a), when owner of goods does not come forward for payment of tax and penalty or for payment of penalty, detained/seized goods and conveyance (used as a means of transport for carrying said goods) and related documents are released on payment of penalty equal to higher of the following:

- (i) 50% of value of goods or
- (ii) 200% of the tax payable on such goods

In view of the same, the amount of penalty payable if Adinath Private Limited does not come forward for the payment of penalty is as follows:

- (i) 50% of value of goods [₹ 3,40,000 (50% of ₹ 6,80,000)]
or
- (ii) 200% of the tax payable on such goods [₹ 2,44,800 (200% of ₹ 6,80,000 × 18%)] whichever is higher, i.e. ₹ 3,40,000.

As per first proviso to section 129(6), conveyance shall be released on payment by the transporter the penalty as mentioned in the order or ₹ 1 lakh, whichever is less.

In the given scenario, since the owner - Adinath Private Limited has failed to come forward to make payment of penalty, penalty of ₹ 3,40,000 shall be levied. Further, the transporter of goods can get its truck released upon payment of the lower of the following:

- (i) penalty as mentioned in the order [₹ 3,40,000]
- (ii) ₹1,00,000

Hence, Ashok Transporters can get its truck released upon payment of ₹ 1,00,000.

Question 13

Ganesh Enterprises, a registered supplier under the GST law, has committed an offence that is compoundable. The Department has instituted prosecution against the proprietor of Ganesh Enterprises and he is of the opinion that he shall not be able to apply for compounding of the offence as the prosecution has been launched. He seeks your advice whether he has the opportunity to apply for compounding of the offence and the consequences arising therefrom. (PYP 4 Marks Nov'19)

Answer 13

A person accused of an offence is permitted to make an application for compounding of an offence even after the institution of prosecution against him.

Therefore, in the given case, Ganesh Enterprises can apply for compounding of offence even though prosecution has been instituted/launched against him.

On payment of compounding amount determined by the Commissioner, the criminal proceedings which have been initiated against Ganesh Enterprises in respect of the said offence, shall stand abated.

The lower limit for compounding amount is to be the greater of the following amounts:

-

- 50% of tax involved, or
- ₹ 10,000.

The upper limit for compounding amount is to be greater of the following amounts: -

- 150% of tax involved or
- ₹ 30,000.

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

Examinees exhibited lack of understanding relating to compounding of offences. Though they correctly stated that an application for compounding of an offence can be made even after the institution of prosecution, but failed to mention that on payment of compounding amount, the criminal proceedings initiated in respect of the offence stands abated.

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Question 14

Mr. Pankaj, an unregistered person under GST, purchases the goods supplied by Mr. Raman, who is a registered person without receiving a tax invoice from Mr. Raman and thus helps in tax evasion by Mr. Raman. What disciplinary action may be taken by tax authorities to curb such type of cases and on whom? (PYP 4 Marks Nov'19)

Answer 14

Supply of goods without issue of any invoice with regard to such supply by a taxable person and the act of aiding or abetting said offence by any person are punishable with penalty and imprisonment.

Penalty would be as follows:

Since Mr. Raman – a taxable person - has supplied goods without invoice, he is punishable with:

Penalty: higher of (a) ₹ 10,000/- or

(a) 100% of tax evaded

Since Mr. Pankaj helped in tax evasion by Mr. Raman, he is punishable with: Penalty: up to ₹ 25,000/-

Imprisonment would be as follows:

In case of first-time offence, were

- (a) tax evaded > ₹ 5 crore, imprisonment upto 5 years and fine
 - (b) Exceeds ₹ 2 crore tax evaded ≤ ₹ 5 crore, imprisonment upto 3 years and fine
 - (c) Exceeds ₹ 1 crore tax evaded ≤ ₹ 2 crore, imprisonment upto 1 years and fine
- In case of subsequent offence, imprisonment up to 5 years and fine

Question 15

Elaborate about cognizable and non-cognizable offences under the CGST Act, 2017. What is the difference between these two while exercising powers by the GST authorities? (PYP 4 Marks Jan'21)

Answer 15

All offences specified under section 132 except the offences that are cognizable and non-bailable (as mentioned below) are non-cognizable offences under the CGST Act, 2017. Cognizable offences under the CGST Act, 2017 are the following offences, where amount of tax evaded or input tax credit wrongly availed or utilised or refund wrongly taken more than (exceeding) ₹ 5 crores, namely:

- (a) Supply without issue of any invoice, in violation of the provisions of GST law, with the intention to evade tax;
- (b) Issue of any invoice/bill without any supply in violation of the provisions of GST law leading to wrongful availment or utilization of ITC/refund of tax;
- (c) Avails ITC using such invoice/bill referred to in clause (b);
- (d) Collects any amount as tax but fails to pay the same to the Government beyond a period of 3 months from the date on which such payment becomes due;

In case of a cognizable offence, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within 24 hours.

In case of a non-cognizable offence, the arrested person shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate.

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The Deputy/Assistant Commissioner shall for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

Question 16

M/s Fly-by-Night Traders, a taxable person, issued an invoice on 15th April 2021 involving input tax credit (ITC) of ₹ 25 lakh to M/s Runaway Traders who utilised the same. No supply of goods was involved in this transaction between the two traders. M/s Fly-by-Night Traders conducted this transaction at the instance of its tax consultant who was not a qualified professional. Explain the relevant provision in brief and determine the amount of penalty leviable under CGST Act, 2017, if any, on the persons involved in respect of the above referred transaction. (PYP5 Marks Dec'21)

Answer 16

Where a taxable person:

- (a) issues any invoice without supply of goods, or
- (b) takes/utilises ITC without actual receipt of goods, either fully or partially, in contravention/violation of the provisions of the GST law or the rules made thereunder, such person shall be liable to pay a penalty of
 - (i) ₹ 10,000
 - or
 - (ii) an amount equivalent to the ITC availed of or passed on (₹ 25 lakh), whichever is higher.

Thus, M/s Fly-by-Night Traders and M/s Runaway Traders, both are liable to pay a penalty of ₹ 25 lakh each.

Further, any person at whose instance above transactions are conducted, shall be liable to a penalty of an amount equivalent to ITC availed of/passed on. Thus, the tax consultant will be liable to pay a penalty of ₹ 25 lakh.

Question 17

Neurological Systems Private Limited has been subject to confiscation of goods on the ground that it has not accounted for the goods that are liable to tax under the CGST Act, 2017. The directors would like to know from you as to how such goods are to be released from the Department. You are required to advise the directors regarding the provisions of law on this matter. (MTP 5 Marks Nov'19)

Answer 17

To get the confiscated goods released from the Department, the directors of Neurological Systems Private Limited are advised as under:-

Neurological Systems Private Limited shall get an option to pay redemption fine in lieu of confiscation.

Such fine should be less than or equal to \leq [Market value of the goods confiscated – Tax chargeable thereon]

Aggregate of such fine and penalty leviable should be more than or equal to \geq Amount of

penalty leviable under section 129(1) of the CGST Act, 2017.

Neurological Systems Private Limited can get its confiscated goods released on payment of such redemption fine plus the tax, penalty and charges payable in respect of such goods.

As per amendment- Only penalty needs to be paid for release of detained/seized goods; penalty has also been enhanced

Detained/seized goods and conveyance (used as a means of transport for

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carrying said goods) and related documents shall be released on payment of:
In case of taxable goods- Penalty equal to 200% of tax payable
In case of exempted goods- Lower of the (i) 2% of the value of goods or (ii) Rs.25,000

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

(i) Large number of examinees did not mention the quantum of redemption fine. Further, they failed to mention that redemption fine is to be paid along with tax, penalty and other charges for releasing confiscated goods.

Question 18

Arjun has committed offence under CGST Act which can be compounded as per provisions of section 138(1) of the CGST Act, 2017. He has paid the tax amount of ₹ 10 lakh involved in the offence. He wishes to apply to Commissioner for compounding the said offence. You are required to compute minimum and maximum compounding amount as per provisions of section 138(2) of the CGST Act, 2017 payable by Arjun. What are the consequences, if Arjun pays such compounding amount as may be determined by Commissioner? (PYP 5 Marks Nov'22)

Answer 18

(i) Minimum limit for compounding amount is higher of:-

- 50% of tax involved, viz., ₹ 5,00,000 (₹ 10 lakh × 50%) or
- ₹ 10,000,

i.e. ₹ 5,00,000.

(ii) Maximum limit for compounding amount is higher of: -

- 150% of tax involved, viz., ₹ 15,00,000 (₹ 10 lakh × 150%) or
- ₹ 30,000

i.e. ₹ 15,00,000.

If Arjun pays such compounding amount as may be determined by Commissioner, no further proceedings shall be initiated under this Act against him in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

Question 19

Comet Chem of Ahmedabad handed over goods to transporter Ram Roadways to carry the same from Ahmedabad to Bharuch in Gujarat.

The value of the goods is ₹ 80,000 which is chargeable to tax @ 18% GST (9% SGST + 9% CGST) and in transit, proper officer intercepted the vehicle under section 68 of CGST Act and seized the goods.

Calculate the penalty payable under section 129 of CGST Act, 2017 for release of the goods:

- If Comet Chem, owner of goods, comes forward for payment of penalty.
- If Comet Chem, owner of goods, does not come forward for payment of penalty.

(PYP 4 Marks Nov'22, May'19)

Answer 19

When Comet Chem. - owner of goods - comes forward for the payment of penalty, penalty payable under section 129 of CGST Act is 200% of the tax payable on such goods, i.e., ₹ 14,400 [200% of (₹ 80,000 × 9%)].

i.e. ₹ 14,400

When Comet Chem. - owner of goods - does not come forward for the payment of

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penalty, penalty payable under section 129 of CGST Act is higher of:

- (i) 50% of value of goods, i.e., ₹ 40,000 (50% of ₹ 80,000) or
 - (ii) 200% of the tax payable on such goods, i.e., ₹ 14,400 [200% of (₹ 80,000 × 9%)].
- i.e. ₹ 40,000

Question 20

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. A disciplinary action is taken against Mr. X and an adhoc penalty of ₹ 20,000/- is imposed by passing an order 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 the order passed by Department? (MTP 5 Marks Oct'19)

Answer 20

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.

Accordingly—

- no penalty is to be imposed without affording an opportunity of being heard 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 the order suffers from lack of clarity about nature of breach which has taken place and about applicable law under which penalty has been imposed, such order passed by the department should be challenged.

Question 21

Bindusar CEO of Ashoka Solution Ltd is issued a summon to appear before the central tax officer to produce the books of accounts of Ashoka Solution Ltd in an enquiry conducted on said company. Determine the amount of penalty if any that may be imposed on Bindusar under the CGST Act, 2017 if he fails to appear before the central tax officer. (MTP 3 Marks Apr'19, MTP 3 Marks Apr'18, RTP May'18)

Answer 21

Sec 122(3)(d) of the CGST Act stipulates that any person who fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an enquiry is liable to a penalty which may extend to ₹ 25,000. Therefore, penalty upto ₹ 25,000 can be imposed on Bindusar under the CGST Act, 2017 in the given case.

Question 22

Answer the following questions:

Ishika started supply of goods in Jaipur, Rajasthan from 05.01.20XX. Her turnover exceeded Rs. 20 lakh on 23.01.20XX. However, she didn't apply for registration. Determine the amount of penalty, if any, that may be imposed on Ishika on 31.03.20XX, if the tax evaded by her, as on said date, on account of failure to obtain registration is Rs. 5,33,000. (MTP 3 Marks Apr'18, RTP May'18)

Answer 22

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Where the aggregate turnover of a supplier making supplies from a State/UT exceeds Rs. 20 lakh in a financial year, he is liable to be registered in the said State/UT. The said supplier must apply for registration within 30 days from the date on which he becomes liable to registration.

However, in the given case, although Ishika became liable to registration on 23.01.20XX, she didn't apply for registration within 30 days of becoming liable to registration.

Section 122(1)(xi) of the CGST Act stipulates that a taxable person who is liable to be registered under the CGST Act, 2017 but fails to obtain registration shall be liable to pay a penalty of:

(a) Rs. 10,000

or

(b) an amount equivalent to the tax evaded [Rs. 5,33,000 in the given case] whichever is higher.

Thus, the amount of penalty that can be imposed on Ishika is Rs. 5,33,000.

Question 23

Tripathi, registered under the CGST Act, 2017 has made a breach in payment of tax amounting to Rs. 6,100. Assessing Authority has imposed a penalty as per law applicable to the breach. Invoking the provisions of section 126, Tripathi argues that it is a minor breach and therefore, no penalty is imposable.

In another instance, Tripathi has omitted certain details in documentation that is not easily rectifiable. This has occurred due to the gross negligence of his accountant and he makes a plea that he was unaware of it and therefore no penalty should be levied.

Tripathi voluntarily writes accepting a major procedural lapse from his side and requests the officer to condone the lapse as the loss caused to the revenue was not significant.

Also a lapse on the part of Tripathi has no specific penalty provision under the CGST Act, 2017. He is very confident that no penalty should be levied without a specific provision under the Act.

Discuss, what action may be taken by the Assessing Authority under law for each of the above breaches. (MTP 6 Marks Aug'18)

Answer 23

As per section 126(1) of the CGST Act, 2017, no penalty shall be leviable under the Act for minor breaches of tax regulations. In terms of Explanation (a) to section 126(1), a breach shall be considered as "minor breach", if tax involved is less than Rs. 5,000. Breach made by Tripathi is not a 'minor breach' since the amount involved is not less than Rs. 5,000. So, penalty is imposable.

Any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent/gross negligence is not liable for penalty in terms of section 126(1) of the CGST Act, 2017. Thus, penalty is imposable in the present case, since the omission in the documentation is not easily rectifiable and has occurred due to gross negligence.

As per section 126(5) of the CGST Act, 2017, where there is a voluntary disclosure of breach, prior to its discovery by the officer, the proper officer may consider this fact as a mitigating factor when quantifying the penalty. Since Tripathi has voluntarily disclosed the breach of procedural requirement to the officer, the proper officer may consider this fact as a mitigating factor when quantifying the penalty. Therefore, the quantum of penalty will depend on the facts and circumstances of the case.

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As per section 125 of the CGST Act, 2017, when no specific penalty has been specified for contravention of any of the provisions of the Act or any rules made there under, it shall be liable to a penalty which may extend to Rs. 25,000. Therefore, general penalty upto Rs. 25,000 may be imposed on Tripathi as when no specific penalty is provided for any contravention, a general penalty may be imposed.

SECTION B

Question 1

What is the quantum of penalty for an offence mentioned under section 122(1), 122(1A) and section 122(2)?

Answer 1

Section 122(1) provides that any taxable person who has committed any of the specified 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

Further, section 122(1A) provides that any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of section 122(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.

Moreover, section 122(2) provides that if any registered person who supplies any goods and/or services on which any tax has not been paid or short paid or erroneously refunded or where the ITC has been wrongly availed or utilized:-

- (i) for any reason other than the reason of fraud or any willful misstatement or suppression of facts to evade tax, he shall be liable to a penalty of ₹ 10,000 or 10% of the tax due from such person, whichever is higher.
- (ii) for reason of fraud, or any willful misstatement or suppression of facts to evade tax, penalty shall be equal to ₹ 10,000 or the tax due from such person, whichever is higher.

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Question 2

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. A disciplinary action is taken against Mr. X and an adhoc penalty of ₹ 20,000/- is imposed by passing an order 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 the order passed by Department?

Answer 2

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.

Accordingly—

- no penalty is to be imposed without affording an opportunity of being heard 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 the order suffers from lack of clarity about nature of breach which has taken place and about applicable law under which penalty has been imposed, such order passed by the department should be challenged.

Question 3

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-

- '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.**
- '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 3

- Failure to pay any amount collected as tax beyond 3 months from due date of payment is a specified offence as per clause (d) of Section 132(1).

In the present case, failure to deposit the tax ₹ 4 lakh (₹ 245 lakh – ₹ 241 lakh). As

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the amount of failure does not exceed ₹ 200 lakh therefore, failure to deposit ₹ 4 lakh collected as tax by 'X' will not be punishable with imprisonment as per section 132(1).

Further, falsification of financial records by 'X' is a specified offence as per section 132(1)(d) and punishable with imprisonment upto 6 months or with fine or both as per clause (iv) of section 132(1) assuming that falsification of records is with an intention to evade payment of tax due under the CGST Act, 2017 and the said offence is bailable in terms of section 132(4).

- (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) read with clause (i) of section 132(1).

Since the amount of tax evaded by 'Y' exceeds ₹ 500 lakh (₹ 550 lakh - ₹ 30 lakh), 'Y' is punishable with an imprisonment for a term which may extend to 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. Such offence is non-bailable in terms of section 132(5).

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 of at least 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court.

Question 4

Discuss the cognizable and non-cognizable offences under section 132?

Answer 4

As per section 132(5), following offences are cognizable offences, provided amount of tax evaded or input tax credit wrongly availed/ utilised or refund wrongly taken exceeds ₹ 5 crores, namely:

- Supply without issuance of invoice with the intention to evade tax
- Issuance of any invoice/ bill without supply leading to wrongful availment/ utilisation of ITC or refund of tax
- Availment of ITC using invoice/ bill against which no supplies have been made or fraudulent availment of ITC without any invoice or bill.
- Failure to pay the amount collected as tax to the Government beyond a period of 3 months from the due date of payment.

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Further, section 132(4) provides that all offences specified under section 132 are non-cognizable offences except the cognizable offences specified as aforesaid.

Question 5

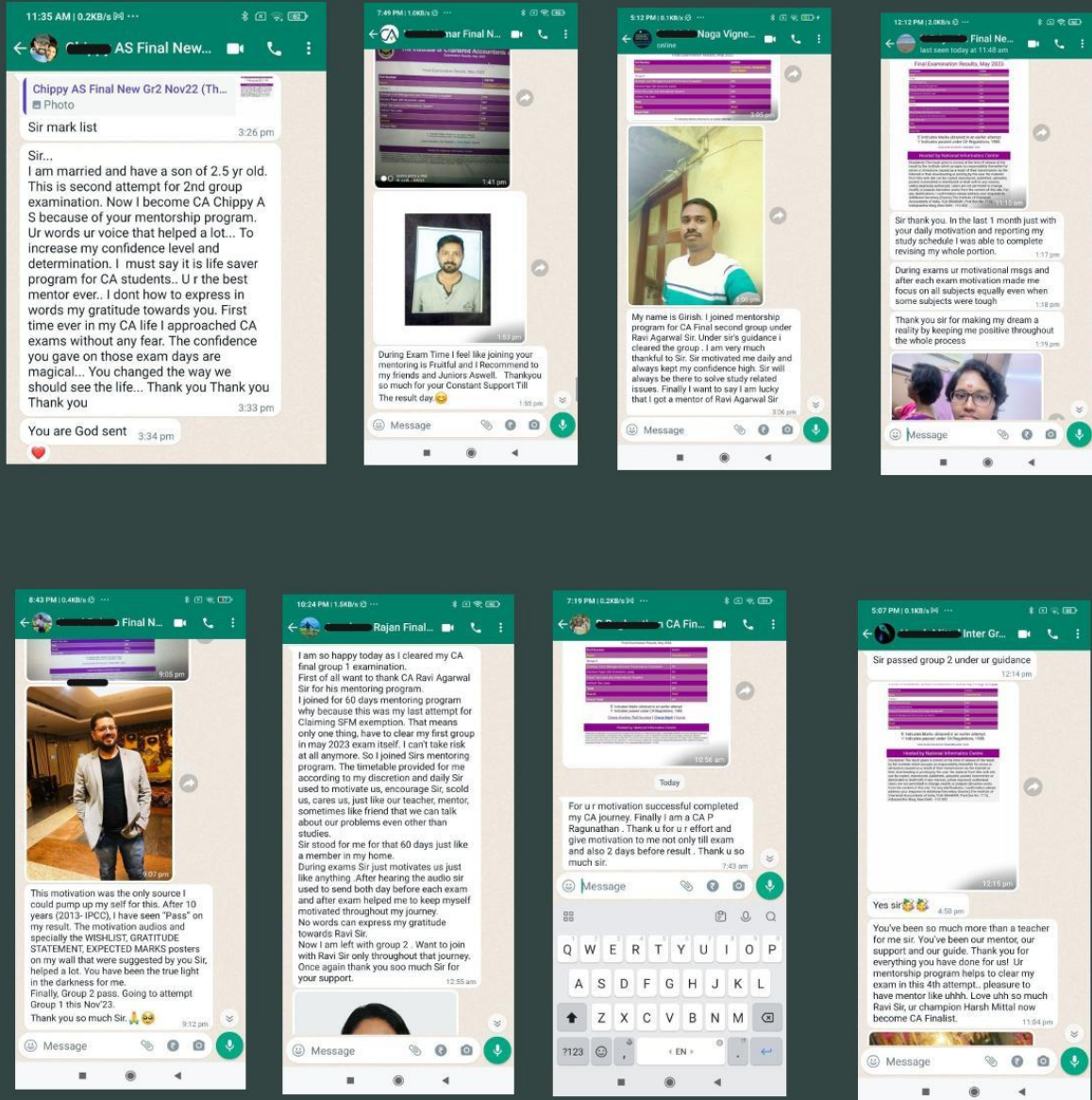
Bindusar CEO of Ashoka Solution Ltd is issued a summon to appear before the central tax officer to produce the books of accounts of Ashoka Solution Ltd in an enquiry conducted on said company. Determine the amount of penalty if any that may be imposed on Bindusar under the CGST Act, 2017 if he fails to appear before the central tax officer.

Answer 5

Sec 122(3)(d) of the CGST Act stipulates that any person who fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an enquiry is liable to a penalty which may extend to ₹ 25,000. Therefore, penalty upto ₹ 25,000 can be imposed on Bindusar under the CGST Act, 2017 in the given case.

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Chapter 22 Appeals And Revision

Attempts wise Distribution

Row Labels	Dec' 21	Jan' 21	Jul' 21	May' 18	Nov' 18	May' 19	May' 22	May' 23	Nov' 19	Nov' 20	Nov' 22	Nov' 23
MCQ												
MTP	Q4					Q3		Q2				
RTP									Q1			
QA												
MTP				Q13, Q14	Q8							Q1, Q17
PYP		Q6		Q12	Q4	Q16	Q7			Q5		
RTP			Q2	Q11	Q9	Q15		Q3	Q10			

SECTION A MULTIPLE CHOICE QUESTIONS (MCQ'S)

1. An appeal to the High Court can be filed under the CGST Act, 2017 in the following cases:

- (i) By a person aggrieved against the order passed by the State bench or Area bench of the Appellate Tribunal
- (ii) By a person aggrieved against the order passed by the National bench or Regional bench of the Appellate Tribunal
- (iii) For a matter involving substantial question of law Choose the most appropriate option.
 - (a) (i) and (ii)
 - (b) (i) and (iii)
 - (c) (ii) and (iii)
 - (d) (i), (ii) and (iii) **(MTP 2 Marks Sep'22, RTP Nov'19)**

Ans: (b)

2. The adjudicating authority passed the order on 23rd January 2023 and it was communicated to the taxpayer on the same day. The taxpayer filed the appeal against the order with the Appellate Authority (hereinafter referred as AA) on 16th February 2023. The appeal proceedings before the AA are stayed by an order of a Court for the period between 1st May 2023 and 30th June 2023. Which of the following statements is true in this regard?

- (a) AA can pass the order by 16th February 2024.
 - (b) AA can pass the order by 18th April 2024.
 - (c) AA can pass the order by 16th August, 2023.
 - (d) AA can pass the order by 18th October, 2023.
- (MTP 2 Marks Mar'23)**

Ans: (b)

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3. Rupam wishes to file an appeal to Appellate Tribunal. In which of the following cases, the Appellate Tribunal cannot refuse to admit his appeal as per the GST laws?
- i. Amount of tax/ ITC or difference in tax/ difference in ITC involved exceeds Rs. 50,000
 - ii. Amount of fine, fee or penalty determined by the order exceeds Rs. 50,000
 - iii. Amount of tax/ ITC or difference in tax/ difference in ITC involved is Rs. 50,000
 - iv. Amount of fine, fee or penalty determined by the order is Rs. 50,000
 - v. Amount of tax/ ITC or difference in tax/ difference in ITC involved is less than Rs. 50,000
 - vi. Amount of fine, fee or penalty determined by the order is less than Rs. 50,000
- (a) i. and ii.
 - (b) i. and iii.
 - (c) ii. and iv.
 - (d) v. and vi. (MTP 2 Marks Apr'19, Oct'19)

Ans: (a)

4. Mr. A, a sole proprietor, has to appear before the Appellate Authority. He decides to appear by an authorized representative. Which of the following persons can be appointed as 'authorized representative' of Mr. A under GST law?
- (a) Sohan, his son, who has been dismissed from a Government service lately.
 - (b) Rohan, a Company Secretary, who has been adjudged insolvent.
 - (c) Mukul, a practicing High Court advocate.
 - (d) All of the above. (MTP 1 Mark Oct'19, MTP 2 Marks Oct'21)

Ans: (c)

QUESTIONS AND ANSWERS

Question 1

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 lakh, 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 lakh on the ground that the differential amount should be ₹ 4 lakh 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. (MTP 5 Marks Oct'23)

Answer 1

Acme Sales received an order finalizing provisional assessment on the basis of a verification report, and requiring payment of ₹ 12 lakh. 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

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the time limitation for appeal by presenting the appeal as a claim for refund. The Supreme Court has held, in the case of Priya Blue Industries Limited, 2004 (172) ELT 145 (SC), that such a refund claim is not permissible for all these reasons. A person who is aggrieved with an assessment order cannot seek refund without filing an appeal against the assessment order.

Question 2

Briefly examine whether the appeal/review application filed in the following independent cases is within the time limit prescribed under the GST law:-

- (i) **The adjudicating authority issued the adjudication order on 23rd April and the same is communicated to the taxpayer - Mr. X - on 28th April. Mr. X, aggrieved by the order of the adjudicating authority filed an appeal to the Appellate Authority on 26th July.**
- (ii) **The adjudicating authority passed the order on 3rd March (communicated same day to the Commissioner). The Commissioner directs his subordinate officer to file a review application with the Appellate Authority. The subordinate officer filed the review application on 23rd September. (RTP May'21)**

Answer 2

- (i) A person aggrieved by any decision/order of an adjudicating authority can file an appeal to the Appellate Authority within 3 months from the date of communication of such decision/order. The Appellate Authority can condone the delay in filing of appeal by 1 month if it is satisfied that there was a sufficient cause for such delay [Section 107 of the CGST Act, 2017].

In view of the aforesaid provisions, in the given case, the relevant date for computing the period of 3 months (for filing the appeal to Appellate Authority) is 28th April (date of communication of order) and not 23rd April. Accordingly, an appeal can be filed by Mr. X to Appellate Authority within 3 months from the date of communication of order (28th April), i.e. 28th July.

Thus, Mr. X has filed the appeal within the time limit prescribed under the GST law.

- (ii) 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 decision/order for the determination of such points arising out of the said decision/ order as may be specified by him.

The Appellate Authority 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 of the CGST Act, 2017].

In the present case, the Commissioner directs his subordinate officer to file a review application with the Appellate Authority. The subordinate officer should have filed the said application till 3rd September (i.e. within 6 months from the date of communication of order). However, the subordinate officer filed the application on 23rd September, i.e. after the expiry of period of 6 months from the date of communication of order. Thus, in the given case, appeal has not been filed within the time limit prescribed under the GST law.

However, Appellate Authority can condone delay in filing of appeal upto 3rd October (up to 1 month) if it is satisfied that there was sufficient cause for such delay.

Question 3

Nitya Associates is engaged in supplying taxable services in Kerela. The Assistant Commissioner of Central Tax passed an adjudication order under

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section 73 which was received by Nitya Associates on 18th October. In the said order, GST liability of ₹ 6,00,000 (CGST + SGST) was decided alongwith interest payable @ 18% p.a. for number of delayed days and a penalty of ₹ 60,000. Nitya Associates was in complete disagreement with said order. So, it filed an appeal before the Appellate Authority on 31st October.

Determine the amount of pre-deposit to be made by Nitya Associates for filing the appeal.

Whether your answer would be different if Nitya Associates 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? (RTP May'23)

Answer 3

Section 107(6) provides that no appeal shall be filed before Appellate Authority (AA), unless the appellant pays*:-

- in full, tax, interest, fine, fee and penalty arising from impugned order, as is admitted by him; and
- 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.

However, no appeal shall be filed to AA against an order under section 129(3) [order for payment of penalty for release of detained/seized goods/conveyances], unless a sum equal to 25% of the penalty has been paid by the appellant.

*Equivalent amount is required to be deposited with respect to SGST liability.

Thus, in the given case, Nitya Associates 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).

However, when Nitya Associates admits the liability of ₹ 2,00,000 (CGST + SGST) and disputes only the balance tax demanded of ₹ 4,00,000, it has to make a pre-deposit of:

- ₹ 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
- 10% of ₹ 4,00,000 which is ₹ 40,000.

Question 4

Rule 112 of the CGST Rules lays down that the appellant shall not be allowed to produce before the Appellate authority (AA) or the Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the AA.

What are the exceptional circumstances specified in the rule where the production of additional evidence will be allowed? Can AA or the Tribunal direct production of any document or examination of any witness? (PYP 5 Marks Nov'18)

Answer 4

Exceptional circumstances specified in rule 112 of the CGST Rules, 2017 where the production of additional evidence will be allowed are as follows:

- where the adjudicating authority/appellate authority (AA) has refused to admit evidence

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which ought to have been admitted.

- (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority/AA.
- (c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority/AA any evidence which is relevant to any ground of appeal; or
- (d) where adjudicating authority/AA has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

Yes, the AA or the Tribunal can direct the production of any document or examination of any witness to enable it to dispose of the appeal.

Question 5

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?

(PYP 5 Marks Nov'20)

Answer 5

The decision of Mr. Mahendran of making an appeal to the First Appellate Authority against the order of the RA is not valid in law. Any person aggrieved by an order passed against him by RA under CGST Act may appeal to the Appellate Tribunal, the second level of appeal.

The powers of the RA to revise the orders passed by the subordinate officers under section 108 of the CGST Act, 2017 are as under: -

- (i) The RA may, on his own motion, or upon information received by him or on request from the SGST/ UTGST Commissioner, call for and examine the record of any proceedings.
- (ii) On examination of the case records, if RA is of the view that the decision/order passed by any officer subordinate to him is erroneous and illegal/improper or has not taken into account material facts, he may stay the operation of such order for such period as he deems fit.
- (iii) The RA, after giving the person concerned an opportunity of being heard and after making necessary further inquiry, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said order.

The RA can revise an order after the expiry of a period of 6 months from the date of communication of the said order but not later than expiry of a period of 3 years from the passing of the said decision/order.

In case of an order subject to an appeal before Appellate Authority (AA)/Tribunal/High Court/ Supreme Court, the RA can pass an order on any point which has not been raised and decided in the appeal, before the expiry of a period of 1 year from the date of the order in such appeal or before the expiry of a period of 3 years from the date of initial order, whichever is later.

Question 6

Anirudh Ltd. is registered in Telangana and paid IGST on a transaction considering the same to be inter-State supply on the basis that the customer is

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situated in Delhi.

However, GST authorities have raised a dispute and have issued a show cause notice that since the services are rendered within Telangana, it is an intra-State supply leviable to CGST and SGST.

Anirudh Ltd. has lost the case before the proper officer and also in first appeal before the Departmental Appellate Authority.

Advise Anirudh Ltd. regarding the following:

- (i) Can Anirudh Ltd. file an appeal against the order of the first Appellate Authority? If yes, before which forum can Anirudh Ltd. file the said appeal?
- (ii) Once a valid appeal is filed by Anirudh Ltd. before the appropriate forum, can the authorities insist Anirudh Ltd. to deposit the CGST and SGST which the authorities are claiming that Anirudh Ltd. ought to have paid but has not paid.
- (iii) If Anirudh Ltd. loses at the 2nd appellate stage as well, is there any other Statutory forum available for Anirudh Ltd. to file another appeal? If yes, before which forum?
- (iv) Assuming Anirudh Ltd. loses at all levels, would there be any interest liability on Anirudh Ltd.?
(PYP 4 Marks Jan'21)

Answer 6

- (i) Yes, Anirudh Ltd. can file an appeal against the order of the first Appellate Authority to the Appellate Tribunal. National Bench/ Regional Benches of the Tribunal will have jurisdiction to hear the appeal as place of supply is one of the issues in dispute.
- (ii) No, Authority can't insist, because once a valid appeal is filed i.e., on payment of requisite pre-deposit, the recovery proceedings for the balance amount of the demand in dispute gets stayed till the disposal of appeal.
- (iii) Yes, Anirudh Ltd. can file another appeal against the decision of the National Bench/Regional Bench of the Tribunal, directly before the Supreme Court.
- (iv) No, there will be no interest liability on Anirudh Ltd. if it loses at all levels. A registered person who has paid IGST on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, is not required to pay any interest on the amount of CGST and SGST payable because there is no shortfall of overall tax amount.

Question 7

On scrutiny of returns filed by Chandan & Co., the Department found some discrepancy in ITC claimed by the company and consequently a Departmental audit was conducted under section 65 of the CGST Act. On conclusion of the audit in February, the Department issued a Show Cause Notice (SCN) alleging that the company had wrongly and deliberately claimed ITC in the returns without actual receipt of goods for the month of January. The Joint Commissioner of Central Tax, not being satisfied by the reply given by the company to the SCN, passed a written order on 28th April which was received by the company on 1st May. The order confirmed the tax demand of ₹ 30,00,000 (i.e., CGST ₹ 15,00,000 and SGST ₹ 15,00,000) and imposed a penalty of equal amount under section 74.

Aggrieved by the order, Chandan & Co. decides to contest the order of adjudication in its entirety. It seeks advice on the following issues -

- (i) To whom should it make an appeal? Can it directly approach the High

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Court?

- (ii) **What is the time limit for filing the appeal in the given case?**
- (iii) **Is there any requirement of pre-deposit of any amount and if so, what would be the amount?**

Provide your legal and reasoned advice to Chandan & Co. (PYP 5 Marks May'22)

Answer 7

- (i) An appeal against the order passed by Joint Commissioner lies before the Appellate Authority - Commissioner (Appeals). Chandan & Co. cannot directly approach the High Court. It needs to first file an appeal to Appellate Authority and then to Appellate Tribunal. However, a writ petition can be filed directly before the High Court for relief.
- (ii) The time-limit for filing an appeal in the given case is 3 months from the date of communication of the order appealed against, i.e., 3 months from 1st May. Hence, the appeal must be filed on or before 1st August.
- (iii) No appeal can be filed before the Appellate Authority unless appellant – Chandan & Co. has paid pre-deposit of ₹ 3,00,000, computed as sum of the following:
 - (a) Full amount of tax, interest and penalty arising from the order as admitted by him, viz. nil, and
 - (b) 10% of the remaining tax in dispute (₹ 30,00,000) arising from the order, viz. ₹ 3,00,000.

Question 8

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?

(MTP 5 Marks Apr'18, MTP 6 Marks Oct'18)

Answer 8

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. (₹ 50 crore in case of IGST)

However, no appeal shall be filed before (AA) against an order under section 129(3), unless a sum equal to 25% of the penalty has been paid by the appellant.

Section 112(8) lays down that no appeal can be filed before the Appellate Tribunal, unless the appellant deposits

- (a) full amount of tax, interest, fine, fee and penalty arising from the impugned order,

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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 (₹ 100 crore in case of IGST), 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.

Question 9

With reference to section 108, elaborate whether a CGST/SGST authority can revise an order passed by his subordinates. (RTP Nov'18)

Answer 9

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-

- the order has been subject to an appeal under section 107 or under section 112 or under section 117 or under section 118; or
- 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.
- the order has already been taken up for revision under this section at any earlier stage.
- the order is a revisional order

Question 10

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. (MTP 4 Marks Nov'21, RTP Nov'19)

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Answer 10

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.

Question 11

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.

(MTP 4 Marks May'20, Apr'18, Apr'21, Mar'22, Mar'21, Oct'22, RTP May'18, PYP 4 Marks May'23)

Answer 11

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As per section 117(1), an appeal against orders passed by the State 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 Principal Bench of the Tribunal would lie to the Supreme Court and not High Court. As per section 109(5) of the Act, only the Principal Bench 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 Principal Bench of the Tribunal. Thus, Mr. A will have to file an appeal with the Supreme Court and not with the High Court.

Question 12

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 if it disagrees with the entire tax demanded.

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? (MTP 4 Marks Oct'21, PYP 5 Marks May'18)

Answer 12

Section 107(6) provides that no appeal shall be filed before Appellate Authority, unless the appellant pays*:-

- in full, tax, interest, fine, fee and penalty arising from impugned order, as is admitted by him; and
- 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).

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:

- ₹ 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
- 10% of ₹ 4,00,000 which is ₹ 40,000.

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Question 13

Pursuant to audit conducted by the tax authorities under section 65 of the CGST Act, 2017, a show cause notice was issued to Home Furnishers, Surat, a registered supplier, alleging that it had wrongly availed the input tax credit without actual receipt of goods for the month of July, 20XX. In the absence of a satisfactory reply from Home Furnishers, Joint Commissioner of Central Tax passed an adjudication order dated 20.08.20XX (received by Home Furnishers on 22.08.20XX) confirming a tax demand of Rs. 50,00,000 and imposing a penalty of equal amount under section 122 of the CGST Act, 2017.

Home Furnishers does not agree with the order passed by the Joint Commissioner. It decides to file an appeal with the Appellate Authority against the said adjudication order. It has approached you for seeking advice on the following issues in this regard:

- (1) Can Home Furnishers file an appeal to Appellate Authority against the adjudication order passed by the Joint Commissioner of Central Tax? If yes, till what date can the appeal be filed?
- (2) Does Home Furnishers need to approach both the Central and State Appellate Authorities for exercising its right of appeal?
- (3) Home Furnishers is of the view that there is no requirement of paying pre-deposit of any kind before filing an appeal with the Appellate Authority. Give your opinion on the issue.
(MTP 6 Marks Mar'18)

Answer 13

- (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

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- (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).

Question 14

With reference to the provisions of section 120 of the CGST Act, 2017, list the cases in which appeal is not to be filed. (MTP 6 Marks Mar'18, Aug'18)

Answer 14

- (1) The Board may, on the recommendations of the GST Council, issue orders or instructions or directions fixing monetary limits for regulating filing of appeal or application by the CGST officer.
- (2) Non-filing of appeal/application by a CGST officer on account of such monetary limits fixed by the Board shall not preclude such officer from filing appeal or application in any other case involving the same or similar issues or questions of law.
- (3) No person, who is a party in application or appeal can contend that the CGST Officer has acquiesced in the decision on the disputed issue by not filing an appeal or application (on account of monetary limits).
- (4) The Appellate Tribunal or Court hearing such appeal or application shall have regard to circumstances for non-filing of appeal or application by the CGST officer on account of monetary limits fixed by the Board.

Question 15

With reference to the provisions of section 121 of the CGST Act, 2017, specify the orders against which no appeals can be filed. (MTP 4 Marks Oct'22, RTP May'19)

Answer 15

As per section 121 of the CGST Act, 2017, no appeal shall lie against any decision taken or order passed by a CGST officer if such decision taken or order passed relates to any one or more of the following matters, namely: —

- (a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or
- (b) an order pertaining to the seizure or retention of books of account, register and other documents; or
- (c) an order sanctioning prosecution under the CGST Act; or
- (d) an order passed under section 80 (payment of tax in instalments).

Question 16

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Enumerate any four orders against which appeal cannot be filed under the CGST Act 2017.

(5 Marks Mar'23 & Oct '22, PYP 4 Marks May'19)

Answer 16

As per section 121 of the CGST Act, 2017, no appeal shall lie against any decision taken or order passed by a CGST officer if such decision taken or order passed relates to any one or more of the following matters, namely:

- (i) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or
- (ii) an order pertaining to the seizure or retention of books of account, register and other documents; or
- (iii) an order sanctioning prosecution under CGST Act; or
- (iv) an order passed under section 80 of the CGST Act (payment of tax in instalments).

Question 17

Krish Pvt. Ltd. received an adjudication order demanding CGST and SGST of ₹ 200 crore each. Krish Pvt. Ltd. filed an appeal to Appellate Authority contesting the entire demand after depositing the mandatory pre-deposit amount. The Appellate Authority heard the appeal and decided in favour of the Department confirming the entire demand. The company filed an appeal to the Appellate Tribunal after depositing the mandatory pre-deposit amount. Determine the mandatory pre-deposit amount required to be deposited under GST law with Appellate Authority and Appellate Tribunal by Krish Pvt. Ltd. while filing appeal.

(MTP 5 Marks Sep'23)

Answer 17

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.

Further, no appeal can be filed before the Tribunal, unless the appellant deposits 3

- (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 Appellate Authority, arising from the said order, subject to a maximum of ₹ 50 crore, in relation to which appeal has been filed.

In view of the above provisions, the amount of pre-deposit to be made by Krish Pvt. Ltd. for filing the appeal to the Appellate Authority is ₹ 20 crore [10% of ₹ 200 crore (tax in dispute)]. Equivalent amount has to be paid for SGST too. Thus, a total of ₹ 40 crore has to be paid by the company as pre-deposit for filing the appeal to the Appellate Authority.

Further, the amount of pre-deposit to be made by Krish Pvt. Ltd. for filing the appeal before the Tribunal is ₹ 40 crore [20% of ₹ 200 crore (tax in dispute)]. Equivalent amount has to be paid for SGST too. Thus, a total of ₹ 80 crore has to be paid by the company as pre-deposit for filing the appeal to the Appellate Tribunal.

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SECTION B

Question 1

Does CGST law provide for any appeal to a person aggrieved by any order or decision passed against him by an adjudicating authority under the CGST Act? Explain the related provisions under the CGST Act.

Answer 1

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, subject to a maximum of ₹ 25 crore. (₹ 50 crore in case of IGST) is paid as pre-deposit by the appellant.

However, no appeal shall be filed before (AA) against an order under section 129(3), unless a sum equal to 25% of the penalty has been paid by the appellant.

Further, no appeal can be filed against the following orders in terms of section 121:-

- an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer;
- an order pertaining to the seizure or retention of books of account, register and other documents; or
- an order sanctioning prosecution under the Act; or
- an order passed under section 80 (payment of tax in installments).

Question 2

Describe the provisions relating to Departmental appeal to Appellate Authority under section 107.

Answer 2

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)].

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Such application shall be dealt with by the AA as if it were an appeal made against the decision/order of the adjudicating authority [Section 107(3)]. There is no requirement of making a pre-deposit in case of departmental appeal.

Question 3

With reference to sections 107(6) and 112(8), 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 3

Section 107(6) provides that no appeal shall be filed before the Appellate Authority, unless the appellant has paid—

- (c) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
- (d) 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. (₹ 50 crore in case of IGST)

However, no appeal shall be filed before (AA) against an order under section 129(3), unless a sum equal to 25% of the penalty has been paid by the appellant.

Section 112(8) lays down that no appeal can be filed before the Appellate Tribunal, unless the appellant deposits

- (c) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
- (d) 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 (₹ 100 crore in case of IGST), 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.

Question 4

With reference to section 108, elaborate whether a CGST/SGST authority can revise an order passed by his subordinates.

Answer 4

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

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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-

- (e) the order has been subject to an appeal under section 107 or under section 112 or under section 117 or under section 118; or
- (f) 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.
- (g) the order has already been taken up for revision under this section at any earlier stage.
- (h) the order is a revisional order

Question 5

The Appellate Tribunal has the discretion to refuse to admit any appeal. Examine the correctness of the above statement.

Answer 5

The statement is incorrect.

Though the Appellate Tribunal does have the power to refuse to admit an appeal, it cannot refuse to admit ANY appeal. It can refuse to admit an appeal where –

- the tax or input tax credit involved or
- the difference in tax or the difference in input tax credit involved or
- the amount of fine, fees or penalty determined by such order, does not exceed ₹ 50,000.

Question 6

In an order dated 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 6

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

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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:

(iii) ₹ 28 crore [10% of the amount of tax in dispute, viz. ₹ 280 crore] or

(iv) ₹ 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:

(iii) ₹ 56 crores [20% of the amount of tax in dispute, viz. 280 crores] or

(iv) ₹ 100 crores,

whichever is less.

= ₹ 56 crores.

Question 7

With reference to the provisions of section 121, specify the orders against which no appeals can be filed.

Answer 7

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).

Question 8

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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 8

As per section 117(1), an appeal against orders passed by the State 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 Principal Bench of the Tribunal would lie to the Supreme Court and not High Court. As per section 109(5) of the Act, only the Principal Bench 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 Principal Bench of the Tribunal. Thus, Mr. A will have to file an appeal with the Supreme Court and not with the High Court.

Question 9

Pursuant to audit conducted by the tax authorities under section 65, a show cause notice was issued u/s 74 of the CGST Act 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 relevant provisions of CGST Law.

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 9

- (4) 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**

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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)].

- (5) 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].
- (6) 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—
- (c) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
 - (d) 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).

Question 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 10

- (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

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application (on account of monetary limits).

- (4) The Appellate Tribunal or Court hearing such appeal or application shall have regard to circumstances for non-filing of appeal or application by the CGST officer on account of monetary limits fixed by the Board.

Question 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 if it disagrees with the entire tax demanded.

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 11

Section 107(6) provides that no appeal shall be filed before Appellate Authority, unless the appellant pays*:-

- (c) in full, tax, interest, fine, fee and penalty arising from impugned order, as is admitted by him; and
- (d) 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).

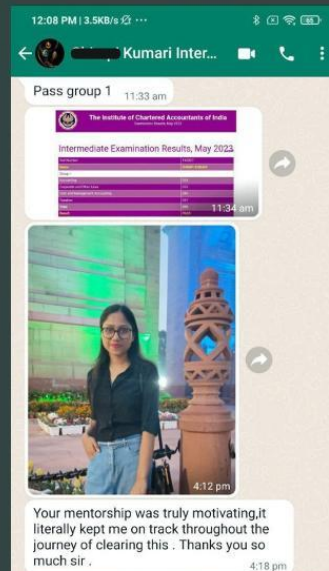
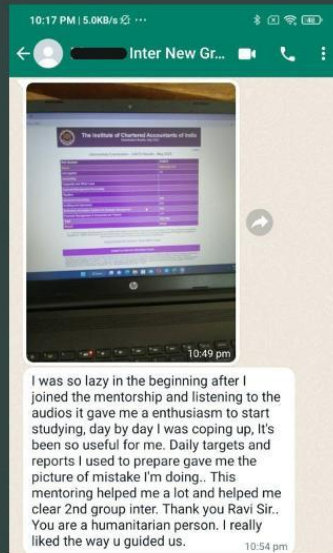
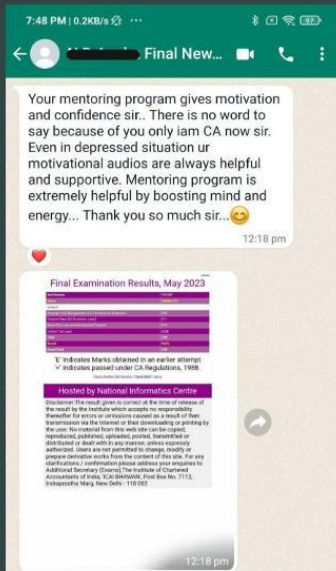
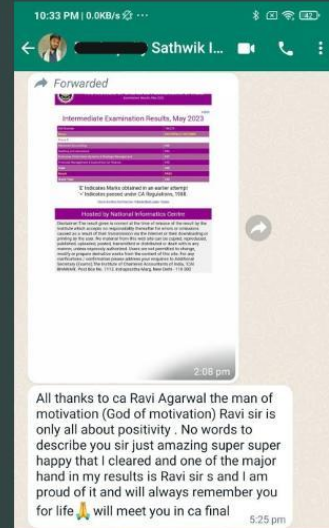
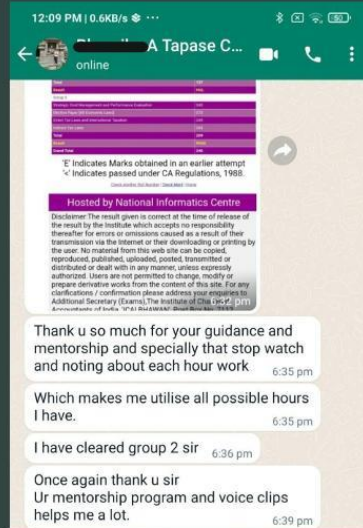
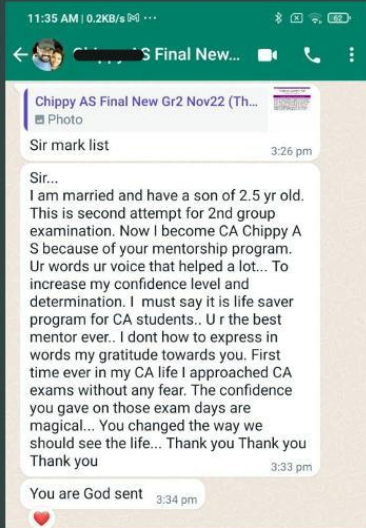
However, when XY Company admits the liability of only ₹ 2,00,000 (CGST + SGST) and disputes the balance tax demanded of ₹ 4,00,000, it has to make a pre-deposit of:

- iii) ₹ 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
- iv) 10% of ₹ 4,00,000 which is ₹ 40,000.

It may be noted that the Appellate Tribunal was not constituted till 30.04.2023. This aspect needs to be borne in mind while reading the examples and questions and answers relating to Appellate Tribunal given in the Chapter.

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Chapter 23 Advance Ruling

Attempts wise Distribution

Row Labels	Dec' 21	Jan' 21	Jul' 21	May' 18	Nov' 18	May' 19	May' 22	May' 23	Nov' 19	Nov' 20	Nov' 22	Nov' 23
MCQ												
RTP									Q1			
QA												
MTP					Q8		Q1					
PYP					Q7			Q6		Q5		
RTP				Q2			Q3					Q4

SECTION A MULTIPLE CHOICE QUESTIONS (MCQ'S)

Question 1

State whether following statements are true or false w.r.t. provisions relating to Advance Ruling.

- Questions on which the advance ruling can be sought under this Act, include rate of tax applicable to a particular supply and place of supply.
- Rectification of advance ruling is not possible once the Authority for Advance Ruling has passed the orders.
- The Authority for Advance Ruling shall pronounce its ruling within 90 days from the date of receipt of application.
- Authority for Advance Ruling may accept application even if the question raised in the application is already pending or decided in any proceedings under any of the provisions of the CGST Act, 2017 qua the applicant.
- Authority for Advance Ruling may, by order, declare such advance ruling void *ab-initio* if it finds out that such ruling is obtained by suppression of material facts, fraud or misrepresentation of facts.

Choose from following options:

- False, False, True, False, True
- False, True, True, False, True
- True, True, False, False, True
- False, False, False, False, True (RTP Nov'19)

Ans: (a)

QUESTIONS AND ANSWERS

Question 1

Sonak 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.

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Sonak's tax advisor has advised him to apply for the advance ruling in respect of these issues. He told Sonak that the advance ruling would bring him certainty and transparency in respect of the said issues and would avoid litigation later. Sonak agreed with his view, but has some apprehensions. In view of the information given above, you are required to advise Sonak with respect to following:

- (i) **The tax advisor asks Sonak to get registered under GST law before applying for the advance ruling as only a registered person can apply for the same. Whether Sonak needs to get registered?**
- (ii) **Sonak is apprehensive that if at all advance ruling is permitted to be sought, he has to seek it every year. Whether Sonak'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) **Sridhar- Sonak's friend - is a supplier registered in Delhi. He is engaged in supply of the goods, which Sonak proposes to supply at the same commercial level that Sonak proposes to adopt.**

He intends to apply the classification of the goods as decided in the advance ruling order to be obtained by Sonak, to the goods supplied by him in Delhi.

Whether Sridhar can do so?

(MTP 4 Marks Apr'22, MTP 9 Marks Mar'19)

Answer 1

- (i) Advance ruling under GST can be sought by a registered person or a person desirous of obtaining registration under GST law [Section 95(c) of the CGST Act, 2017]. Therefore, it is not mandatory for a person seeking advance ruling to be registered.
- (ii) Section 103(2) of the CGST Act, 2017 stipulates that the advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed. Therefore, once Sonak 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 of the CGST Act, 2017, if the applicant is aggrieved with the finding of the AAR, he can file an appeal with Appellate Authority for Advance Ruling (AAAR). Similarly, if the concerned/jurisdictional officer of CGST/SGST does not agree with the findings of AAR, he can also file an appeal with AAAR.

Such appeal must be filed within 30 days from the date on which the ruling sought to be appealed against is communicated. The Appellate Authority may allow additional 30 days for filing the appeal, if it is satisfied that there was a sufficient cause for delay in presenting the appeal.

- (iv) Section 103 of the CGST Act, 2017 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, Sridhar will not be able to apply the classification of the goods that will be decided in the advance ruling order to be obtained by Sonak, to the goods supplied by him in Delhi.

Question 2

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

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[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) Can Ranjan seek advance ruling to determine (a) the classification of the goods proposed to be supplied by him and (b) the place of supply, if he supplies said goods from Delhi to buyers in U.S.?
- (iii) 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?
- (iv) 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?
- (v) 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?
(RTP May'18)

Answer 2

- (i) Advance ruling under GST can be sought by a registered person or a person desirous of obtaining registration under GST law [Section 95(c) of the CGST Act, 2017]. Therefore, it is not mandatory for a person seeking advance ruling to be registered.
- (ii) Section 97(2) of the CGST Act, 2017 stipulates the questions/matters on which advance ruling can be sought. It provides that advance ruling can be sought for, inter alia, determining the classification of any goods or services or both. Therefore, Ranjan can seek the advance ruling for determining the classification of the goods proposed to be supplied by him.

Determination of place of supply is not one of the specified questions/matters on which advance ruling can be sought under section 97(2). Further, section 96 of the CGST Act, 2017 provides that AAR constituted under the provisions of an SGST Act/UTGST Act shall be deemed to be the AAR in respect of that State/Union territory under CGST Act also.

Thus, AAR is constituted under the respective State/Union Territory Act and not the central Act. This implies that ruling given by AAR will be applicable only within the jurisdiction of the concerned State/Union territory.

It is also for this reason that the questions on determination of place of supply cannot be raised with the AAR. Hence, Ranjan cannot seek the advance ruling for determining the place of supply of the goods proposed to be supplied by him.

Note: The above answer is based on the view taken by the CBEC in its e-flier issued on the subject of advance ruling. The e-flier is available on the CBEC's website. However, it can be also be argued that the question relating to determination of the liability to pay tax on goods and/or services as provided under section 96(2)(e) of the CGST Act, 2017 encompasses within its ambit the question relating to place of supply.

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This is so because place of supply is one of the factor to determine as to whether the supply is leviable to CGST & SGST or IGST.

(iii) Section 103(2) of the CGST Act, 2017 stipulates that the advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed. Therefore, once Ranjan has sought the advance ruling with respect to an eligible matter/question, it will be binding till the time the law, facts and circumstances supporting the original advance ruling remain same.

(iv) No, the tax advisor's view is not correct. As per section 100 of the CGST Act, 2017, if the applicant is aggrieved with the finding of the AAR, he can file an appeal with Appellate Authority for Advance Ruling (AAAR). Similarly, if the concerned/jurisdictional officer of CGST/SGST does not agree with the findings of AAR, he can also file an appeal with AAAR.

Such appeal must be filed within 30 days from the receipt of the advance ruling. The Appellate Authority may allow additional 30 days for filing the appeal, if it is satisfied that there was a sufficient cause for delay in presenting the appeal.

(v) Section 103 of the CGST Act provides that an advance ruling pronounced by AAR is binding only on the applicant who had sought it and on the concerned officer or the jurisdictional officer in respect of the applicant. This implies that an advance ruling is not applicable to similarly placed other taxable persons in the State. It is only limited to the person who has applied for an advance ruling.

Thus, Sambhav will not be able to apply the classification of the goods that will be decided in the advance ruling order to be obtained by Ranjan, to the goods supplied by him in Delhi.

Question 3

Chandra is engaged in supplying certain goods in the State of Punjab from his factory located in Jalandhar, Punjab. He is not yet registered under GST. As his turnover is moving towards the applicable threshold limit for registration under GST, he approaches his tax advisor to ascertain the applicability of GST on the supply made by him.

His tax advisor is unable to determine whether supply of goods by Chandra amounts to supply of goods under GST law and also, the classification of said goods. He advises Chandra to apply for the advance ruling in respect of said issues. He told Chandra that the advance ruling would bring him certainty and transparency in respect of the said issues and would avoid litigation later. Chandra agrees with his view, but has some apprehensions.

In view of the information given above, you are required to advise Chandra with respect to following:

- (i) **The tax advisor asks Chandra to get registered under GST law before applying for the advance ruling as only a registered person can apply for the same. Whether Chandra needs to get registered before applying for advance ruling?**
- (ii) **Can Chandra seek advance ruling to determine whether supply of goods by Chandra amounts to supply of goods under GST law and if yes, to determine the classification of said goods?**
- (iii) **Chandra is doubtful whether he can seek advance ruling in relation to an activity/transaction already being undertaken. Whether Chandra's doubt is correct?**
- (iv) **Chandra is apprehensive that Authority for Advance Ruling may take years to pronounce its ruling. Whether his apprehension is correct?**

(RTP May'22)

Answer 3

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- (i) Advance ruling under GST can be sought by a registered person or a person desirous of obtaining registration under GST law [Section 95(c) of the CGST Act, 2017]. Therefore, it is not mandatory for a person seeking advance ruling to be registered.
- (ii) Section 97(2) of the CGST Act, 2017 stipulates the questions/matters on which advance ruling can be sought. It provides that advance ruling can be sought for, inter alia, determining whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term as well as the classification of any goods or services or both. Therefore, Chandra can seek the advance ruling for determining whether supply of goods by him amounts to supply of goods under GST law as well as for determining the classification of said goods.
- (iii) As per the definition of advance ruling under section 95(a) of the CGST Act, 2017, advance ruling decision can be provided by the Authority to an applicant on matters/questions specified in section 97(2) of the said Act, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. Thus, advance ruling can be sought not only for activities/transactions proposed to be undertaken but also for activities/transactions already undertaken by the applicant.
Hence, in the given case, Chandra can seek the advance ruling in relation to the supply of goods being already undertaken by him.
- (iv) No, Chandra's view is not correct. As per section 98(6) of CGST Act, 2017, the Authority for Advance Ruling shall pronounce its ruling in writing within 90 days from the date of receipt of application.

Question 4

Advance Ruling once issued cannot be held to be void ab-initio under any circumstances. Discuss the correctness of the statement by explaining relevant provisions. (RTP Nov'23)

Answer 4

The said statement is incorrect. Section 104 of the CGST Act, 2017 states the circumstances under which the advance ruling would be considered as void and hence would lose its binding value.

If the Authorities (AAR and Appellate Authority) find that the advance ruling pronounced has been obtained by the applicant/appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio.

Consequently, all the provisions of the CGST Act 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/ appellant. A copy of the order so made shall be sent to the applicant, the concerned officers and the jurisdictional officer.

Question 5

Can Mr. Venkat obtain advance ruling for the issue related to place of supply? Also list all issues for which advance ruling can be sought. (PYP 4 Marks Nov'22)

Answer 5

No, Venkat cannot obtain advance ruling for issue related to place of supply¹⁴. Advance Ruling can be sought for the following questions:

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- (a) Classification of any goods or services or both;
- (b) Applicability of a notification issued under provisions of the GST law;
- (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 GST law;
- (f) Whether applicant is required to be registered;
- (g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

¹⁴ The above answer is based on the view taken by the CBIC in its e-flyer issued on 'advance ruling'. However, it is also possible to take a view that the question relating to determination of the liability to pay tax on goods and/or services as provided under section 96(2)(e) of the CGST Act, 2017 encompasses within its ambit the question relating to place of supply. This is so because place of supply is one of the factors to determine as to whether the supply is leviable to CGST & SGST or IGST. In that case, conclusion will be that Venkat can obtain advance ruling for issue related to place of supply.

Question 6

Mr. Raj intends to start a new manufacturing business in Jaipur. However, he is not able to determine the classification of the goods proposed to be manufactured and supplied by him since the classification of said goods has been contentious. Mr. Raj read an article about advance ruling in the newspaper and decided to apply for advance ruling so as to avoid litigation later.

Mr. Rahul, who is friend of Mr. Raj is also engaged in the supply of goods similar to which Mr. Raj proposes to manufacture in Jaipur and Mr. Rahul advised him to apply the same classification as of his, since he has already taken advance ruling order regarding classification of the said goods.

Mr. Raj's tax consultant also agreed with the advice given by Mr. Rahul. Mr. Raj also thought it to be a good decision since he was unregistered and thought that he needed to be registered to apply for advance ruling in his name.

You are required to advise Mr. Raj with respect to following:

- (a) Whether Mr. Raj and his tax consultant are right and can classify the goods proposed to be supplied by Mr. Raj on the basis of his friend Mr. Rahul's advance ruling order?**
- (b) Whether Raj needs to get registered to apply for advance ruling?**

1 It has been most logically assumed that article imported by ABC Exports is not cleared as such/ used in the manufacture of goods cleared into DTA. (PYP 4 Marks May'23)

Answer 6

- (a) No, Mr. Raj and his tax consultant are not correct.
An advance ruling is binding only on the applicant who had sought it and on the concerned officer. An advance ruling is not applicable to similarly placed other taxable persons in the State.
Thus, Mr. Raj cannot classify the goods to be supplied by him on the basis of his friend Mr. Rahul's advance ruling order.
- (b) No, Mr. Raj need not register to apply for advance ruling since advance ruling can be sought by a registered person or person desirous of obtaining registration. It is not mandatory for a person seeking advance ruling to be registered.

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Question 7

Briefly explain the procedure to be followed by the Authority for Advance Ruling on receipt of the application for Advance Ruling under section 98. (PYP 5 Marks Nov'18)

Answer 7

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.

Question 8

Discuss briefly provisions of CGST Act, 2017 regarding questions for which advance ruling can be sought. (MTP 5 Marks Aug'18, Mar'21)

Answer 8

As per section 97(2) of CGST Act, 2017, advance ruling can be sought for the following questions: -

- I. classification of any goods or services or both
- II. applicability of a notification issued under the CGST Act
- III. determination of time and value of supply of goods or services or both
- IV. admissibility of input tax credit of tax paid or deemed to have been paid
- V. determination of the liability to pay tax on any goods or services or both
- VI. whether applicant is required to be registered
- VII. whether any particular activity with respect to any goods and/or services,

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amounts to/results in a supply of goods and/or services, within the meaning of that term.

Note: Any of the four points may be mentioned.

SECTION B

Question 1

Which are the questions for which advance ruling can be sought?

Answer 1

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.

Question 2

What is the objective of having a mechanism of Advance Ruling?

Answer 2

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 be undertaken 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

Question 3

To whom will the Advance Ruling be applicable?

Answer 3

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

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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.

Question 4

What is the time period for applicability of Advance Ruling?

Answer 4

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.

Question 5

Can an advance ruling given be nullified?

Answer 5

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.

Question 6

Ranjan intends to start selling certain goods in Delhi. However, he is not able to determine (i) the classification of the goods proposed to be supplied by him [as the classification of said goods has been contentious] and (ii) the place of supply if he supplies said goods from Delhi to buyers in U.S.

Ranjan's tax advisor has advised him to apply for the advance ruling in respect of these issues. He told Ranjan that the advance ruling would bring him certainty and transparency in respect of the said issues and would avoid litigation later. Ranjan agreed with his view, but has some apprehensions.

In view of the information given above, you are required to advise Ranjan with respect to following:

- (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.**

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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 6

- 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.
- iv) Such appeal must be filed within 30 days from the date on which the ruling sought to be appealed against is communicated. The Appellate Authority may allow additional 30 days for filing the appeal, if it is satisfied that there was a sufficient cause for delay in presenting the appeal.
- v) Section 103 provides that an advance ruling pronounced by AAR is binding only on the applicant who had sought it and on the concerned officer or the jurisdictional officer in respect of the applicant. This implies that an advance ruling is not applicable to similarly placed other taxable persons in the State. It is only limited to the person who has applied for an advance ruling.

Thus, Sambhav will not be able to apply the classification of the goods that will be decided in the advance ruling order to be obtained by Ranjan, to the goods supplied by him in Delhi.

Question 7

Briefly explain the procedure to be followed by the Authority for Advance Ruling on receipt of the application for Advance Ruling under section 98.

Answer 7

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:-

10. 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.
11. 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.
12. 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

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- applicant under any of the provisions of this Act.
- 13.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.
 - 14.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.
 - 15.Before giving the ruling, AAR must hear the applicant or his authorized representative as well as the jurisdictional officers of CGST/ SGST.
 - 16.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
 - 17.The Authority shall pronounce its advance ruling in writing within 90 days from the date of receipt of application.
 - 18.A copy of the advance ruling duly signed by members and certified in prescribed manner shall be sent to the applicant, the concerned officer and the jurisdictional officer.

Question 8

Briefly explain whether an appeal could be filed before the Appellate Authority against order of Authority for Advance Ruling (AAR), with reference to sections 100 and 101.

Answer 8

Yes, the concerned officer, jurisdictional officer or applicant aggrieved by any advance ruling may appeal to the Appellate Authority for Advance Ruling (AAAR) within 30 days [extendible by another 30 days] from the date on which such ruling is communicated to him in the prescribed form and manner.

The AAAR must pass an order confirming or modifying the ruling appealed against within a period of 90 days of the filing of an appeal, after hearing the parties to the appeal.

If members of AAAR differ on any point referred to in appeal, it shall be deemed that no advance ruling can be issued in respect of the question under appeal. A copy of the advance ruling pronounced by the AAAR is sent to applicant, concerned officer, jurisdictional officer and to the Authority.

Question 9

Discuss briefly provisions of CGST Act, 2017 regarding questions for which advance ruling can be sought.

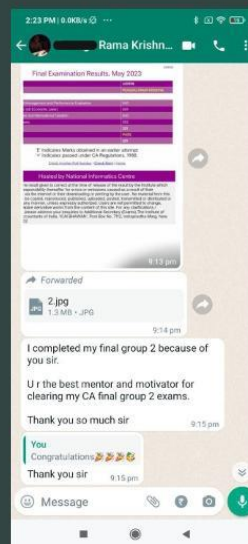
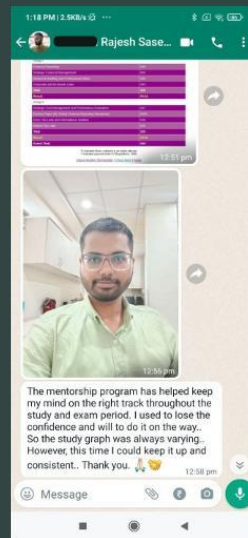
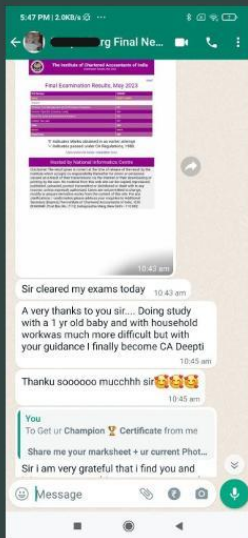
Answer 9

As per section 97(2), advance ruling can be sought for the following questions:-

- (a) classification of any goods or services or both

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Chapter 24 Miscellaneous Provisions

Attempts wise Distribution

Row Labels	Dec' 21	Jan' 21	Jul' 21	May' 18	Nov' 18	May' 19	May' 22	May' 23	Nov' 19	Nov' 20	Nov' 22	Nov' 23
MCQ												
MTP			Q3			Q1, Q4			Q2			
QA												
MTP						Q2, Q3	Q5					
PYP	Q1				Q4							
RTP											Q6	

SECTION A MULTIPLE CHOICE QUESTIONS (MCQ'S)

1. Where the ~~National Anti-Profitteering Authority~~ (**Competition Commission of India**) determines that a registered person has not passed on the benefit of input tax credit to the recipient by way of commensurate reduction in price, the Authority may order:

- i. reduction in prices
- ii. imposition of prescribed penalty
- iii. cancellation of registration

Which of the above options are correct?

- (a) i. and ii.
- (b) i., ii. and iii.
- (c) i. and iii.
- (d) i. (MTP 1 Marks Apr'19, May'20, Apr'21)

Ans:(b)

As per amendment with effect from 01.12.2022 rule 137 has been omitted, National Anti-profitteering Authority (NAA) ceases to exist and has been replaced by Competition Commission of India (CCI)

2. State which of the following statement is incorrect:

- (i) An agent, supplying goods on behalf of principal where invoice is issued in the name of principal, is required to get compulsorily registered under GST.
- (ii) Persons who are required to deduct tax under section 51, whether or not separately registered under this Act are compulsory required to get registered under GST without any threshold.
- (iii) Every person supplying online information and database access or retrieval services from a place outside India to a registered person in India is compulsory required to get registered under GST without any threshold.
- (iv) Persons who supply services, other than supplies specified under sub-section (5)

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of section 9, through such electronic commerce operator who is required to collect tax at source under section 52 are compulsory required to get registered under GST without any threshold.

- (a) (i), (ii)
- (b) (iii), (iv)
- (c) (i), (iii), (iv)
- (d) None of the above (MTP 2 Marks Oct'19)

Ans: (c)

3. Being aggrieved by the order of proper officer, a tax payer filed an appeal for issue of pending refund amount. The Appellate authority ordered in favor of tax payer and granted refund of Rs.5,00,000/- and interest of Rs.80,000 on that refund amount totalling to Rs. 5,80,000 on 06.10.2023. In its order, Authority instead of adding the interest to the refund, mistakenly subtracted Rs. 80,000 and refund granted in the order totalled to Rs. 4,20,000. The taxpayer vexed up with the next process and accepted Rs. 4,20,000 as refund and did not apply for rectification. The authority, suo moto wants to rectify the mistake after 3 years. What is the time limit for rectification of mistake apparent from record?

- (a) 3 months from the date of issue of order i.e., 06.01.2023.
- (b) 6 months from the date of issue of order i.e., 06.04.2023.
- (c) No time limit for rectification of mistake.
- (d) Since tax payer has not applied for rectification, mistake cannot be rectified.

(MTP 2 Marks Mar'21)

Ans: (c)

4. GST compliance rating shall be assigned to:

- (a) only a person who is liable to deduct TDS/ collect TCS
- (b) only a composition dealer
- (c) only an Input Service Distributor
- (d) every registered person (MTP 1 Marks Apr'19, Nov'21, Oct'23)

Ans: (d)

QUESTIONS AND ANSWERS

Question 1

Director General of Anti-Profiteering Authority—(Competition Commission of India), determines that a registered person, has not passed on the benefits of reduction of GST tax rates. List the different possible orders that may be passed by the said authority for the above finding. (PYP 5 Marks Dec'21)

Answer 1

Where the Authority (Competition Commission of India) determines that a registered person has not passed on the benefit, it may 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 @ 18% or recovery

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- of the amount including interest not returned, as the case may be
- (c) the deposit of an amount equivalent to 50% of the amount determined under the above clause along with interest @ 18% and the remaining 50% of the amount in the
 - (d) Consumer Welfare Fund of the concerned State, where the eligible person does not claim return of the amount or is not identifiable
 - a. imposition of prescribed penalty; and
 - b. cancellation of registration under GST.

Note – Students are advised to read 'Director General of Anti-Profiteering Authority' as '~~Anti-Profiteering Authority~~'. (**Competition Commission of India**)

Question 2

When shall the particulars relating to any proceedings or prosecution be published under GST laws? Discuss the relevant provisions. (MTP 4 Marks Apr'19)

Answer 2

When the Commissioner/authorized officer is of opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings or prosecution under the CGST Act in respect of such person, it may cause to be published such name and particulars [Section 159(1)].

No publication under this section shall be made in relation to any penalty imposed under the CGST Act until the time for presenting an appeal to the Appellate Authority under section 107 has expired without an appeal having been presented or the appeal, if presented, has been disposed of [Section 159(2)].

Question 3

Explain the provisions relating to rectification of errors apparent on the face of record under section 161. (MTP 5 Marks Mar'19, Mar'22, Apr'21)

Answer 3

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.

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Question 4

Elaborate the functions of Anti-profiteering Authority. (PYP 5 Marks Nov'18, RTP May'18)

As per amendment with effect from 01.12.2022 rule 137 has been omitted, National Anti-profiteering Authority (NAA) ceases to exist and has been replaced by Competition Commission of India (CCI)

Answer 4

The authority shall discharge the following functions, namely: -

- (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]

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

In many cases, examinees provided general answers. The duties of National Anti-Profiteering Authority were not amply corroborated by legal provisions.

Question 5

Explain the scope of circulars and instructions issued by the Board. (MTP 4 Marks Apr'22)

Answer 5

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.

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Question 6

Briefly answer the following questions with reference to the provisions of rectification of mistakes/errors apparent on the face of record by any authority, under section 161?

- Which documents are covered under section 161?**
- Who can rectify the errors apparent on the face of record?**
- What type of mistakes or errors can be rectified?**
- What is the time limit for rectification? (RTP Nov'22, MTP 4 Marks Mar'23)**

Answer 6

- Following documents are covered under section 161:
 - Decision
 - Order
 - Any notice
 - Certificate
 - Any other document
- 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 documents.
- Errors or mistakes which are apparent on the face of record may be rectified. Rectification can only be of error apparent from record. It is a settled law that a decision on a debatable point of law is not a mistake apparent from the record.
- No rectification can be made after a period of 6 months from the date of issue of such decision, order, notice, certificate or any other document.
However, such time limit does not apply in cases where the rectification is purely in the nature of correction of a clerical or arithmetical error or mistake, arising from any accidental slip or omission.

SECTION B

Question 1

Briefly explain how the GST compliance rating score is determined.

Answer 1

As per section 149(2), the GST compliance rating is determined on a scale of ten on the basis of prescribed parameters.

Question 2

When shall the particulars relating to any proceedings or prosecution be published under GST laws? Discuss the relevant provisions.

Answer 2

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)].

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Question 3

Explain the provisions relating to rectification of errors apparent on the face of record under section 161.

Answer 3

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.

Question 4

Write a short note on Anti-profiteering measure.

Answer 4

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. Competition Commission of India (CCI) 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. Henceforth, all investigations, based on complaints filed by consumers, will be done by the Directorate General of Anti- profiteering (DGAP) which will then submit a report to CCI.

Question 5

Elaborate the functions of Anti-profiteering Authority.

Answer 5

The authority shall discharge the following functions, namely:-

- (v) 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
- (vi) to identify the taxpayer who has not passed on the benefit
- (vii) 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%

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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

(viii) to furnish a performance report to the GST Council by the 10th of the month succeeding each quarter [Rule 127 of the CGST Rules, 2017]

Question 6

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 6

Section 169(1) provides that any decision, order, summons, notice or other communication under the CGST Act and the rules made thereunder can be served by any one of the following methods:

- (a) Giving/tendering directly including by a courier to the addressee or authorised representative or to any adult member of family residing with the taxable person; or
- (b) By Registered post/speed post/courier with acknowledgement due at the last known place of business or residence; or
- (c) By Email to the e-mail address provided at the time of registration or as amended from time to time; or
- (d) By making the same available at common portal; or
- (e) Publication in newspaper circulating in the locality in which the addressee is last known to have resided, carried on business or personally worked for gain; or
- (f) If none of the above modes is practicable then by Affixing at last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority concerned.

Question 7

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 7

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

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- iii) For service of notice or recovery of demand
- iv) For furnishing information to Court in a proceeding where Government is a party
- v) For audit of tax receipts or refunds
- vi) For inquiry into the conduct of a GST officer
- vii) For enabling levy, realisation of any tax or duty
- viii) In lawful exercise of powers
- ix) For enquiry into a charge of misconduct by any professional
- x) For data entry on automated system
- xi) For fulfilling the requirement under any other law and in public interest.

Question 8

Explain the scope of circulars and instructions issued by the Board.

Answer 8

Section 168 empowers the Board (CBIC) to issue orders, instructions or directions to the CGST officers for the purpose of uniformity in the implementation of the CGST Act. All officers and all other persons employed in the implementation of the Act observe and follow such orders, instructions or directions.

The binding nature of such orders, instructions and directions has been a matter of debate and scrutiny. The general understanding that prevails now is that a circular is binding on the officers, but not on the assessee. However, in case such circular states something contrary to the law, the law shall prevail over the circular.

Question 9

'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 9

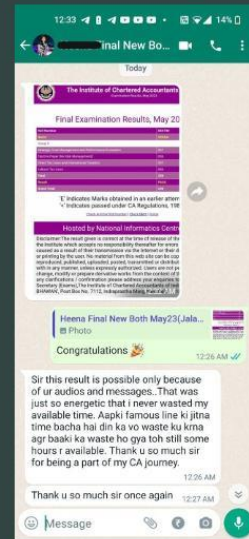
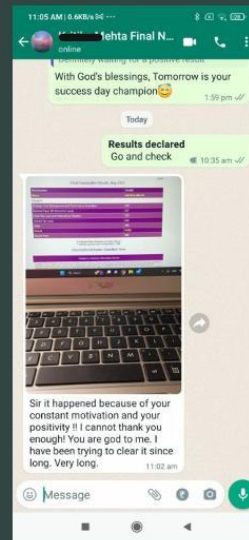
The statement is not correct.

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.

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Chapter 25 Levy Of And Exemptions From Customs Duty

Attempts wise Distribution

Row Labels	Dec' 21	Jan' 21	Jul' 21	May' 18	Nov' 18	May' 19	May' 22	May' 23	Nov' 19	Nov' 20	Nov' 22	Nov' 23
MCQ												
MTP	Q4		Q5, Q6						Q1, Q14, Q15	Q2, Q3	Q7, Q8, Q9	
RTP						Q10			Q11	Q12		Q13
QA												
MTP	Q8			Q15, Q16	Q13		Q9			Q14		
PYP	Q12	Q11	Q1, Q3						Q5		Q4, Q6	
RTP				Q7				Q2			Q10	

SECTION A

MULTIPLE CHOICE QUESTIONS (MCQ'S)

1. The taxable event under the Customs Act, 1962 is:
- Import of goods into India/ export of goods from India;
 - Supply of goods into India/ Supply of goods from India to outside India;
 - Sale of goods into India/ Sale of goods outside India;
 - Manufacture of goods into India for supply outside India. **(MTP 1 Mark Oct'19, Oct'20)**

Ans: (a)

2. Which of the following is correct for destroyed goods under section 23 of the Customs Act, 1962?

- It is only applicable in case of total loss of goods even if the same can be recovered.
- The importer is not required to pay duty on such goods.
- The provisions are also applicable even if goods are destroyed after warehousing.
- The importer need not prove the loss to the proper officer. **(MTP 1 Mark May'20, Apr'21, Oct'21)**

Ans: (c)

3. In which of the following cases, importer can claim pilferage and choose not to pay duty under section 13 of the Customs Act, 1962?
- Goods pilfered while on high seas;
 - Goods pilfered before unloading;
 - Goods pilfered after unloading but before order for home consumption given by proper officer;
 - Goods cleared for home consumption.

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- (a) (i) and (ii)
- (b) (i) and (iii)
- (c) Only (ii)
- (d) Only (iii) **(MTP 1 Mark May'20, Apr'21, MTP 2 Marks, Mar'22, Oct'23)**

Ans: (d)

4. In which of the following cases, can an importer claim abatement of duty under section 22 of the Customs Act, 1962?

- i. Goods pilfered during unloading;
- ii. Goods damaged by accident (due to negligence of the importer) after unloading but before examination for assessment by customs authorities;
- iii. Goods destroyed by accident while in warehouse (due to negligence of the importer);
- iv. Goods deteriorated by accident (not due to negligence of the importer) after unloading but before examination for assessment by customs authorities.

- (a) Only (iv)
- (b) Only (iii)
- (c) Both (i) and (iii)
- (d) Only (ii) **(MTP 1 Mark May'20, Apr'21, MTP 2 Marks Nov'21, Mar'22)**

Ans: (a)

5. Which of the following statements is correct in case of pilfered goods under Customs?

- (a) Refund of duty can be claimed in case of pilfered goods
- (b) Duty is not required to be paid in case of pilfered goods.
- (c) Duty drawback can be availed in case of pilfered goods.
- (d) Duty is payable at the reduced rates in case of pilfered goods. **(MTP 1 Mark Mar'21)**

Ans: (b)

6. Which of the following statements is most appropriate in case of dutiable goods under customs law?

- (a) Dutiable goods means any goods which are chargeable to duty.
- (b) Dutiable goods means any goods on which duty has not been paid.
- (c) Dutiable goods means any goods which are chargeable to duty and on which duty has been paid.
- (d) Dutiable goods means any goods which are chargeable to duty and on which duty has not been paid. **(MTP 1 Mark Mar'21)**

Ans: (d)

7. In which of the following cases, can an importer claim abatement of duty under section 22 of the Customs Act, 1962?

- (i) Goods pilfered during unloading
- (ii) Goods damaged by accident (due to negligence of the importer) after unloading but before examination for assessment by customs authorities

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- (iii) Goods destroyed by accident while being removed from the warehouse after clearance for home consumption
- (iv) Goods damaged by accident (not due to negligence of the importer) after unloading but before examination for assessment by customs authorities

Choose the most appropriate option.

- (a) Only (iv)
- (b) Only (iii)
- (c) Both (i) and (iii)
- (d) (i), (ii), (iii) and (iv) (MTP 2 Marks Sep'22)

Ans: (a)

8. Advaita Ltd. sent certain goods abroad for repairs. Advaita Ltd. has been advised by their consultants that they will have to pay customs duty (i.e. basic customs duty, IGST & GST compensation cess) only on fair cost of repairs, cost of materials used in repairs (whether such costs are actually incurred or not), freight and insurance charges, both ways, on re-import of exported goods under Notification No. 45/2017 Cus dated 30.06.2017 provided they fulfill following conditions:

- (i) The re-importation is done within 3 years from date of export or, if time is extended, within 5 years.
- (ii) The exported and re-imported goods are same.
- (iii) The ownership of goods should not have changed.

Which one of the above-mentioned conditions is/are correct? Choose the most appropriate option.

- (a) (i), (ii) and (iii)
- (b) (ii) and (iii)
- (c) (i) and (iii)
- (d) Only (ii) (MTP 2 Marks Oct'22, Apr'22)

Ans: (a)

9. The relevant date for determining the rate of exchange in case of imported goods is:

- (a) date when the vessel leaves the exporter's port for India.
- (b) date of presentation of bill of entry.
- (c) date of examination of goods by proper officer.
- (d) date of deposit of duty. (MTP 1 Mark Oct'22)

Ans: (b)

10. Which of the following statements is not correct for pilfered goods under section 13 of the Customs Act, 1962?

- (a) The importer is not required to pay duty on imported goods which are pilfered after unloading but before being cleared for home consumption.
- (b) The importer is not required to pay duty on warehoused goods which are pilfered before being cleared for home consumption.
- (c) The onus to prove the pilferage does not lie on the importer.
- (d) If pilfered goods are restored to the importer, he becomes liable to pay duty. (RTP May'19)

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Ans: (b)

11. Which of the following combinations is correct?

Situation	Consequence
1. Goods pilfered	1. Abatement of duty
2. Goods lost or destroyed	2. No liability pay customs duty
3. Goods damaged or deteriorated	3. Remission of duty

- (a) 1 and 1, 2 and 2, 3 and 3
 (b) 1 and 3, 2 and 1, 3 and 2
 (c) 1 and 2, 2 and 3, 3 and 1
 (d) 1 and 2, 2 and 1, 3 and 3 **(RTP Nov'19)**

Ans: (c)

12. Outline the stepwise procedure of import of goods into India.

- i. Grant of entry inwards to vessel
- ii. Filing of Import General Manifest
- iii. Unloading of goods
- iv. Assessment of goods
- v. Filing of Bill of Entry
- vi. Payment of duty

- (a) (i), (ii), (iii), (iv), (v), and (vi)
 (b) (ii), (iii), (i), (iv), (v), and (vi)
 (c) (iii), (ii), (i), (vi), (v), and (iv)
 (d) (ii), (i), (iii), (v), (iv) and (vi) **(RTP May'20)**

Ans: (d)

13. Which of the following statements is correct for destroyed goods under section 23 of the Customs Act, 1962?

- (a) It is applicable in case of total loss of goods even if same can be recovered.
 (b) The provisions of this section are also applicable if goods are lost due to pilferage at any time before clearance for home consumption.
 (c) The provisions of this section are also applicable even if the goods are destroyed at the warehouse.
 (d) The importer need not prove the loss to the proper officer. **(RTP Nov'23)**

Ans: (c)

14. Read the following and choose the correct option:

- i. Indian customs waters extend up to 12 nautical miles;
- ii. Indian customs waters extend up to 24 nautical miles;
- iii. Indian customs waters extend up to exclusive economic zone of India;
- iv. Indian customs waters include territorial waters and extend up to 200 nautical miles.

- (a) Only (ii)
 (b) (iii) and (iv)
 (c) (ii) and (iv)
 (d) Only (iv) **(MTP 1 Mark Oct'19, Oct'21)**

Ans: (b)

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15. Which of the following statement(s) is/are correct?

- (i) Special exemption under section 25 of the Customs Act is granted by issuing a notification;
- (ii) General exemption under section 25 of the Customs Act is granted by issuing an order;
- (iii) Special exemption is required to be published in official gazette;
- (iv) General exemption is not required to be published in official gazette.
 - (a) All of above
 - (b) None of above
 - (c) Both (i) and (ii)
 - (d) (ii) and (iv) (MTP 1 Mark Oct'19, MTP 2 Marks, Oct'21)

Ans: (b)

QUESTIONS AND ANSWERS

Question 1

Mr. Chandrakant imported a car from Britain (UK). After the car arrived in the port and was unloaded, he went and saw the car and found that it was damaged and it was possible to get the car repaired and use it. The examination by Customs for the purpose for assessment is not over. He has come to you seeking advice as to what are the options available to him under the Customs Act, 1961?

(PYP 5 Marks Jul'21)

Answer 1

Where any imported goods, other than warehoused goods, had been damaged at any time after unloading but before their examination by customs authorities, on account of any accident not due to any willful act, negligence or default of the importer, abated duty shall be charged on said goods.

In the given case, the imported goods have been damaged after unloading but before examination and such damage is not due to negligence of the importer. Therefore, benefit of abated duty will be available to Mr. Chandrakant.

He can either get the damaged car valued by the proper officer or it may be sold by the proper officer by public auction or by tender, or with the consent of Mr. Chandrakant in any other manner, and the gross sale proceeds shall be deemed to be the value of such car.

The duty charged on damaged car will be computed as under: = Duty on car before damage × (Value of damaged car/Value of car before damage)

Question 2

Great Year Ltd. imported a offset printing machine from Germany for ₹ 5.00 crores and the bill of entry for home consumption was cleared in October, 2019 on payment of duty. However, due to certain technical glitches, the said machine could not be started functioning and the said machine was sent-back to the supplier for repairs in November, 2019. The manufacturer of machinery in Germany had made necessary repairs and had sent back the machine again to Great Year Ltd.

Accordingly, Great Year Ltd. re-imported the machine without any re-manufacturing or reprocessing in March 2020. Since the machine was having manufacturing defect, the repairs were carried out by the machine manufacturer without charging any amount for the repairs. However, the fair cost of repairs

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carried out including cost of material consumed during repairs for ₹ 70 lakh, would have been ₹ 90 lakh.

Actual insurance and freight charges incurred were ₹ 7.5 lakh each side from India to Germany and from Germany to India. Assume the rate of basic customs duty is 10%, social welfare surcharge is 10% and integrated tax is 18%.

You are required to compute the amount of customs duty payable (if any) on re-importation of the machine. Make the necessary assumptions, if required. Also, provide the exemption, if any, with regard to re-importation of goods which had been exported for repairs abroad.

(PYP 5 Marks Jan'21, RTP May'23)

Answer 2

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 material used in repairs (whether such costs are actually incurred or not), insurance and freight charges, both ways. However, following conditions need to be satisfied for availing this concession:

- goods must be re-imported within 3 years, extendable by further 2 years, after their exportation;
- exported goods and the re-imported goods must be the same;
- Ownership of the goods should not change.

Since all the conditions specified above are fulfilled in the given case, the customs duty payable on re-imported goods will be computed as under:

Particulars	₹ in lakh
Value of goods re-imported after exports [₹ 90 lakh (including cost of materials) + (insurance and freight charges, both ways ₹ 7.5 × 2) lakh]	105.000
Add: Basic customs duty @ 10% (A)	10.500
Add: Social welfare surcharge @ 10% on ₹10.5(B)	1.050
Value for computing integrated tax	116.550
Integrated tax @ 18% (₹ 117 lakh × 18%) - (C)	20.979
Customs duty and integrated tax payable [(A) +(B)+ (C)]	32.529

Question 3

Determine the customs duty payable under the Customs Tariff Act, 1975 including the safeguard duty of 25% under section 8B of the said Act with the following information made available by the importer:

Assessable value of fibre granules imported from three developing countries during July 2020	₹ 25,00,000
Share of imports of fibre granules from three developing countries taken together against total imports of fibre granules to India	10%
Rate of basic customs duty	10%
Rate of integrated tax	12%
Rate of social welfare surcharge	10%

(PYP 5 Marks Jul'21)

Answer 3

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Computation of customs duty payable including the safeguard duty payable thereon

Particulars	Amount (₹)
Assessable value of fibre granules imported	25,00,000
Add: Basic custom duty @ 10% (₹ 25,00,000 × 10%)	2,50,000
Safeguard duty @ 25% on ₹ 25,00,000 [Safeguard duty is imposable in the given case since share of imports of fibre granules from the three developing countries taken together exceeds 9% of the total imports of fibre granules into India.]	6,25,000
Social welfare surcharge @ 10% of ₹ 2,50,000	25,000
Total	34,00,000
Integrated tax (₹ 34,00,000 × 12%) [Value for calculation of integrated tax shall also include safeguard duty amount.]	4,08,000
Total customs duty payable ₹ (2,50,000 + 6,25,000 + 25,000 + 4,08,000)	13,08,000

Question 4

KIP Chemical, Ahmedabad, Gujarat supplies goods to ACCP, Bharuch, situated in Dahez SEZ (Gujarat). Examine with reference to decided case law, whether such supply is chargeable to export duty under the provisions of Customs Act, 1962. (PYP 5 Marks Nov'22)

Answer 4

Supply made by KIP Chemical, Gujarat, to ACCP situated in Dahez SEZ, Gujarat is not chargeable to export duty.

In a judicial pronouncement¹², it is held that the clearances of goods from DTA to SEZ are not chargeable to export duty on the basis of the following observations:-

- The charging section under Customs Act 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.

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 charging section for customs duty. Since there is no charging provision in the SEZ Act providing for levy and collection of export duty on goods supplied by a DTA unit to a Unit in a SEZ, export duty cannot be levied on the DTA supplier.

¹² vide Tirupati Udyog Ltd. v. UOI 2011 (272) E.L.T. 209 (A.P.). View taken in said case has also been confirmed in Essar Steel v. UOI 2010 (249) ELT 3 (Guj.) [maintained by SC] wherein the Departmental appeal has been dismissed by Supreme Court on 12.07.2010 - 2010 (255) ELT A115.

Question 5

Under which provisions of Constitution of India, government is empowered to levy taxes, custom duty and export duties. You are required to write a note on

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related provisions and restrictions under the Constitution of India. (PYP 5 Marks May'23)

Answer 5

Constitution 9 provides that no tax shall be levied or collected except by authority of law.

Entry 83 of Union List or List I of Seventh Schedule to the Constitution has given the power to the Union to frame laws to levy duties of customs including export duties.

Constitution 18 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 and/or export of the goods or services or both into and/or out of territory of India it solely lies with the Union, i.e. the Parliament of India.

Question 6

Mr. X, a chemical manufacturer, imports a machine from Germany on 12 th January, 2023 for ₹ 20 lakh. Mr. X is eligible for concessional rate of customs duty on capital goods imported by him subject to the condition that he follows the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. Machinery was put to use on 1st February, 2023. On 5th April, 2023, Mr. X wants to clear the machine for home consumption after having used the machine for the specified purpose for which it was imported. Mr. X requires your help in calculating the customs duty he will be liable to pay for such clearance as per rule 7 of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. Concessional rate of basic customs duty is 5%. Normal rate of basic customs duty is 20%. Calculate the basic customs duty payable by Mr. X on clearance of such capital goods for home consumption on 5th April, 2023. Ignore interest calculation. (PYP 5 Marks Nov'22)

Answer 6

Computation of basic customs duty payable by Mr. X

An importer who has imported the capital goods availing benefit of an exemption notification, may clear such goods after using them for specified purpose, on payment of duty equal to difference between the duty leviable on such goods without exemption and duty already paid at the time of importation, along with interest, on the depreciated value allowed in straight line method, as below:

- (i) for every quarter in the first year @ 4%;
- (ii) for every quarter in the second year @ 3%;
- (iii) for every quarter in the third year @ 3%;
- (iv) for every quarter in the fourth and fifth year @ 2.5%;
- (v) and thereafter for every quarter @ 2%.

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Thus, depreciation % will be computed as follows: 2023 : 4 quarter x 4 = 16%

2023 : 4 quarter x 3 = 12%

2024 : 4 quarter x 3 = 12%

2025 : 2 quarter x 2.5 = 5%

Total depreciation % will be 45%

Depreciation amount will be : 45% of ₹ 20 Lakh = ₹ 9 lakh

Depreciated value of the machine is ₹ 20 Lakh – ₹ 9 lakh = ₹ 11 lakh

Accordingly, basic customs duty payable by Mr. X will be computed as follows:

= [₹ 11 lakh × 20%] - [₹ 20 lakh × 5%]

= ₹ [2.20-1.00] lakh

= ₹ 1.20 lakh

Question 7

Examine the validity of the following statements:

- A beneficial owner of imported goods is a person on whose behalf the goods are being imported.**
- Customs area does not include a warehouse.**
- Customs station includes international courier terminal. (RTP May'18)**

Answer 7

- 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.
- 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.
- 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 section 2(13), a customs station means any customs port, customs airport, international courier terminal, foreign post office or land customs station.

Question 8

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.

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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.

sExamine 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?

(MTP 5 Marks Nov'21 & Oct'22, Oct'23, PYP 5 Marks Nov'18)

Answer 8

The two different situations here are (i) damage after unloading and (ii) deterioration after unloading.

The abatement of duty is allowed under section 22(b) 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.

Question 9

M/s. AB, 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. (MTP 5 Marks Mar'22)

Answer 9

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

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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 AB for selling the surplus power in domestic tariff area for the following reasons:

- (i) They have used the DG sets and furnace oil imported duty free for generation of power, and
- (ii) such power generated has been used for manufacturing goods for export, and
- (iii) only the surplus power has been sold, as power cannot be stored.

Question 10

BCG Ltd. imported goods from Japan and intends to avail the benefit of an exemption notification issued under section 25(1) of the Customs Act, 1962 with regard to said goods. However, since it does not have a manufacturing facility at all, it needs to send the goods so imported for job work to a job worker. Its accountant advised it that as per the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, BCG Ltd. is not permitted to send such goods for job work. You are required to advise BCG Ltd. on the said issue elaborating the relevant legal provisions under the customs law. (RTP Nov'22)

Answer 10

As per rule 6A of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, the importer is permitted to send the goods for job work. The said rule stipulates that the importer shall maintain a record of the goods sent for job work during the month and mention the same in the prescribed monthly statement. The importer shall send the goods to the premises of the job worker under an invoice or wherever applicable through an e-way bill, mentioning the description and quantity of the goods. The maximum period for which the goods can be sent to the job worker shall be 6 months from the date of the invoice/e-way bill.

In case the importer is not able to establish that the goods sent for job work have been used as per the particulars mentioned under rule 4 of the said rules, the Jurisdictional Custom Officer shall take prescribed necessary action against the importer.

The job worker shall -

- (i) maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;
- (ii) produce the account details before the Jurisdictional Custom Officer as and when required by the said officer; and
- (iii) after completion of the job work, send the processed goods to the importer or to another job worker as directed by the importer for carrying out the remaining processes, if any, under the cover of an invoice or an e-way bill.

Question 11

Elaborate the meaning and historical background of "customs". Also elucidate the constitutional entries/provisions which provide the power to make laws relating to customs duty, and who possesses the power to make such laws. (PYP 5 Marks Jan'21)

Answer 11

The term 'customs' derives its colour and essence from the term 'custom', which means a habitual practice or course of action that characteristically is repeated in like circumstances.

Duties on import and export of goods were levied through legislations during the British period before which, during monarchical governance, said duty was collected at

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the city gates at the time of goods coming in and going out. The legislations of the British period were replaced by the enactment and promulgation of the Customs Act, 1962 and the Customs Tariff Act, 1975

The power to make laws is conferred on the Parliament and the legislature of a State by Article 245 of the Constitution of India. Further, entry 83 of the List I [Union List] of the Seventh Schedule to Article 246 of the Constitution of India grants the power to frame laws relating to customs duty. The power to make laws relating to customs duty vests exclusively with the Parliament.

Question 12

Supreme Car Decors imported car music systems and GPS devices from Germany. The importer submits the following issues for your consideration:

- (iii) **7 music systems were pilfered before unloading and before the proper officer has made an order for clearance for home consumption.**
- (iv) **10 GPS devices were pilfered after unloading and before the proper officer has made an order for clearance for home consumption.**
- (v) **30 music systems were damaged after unloading and examination for assessment by the customs authorities but before actual home clearance.**

Supreme Car Decors seeks your expert advice with reason regarding the impact on customs duty on the said goods. (PYP 5 Marks Dec'21)

Answer 12

- I. Duty is not leviable on the music systems pilfered before unloading since import duty is leviable only when import is completed; import gets completed only when goods become part of the mass of goods within the country.
However, it is also possible to take a view that duty is payable on the music systems pilfered before unloading since an importer is not liable to pay duty leviable on pilfered imported goods only if such goods are pilfered after unloading and before proper officer makes order for clearance for home consumption.
- II. Supreme Car Decors is not liable to pay duty leviable on GPS devices pilfered since an importer is not liable to pay duty leviable on any imported goods pilfered after unloading and before proper officer makes order for clearance for home consumption.
- III. Abatement of duty on damaged imported goods is available if such imported goods are damaged accidentally after unloading but before examination for assessment by the customs authorities.
In the given case, since imported music systems⁴ are damaged after examination for assessment by the customs authorities, abatement of duty on such goods is not available.

⁴ It has been assumed that that the imported music systems have not been warehoused.

Question 13

An importer imported a consignment weighing 10,000 tons. The importer 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. The importer thereafter found, on taking delivery from the Port Trust Authorities i.e., before the clearance for home consumption, that only 9,000 tonnes of inputs were available at the docks although he had paid duty for the entire 10,000 tonnes.

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There was no short-landing of cargo. The short- delivery of 1,000 tonnes was also substantiated by the Port Trust Authorities, who gave a weighment certificate to the importer.

On filing a representation to the Customs Department, the importer has been directed in writing to justify as to which provision of the Customs Act, 1962 governs his claim for remission of duty on the 1,000 tonnes not delivered by the Port Trust. Examine the issue and tender your opinion as per law, giving reasons.

(MTP 5 Marks Oct'18, PYP 5 Marks May'18)

Answer 13

As per section 23(1) of the Customs Act, 1962, 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 inputs received in India was 10,000 tonnes and 1,000 tonnes thereof was lost when it was in custody of Port Authorities i.e., before clearance for home consumption was made. Further, the loss of 1,000 tonnes of inputs cannot be construed to be pilferage, as loss of such huge quantity cannot be treated as "Petty Theft".

Hence, the aforesaid provisions of law justify the importer's claim for remission of duty.

Question 14

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. (MTP 5 Marks May'20 & Apr'21)

Answer 14

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

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reasonable time so as to enable the importer to avail of the benefits under the notification.

Question 15

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 customs duty 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 with the help of a decided case law whether the importer could claim the benefit of the aforesaid notification in respect of the entire lot of the imported inputs including those that were damaged in transit. (MTP 5 Marks Mar'18, Aug'18, Oct'20, Mar'21, Oct'21, Apr'22, Oct'19)

Answer 15

The facts of the case are similar to the case of BPL Display Devices Ltd. v. CCE., Ghaziabad (2004) 174 ELT 5 (SC) wherein the Supreme Court has held that the benefit of the notifications cannot be denied in respect of goods which are intended for use for manufacture of the final product but cannot be so used due to shortage or leakage. The Apex Court has held that no material distinction can be drawn between loss on account of leakage and loss on account of damage. The benefit of said exemption cannot be denied as inputs were intended for use in the manufacture of final product but could not be so used due to shortage/leakage/damage. It has been clarified by the Supreme Court that words "for use" have to be construed to mean "intended for use".

Therefore, the importer can claim the benefit of the notification in respect of the entire lot of the inputs imported including those that were damaged in transit.

Question 16

What will be the impact on the customs duty if the goods are –:

- (i) **damaged inside the warehouse before clearance for home consumption. (MTP 2 Marks Apr'18)**
- (ii) **destroyed in the warehouse before clearance for home consumption. (MTP 2 Marks Apr'18)**
- (iii) **destroyed on the wharf, before clearance for home consumption. (MTP 1 Mark Apr'18)**

Answer 16

- (i) When the goods are damaged inside the warehouse abatement in customs duty, on resultant loss in value, has been provided through section 22 of the Customs Act, 1962. Section 22 contemplates that for claiming abatement of duty, the damage (not deterioration) should occur at any time before clearance of the imported goods for home consumption from the warehouse. However, the damage should not be attributable to the importer. It should be proved to the satisfaction of Assistant Commissioner or Deputy Commissioner of Customs that the imported goods have actually suffered damages. The claim for abatement is not tenable unless the importer factually proves the damage. The following equation provides the way to calculate the abatement of duty.

$$\frac{\text{Duty after damage}}{\text{Duty before damage}} = \frac{\text{Value after damage}}{\text{Value before damage}}$$

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- (ii) When the goods are destroyed in the warehouse before clearance for home consumption, customs duty will be remitted as per the provisions of section 23 of the Customs Act, 1962. Section 23(1) applies when the goods have been lost (otherwise than as a result of pilferage) or destroyed in entirety i.e. whole or part of goods is lost once for all. The goods cease to exist and cannot be retrieved. The loss is generally on account of natural causes such as fire, flood etc., and no human element is present as in section 13 of the Customs Act, 1962. The loss or destruction may occur at any time before clearance for home consumption. The loss/destruction has to be proved to the satisfaction of Assistant Commissioner or Deputy Commissioner.
- (iii) As all the conditions of section 23 of the Customs Act, 1962 are fulfilled, duty will be remitted in this case also.

SECTION B

Question 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 & Agriculture infrastructure and development 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 1

As per Notification No. 45/2017 Cus. dated 30.06.2017, duty payable on re- importation of goods which had been exported for repairs abroad is the duty of customs which would be leviable if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not), insurance and freight charges, both ways. However, following conditions need to be satisfied for availing this concession:

- goods must be re-imported within 3 years, extendable by further 2 years, after their exportation;
- exported goods and the re-imported goods must be the same;
- ownership of the goods should not change.

Since all the conditions specified above are fulfilled in the given case, the customs duty payable on re imported goods will be computed as under.

Particulars	₹
Value of goods re-imported after exports	₹ 9 lakh (including cost of
	12,00,000

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materials) + ₹ 3 lakh]	
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

Question Illustration 2

Distinguish between Jetsam and Flotsam

Answer 2

Jetsam and Flotsam are goods which are jettisoned (i.e. thrown with speed) from the vessel into the sea to reduce weight of vessel to prevent it from sinking. They are not abandoned goods. Jetsam gets sunk whereas Flotsam does not sink but floats. Duty is payable on both unless they are entitled to be admitted free of duty.

Question Illustration 3

An importer imported consignment of goods chargeable to duty @ 40% ad valorem. The vessel arrived on 31st May. A bill of entry for warehousing the goods was presented on 2nd June and the goods were duly warehoused. In the meantime, an exemption notification was issued on 15th October reducing the effective customs duty to 25% ad valorem.

Thereafter, the importer filed a bill of entry for home consumption on 20th October claiming 25% duty. The customs Department charged higher rate of duty @ 40% ad valorem. Give your views on the same, discussing the relevant provisions of the Customs Act, 1962.

Answer 3

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 (the date on which the bill of entry for home consumption is presented) and thus, the relevant rate of duty will be 25%.

Question & Answer 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 2,000 to 10,000).

Question 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

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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 5

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 6,000 metric tonnes and 500 metric tonnes thereof was lost when it was in custody of Port Authorities i.e. before clearance for home consumption was made. Also, the loss of 500 MT of scrap cannot be construed to be pilferage, as loss of such huge quantity cannot be treated as “Petty Theft”.

Hence, Peerless Scraps may take shelter under section 23 justifying his claim for remission of duty.

Question 6

What are the provisions relating to effective date of notifications issued under section 25 of the Customs Act, 1962?

Answer 6

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.

However, where any exemption is granted subject to any condition, such exemption shall, unless otherwise specified or varied or rescinded, be valid up to 31st day of March falling immediately after two years from the date of such grant or variation.

Further, However limited period of validity shall not apply to any such exemption granted to, or in relation to,—

- (a) any multilateral or bilateral trade agreement;
- (b) obligations under international agreements, treaties, conventions or such other obligations including with respect to United Nations agencies, diplomats and international organisations;

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- (c) privileges of constitutional authorities;
- (d) schemes under the Foreign Trade Policy;
- (e) the Central Government schemes having validity of more than two years;
- (f) re-imports, temporary imports, goods imported as gifts or personal baggage;
- (g) any duty of customs under any law for the time being in force, including integrated tax leviable under sub-section (7) of section 3 of the Customs Tariff Act, 1975, other than duty of customs leviable under section 12.

The above rules do not apply to exemptions granted through special orders. Special orders are issued separately for each case and communicated to the beneficiary directly by the Government.

Question 7

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 7

This issue has been addressed by the Supreme Court in the case of Commissioner of Customs v. Tullow India Operations Ltd. (2005) 189 ELT 401 (SC). The Apex Court has observed that if a condition is not within the power and control of the importer and depends upon the acts of public functionaries, non-compliance of such a condition, subject to just exceptions cannot be held to be a condition precedent which would disable it from obtaining the benefit for all times to come.

In the given case also the certificate has not been granted within a reasonable time. Therefore, in view of the above-mentioned judgement, the importer M/s Pure Energy Ltd. cannot be blamed for the lapse by the authorities. The Directorate General of Hydrocarbons is under the Ministry of Petroleum and Natural Gas and such a public functionary is supposed to grant the essentiality certificate within a reasonable time so as to enable the importer to avail of the benefits under the notification.

Question 8

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.

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Do you think the demand of the Customs Department is valid in law.

Answer 8

The facts of the case are similar to the case of Commissioner v. Hanil Era Textile Ltd. 2005 (180) ELT A44 (SC) wherein the Supreme Court agreed to the view taken by the Tribunal that in the absence of a restrictive clause in the notifications that imported goods are to be solely or exclusively used for manufacture of goods for export, there is no violation of any condition of notification, if surplus power generated due to unforeseen exigencies is sold in domestic tariff area.

Therefore, no duty can be demanded from M/s XYZ for selling the surplus power in domestic tariff area for the following reasons:

- (i) They have used the DG sets and furnace oil imported duty free for generation of power, and
- (ii) such power generated has been used for manufacturing goods for export, and
- (iii) only the surplus power has been sold, as power cannot be stored.

Question 9

Referring to section 25 of the Customs Act, 1962, discuss the following:

- (i) **Special exemption**
- (ii) **General exemption**

Answer 9

- (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.

However, where any exemption is granted subject to any condition, such exemption shall, unless otherwise specified or varied or rescinded, be valid up to 31st day of March falling immediately after two years from the date of such grant or variation.

Further, limited period of validity shall not apply to any such exemption granted to, or in relation to,—

- (a) any multilateral or bilateral trade agreement;
- (b) obligations under international agreements, treaties, conventions or such other obligations including with respect to United Nations agencies, diplomats and international organisations;
- (c) privileges of constitutional authorities;

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- (d) schemes under the Foreign Trade Policy;
- (e) the Central Government schemes having validity of more than two years;
- (f) re-imports, temporary imports, goods imported as gifts or personal baggage;
- (g) any duty of customs under any law for the time being in force, including integrated tax leviable under sub-section (7) of section 3 of the Customs Tariff Act, 1975, other than duty of customs leviable under section 12.

Further, this exemption applies to all importers while exemption under section 25(2) is for specific importer and specific goods under import.

Question 10

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 10

- (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, the importer is not liable to pay the duty on the said pilfered goods unless the pilfered goods are restored to importer. In such a case, duty on pilfered goods is payable by the Port authorities. Also, the importer does not have to prove pilferage. However, the loss must be only due to pilferage. Section 13 is not applicable for warehoused goods.

Question 11

Distinguish between Pilfered goods and Lost/destroyed goods

Answer 11

	Pilfered goods	Lost/Destroyed goods
1.	Covered by section 13	Covered by section 23(1)
2.	Importer is not liable to pay duty on these 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

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		recognized
8.	Duty need not be calculated	Duty should be calculated for determining the remission amount
9.	No need to prove pilferage. It is quite obvious	Should be proved and remission sought for

Question 12

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 12

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).
 - (v) certain goods, listed in the notification, are not covered by this exemption.

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[Notification No. 158/95 Cus. dated 14.11.1995 as amended vide Notification No. 60/2018 Cus dated 11.09.2018]

Question 13

Write a brief note on stages of imposition of taxes and duties.

Answer 13

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.

The final stage is where the tax or duty is actually collected. The collection of tax or duty may for administrative or other reasons be postponed to a later time.

Question 14

Discuss the provisions relating to denaturing or mutilation of goods.

Answer 14

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.

Question 15

Briefly explain the provisions relating to abatement of duty on damaged or deteriorated goods under section 22 of the Customs Act, 1962.

Answer 15

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)].

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The duty to be charged on the goods referred to in sub-section (1) shall bear the same proportion to the duty chargeable on the goods before the damage or deterioration which the value of the damaged or deteriorated goods bears to the value of the goods before the damage or deterioration [Sub-section (2)].

For the purposes of this section, the value of damaged or deteriorated goods may be ascertained by either of the following methods at the option of the owner:-

- (a) the value of such goods may be ascertained by the proper officer, or
- (b) such goods may be sold by the proper officer by public auction or by tender, or with the consent of the owner in any other manner, and the gross sale proceeds shall be deemed to be the value of such goods [Sub-section (3)].

Question 16

Briefly explain the following with reference to the provisions of the Customs Act, 1962:

- (i) **Indian customs waters**
- (ii) **India**

Answer 16

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)].

India includes not only the surface of sea in the territorial waters, but also the air space above and the ground at the bottom of the sea.

Question 17

Distinguish between Indian territorial waters and Indian custom waters.

Answer 17

Indian customs waters cover both the Indian territorial waters and exclusive economic zone as well. Indian territorial waters extend up to 12 nautical miles (nm) from the base line Whereas, exclusive economic zone of India is an area beyond the Indian territorial waters. The limit of exclusive economic zone is 200 nautical miles from the nearest point of the baseline. Therefore, Indian customs waters extend to a total of 200 nm from base line.

Question 18

Write a brief note on the constitutional provisions governing the levy of customs duties.

Answer 18

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

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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.

Question 19

Examine the validity of the following statements:

- (d) **A beneficial owner of imported goods is a person on whose behalf the goods are being imported.**
- (e) **Customs area does not include a warehouse.**
- (f) **Customs station includes international courier terminal.**

Answer 19

- (d) 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.
- (e) The statement is not valid. The definition of customs area includes within its ambit a warehouse too.

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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.

- (f) 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 section 2(13), a customs station means any customs port, customs airport, international courier terminal, foreign post office or land customs station.

Question 20

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 20

The two different situations here are (i) damage after unloading and (ii) deterioration after unloading.

The abatement of duty is allowed under section 22(b) 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

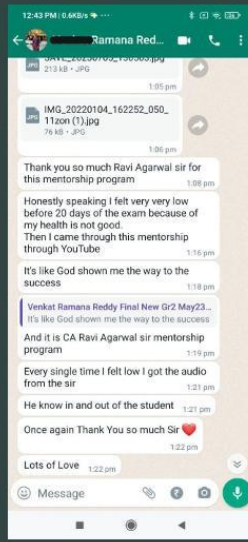
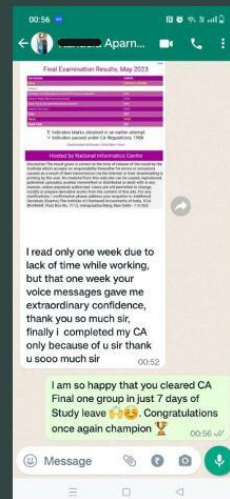
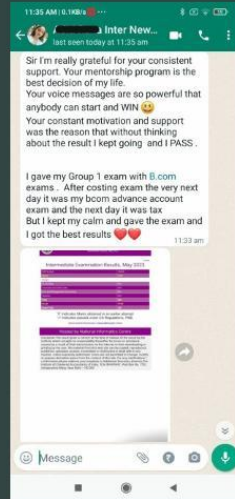
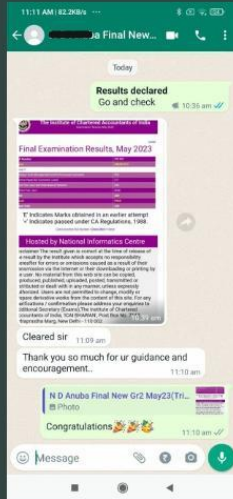
$$= [\text{₹ } 1,50,000 / \text{₹ } 7,50,000] \times \text{₹ } 1,50,000 = \text{₹ } 30,000$$

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.

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Chapter 26 Types Of Duty

Attempts wise Distribution

Row Labels	Dec' 21	Jan' 21	Jul' 21	May' 18	Nov' 18	May' 19	May' 22	May' 23	Nov' 19	Nov' 20	Nov' 22	Nov' 23
MCQ												
MTP	Q1					Q7		Q2	Q9			Q3
RTP						Q4		Q6		Q5		Q8
QA												
MTP	Q10		Q9				Q12, Q13	Q1			Q11	
PYP	Q6	Q8						Q7	Q4	Q5		
RTP			Q3						Q2			

SECTION A

MULTIPLE CHOICE QUESTIONS (MCQ'S)

1. Which of the following are levied as additional duties of customs under section 3 of the Customs Act, 1962?

- (i) Duty equal to excise duty leviable on like product manufactured in India
- (ii) Countervailing duty as special additional duty
- (iii) Special additional duty to counterbalance sales tax
- (iv) Anti-dumping duty to protect domestic industry

- (a) (i), (ii), (iii) and (iv)
- (b) (i), (ii) and (iv)
- (c) (i), (iii) and (iv)
- (d) (i), (ii) and (iii) (MTP 2 Marks Nov'21)

Ans: (d)

2. Social welfare surcharge is payable on-

- (i) Basic customs duty
- (ii) IGST
- (iii) Anti-dumping duty
- (iv) GST compensation cess

Choose the most appropriate option.

- (a) Only (i)
- (b) (i) + (ii) + (iii)
- (c) (i) + (ii) + (iv)
- (d) (i) + (iii) (MTP 1 Mark Apr'23)

Ans: (a)

3. Which of the following duties are excluded while computing social welfare surcharge (SWS)?

- (i) Safeguard duty
- (ii) Countervailing duty
- (iii) Social welfare surcharge itself

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(iv) **Anti-dumping duty to protect domestic industry Choose the most appropriate option.**

- (a) (i), (ii), (iii) and (iv)
- (b) (i), (ii) and (iv)
- (c) (i), (iii) and (iv)
- (d) (i), (ii) and (iii) **(MTP 2 Marks Oct'23)**

Ans: (a)

4. Which of the following statements is/are correct for safeguard duty under section 8B of the Customs Tariff Act, 1975?

- (i) **Safeguard duty is imposed on articles which are imported in increased quantities.**
 - (ii) **Such increased importation is causing or threatening to cause serious injury to domestic market.**
 - (iii) **Safeguard duty can be imposed for a period of 4 years and the period of imposition can be extended. However, in no case the safeguard duty shall continue to be imposed beyond a period of 10 years from the date on which it was first imposed.**
 - (iv) **Safeguard duty can be imposed provisionally also pending final determination of duty.**
- (a) (i), (ii) and (iii)
 - (b) Only (i) and (iv)
 - (c) None of above
 - (d) All of above **(RTP May'19)**

Ans: (d)

5. Which of the following statements is false?

- (a) Anti-dumping duty is imposed when any article is exported from any country to India at more than its normal value.
 - (b) Safeguard duty shall not be applicable on articles imported by a 100% EOU or SEZ unit unless specifically made applicable.
 - (c) Safeguard duty shall not be imposed on articles originating from developing country if the share of imports of that article from that country \leq 3% of the total imports of that article into India.
 - (d) Central Government may exempt notified quantity of any article, when imported from any country into India, from whole/part of the safeguard duty.
- (RTP Nov'20)**

Ans: (a)

6. Safeguard duty cannot be imposed if:

- (a) the article on which it is proposed to be imposed originates from a developed country provided its share of imports is not more than 3% of total imports of that article in India.
- (b) the article on which it is proposed to be imposed originates from a developing country provided its share of imports is not more than 5% of total imports of that article in India.
- (c) the article on which it is proposed to be imposed originates from more than one developing country and its aggregate share of imports from developing countries each with less than 3% share taken together does not exceed 9% of total imports of that article into India.

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(d) the article is imported by a person in special category State. **(RTP May'23)**

Ans: (c)

7. The integrated tax leviable on imported goods is levied-

- (a) as an additional duty of customs under section 3(7) of the Customs Tariff Act, 1975;
- (b) as integrated tax under section 5 of the Integrated Goods and Services Tax Act, 2017;
- (c) as a duty of customs under the Customs Tariff Act, 1975 read with Integrated Goods and Services Tax Act, 2017;
- (d) None of the above **(MTP 1 Marks Apr'19)**

Ans: (b)

8. Countervailing duty under section 9 of the Customs Tariff Act shall not be levied unless it is determined that:

- (i) **Subsidy relates to export performance;**
- (ii) **Subsidy relates to use of domestic goods over imported goods in export article;**
- (iii) **Subsidy is conferred on all persons engaged in the manufacture of export article.**
 - (a) All of above
 - (b) Only (iii)
 - (c) (ii) and (iii)
 - (d) (i) and (ii) **(MTP 1 Mark Oct'19, Oct'20, RTP Nov'23)**

Ans: (d)

9. Anti-Dumping duty is calculated as

- (a) Higher of margin of dumping or injury margin;
- (b) Lower of margin of dumping or injury margin;
- (c) Higher of export price or normal value;
- (d) Lower of export price or normal value **(MTP 1 Mark Oct'19, Mar'19, Nov'21, Sep'22, MTP 2 Marks Oct'20)**

Ans: (b)

QUESTIONS AND ANSWERS

Question 1

Royal Park Limited has imported Product 'A' for sale in India from Country Alpha, which are liable for anti-dumping duty. You are provided with the following details.

- (i) **Country Alpha does not sell Product 'A' in its domestic market. However, it exports the same Product 'A' at USD 200 per piece to another third country.**
- (ii) **The Product 'A' is sold in domestic industry @ USD 175 per piece.**
- (iii) **Royal Park Limited has imported Product 'A' at USD 100 per piece.**
- (iv) **Landed value of Product 'A' is USD 125 per piece.**

Compute the anti-dumping duty payable by Royal Park Limited for 1,000 pieces of Product 'A' it has imported during the year assuming conversion rate @ ₹ 75 per USD. (MTP 5 Marks Mar'23)

Answer 1

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The quantum of anti-dumping duty is:

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

Margin of dumping is the difference between export price and normal value of the imported article and injury margin 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 given case, anti-dumping duty per piece is:

- (i) Margin of dumping is USD 100 [USD 200¹ - USD 100²] or
- (ii) Injury margin is USD 50 [USD 175³ - USD 125⁴] whichever is lower i.e. USD 50

Anti-dumping duty for 1,000 pieces (in rupees) = USD 50 × 1,000 pieces × ₹ 75 = ₹ 37,50,000.

1 When there are no sales of the like article in the domestic market of the exporting country, normal value is taken as the comparable representative price of the like article when exported from the exporting country to an appropriate third country.

2 Export price is price of the article exported from the exporting country.

3 Fair Selling Price/Non-Injurious Price is that level of price, which the industry is, expected to have charged under normal circumstances in the Indian market. It has been most logically assumed that the “domestic industry” referred to in point (ii) of the question refers to the domestic Indian market.

4 Landed values.

Question 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. (RTP Nov'19)

Answer 2

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 t:

- (i) altering the description or name or composition of the article subject to such anti-dumping duty,
- (ii) import of such article in an unassembled or disassembled form,
- (iii) changing the country of its origin or export, or
- (iv) any other manner, whereby the anti-dumping duty so imposed is rendered ineffective.

In such cases, investigation can be carried out by Central Government and then anti-dumping can be imposed on such articles.

Question 3

KTU Limited has imported certain goods for sale in India from Country Z, which are liable for anti-dumping duty. Country Z sell the like goods in its domestic market in the ordinary course of trade at USD 300 per piece. The imported goods are sold in domestic Indian industry @ USD 275 per piece. KTU Limited has imported the goods at USD 180 per piece. Landed value of the imported goods is USD 190 per piece.

Compute the anti-dumping duty payable by KTU Limited for 800 pieces of these

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goods it has imported during the year assuming conversion rate @ ₹ 72 per USD. (RTP May'21)

Answer 3

The quantum of anti-dumping duty is:

- (i) margin of dumping or
- (ii) injury margin whichever is lower.

Margin of dumping is the difference between export price and normal value of the imported article.

Injury margin 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.

Export price in relation to an article, means the price of an article exported from the exporting country or territory. KTU Limited has imported the goods at USD 180 per piece. Thus, export price is USD 180 per piece.

Normal value in relation to an article, 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. Since Country Z sell the like goods in its domestic market in the ordinary course of trade at USD 300 per piece, thus normal value in the given case is USD 300 per piece.

Fair Selling Price (FSP) [Non-Injurious Price] is that level of price, which the industry is, expected to have charged under normal circumstances in the Indian market during the period defined. Since the imported goods are sold in domestic Indian Industry @ USD 275 per piece, thus Fair selling price in the present case is USD 275 per piece.

Landed Value is taken as the assessable value under the Customs Act and the applicable basic customs duties except CVD, SAD and special duties. Landed value in the given case is USD 190 per piece. In the given case, anti-dumping duty per piece is:

- (i) Margin of dumping is USD 120 [USD 300- USD 180] or
- (ii) Injury margin is USD 85 [USD 275 – USD 190] whichever is lower i.e. USD 85 Anti-dumping duty for 800 pieces (in rupees) = USD 85 × 800 pieces × ₹ 72 = ₹ 48,96,000.

Question 4

During the year 2023, 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. (PYP 5 Marks Nov'19)

Answer 4

In the given case, since Product XYZ is being imported into the country in increased quantity, Central Government should consider levying safeguard Duty and not anti-dumping duty. Anti-dumping duty is imposed when any article is exported from any country to India at less than its normal value, which is not the case here.

However, safeguard duty can be imposed only when Central Government is satisfied that such increased importation is causing/threatening to cause serious injury to the domestic industry.

Exemptions/reliefs:

- (a) Safeguard duty shall not be imposed on articles originating from developing country if the share of imports of that article from that country \leq 3% of the total imports of that article into India.
- (b) Safeguard duty shall not be imposed on articles originating from more than one developing country if the aggregate of imports from developing countries each with less

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- than 3% import share taken together \leq 9% of the total imports of that article into India.
- Safeguard duty shall not be applicable on articles imported by a 100% EOU/ SEZ unit unless specifically made applicable.
 - 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.
 - Central Government may exempt notified quantity of any article, when imported from any country into India, from whole/part of the safeguard duty.

Question 5

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.

- 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.**
 - The printed circuit board is sold in domestic industry @ USD 175 per piece.**
 - PCB Limited has imported the printed circuit boards at USD 100 per piece.**
 - Landed value of the printed circuit boards is USD 125 per piece.**
- Compute the anti-dumping duty payable by PCB Limited for 1,000 pieces of printed circuit boards it has imported during the year assuming conversion rate @ ₹ 75 per USD. (PYP 5 Marks Nov'20)**

Answer 5

The quantum of anti-dumping duty is:

- Margin of dumping or (ii) injury margin, whichever is lower.
Margin of dumping is the difference between export price and normal value of the imported article and injury margin 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 given case, anti-dumping duty per piece is:
 - Margin of dumping is USD 100 [USD 200¹⁰ - USD 100¹¹] or
 - Injury margin is USD 50 [USD 175¹² - USD 125¹³] whichever is lower i.e. USD 50
- Anti-dumping duty for 1,000 pieces (in rupees) = USD 50 × 1,000 pieces × ₹ 75 = ₹ 37,50,000

Question 6

With reference to the Customs Act, 1962, decide the validity of the following independent cases with proper legal provisions:

- Apex Rubber Limited is a 100% EOU located in a Special Economic Zone. It imported certain items from China for its production process. Customs officer proposed to impose anti-dumping duty on such imports. The importer contends that no anti-dumping duty can be imposed on imports by a 100% EOU under any circumstances.**
- Customs Department proposed to impose anti-dumping duty retrospectively in respect of certain items. Importer's association claimed that anti-dumping duty cannot be levied with retrospective effect under any circumstances. (PYP 5 Marks Dec'21)**

Answer 6

- The contention of the importer is partially correct.

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Anti-dumping duty cannot be imposed on imports made by 100% EOU. However, following circumstances are exception to the same:

- (i) where it is specifically made applicable in such notifications or such impositions, as the case may be; or
 - (ii) where such article imported is either cleared as such into the DTA or used in the manufacture of any goods that are cleared into the DTA, and in such cases anti-dumping duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.
- II. The claim of the importer's association is not correct. Anti-dumping duty can be levied with retrospective effect not beyond 90 days from the date of such notification, if Central 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 is likely to seriously undermine the remedial effect of anti-dumping duty liable to be levied owing to timing and volume of imported article dumped and other circumstances.

Question 7

The custom authorities of India noticed that there is an increase in the quantity of Solar PV Products imported into the country. So, on the recommendation of Director General (Specific Safeguard), the Central Government via Notification in Official Gazette imposed safeguard duty @25% on the import of Solar PV Products.

ABC Exports an importer in Bhubaneswar imported Solar PV Products from Vietnam at landed price (exclusive of duties) of ₹ 30 lakh. Assume that IGST u/s 3(7) is 12%, BCD is 10% and SWS @10%. Determine the total duties payable under Customs Act. Ignore agriculture infrastructure and development cess.

Will it change your answer if ABC Exports is a SEZ unit? Explain discussing applicable provisions.

(PYP 5 Marks May'23)

Answer 7

Computation of total duties payable under Customs Act

Particular	Amount (₹)
Landed price of Solar PV Products	30,00,000
Add: Basic custom duty @ 10% (₹ 30,00,000 × 10%)	3,00,000
Add: Safeguard duty @ 25% on ₹ 30,00,000	7,50,000
Add: Social welfare surcharge @ 10% on ₹ 3,00,000	30,000
Total	40,80,000
IGST (₹ 40,80,000 × 12%) [Value for calculation of IGST also includes safeguard duty amount.]	4,89,600
Total customs duty payable (₹ 3,00,000 + ₹ 7,50,000 + ₹ 30,000 + ₹ 4,89,600)	15,69,600

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Safeguard measures are not applicable to articles imported by a SEZ unit unless specifically made applicable or article imported is cleared as such/ used in the manufacture of goods cleared into DTA.

¹ It has been most logically assumed that the movement of goods has commenced from Kerala. Thus, if ABC Exports is a SEZ unit, safeguard duty will not be applicable to it and total amount of duties payable will be ₹ 7,29,600. 10(3,00,000 BCD + 30,000 SWS + 3,99,600 IGST)

Question 8

GER Ltd. of Germany supplies luxurious car worth ₹ 1 crore to IND Ltd. of India. Before the car reached Indian port but after crossing of the territorial waters of India, IND Ltd. sells it to T1 Ltd. by way of transfer of documents of title.

T1 Ltd. clears the said car for warehousing and stores said goods in customs bonded warehouse. T1 Ltd. sells the said car from warehouse to T2 Ltd., and T2 Ltd. clears the said car from the customs bonded warehouse.

Answer the following with brief reasons:

- (i) Is GST leviable on import of goods from GER Ltd. by IND Ltd.?**
- (ii) Is GST leviable on supply of goods by IND Ltd. to T1 Ltd.?**
- (iii) Is GST leviable on supply of goods by T1 Ltd. to T2 Ltd.?**
- (iv) Is GST leviable on clearance of goods by T2 Ltd. from the customs bonded warehouse?**

(PYP 5 Marks Jan'21)

Answer 8

- (i)** GST on import of goods is levied at the time when customs duty is levied on the said goods under the Customs Act, 1962, i.e., on importation. Importation gets completed when the goods become part of the mass of goods within the country⁵. Thus, GST is not leviable on import of goods from GER Ltd. by IND Ltd. since the import of goods is not complete.
- (ii)** GST is not leviable on supply of goods by IND Ltd. to T1 Ltd. as 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 is treated neither as a supply of goods nor a supply of services.
- (iii)** GST is not leviable on supply of goods by T1 Ltd. to T2 Ltd. since supply of warehoused goods to any person before clearance for home consumption is treated neither as a supply of goods nor a supply of services.
- (iv)** Yes, GST is leviable on clearance of goods by T2 Ltd. from the customs bonded warehouse as customs duty is levied on warehoused goods at the time of clearance thereof from the warehouse and as mentioned in point (i), GST on import of goods is levied at the time when customs duty is levied thereon.

Question 9

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**

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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.**
(MTP 5 Marks Mar'21, Oct'21)

Answer 9

- (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.

Question 10

During the year 2023, 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. (MTP 5 Marks Nov'21)

Answer 10

In the given case, since Product XYZ is being imported into the country in increased quantity, Central Government should consider levying safeguard Duty and not anti-dumping duty. Anti-dumping duty is imposed when any article is exported from any country to India at less than its normal value, which is not the case here. However, safeguard duty can be imposed only when Central Government is satisfied that such increased importation is causing/threatening to cause serious injury to the domestic industry.

Exemptions/reliefs:

- (a) Safeguard duty shall not be imposed on articles originating from developing country if the share of imports of that article from that country \leq 3% of the total imports of that article into India.
- (b) Safeguard duty shall not be imposed on articles originating from more than one developing country if the aggregate of imports from developing countries each with less than 3% import share taken together \leq 9% of the total imports of that article into India.
- (c) Safeguard duty shall not be applicable on articles imported by a 100% EOU/ SEZ unit unless specifically made applicable;
- (d) Safeguard duty shall not be applicable on articles imported by a 100% EOU/ SEZ unit

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unless the article imported is either cleared as such/ used in the manufacture of any goods that are cleared, into DTA.

- (e) Central Government may exempt notified quantity of any article, when imported from any country into India, from whole/part of the safeguard duty.

Question 11

Determine the total duties payable under Customs Act if Mr. Bhairav 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%. Ignore agriculture infrastructure and development cess. (MTP 5 Marks Oct'22 & Apr'23)

Answer 11

Computation of total duties payable under the Customs Act

S. No.	Particulars	(₹)
1	Landed price	25,00,000
2	Add: Basic customs duty @ 10%	2,50,000
3	Add: Safeguard duty @ 30% on ₹ 25,00,000	7,50,000
4	Add: Social welfare surcharge (SWS) @ 10 % on ₹ 2,50,000 [While calculating SWS, safeguard duty is excluded]	25,000
5	Add: Integrated tax 12% of ₹ 35,25,000 (₹ 25,00,000 + ₹ 2,50,000 + ₹ 7,50,000 + ₹ 25,000) [Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable SWS]	4,23,000
6	Total customs duties and tax payable [₹ 2,50,000 + ₹ 7,50,000 + ₹ 25,000 + ₹ 4,23,000]	14,48,000

Question 12

Radhey Shyam 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.

(MTP 5 Marks Mar'22, Apr'21, May'20)

Answer 12

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: -

- 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
- 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, Radhey Shyam Industries would succeed in its contention only if all of the above conditions are not satisfied.

Question 13

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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. (MTP 5 Marks Apr'22)**

Answer 13

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.

SECTION B

Question 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 1

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.

Question 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;**

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- (iii) **where anti-dumping duty is imposed retrospectively from a date prior to the date of imposition of provisional duty.**

Answer 2

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.

Question Illustration 3

With reference to the Customs Tariff Act, 1975, discuss the validity of the imposition of customs duties in the following cases:-

- (d) **Both countervailing duty and anti-dumping duty have been imposed on an article to compensate for the same situation of dumping.**
- (e) **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.**
- (f) **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 3

- (d) **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.
- (e) **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.
- (f) **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.

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Question 4

With reference to section 9AA of Customs Tariff Act, 1975, state briefly the provisions of refund of anti-dumping duty.

Answer 4

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.

Question 5

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 5

As per section 9A(1A) of the Customs Tariff Act, 1975, following are the ways that would constitute circumvention (avoiding levy of duty by unscrupulous means) of antidumping duty imposed on an article that may warrant action by the Central Government:

- i) altering the description or name or composition of the article subject to such anti-dumping duty,
- ii) import of such article in an unassembled or disassembled form,
- iii) changing the country of its origin or export, or
- iv) any other manner, whereby the anti-dumping duty so imposed is rendered ineffective.

In such cases, investigation can be carried out by Central Government and then anti dumping can be imposed on such articles.

Question 6

When shall the safeguard measures under section 8B of the Customs Tariff Act, 1975 be not imposed? Discuss briefly.

Answer 6

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

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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.

Question 7

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 7

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.

Question 8

Write a note on "Emergency power to impose or enhance import duties under section 8A of the Customs Tariff Act, 1975".

Answer 8

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.

Question 9

Determine the customs duty payable under the Customs Tariff Act, 1975 including the safeguard duty of 30% under section 8B of the said Act with the following details available on hand:

Assessable value of Sodium Nitrite imported from a developing country from 26th August, 2022 to 25th August, 2023 (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%

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Note: Ignore GST compensation cess and Agriculture infrastructure and development cess.

Answer 9

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.

Question 10

Differentiate between protective duty and safeguard measures.

Answer 10

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.

- The protective duties should not be very stiff so as to discourage imports.
- It should be sufficiently attractive to encourage imports to bridge the gap between demand and supply of those articles in the market.

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)].

Circumstances in which safeguard measures can be imposed: Central Government after conducting enquiry can impose the safeguard measures if it is satisfied that,

- Any article is imported into India in increased quantities; and
- Such increased importation is causing or threatening to cause serious injury to domestic industry.

The measures are imposed by issuing a notification in the Official Gazette.

Objective of safeguard measures: The safeguard measures are imposed for the purpose of protecting the interests of any domestic industry in India aiming to make it more competitive.

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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.

The measures are imposed by issuing a notification in the Official Gazette.

Question 11

Briefly examine the nature and significance of the levy of anti-dumping duty under the Customs Tariff Act, 1975.

Answer 11

Anti-dumping action can be taken only when there is an Indian industry which produces “like articles” when compared to the allegedly dumped imported goods. Further, this duty is country specific i.e. it is imposed on imports from a particular country.

Under the General Agreement on Tariffs and Trade (GATT) provisions, anti-dumping duties higher than the margin of dumping cannot be imposed. However, a lesser duty which is adequate to remove the injury to the domestic industry, is permissible. In India, the Government is obliged to restrict the anti-dumping duty to the lower of the two i.e., dumping margin and the injury margin.

Section 9A(1) of the Customs Tariff Act, 1975 provides that where any article is exported by an exporter or producer from any country or territory (hereinafter in this section referred to as the exporting country or territory) to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.

Every notification issued under this section shall as soon as may be after it is issued, be laid before each House of Parliament [Sub-section (7)]. Further, the provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act [Sub-section (8)].

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

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

The anti-dumping duty chargeable under this section is in addition to any other duty imposed under this Act or any other law for the time being in force.

Question 12

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 12

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:-

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- (a) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury, and
- (b) the injury is caused by massive dumping of an article imported in a relatively short time, which in the light of timing and volume of the imported article dumped and other circumstances is likely to seriously undermine the remedial effect of the anti-dumping duty liable to be levied.

The duty can be levied retrospectively by issuing a notification but not beyond 90 days from the date of notification.

Thus, Chaintop Industries would succeed in its contention only if all of the above conditions are not satisfied.

Question 13

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%. Ignore agriculture infrastructure and development cess.

Answer 13

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	25,000
	[While calculating SWS, safeguard duty is excluded]	
5	Add: Integrated tax 12% of ₹ 35,25,000 (₹ 25,00,000 + ₹ 2,50,000 + ₹ 7,50,000 + ₹ 25,000)	4,23,000
	[Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable SWS]	
6	Total customs duties and tax payable [₹ 2,50,000 + ₹ 7,50,000 + ₹ 25,000 + ₹ 4,23,000]	14,48,000

Question 14

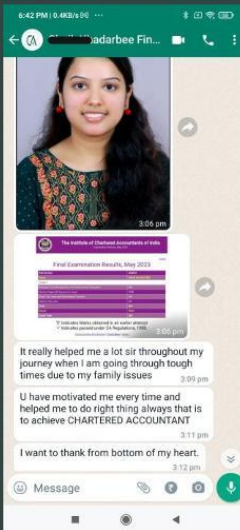
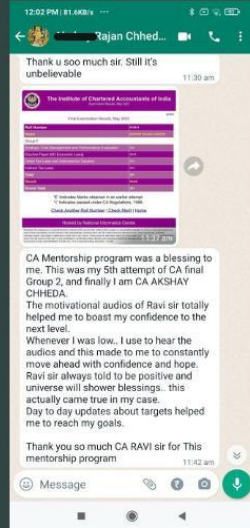
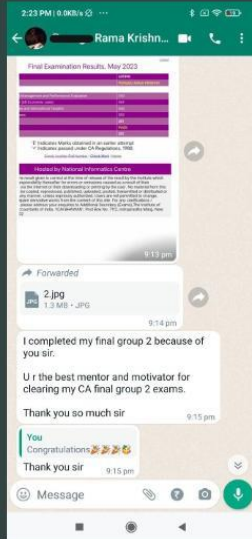
During the year 2023, the customs authorities have noticed that there is an increased quantity of Product XYZ being imported into the country. Determine whether the Central Government should consider levying safeguard duty or anti-dumping duty with appropriate reasons. Also enumerate any exemptions/reliefs available from such duty.

Answer 14

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Chapter 27

Classification Of Imported And Export Goods

Attempts wise Distribution

Row Labels	Dec' 21	Jan' 21	Jul' 21	May' 18	Nov' 18	May' 19	May' 22	May' 23	Nov' 19	Nov' 20	Nov' 22	Nov' 23
MCQ												
MTP						Q2				Q1		
QA												
PYP		Q2					Q3					
RTP						Q1						

SECTION A

MULTIPLE CHOICE QUESTIONS (MCQ'S)

1. **Electric shaving machine is classifiable under following:**
8510: Shavers and hair clippers with self-contained electric motors;
8509: Electro mechanical domestic appliances with self-contained electric motor
As per rules of classification, electric shaving machine should be classifiable under
- 8510
 - 8509
 - More information is needed;
 - Can be classified under both **(MTP 2 Marks May'20, Apr'21)**

Ans: (a)

2. **Which of the following statement(s) is/are correct?**
- Cases which are specially designed or fitted to contain a specific article and given with the articles for which they are intended shall follow the classification of items which are packed;**
 - Packing materials whether capable of repetitive use or not, cleared along with goods, are classifiable with goods.**
- (i)
 - (ii)
 - Both (i) and (ii)
 - None **(MTP 1 Mark Mar'19)**

Ans:(a)**QUESTIONS AND ANSWERS****Question 1****Explain rule 3 of the rules for Interpretation of the Customs Tariff. (RTP May'19)****Answer 1**

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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.

Question 2

Precise Finishing Ltd. imported consignment of graphic design system and one electronic flat knitting machine. The graphic design system is a computer system required to design the artwork which shall be knitted by the flat knitting machine. Graphic design system is not an integral part of electronic flat knitting machine.

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, an exemption had been granted in respect of electronic flat knitting machine and falling within Chapter 85 of the First Schedule to the Customs Tariff Act, 1975. The exemption does not include any specific mention of accessories to the machine. Precise Finishing Ltd. has claimed exemption of the said notification in respect of Graphic Design System also as accessory of Flat Knitting Machine.

The Customs Department rejected the importer's claim for exemption on Graphic Design System. Examine whether the Department's action is sustainable in law. (PYP 5 Marks Jan'21)

Answer 2

The graphic design system is not an integral part of the electronic flat knitting machine. It is an accessory to the machine.

Hence, electronic flat knitting machine and graphic design system cannot be treated as one single unit and should be classified and assessed separately.

In the given case, the exemption had been granted under the customs law specifically in respect of the electronic flat knitting machine falling under Chapter 85 of the First Schedule to the Customs Tariff Act, 1975 and not to its accessory – the graphic design system.

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Therefore, the benefit of the exemption notification available in respect of the electronic flat knitting machine will not be available to graphic design system. The Department's action is sustainable in law.

Question 3

"The laptop supplied along with software loaded on hard disk drive has to be classified as laptop and valuation has to be made as one unit. The classification also has to be determined accordingly." Examine this statement with reference to classification and valuation of laptop under Customs Act, 1962 read with relevant rules and relevant judicial pronouncement, if any.

(PYP 5 Marks May'22)

Answer 3

Operating Software preloaded in the laptop forms an integral part of the laptop. In a judicial pronouncement by Supreme Court¹⁰, the Question as to whether the laptop supplied alongwith the software loaded on hard disk drive is to be classified as laptop has been Answered in affirmative.

The Court observed that a laptop cannot work without operating system like windows. Therefore, the laptop along with software has to be classified as laptop and for valuation also, the laptop along with software has to be classified as one unit / laptop.

Hence, the statement is correct.

¹⁰ vide **CC v. Hewlett Packard India Sales (P) Ltd. 2007 (215) E.L.T. 484 (S.C.)**

SECTION B

Question Illustration 1

Briefly explain "standard unit of quantity" with reference to the First Schedule to the Customs Tariff Act, 1975

Answer 1

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.

Question Illustration 2

Write a brief note on rule 1 of the Rules of Interpretation of the First Schedule to Customs Tariff Act, 1975.

Answer 2

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.

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Thus, the titles of sections, chapters and sub-chapters cannot be used to determine classification of a product.

Question Illustration 3

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.**
- **Sterilization 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, Oxycoccus, Vaccinium vitis-idaea) juice
2009 89	Other
2009 89 10	Mango
2009 89 90	Other
2009 90 00	Mixtures of juices

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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 3

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.

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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%.”

Question 4

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 4

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.

Question 5

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 5

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.

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Rule 4 of the Rules of Interpretation is called as akin rule. This rule lays down that goods which cannot be classified in accordance with rules 1, 2 and 3 of the Rules of Interpretation shall be classified under the heading appropriate to the goods to which they are most akin. In other words, akin rule' is a residual rule which is to be applied when classification is not possible by applying any of the earlier rules. It is a rule of last resort.

Question 6

Write a note on “Project Imports” under the Customs Tariff Act, 1975.

Answer 6

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.

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

Question 7

Explain rule 3 of the rules for Interpretation of the Customs Tariff.

Answer 7

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:]

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Rule 3(a) – Specific over general

- (iii) The heading which provides the most specific description shall be preferred to headings providing a more general description.
- (iv) However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

Rule 3(b) – Essential character principle:

Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified with reference to (a), shall be classified as if they consisted of material which gives them their essential character, in so far as this criterion is applicable.

Rule 3(c) – Latter the better:

When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

Question 8

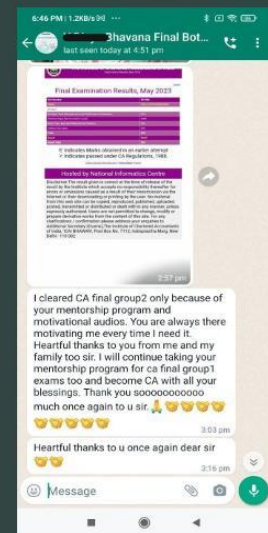
Briefly explain the meaning of abbreviation “%” in relation to the rate of duty.

Answer 8

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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Chapter 28 Valuation Under The Customs Act, 1962

Attempts wise Distribution

Row Labels	Dec' 21	Jan' 21	Jul' 21	May' 18	Nov' 18	May' 19	May '22	May' 23	Nov' 19	Nov' 20	Nov' 22	Nov' 23
MCQ												
MTP						Q1, Q8, Q9		Q4				Q5
RTP	Q3							Q7	Q2		Q6	
QA												
MTP	Q28, Q29		Q21	Q26				Q9, Q27	Q25	Q34, Q35	Q36	
PYP	Q14	Q24	Q13	Q33	Q8	Q10	Q15, Q16	Q17, Q18	Q11	Q12	Q23	
RTP	Q5		Q30	Q1, Q31		Q2, Q3	Q6, Q19, Q20	Q22	Q32	Q4		Q7

SECTION A

MULTIPLE CHOICE QUESTIONS (MCQ'S)

1. Under the Customs Act, 1962, the relevant date for determining the rate of exchange in case of imported goods is:

- Date when the vessel arrives in India
- Date of presentation of bill of entry
- Date of examination of goods by proper officer
- Date of deposit of duty (MTP 1 Mark Mar'19)

Ans: (b)

2. Alpha Ltd. makes two sales to unrelated buyers. In the first sale, 500 units are sold at a price of ₹ 95. In the second sale, 400 units are sold at a price of ₹ 100. For the purposes of rule 7 (Deductive Value) of the Customs (Determination of Value of Imported Goods) Rules, 2007, determine the unit price in greatest aggregate quantity.

- ₹ 95
- ₹ 100
- Average of ₹ 95 and ₹ 100 i.e. $(₹ 95 + ₹ 100)/2 = ₹ 97.5$
- Data is insufficient to determine the unit price in greatest aggregate quantity (MTP 2 Marks Oct'22, Apr'22, RTP Nov'19)

Ans: (a)

3. Sapphire Enterprises imported some goods through vessel from USA in the month of April. The value of goods imported was ₹ 6,50,000.

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- (d) Both (a) and (b) (MTP 1 Mark Sep'23, RTP May'19, RTP Nov'22)

Ans: (c)

7. Which of the following statements is correct in relation to value of imported goods determined under rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, i.e. transaction value of identical goods?

- (a) The transaction value of identical goods in a sale at any commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.
- (b) The transaction value of identical goods in a sale at same commercial level and in any quantity as the goods being valued shall be used to determine the value of imported goods.
- (c) The transaction value of identical goods in a sale at same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.
- (d) The transaction value of identical goods in a sale at any commercial level and in any quantity as the goods being valued shall be used to determine the value of imported goods. (RTP May'23)

Ans: (c)

8. Prabhat International Ltd. exported some goods to USA by air at an FOB price of US \$ 1,00,000. Other details are as follows:

Particulars	Date	Rate of duty	Rate of exchange notified by CBIC	Rate of exchange prescribed by RBI
Presentation of shipping bill	16.04.20 XX	12%	1 US \$ = 65	1 US \$ = 68
Let export order	18.05.20 XX	10%	1 US \$ = 64	1 US \$ = 66

The export duty payable by Prabhat International Ltd. is:

- (a) ₹ 6,50,000
- (b) ₹ 7,80,000
- (c) ₹ 7,68,000
- (d) ₹ 6,40,000 (MTP 2 Marks Mar'19)

Ans: (a)

9. Certain goods were imported by air. The free on board value of goods is Rs. 100. The cost of transport, loading, unloading and handling charges up to place of importation is Rs. 25. The cost of insurance is Rs. 10. For the purposes of rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, which of the following shall be added to the value of imported goods?

- (a) Cost of transport, loading, unloading and handling charges – Rs. 25; and Cost of insurance Rs. 10;
- (b) Cost of transport, loading, unloading and handling charges – Rs. 25; and Cost of insurance Rs. 1.125
- (c) Cost of transport, loading, unloading and handling charges – Rs. 20; and Cost of insurance Rs. 1.125
- (d) Cost of transport, loading, unloading and handling charges – Rs. 20; and Cost of

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insurance Rs. 10
(MTP 2 Marks Apr'19)

Ans: (d)

QUESTIONS AND ANSWERS

Question 1

Determine the assessable value of imported goods in the following cases:
(RTP May'18)

Case I

Particulars	US \$
FOB value	1,000
Freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	Not known
Insurance charges	10

Case II

Particulars	US \$
FOB value plus insurance charges	1,010
Freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	Not known

Case III

Particulars	US \$
FOB value	1,000
Sea freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	60
Insurance charges	Not known

Case IV

Particulars	US \$
FOB value plus sea freight and loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	1,060
Insurance charges	Not known

Case V

Particulars	US \$
FOB value	1,000
Air freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	250
Insurance charges	10

Answer 1

Rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007 (CVR) has been substituted by a new sub-rule. The new sub-rule provides that 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 -

- the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation;
- the cost of insurance to the place of importation:

Provided that where the cost referred to in clause (a) is not ascertainable, such cost

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shall be 20% of the free on board value of the goods.

Provided 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:

Provided also that 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.

Provided also 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 (a) is ascertainable, the cost referred to in clause (b) shall be 1.125% of such sum.

Provided also that 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.

Provided also that in the case of goods imported by sea or air and transshipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded.
Explanation-

The cost of transport of the imported goods referred to in clause (a) includes the ship demurrage charges on chartered vessels, lighter age or barge charges.

In the backdrop of the above provisions, the assessable value in the various cases will be computed as under:

Computation of assessable value

MAY, 2018 Case I

Particulars	US \$
FOB value	1,000
Add: Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation [20% of FOB value in terms of first proviso to rule 10(2) of CVR]	200
Cost of insurance [Includible in terms of rule 10(2)(b) of CVR]	10
Assessable value [CIF value]	1,210

Case II

Particulars	US \$
FOB value plus insurance charges	1,010
Add: Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation [20% of sum of FOB value of the goods and the cost of insurance in terms of second proviso to rule 10(2) of CVR]	202
Assessable value [CIF value]	1,212

Case III

Particulars	US \$
FOB value	1,000
Add: Cost of sea transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation [Includible in terms of rule 10(2)(a) of CVR]	60
Insurance [1.125% of sum of FOB value of the goods in terms of third proviso to rule 10(2) of CVR]	11.25
Assessable value [CIF value]	1,071.25

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Assessable value rounded off	1,071
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Case IV

Particulars	US \$
FOB value plus sea freight and loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	1,060
Add: Insurance [1.125% of sum of FOB value of the goods and sea freight and loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation in terms of fourth proviso to rule 10(2) of CVR]	11,925
Assessable value CIF value	1071.9 25
Assessable value rounded off	1,072

Case V

Particulars	US \$
FOB value	1,000
Add: Cost of air transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation is restricted to 20% of FOB value when transportation of goods is through air [Fifth proviso to rule 10(2) of CVR]	200
Cost of insurance	10
Assessable value [CIF value]	1,210

Question 2

Sphinx Merchandise Ltd. has exported some goods to USA by air. The FOB price of goods exported is US \$ 1,00,000.

Compute the export duty payable by Sphinx Merchandise Ltd. with the help of following details provided. (RTP May'19)

Particulars	Date	Rate of duty	Rate of exchange notified by CBIC	Rate of exchange prescribed by RBI
Presentation of shipping bill	17.06.20XX	12%	1 US \$ = 65	1 US \$ = 64
Let export order	19.07.20XX	10%	1 US \$ = 64	1 US \$ = 65

Answer 2

Computation of export duty

Particulars	Amount (US \$)
Assessable value [Note 1]	1,00,000
	Amount (₹)
Assessable value = US \$ 1,00,000 x ₹ 65 [Note 2]	65,00,000
Export duty @ 10% [Note 3]	6,50,000

Notes:-

1. The transaction value, i.e. FOB price of export goods, is considered as assessable value in terms of section 14(1) of the Customs Act, 1962.
2. As per third proviso to section 14(1) of the Customs Act, 1962, assessable value has to be calculated with reference to the rate of exchange notified by CBEC on date of presentation of shipping bill of export.
3. The rate of duty prevalent on the date of let export order is considered for computing

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export duty in terms of section 16(1)(a) of the Customs Act, 1962.

As per section 121 of the CGST Act, 2017, no appeal shall lie against any decision taken or order passed by a CGST officer if such decision taken or order passed relates to any one or more of the following matters, namely:—

- an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or
- an order pertaining to the seizure or retention of books of account, register and other documents; or
- an order sanctioning prosecution under the CGST Act, 2017; or
- an order passed under section 80 of the CGST Act, 2017 (payment of tax in instalments).

Question 3

Kankan Corp had imported a machine from USA for ₹ 365 lakh on payment of appropriate customs duty in February. However, in July, the machine had to be sent back to the supplier for repair (not amounting to manufacture) from the factory of Kankan Corp. This machine was repaired and thereafter, re-imported by Kankan Corp in November next year. The supplier has agreed to provide discount of 60% of the fair cost of repairs, resulting in Kankan Corp paying USD 12,000. Following further particulars are available:

Particulars	Date	Rate of Duty	Inter Bank Exchange rate	Rate notified by CBEC
Bill of Entry	21 st February	12%	61.40	62
Aircraft arrival	26 th February	15%	62.50	63.25

Integrated tax is leviable @ 12%.

	Outwards (Amt. in ₹)	Inwards (Amt. in ₹)
Insurance	23,000	27,000
Air Freight	93,500	1,06,500

Determine total duty payable with appropriate notes for your computation assuming that Kankan Corp is not an EOU. (RTP May'20)

Answer 3

Notification No. 45/2017 Cus. dated 30.06.2017 stipulates that in case of re-importation of goods exported for repairs, duty is payable on fair cost of repairs carried out, insurance and freight charges - both ways, subject to fulfillment of following conditions:-

- The time limit for re-importation is 3 years
- The exported goods and the re-imported goods must be the same.
- The ownership of the goods should not have changed.

Since all the specified conditions are fulfilled in the given case, total duty payable will be computed as under:-

Computation of total duty payable by Kankan Corp.

Particulars	
Fair cost of repairs (in dollars) = \$12,000/40%	\$ 30,000
	₹

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Fair cost of repairs (in rupees)	18,60,000.0 0
= \$30,000 × ₹ 62 [Note-1]	
Add: Inward and outward insurance [₹ 23,000 + ₹ 27,000]	50,000.00
Add: Inward and outward air freight [₹ 93,500 + ₹ 1,06,500]	2,00,000.00
Assessable Value	21,10,000.0 0
Add: Basic customs duty (BCD) @15% [Note-2]	3,16,500.00
Add: Social Welfare Surcharge @ 10% of BCD	31,650.00
Value for computing IGST	24,58,150.0 0
IGST @ 12%	2,94,978.00
Total duty and tax payable = [₹ 3,16,500 + ₹ 31,650 + ₹ 2,94,978]	6,43,128

Notes: -

1. Rate of exchange notified by the CBEC on date of presentation of bill of entry would be the applicable rate in terms of third proviso to section 14(1) of the Customs Act, 1962.
2. Rate of duty is the rate in force on date of presentation of bill of entry or arrival of aircraft, whichever is later in terms of proviso to section 15(1) of the Customs Act, 1962.

Question 4

Rudraksh Manufacturers, Kolkata, is engaged in manufacturing the textile articles. It has decided to enhance its production capacity in the current year. Therefore, it imports a machine through vessel from George Inc., USA at a price of \$ 31,650 (including transport charges from the factory of George Inc. upto US port of \$ 2,500 and handling charges at US port of \$ 1,750). Rudraksh Manufacturers has provided the following additional information in respect of machine imported:

S.No.	Particulars	Amount
(i)	Charges for design and engineering work undertaken for the machine in US	US \$ 1,750
(ii)	Buying commission paid by Rudraksh Manufacturers	US \$ 150
(iii)	Freight charges from USA to India	US \$ 3,000
(iv)	Unloading and handling charges paid at the place of importation	₹ 2,250
(v)	Exchange rate to be considered: 1\$ = ₹ 60	

The actual insurance charges paid are not ascertainable. You are required to determine the assessable value of the imported machine under the Customs Act, 1962 from the given particulars. (RTP Nov'20)

Answer 4

Computation of assessable value of imported goods

Particulars	Amount (US \$)
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Price of the machine (including transport charges from the factory of George Inc. upto US port and handling charges at US port) [Note-1]	31,650
Add: Charges for design and engineering work undertaken for the machine in USA [Note 2]	1,750
Buying commission [Note 3]	Nil
FOB value	33,400.00
Add: Freight charges up to India [Note-1]	3,000.00
Insurance charges @ 1.125% of FOB [Note 4]	375.75
CIF value	36,775.75
Add: Unloading and handling charges paid at the place of importation [Note 5]	Nil
Assessable value	36,775.75
Assessable value in Indian rupees @ ₹ 60/ per \$	₹ 22,06,545

Notes:

- (1) The cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation are includible in the assessable value [Rule 10(2)(a) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR)].
- (2) Design and engineering work undertaken elsewhere than in India and necessary for the production of the imported goods is includible in the assessable value [Rule 10(1)(b)(iv) of the CVR].
- (3) Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of the CVR].
- (4) If insurance cost is not ascertainable, the same shall be added @ 1.125% of FOB value of the goods [Third proviso to rule 10(2) of the CVR].
- (5) By virtue of rule 10(2) of the CVR, only charges incurred for delivery of goods “to” the place of importation are includible in the transaction value. The loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation are not to be added to the CIF value of the goods. [Circular No. 39/2017 Cus. dated 26.09.2017].

Question 5

Sambhav Industries imported a machine for manufacturing steel equipment from George Inc., USA through vessel. The cost of the said machine at the factory of George Inc. is US \$ 10,000. George Inc. incurred the cost of US \$ 500 for transporting the said machine from its factory to the port of New York and New Jersey from which the machinery was shipped for export to Mumbai port, India. It further paid US \$ 50 as handling charges for loading the machine in the ship. You are required to determine the assessable value of the machine imported by Sambhav Industries under the Customs Act, 1962 taking into account the following additional information:(RTP Nov'21)

- Buying commission paid by Sambhav Industries US \$ 50**
- Freight charges from port of New York and New Jersey to Mumbai port US \$ 1,000**
- Exchange rate to be considered: 1\$ = ₹ 70**
- Actual insurance charges paid are not ascertainable**
- Lighterage charges paid by Sambhav Industries at Mumbai port**

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₹ 12,000

(vi) Unloading and handling charges paid at Mumbai port ₹ 24,000

Answer 5

Computation of assessable value of the imported machine

		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 value in US \$	10,550.00
		₹
	FOB value in Indian rupees @ ₹ 70 per \$	7,38,500.00
(iv)	Freight charges up to India [US \$ 1,000 × ₹ 70]	70,000.00
(v)	Insurance charges @ 1.125% of FOB [Note 1]	8308.13
(vi)	Lighterage charges paid by the importer [Note 2]	12,000
(vi)	Unloading and handling charges paid at Mumbai port [Note-3]	Nil
	CIF/Assessable value	8,28,808.13
	Assessable value (rounded off)	8,28,808

Notes:

- 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].
- Cost of transport of the imported goods includes lighterage charges [Explanation to rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
- As per rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, only charges incurred for delivery of goods "to" the place of importation are includible in the transaction value. Thus, 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 assessable value of the goods.
- Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

Question 6

Parsvnath Ltd. is engaged in supply of goods. It imported certain raw material from Lummus Inc. of US. Lummus Inc. is controlled by Parsvnath Ltd. In the given case, the transaction value has been rejected since Parsvnath Ltd. and Lummus Inc. are related. However, since no similar/ identical goods are imported in India, rules 4 and 5 of the Customs Valuation (Determination of value of Imported goods) Rules, 2007 are found inapplicable. Parsvnath Ltd. requests Customs Authorities to determine value accordingly as per rule 8 of the said rules. It furnishes following cost related data of imports to the authorities:

Particulars	Amount (\$)
Cost incurred by Lummus Inc.	

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Cost of raw material	2,280
Fabrication charges	1,140
Other chargeable expenses	456
Other indirect costs	285
Normal net profit margin of Lummus Inc. is 20% of FOB	
Cost incurred for import of raw material	
Freight from Lummus Inc.'s factory to US port	285
Loading charges at US port	114
Air freight from US port to Indian port	1,710
Insurance from US port to Indian port	57
Exchange rate ₹ 69 per \$	

The Customs Authorities are of the opinion that since value as per rule 7 can be determined at ₹ 5,48,000, there is no need to apply rule 8. Is the request of Parsvnath Ltd. legally tenable? If so, compute the assessable value under the Customs Act, 1962. (RTP May'22)

Answer 6

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 Parsvnath Ltd. for determination of value under rule 8 is legally tenable, if the same is also approved by the proper officer. Assuming that the request of Parsvnath Ltd. has been approved by the proper officer, the assessable value of the imported goods under rule 8 will be the sum of-

- the cost of materials and fabrication or other processing;
- an amount for profit and general expenses
- 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	2,280
Add: Fabrication charges	1,140
Other chargeable expenses	456
Other indirect costs	285
Cost of the goods at Lummus Inc.'s factory	4,161
Add: Net profit margin @ 20% of FOB, i.e. 25% of total cost	1,140
Total cost till US port = Cost of the goods at factory + Freight from factory to US port and loading charges at US port = \$ 4,560 [\$ 4,161+ \$ 285 + \$ 114]	
FOB value = Total cost till US port + profit = \$ 5,700 (\$ 4560 + \$ 1,140)	
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]	1,140
Insurance charges (actual)	
Assessable value	6,498
Assessable value in Indian Rupees (Exchange rate - ₹ 69 per \$)	4,48,362

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Question 7

Ampine Ltd. imported a machine from UK in April. The details in this regard are as under:

- (i) **FOB value of the machine: 9,800 UK Pound**
- (ii) **Freight (Air): 3,000 UK Pound**
- (iii) **Licence fee, the buyer was required to pay in UK: 600 UK Pound**
- (iv) **Buying commission paid in India ₹ 15,000**
- (v) **Date of filing bill of entry was 20th April and the rate of exchange notified by CBIC on this date was ₹ 99 per one pound. Rate of BCD was 7.5%.**
- (vi) **Date of arrival of aircraft was 25th April 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. (RTP Nov'23)

Answer 7

Computation of assessable value and total customs duty and integrated tax payable by Ampine Ltd.

Particular	Amount (₹)
FOB value	9,800
Add: License fee required to be paid in UK [Note – 1]	600
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. Licence fee relating to imported goods payable by the buyer as a condition of sale is 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

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- considered [Third proviso to section 14 of the Customs Act, 1962].
- 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].
 - 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].
 - Buying commission is not includible in the assessable value [Clause (a)(i) of sub- rule (1) of rule 10 of the Customs Valuation Rules].
 - 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].
 - Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Question 8

Jolly overseas Ltd. of Hyderabad has imported a machine from U.K (England) through the sea route by a vessel. The details of the import transaction are as follows:

Sl. No.	Particulars	Amount in U.K. (£)
(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	600
(iii)	Handling charges paid for loading the machine on the ship at the port of exportation	500
(iv)	License fee relating to the imported goods payable by the importer as a condition of sale	900
(v)	Actual Freight charges from the port of export to the port of import are not ascertainable	-
(vi)	Actual insurance charges paid	200
(vii)	Landing charges paid at the place of importation are not ascertainable	-

(i)	Handling charges associated with the delivery of the imported goods at the place of importation		₹ 15,000
1	Bill of entry:	Dated 21.01.2024	
		Exchange rate on that day:-	
		(a) Notified by CBEC 1 UK £ = ₹ 101	
		(b) prescribed by RBI 1 UK £ = ₹ 100	
2	Entry inward:	Dated 26.01.2024	
		Exchange rate on that day:-	
		(a) Notified by CBEC 1 UK £ = ₹ 102	
		(b) prescribed by RBI 1 UK £ = ₹ 103	

Compute the assessable value of the machine (in rupees) for the purpose of levy of Customs Duty.

(PYP 5 Marks Nov'18)

Answer 8

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Computation of assessable value of machine

Particulars	Amount (UK £)
Cost of the machine at the factory of the exporter	20,000
Add: Licence fee relating to the imported goods payable by the importer as a condition of sale [Note 1(i)]	900
Add: Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation [20% of £22,000] [Note 1(ii)]	4,400
Insurance charges [Taken at actuals]	200
CIF value	25,500
Add: Landing charges paid at the place of importation and handling charges associated with the delivery of the imported goods at the place of importation [Note 1(iii)]	Nil
Assessable value	25,500
Assessable value in Indian rupees @ ₹101/ per £ [Note 2]	25,75,500

Notes:

- (1) As per rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007-
- I. Licence fees related to the imported goods payable as a condition of the sale of the goods being valued is includible in the assessable value
 - II. 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.
Where such cost is not ascertainable, it shall be 20% of the free on board (FOB) value of the goods.
FOB value will be sum total of cost of machine, transport charges from factory to port of exportation, handling charges at the port of exportation and licence fee paid as a condition of sale of imported goods, which will be £ 22,000 [£ 20,000 + £ 600 + £ 500 + £ 900]
 - III. 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.
- (2) As per section 14 of the Customs Act, 1962, the rate of exchange notified by the CBEC on the date of presentation of bill of entry is to be considered for the purpose of conversion of assessable value into Indian currency.

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

Some examinees were not aware that notional landing charges are no longer required to be added to the CIF value of machine.

Question 9

Determine the total duties (duty, tax and cess) payable under Customs Act if Mr. Rao imported rubber from Malaysia at landed price 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

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notified on this product is 30%, rate of integrated tax u/s 3(7) is 12% and rate of basic customs duty is 10%. (PYP 5 Marks May'19, MTP 5 Marks Apr'23)

Answer 9

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	25,000
	[While calculating SWS, safeguard duty is excluded]	
5	Add: Integrated tax	4,23,000
	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]	
6	Total customs duties and tax payable	14,48,000
	[₹ 2,50,000 + ₹ 7,50,000 + ₹ 25,000 + ₹ 4,23,000]	

Question 10

Determine the Assessable value under customs law of an imported machine based on the following information:

- (1) **Cost of machine**
(Contract price = ₹ 1,00,000, Revised price = ₹ 2,00,000, Negotiated & Agreed price = ₹ 1,50,000)
 - (2) **Freight from the factory of the exporter to the port for shipment** = ₹ 20,000
 - (3) **Freight incurred from port of entry to inland container depot** = ₹ 60,000
 - (4) **Handling charges paid for loading the machine in the ship** = ₹ 5,000
 - (5) **Demurrage charge paid at port** = ₹ 30,000
 - (6) **Buying commission paid by importer** = ₹ 5,000
 - (7) **Commission paid to local agent appointed by exporter** = ₹ 1,000
 - (8) **Vendor inspection charges (not required under contract)** = ₹ 8,000
- (PYP 5 Marks May'19)

Answer 10

Computation of assessable value of the imported machine under customs law

Particulars	(₹)
Cost of machine [Note-1]	1,50,000
Add: Commission paid to local agent appointed by exporter [Note-4]	1,000
Add: Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation - 20% of FOB [Note-2 & 5]	35,200
Add: Insurance @ 1.125 % of FOB [Note-3 & 5]	1,980
Assessable value	1,88,180

Notes:

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1. As per section 14 of the Customs Act, 1962, the value of the imported goods is the transaction value, i.e. the price actually paid or payable for the goods, which in this case is the negotiated and agreed price.
2. 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. Further, where such cost is not ascertainable, it shall be 20% of the free on board (FOB) value of the goods which would also include demurrage charges³ [Rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
3. Where insurance cost is not ascertainable, it shall be 1.125% of the free on board (FOB) value of the goods [Rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
4. Buying commission is not includible in the assessable value. However, commission paid to local agent appointed by exporter is includible since it's not a buying commission [Rule 10(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
5. FOB value will be sum total of cost of machine, freight from factory of exporter to port for shipment, handling charges paid for loading the machine in the ship and commission paid to local agent appointed by exporter, which will be ₹ 1,76,000 [(₹ 1,50,000 + ₹ 20,000 + ₹ 5000 + ₹ 1,000)].
6. Freight incurred from port of entry to Inland Container depot is not includible in assessable value [Rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
7. 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. Vendor inspection charges not required under contract are thus, not includible in the assessable value [Rule 10(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

Note: In the above answer, demurrage charges have not been added separately in the cost of transport, loading, unloading and handling charges by taking a view that where unascertainable cost of transport etc. has been computed as 20% of FOB value, the same includes all elements of costs of transport. However, it is also possible to take an alternative view that actual demurrage charges should be separately added in the cost of transport by virtue of explanation to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 irrespective of whether the

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

In large number of cases, examinees exhibited lack of understanding of the Customs law. They were ignorant that the value of the imported goods is the transaction value, i.e. the price actually paid or payable for the goods, which in this case is the negotiated and agreed price in terms of section 14 of the Customs Act, 1962. The inclusions/exclusions of various items for determination of assessable value under customs law were not amply corroborated by legal provisions.

cost of transport has been computed as 20% of FOB value or on the basis of actual values.

Question 11

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

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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. (PYP 5 Marks Nov'19)

Answer 11

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

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	₹
Assessable value in Indian Rupees (Exchange rate - Rs 70 per \$)	3,99,000

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

Majority of the examinees failed to calculate correct profit margin and thus, computed wrong assessable value. They also failed to bring out legal provision that the order of application of rules 7 and 8 of Customs Valuation Rules can be reversed at the request of the importer and with the approval of the proper officer.

Question 12

Detox Limited wants to import customized machine to be used in its business. Detox Ltd. provides the following further details:

Sl. No.	Particulars	Amount
(1)	Cost of the machine	USD 15,000
(2)	Charges paid to canalising agent in India	₹ 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 - 12.06.2023, Rate notified by CBIC - ₹ 75 per USD, Rate notified by RBI - ₹ 76 per USD	
(9)	Date of arrival of aircraft - 15.06.2023, Rate notified by CBIC - ₹ 77 per USD, Rate notified by RBI - ₹ 78 per USD	

You are required to compute the customs duty and integrated tax payable by Detox Ltd. on above import. (PYP 5 Marks Nov'20)

Answer 12

Computation of customs duty and integrated tax

Particulars	Amount
Cost of machine	USD 15,000
	(₹)
Cost of machine in rupees @ ₹ 75 per USD [Rate of exchange notified by the CBIC on the date of presentation of bill of entry]	11,25,000.0 0
Add: Charges paid to canalising agent in India [Includible in assessable value as it's not a buying commission]	25,000.00
FOB value as per customs	11,50,000.0 0
Add: Air freight (USD 1,500 x ₹ 75) [Actual freight is added since it does not exceed 20% of FOB value]	1,12,500.00
Add: Insurance (USD 250 x ₹ 75)	18,750.00
Assessable value	12,81,250.0

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	0
Add: Basic custom duty @15% (rounded off) [Rate in force on the date of presentation of bill of entry or on the date of arrival of aircraft, whichever is later.]	1,92,188
Add: Social Welfare Surcharge @ 10% of ₹ 1,92,188 (rounded off)	19,219
Total	14,92,657
Integrated tax @ 12% (rounded off)	1,79,119
Total customs duties [₹ 1,92,188 + ₹ 19,219]	2,11,407

Question 13

An importer imported a machine from Germany. The vessel carried the machine up to Chennai port and from the Chennai port the machine was transhipped to Kandla port. Determine the assessable value under Customs Act, 1962. Conversion to Indian rupees has already been done wherever required.

S.No.	Particulars	Amount in rupees
i	Basic cost of the machine at the factory in Germany	2,00,000
ii	Transport charges of the machine from the factory in Germany to the load port for transportation to India	10,000
iii	Loading and handling charges at the load port in Germany for loading the machine on the ship	2,000
iv	Freight charges payable to the shipping company for transport to India	10,000
v	Insurance charges paid but not ascertainable	-
vi	Transshipment charges from Chennai to Kandla port	5,000
vii	Unloading and handling charges paid at Kandla port	2,000

Provide brief note to support your conclusion wherever required. (PYP 5 Marks Jul'21)

Answer 13

Computation of assessable value

Particulars	Amount (₹)
Cost of machine	2,00,000
Add: Transport charges from factory in exporting country to load port	10,000
Add: Loading and handling charges at load port	2,000
FOB value	2,12,000
Freight charges for transport to India	10,000
Insurance charges [Insurance charges have been included @ 1.125% of FOB value of goods]	2,385
Assessable value	2,24,385

Note: Cost of transport, unloading and handling charges associated with transshipment of imported goods to another customs station in India is not included in the assessable value.

Question 14

PPR Engineering, a manufacturer of tools and spares of Punjab, imports a CNC machine from USA. Contracted CIF price for import was US \$ 15,500. Due to fluctuation of price of machine in international market, price of the machine was

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re-negotiated after placing the order and finally the machine was agreed to be imported at US\$ 14,000 CIF. Actual freight paid was US \$ 3,000 and insurance cost was US \$ 1,800. Other information is given below:

- (i) Cost of inspection carried out by foreign supplier on his own account was US \$ 300, and the same was neither required under the terms of contract nor for making the goods ready for shipment.
- (ii) Commission payable to local agent of the exporter was US \$ 184. (It is not a buying commission).
- (iii) Date of bill of entry presentation is 25th February, 2024. On this date, rate of BCD is 10%, rate of exchange notified by CBIC for 1 US \$ is ₹ 73, RBI rate is ₹ 71.
- (iv) Date of arrival of aircraft at customs station is 5th March, 2024. On this date, rate of BCD is 15%, rate of exchange notified by CBIC for 1 US \$ is ₹ 74, RBI rate is ₹ 72. You are required to compute the assessable value and calculate basic customs duty payable by PPR Engineering. (PYP 5 Marks Dec'21)

Answer 14

Computation of assessable value and basic customs duty payable

Particulars	Amount (\$)
CIF value [Transaction value is re-negotiated price since it is the price actually paid/payable.]	14,000
Less: Air freight	3,000
Less: Insurance	1,800
FOB value	9,200
Add: Vendor inspection charges [Not includible since it is not a payment made as a condition of sale of the imported goods by the buyer to the seller]	Nil
Add: Commission payable to local agent of the exporter [Includible since it is not a buying commission ³]	184
FOB value as per customs	9,384
Add: Freight [Restricted to 20% of FOB value since goods are imported by air.]	1,876.80
Add: Actual insurance charges	1,800
Exchange rate is ₹ 73 per \$ [Rate of exchange notified by CBIC on the date of filing of bill of entry]	13,060.80
	0
	₹
Assessable value [\$ 13,060.80 × ₹ 73]	9,53,438.40
Basic custom duty @ 15% (rounded off) [Rate of BCD is 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.]	1,43,016

³ It has been assumed that the local agent has been appointed by the exporter.

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

Some examinees did not give correct treatment of vendor inspection charges. Vendor inspection charges were not includible since it was not a payment made as a condition of sale of the imported goods by the buyer to the seller.

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Question 15

A non-resident Indian from USA donated food processing machinery to Om Charitable Trust (OCT). OCT, however, paid commission to local agent in India. Assistant Commissioner of Customs determined the FOB value of machine at US \$ 17,500 including design and development charges. The trust accepted the value determined. Actual air freight paid was US \$ 4,000 and insurance cost was US \$ 1,500. Other details available are given below:

- (i) Commission paid to local agent of the exporter is US\$ 2,100 (paid in ₹ 1,57,500).
 - (ii) Date of Bill of Entry presentation is 25th March, 2024. On this date, rate of BCD is 10%. Rate of exchange notified by CBIC is ₹ 75 per US \$; Reserve Bank Rate is ₹ 76 per US \$.
 - (iii) Date of arrival of aircraft at customs station is 5th April, 2024. On this date, rate of BCD is 15%, rate of exchange notified by CBIC is ₹ 74 per US \$; Reserve Bank Rate is ₹ 75 per US \$.
 - (iv) Social welfare surcharge is leviable @ 10% and applicable IGST rate is 18%
- Compute the assessable value under the Customs Act and also calculate basic customs duty payable, social welfare surcharge and IGST on import of machine. Assume that no exemption is available on this transaction and make suitable assumptions, if required. (PYP 5 Marks May'22)

Answer 15

Computation of assessable value, basic customs duty, social welfare surcharge and IGST

Particulars	Amount (\$)
FOB value computed by Customs Officer (including design and development charges ⁹)	17,500
Add: Commission paid to local agent in India [Includible since it is not a buying commission]	2,100
FOB value as per customs	19,600
Add: Air freight (\$ 19,600 × 20%) [Restricted to 20% of FOB value since goods are imported by air.]	3,920
Add: Actual insurance charges	1,500
Assessable value in \$	25,020
Assessable value in rupees [\$ 25,020 × ₹ 75] [Rate of exchange notified by CBIC on the date of filing of bill of entry is considered.]	₹ 18,76,500

⁹ It has been most logically presumed that design and development is undertaken in USA and necessary for the production of imported goods.

Particulars	₹
Add: Basic custom duty @ 15% on ₹ 18,76,500 [Rate of BCD is 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]	2,81,475
Add: Social Welfare surcharge @ 10% on ₹ 2,81,475 (rounded off)	28,148
Total	21,86,123
Integrated tax @ 18% on ₹ 21,86,123 [rounded off]	3,93,502

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Question 16

Raghu Limited imported a machine from Japan. The payment includes ₹ 2,00,000 for post importation charges for installation and testing at the site of Raghu Limited in India. These charges are payable as a condition for sale of the imported machine. The department contends that this amount is includible in the assessable value. Examine the correctness of the stand taken by the Department. (PYP 2 Marks May'22)

Answer 16

Payment made for installation and testing at the site of the importer is includible in the assessable value of imported goods since said payment is made as a condition of sale of such goods by the buyer to the seller, even though imported goods are subjected to said process after their importation. The stand of Department is correct.

Question 17

ABC Industries of Mumbai imported certain goods from United States of America. Expenses incurred with respect to import are given below:

Cost of Goods	\$ 40,000
Transport charges from factory of exporter to the port for shipment	\$ 800
Freight charges from US to India	\$ 5,000
Ligherage charges paid by ABC Industries at the port in India	₹ 12,000
Freight incurred from port of entry to Inland container depot	₹ 40,000
Ship demurrage charges paid at Indian port of importation	₹ 12,000
ABC Industries incurred designing charges necessary for those goods which were paid to WOW Designers in New Delhi.	₹ 75,000

Date of Bill of Entry is 16.02.2024 (Rate of BCD 20%, Notified Exchange Rate by CBIC is ₹ 70 per US \$)

Date of Entry Inward 16.03.2024 (Rate of BCD 10%, Notified Exchange Rate by CBIC is ₹ 75 per US\$)

SWS rate is 10% and rate of IGST is ₹ 12%. Compute Assessable Value of imported goods, Basic Customs Duty and IGST. Ignore GST Compensation Cess. (PYP 5 Marks May'23)

Answer 17

Computation of assessable value, basic customs duty and IGST payable

Particulars	Amount (\$)
-------------	-------------

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Cost of goods	40,000
Transport charges up to port	800
Designing charges [Not includible since undertaken in India.]	-
FOB value	40,800
	Amount (₹)
FOB value in Indian rupees @ ₹ 70/- per \$ [Rate of exchange notified by CBIC on the date of presentation of bill of entry is considered]	28,56,000
Freight charges up to India [US \$ 5,000 x ₹ 70]	3,50,000
Lighterage charges paid by the importer [Cost of transport includes lighterage charges.]	12,000
Ship demurrage charges [Cost of transport includes ship demurrage charges]	12,000
Freight incurred from port of entry to Inland Container depot [Not includible in assessable value]	Nil
Insurance charges @ 1.125% of FOB value [Insurance charges are included @ 1.125% of FOB value since they are not ascertainable.]	32,130
Assessable value	32,62,130
Add: Basic customs duty @ 10% [Rate prevalent on the date of presentation of bill of entry or on the date of entry inwards, whichever is later.]	3,26,213
Add: Social Welfare surcharge @ 10%	32,621.30
Total	36,20,964.30
Add: IGST @ 12% of ₹ 36,20,964.30	4,34,515.72 Or 4,34,516 (Rounded off)

Question 18

Importer Mr. M is engaged in importing and distributing of sports goods. He imports sports product from Mr. Q of Malaysia and sells it under brand name "TrueSpeed". To publicize the product, Mr. M spent on AMP (Advertisement, Marketing and Promotion) of the product.

The department contended that AMP expenses incurred by M were required to be added in the value of imported goods. Whether the contention of department is correct? (PYP 5 Marks May'23)

Answer 18

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The contention of the department that AMP expenses incurred by M were required to be added to the value of imported goods was not correct.

As per a judicial pronouncement¹¹, it was decided that AMP expenses incurred by importer for promotion of brand are not includible in assessable value of imported goods on the following grounds:

Agreement did not specify that a fixed amount/percentage of the invoice value of the imported goods, was obliged to be spent by the assessee towards AMP, as a condition of sale/ import.

It was a post import activity incurred by the assessee on its own account and not for discharge for any obligation of the seller under the terms of sale.

The assessee importer was not obliged to give any account of expenditure incurred by it to the exporter, unless such expenditure was incurred at the instance of the exporter under stipulation of reimbursement.

Question 19

Mr. X has imported a machine from Japan in June, 2023 for ₹ 50 lakh. However, the machine was exported back in December, 2023 for repairs. The supplier has agreed to carry out the repairs as the machine was still in warranty period, which would normally take 6 months. The fair cost of the repairs will cost ₹ 10 lakh. In the meantime, Mr. X has requested the supplier to provide him another machine so that he can carry out his operations without hindrance. Acceding to the request, the supplier has provided him with another machine which was imported during February, 2024. The value of the new machine is ₹ 55 lakh. Freight charges incurred were ₹ 2 lakh. You are required to compute the assessable value and total duty payable for the above transaction of replacement. Customs duty is 10% and IGST is 12%. Social Welfare Surcharge to be taken at 10%. (PYP 5 Marks Nov'19, MTP 5 Marks Sep'23, RTP May'22)

Answer 19

As per Notification No. 45/2017 Cus. dated 30.06.2017, duty payable on re-importation of goods which had been exported for repairs abroad is the duty of customs which would be leviable if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not), insurance and freight charges, both ways. However, following conditions need to be satisfied for availing this concession:

- goods must be re-imported within 3 years, extendable by further 2 years, after their exportation;
- exported goods and the re-imported goods must be the same;
- ownership of the goods should not change.

However, above special provisions relating to payment of concessional duty in case of re-importation of goods exported for repairs are not applicable in the given case as the goods exported for repairs and the re-imported goods are not the same. Therefore, full customs duty will be payable on the machine received as replacement

Computation of assessable value and total duty payable

Special provisions relating to payment of concessional duty in case of re-

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importation of goods exported for repairs are not applicable in the given case as the goods exported for repairs and the re-imported goods are not the same.

	Amount (₹)
Value of new machine (FOB) ⁵	55,00,000
Add: Freight charges ⁶	2,00,000
Insurance charges @ 1.125% of FOB [₹ 55,00,000 × 1.125%] [Insurance charges have been included @ 1.125% of FOB value since actual charges are not ascertainable]	61,875
Assessable Value	57,61,875
Add: Basic customs duty @ 10% of ₹ 57,61,875 (rounded off) (A)	5,76,188
Social welfare surcharge @ 10% of ₹ 5,76,188 (rounded off) (B)	57,619
Total	63,95,682
Add: Integrated tax @ 12% of ₹ 63,95,682 (rounded off) (C)	7,67,482
Total duty payable [(A) +(B) + (C)] (rounded off)	14,01,289

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

Most of the examinees were ignorant that the special provisions relating to payment of concessional duty in case of re-importation of goods exported for repairs were not applicable in the given case as the goods were exported for repairs and the re-imported goods were not the same. Therefore, full customs duty was payable on the machine received as replacement.

Question 20

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 10th April. 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 15th April. The machine arrived in India on 18th April. 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.

OR

Unicalp Textile Industries imported a machine from Eureka Engineering Works Ltd., New Jersey for dyeing the fabric. The price of the machine was settled at US \$ 25,000. The machine was shipped on 10.02.20XX.

Meanwhile, Unicalp Textile Industries negotiated for a reduction in the price. As a result, Eureka Engineering Works Ltd. agreed to reduce the price by \$ 4,250 and sent the revised price of \$ 20,750 on 15.02.20XX. The machine arrived in India on 18.02.20XX. The Commissioner of Customs decided to take the original price of \$ 25,000 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 with the help of a decided case law, if any. (RTP Nov'18)

Answer 20

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No, the Commissioner's approach is not correct in law.

As per section 14 of the Customs Act, the transaction value of the goods is the price actually paid or payable for the goods at the time and place of importation. Further, the Supreme Court in the case Garden Silk Mills v. UOI has held that importation gets complete only when the goods become part of mass of goods within the country. Therefore, since in the instant case the price of the goods was reduced while they were in transit, it could not be contended that the price was revised after importation took place. Hence, the goods should be valued as per the reduced price, which was the price actually paid at the time of importation.

Question 21

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. (MTP 5 Marks Apr'21, May'20)

Answer 21

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].

Question 22

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

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(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	

(Old & New SM) (Same concept different figures MTP 5 Marks Aug'18, Sep'22, Sep'23, RTP Nov'18, RTP May'23)

Answer 22

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 \$	₹ 8,16,808.3 0
	Assessable Value	₹ 8,16,808.3 0
	Assessable Value (rounded off)	8,16,808

Notes:

- 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].
- Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

Question Illustration 23

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)
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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 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. (Old & New SM) (Same concept different figures PYP 5 Marks Nov'22)

Answer 23

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:

$$= 800 \times 160 = \text{US } \$ 1,28,000$$

At the exchange rate of \$ 1 = ₹ 70

CIF Value (in Rupees)	=	₹ 89,60,000
Assessable Value	=	₹ 89,60,000

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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

Question Illustration 24

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	24th October (Rate BCD 10%; Exchange rate as notified by CBIC ₹ 100 per UK Pound)
vi)	Date of arrival of aircraft	20th October (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. (Old & New SM) (Same concept different figures PYP 5 Marks Jan'21)

Answer 24

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 × 20%) [Note 3]	1,73,200.00

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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:

- 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]
- 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].
- 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].
- 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].
- 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.
- Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Question Illustration 25

From the following particulars, calculate total customs duty and integrated tax payable:

- Date of presentation of bill of entry: 20th June [Rate of BCD 20%; Inter-bank exchange rate: ₹ 61.60 and rate notified by CBIC ₹ 70].**
- Date of arrival of aircraft in India: 30th June [Rate of BCD 10%; Inter-bank exchange rate: ₹ 61.80 and rate notified by CBIC ₹ 73.00].**
- Rate of Integrated tax: 12%. Ignore GST Compensation Cess.**
- CIF value 2,000 US Dollars; Air freight 500 US Dollars, Insurance cost 100 US Dollars.**
- Social Welfare Surcharge 10%. (Old & New SM) (Same concept different figures MTP 5 Marks Oct'19)**

Answer 25

Computation of total customs duty and integrated tax payable

Particulars	Amount
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CIF value		2000 US Dollars
Less: Freight	500	
Insurance	100	600 US Dollars
FOB Value		1400 US Dollars
Add: Air Freight [Note 1]	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 applicable rate. [Proviso to Section 14(1) of the Customs Act, 1962].
3. Rate of duty would be the rate as prevalent on the date of filing of bill of entry or arrival of aircraft, whichever is later [proviso to section 15 of the Customs Act, 1962].
4. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Question Illustration 26

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
	8th September	20% ₹ 70
	Date of arrival of aircraft	BCD
	30th September	10% ₹ 72
	The inter-bank rate was 1 USD	₹ 73

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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. (Old & New SM, MTP 5 Marks March '18)
(Same concept different figures MTP 5 Marks Mar'21)**

Answer 26

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:

- 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].
- 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].
- 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].
- 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].

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5. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Question 27

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)

(Old & New SM, MTP 5 Marks Mar'23, Nov'21, Mar'19)

Answer 27

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

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Add: Freight [Note 3]	2,54,000
Insurance paid to the insurer in India [Note 1]	6,000
CIF value	15,30,000
Assessable value	15,30,000

Notes:

1. Engineering and design charges paid in UK, licence fee relating to imported goods payable by the buyer as a condition of sale, materials and components supplied by the buyer free of cost and actual insurance charges paid are all includible in the assessable value [Rule 10 of the Customs (Determination of Value of Imported Goods) Rules, 2007].
2. As per Explanation to section 14(1) of the Customs Act, 1962, assessable value should be calculated with reference to the rate of exchange notified by the CBIC.
3. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
4. Buying commission is not included in the assessable value [Rule 10(1)(a) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
5. Only ship demurrage charges on chartered vessels are included in the cost of transport of the imported goods. Thus, demurrage charges for delay in clearing the machine from the Airport will not be includible in the assessable value [Explanation to Rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].

Question 28

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. (MTP 5 Marks Oct'21, Apr'19)

Answer 28

Computation of customs duty and integrated tax payable by ABC Industries Ltd.

Particulars	Amount
CIF value	6,000 US \$
Less: Freight	1,200 US \$
Less: Insurance	1,800 US \$

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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.

Question 29

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:

	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

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(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	

(Same concept different figures MTP 5 Marks Apr'18)

Answer 29

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:

- 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)].
- 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].
- Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of the CVR].
- 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].

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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.

Question 30

ABC Industries Ltd. of Mumbai imported one machine through vessel from Japan, in the month of November.

The following particulars are made available:

	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:-

	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.

(Old & New SM) (Same concept different figures RTP May'21)

Answer 30

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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:

- 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.
- 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].
- 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.
- 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].
- Cost of insurance, transport, loading, unloading, handling charges associated with transshipment of imported goods to another customs station in India is not included in the assessable value [Rule 10(2) of the CVR].

Question 31

Product 'Alpha' was imported by Mr. Adhik by air. The details of the import transaction are as follows:

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Particulars	US \$
Price of 'Alpha' 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 22nd August, the bill of entry for home consumption was presented by Mr. Adhik on 20th August.

The other details furnished by Mr. Adhik are:

	20 th August	22 nd August
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-

- value of product 'Alpha' for the purpose of levying customs duty
- customs duty and tax payable (5 Marks Oct'22, RTP May'18, Old & New SM)

Answer 31

Computation of assessable value of product 'Alpha'

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 \$

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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.

Question 32

Compute export duty from the following data:

- (i) FOB price of goods: US \$ 1,00,000.
- (ii) Shipping bill presented electronically on 26th April.
- (iii) Proper officer passed order permitting clearance and loading of goods for export (Let Export Order) on 4th May.
- (iv) Rate of exchange and rate of export duty are as under:

	Rate of Exchange	Rate of Export Duty
On 26 th April	1 US \$ = ₹ 70	10%
On 4 th May	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.) (MTP 5 Marks April '23, Oct '23, Old & New SM) (Same concept different figures RTP Nov'19, MTP 5 Marks Apr'22, Mar'22)

Answer 32

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Computation of export duty

Particulars	Amount (US \$)
FOB price of goods [Note 1]	1,00,000
	Amount (Rs.)
Value in Indian currency (US \$ 1,00,000 x 7.70) [Note 2]	70,00,000
Export duty @ 8% [Note 3]	5,60,000

Notes:

- As per section 14(1) of the Customs Act, 1962, assessable value of the export goods is the transaction value of such goods which is the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation.
- As per third proviso to section 14(1) of the Customs Act, 1962, assessable value has to be calculated with reference to the rate of exchange notified by the CBIC on the date of presentation of shipping bill of export.
- As per section 16(1)(a) of the Customs Act, 1962, in case of goods entered for export, the rate of duty prevalent on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation, is considered.

Question 33

Arpan Industries Ltd., New Delhi has imported certain machine (by sea) from Japan. From the following particulars furnished by it, work out the assessable value of the machine and customs duty payable by Arpan Industries Ltd. with appropriate working notes:

S. No.	Particulars	Amount in (Rs.)
(i)	CIF value of the machine	4,23,379.69
(ii)	Freight incurred from port of entry to Inland Container depot	25,000.00
(iii)	Unloading and handling charges paid at the place of importation	40,000.00
(iv)	Designing charges paid to Consultancy firm in Mumbai	10,000.00

1.	Basic Customs Duty leviable	10% advalorem
2.	Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is 18%.	
3.	Note: Ignore GST Compensation Cess.	

(MTP 5 Marks Oct'18, PYP 5 Marks May'18)

Answer 33

Computation of assessable value and customs duty payable

Particulars	Rs.
CIF value of machine	4,23,379.69
Unloading and handling charges at the place of importation [Note-1]	Nil

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Freight from port of entry to ICD [Note-2]	Nil
Designing charges paid to consultancy firm in Mumbai [Note-3]	Nil
Assessable Value	4,23,379.69
Add: Basic customs duty (BCD) @10% (rounded off)	42,338
Add: Education cesses @3% of BCD (rounded off)	1,270
Value for computing IGST	4,66,987.69
IGST @ 18% (rounded off)	84,058
Total duty and tax payable	1,27,666
= [Rs. 42,338 + Rs. 1,270 + Rs. 84,058]	

Notes: -

- Only charges incurred for delivery of goods “to” the place of importation are includible in the transaction value vide rule 10(2)(a) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. 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.
- In case of goods imported by sea and transshipped to another custom station in India, the cost of transport associated with such transshipment is excluded in terms of sixth proviso to rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
- Rule 10(1)(b)(iv) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 provides that only the design and engineering work undertaken elsewhere than in India is includible in the assessable value.

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

Most of the examinees were ignorant about the treatment of unloading and handling charges paid at the place of importation. They were not aware that only charges incurred for delivery of goods “to” the place of importation are includible in the transaction value vide rule 10(2)(a) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Further, they also wrongly added landing charges to the CIF value of machine.

Question 34

Compute the total duty and integrated tax payable under the Customs Law on an imported equipment based on the following information:

- Assessable value of the imported equipment US \$ 10,100**
- Date of bill of entry is 25.4.2023. Basic customs duty on this date is 10% and exchange rate notified by the Central Board of Indirect taxes and Customs is US \$ 1 = ₹ 72.**
- Date of entry inwards is 21.4.2019. 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.**
- Integrated tax: 12%**
- 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. (MTP 5 Marks Oct'20, Old & New SM)

Answer 34

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Computation of total customs duty and integrated tax payable

Particulars	₹
Assessable value (\$ 10,100 x 72) [Note-1]	7,27,200.00
Add: Basic custom duty @ 10% [Note-2]	72,720.00
Add: Social Welfare Surcharge @ 10% on ₹ 72,720	7,272.00
Total	8,07,192.00
Add: Integrated tax @ 12% [Note-3]	96,863.04
Total Customs duty and integrated tax payable (rounded off to nearest rupee)	1,76,855

Notes:

- 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].
- 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].
- Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Question 35

Heron Manufacturers Ltd., registered in Mumbai (Maharashtra), is a manufacturer of cardboard box. It imports a cardboard box making machine from USA. Heron Manufacturers Ltd. enters into a contract with Garud 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, Heron Manufacturers Ltd. authorises Garud 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 Heron Manufacturers Ltd. which shall be reimbursed by Heron Manufacturers Ltd. to Garud Logistics on the actual basis in addition to agency charges.

Garud Logistics provided following details:

S. No.	Particulars	Amount (Rs.)
(i)	Agency charges	6,00,000
(ii)	Unloading of machine at Kandla port, Gujarat	65,000
(iii)	Charges for transport of machine from Kandla port, Gujarat to its Garud Logistics' godown in Ahmedabad, Gujarat	30,000
(iv)	Charges for transport of machine from Garud Logistics' Ahmedabad godown to the warehouse of Heron Export Import House in Mumbai, Maharashtra	33000
(v)	Prepared and submitted Bill of Entry and paid customs duty	6,75,000
(vi)	Dock dues paid	35,000
(vii)	Port charges paid	40,000
(viii)	Hotel expenses	60,000

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(ix)	Travelling expenses	75,000
(x)	Telephone expenses	5,000

Compute the value of supply made by Garud Logistics with the help of given information.

Would your answer be different, if Garud Logistics has charged Rs. 25,00,000 as a lump sum consideration for getting the imported machine cleared from the customs station and bringing the same to the warehouse of Heron Manufacturers Ltd.? (MTP 9 Marks Mar'21)

Answer 35

As per explanation to rule 33 of the CGST Rules, 2017, a “pure agent” means a person who-

- 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;
- 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;
- does not use for his own interest such goods or services so procured; and
- 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, Garud Logistics has entered into a contractual agreement with recipient of supply, Heron 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, Garud Logistics does not hold any title to said services and does not use them for his own interest.

Lastly, Garud Logistics receives only the actual amount incurred to procure such services in addition to agency charges. Thus, Garud Logistics qualifies as a pure agent.

Further, rule 33 of the CGST Rules, 2017 stipulates that notwithstanding anything contained in the provisions of Chapter IV – Determination of Value of supply, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely-

- the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;
- the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- 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 Garud Logistics as a pure agent of Heron Manufacturers Ltd. shall be excluded from the value of supply.

Accordingly, value of supply made by Garud Logistics is as follows:

Particulars	Amount (Rs.)
Agency charges	6,00,000

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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 Heron Export Import House in Mumbai, Maharashtra	Nil
Customs duty	Nil
Dock charges	Nil
Port charges	Nil
Hotel expenses	60,000
Travelling expenses	75,000
Telephone expenses	5,000
Value of supply	7,40,000

Yes, the answer would be different. If lump sum amount of Rs. 25,00,000 is paid, then the value of supply shall be Rs. 25,00,000 and tax shall be charged on value of supply, since individual cost are not given.

Question 36

Sudhakar Enterprises imported certain goods from a developing country from 15th April, 2023 to 14th April, 2024 (both days inclusive). Assessable value of the goods is ₹ 30,00,000. Share of imports of said goods from the developing country against total imports of such goods to India is 4%. Rates of basic custom duty, integrated tax and social welfare surcharge are 10%, 12% and 10% respectively. 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 help of the details available. Note: Ignore GST compensation cess and agriculture infrastructure and development cess. (MTP 5 Marks Sep'22) (Same concepts different figures MTP 5 Marks Oct'19, Oct'20)

Answer 36

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

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integrated tax shall also include safeguard duty amount.

SECTION B

Question 1

M/s IES Ltd. (assessee) imported certain goods at US \$ 20 per unit from an exporter who was holding 30% equity in the share capital of the importer company. Subsequently, the assessee entered into an agreement with the same exporter to import the said goods in bulk at US \$ 14 per unit. When imports at the reduced price were effected pursuant to this agreement, the Department rejected the transaction value stating that the price was influenced by the relationship and completed the assessment on the basis of transaction value of the earlier imports i.e., at US \$20 per unit under rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules 2007.

State briefly, whether the Department's action is sustainable in law?

Answer 1

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.

Question 2

Answer the following with reference to the provisions of section 14 of the Customs Act, 1962 and the rules made thereunder:

- (i) What shall be the value, if there is a price rise of the imported goods in international market between the date of contract and the date of actual importation but the importer pays the contract price?**
- (ii) Whether the payment for post-importation process is includible in the value if the same is related to imported goods and is a condition of the sale of the imported goods?**

Answer 2

- (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**

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entered into, the transaction value shall be the price stated in the contract, unless it is not legally acceptable.

Price rise between date of contract and date of actual import is irrelevant, as the price actually paid or payable shall be taken to be the value. Thus, price stated in the contract (unless unacceptable) shall be taken.

- (ii) As per explanation to Rule 10(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the payment for post-importation process is includible in the value of the imported goods if the same is related to such imported goods and is a condition of the sale thereof.

Question 3

Mother Mary Hospital and Research Centre imported a machine from Delta Scientific Equipments, Chicago for in house research. The price of the machine was settled at US \$ 5,000. The machine was shipped on 10th April. 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 15th April. The machine arrived in India on 18th April. 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 3

No, the Commissioner's approach is not correct in law.

As per section 14 of the Customs Act, the transaction value of the goods is the price actually paid or payable for the goods at the time and place of importation. Further, the Supreme Court in the case Garden Silk Mills v. UOI has held that importation gets complete only when the goods become part of mass of goods within the country. Therefore, since in the instant case the price of the goods was reduced while they were in transit, it could not be contended that the price was revised after importation took place. Hence, the goods should be valued as per the reduced price, which was the price actually paid at the time of importation.

Question 4

'A' had imported goods from Finland. Due to deep draught at the port, such goods were not taken to the jetty in the port but were unloaded at the outer anchorage. The charges incurred for such unloading and transport of the goods from outer anchorage to the jetty in barges (small boats) were ₹ 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 4

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As per Rule 2(da), “place of importation” means the customs station, where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse. Therefore, the outer anchorage where the goods are unloaded would not be the place of importation. Rule 10(2)(a) stipulates that for the purposes of section 14(1) of the Customs Act, 1962 and Valuation rules, value of imported goods shall be the value of such goods and shall include, the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation.

Therefore, in cases where the big mother vessels cannot enter the harbour for any reason and goods are brought to the docks by smaller vessels like barges, the cost incurred by the importer for bringing the goods to the landmass or place of consumption, such as barge charges will also be included in the cost of transportation. Therefore, ‘A’s claim is not tenable in law.

Question 5

A material was imported by air at CIF price of 5,000 US\$. Freight paid was 1,500 US\$ and insurance cost was 500 US\$. The banker realized the payment from importer at the exchange rate of ₹ 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 5

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:

- 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].
- Rate of exchange determined by CBIC is considered [clause (a) of the explanation to section 14 of the Customs Act, 1962].

Question 6

From the particulars given below, find out the assessable value of the imported goods under the Customs Act, 1962:

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		US \$
(viii)	Cost of the machine at the factory of the exporter	10,000
(ix)	Transport charges from the factory of exporter to the port for shipment	500
(x)	Handling charges paid for loading the machine in the ship	50
(xi)	Buying commission paid by the importer	50
(xii)	Freight charges from exporting country to India	1,000
(xiii)	Exchange rate to be considered: 1\$ =	₹ 70
(xiv)	Actual insurance charges paid are not ascertainable	

Answer 6

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:

- 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].
- Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

Question 7

Compute export duty from the following data:

- FOB price of goods: US \$ 1,00,000.
- Shipping bill presented electronically on 26th April.
- Proper officer passed order permitting clearance and loading of goods for export (Let Export Order) on 4th May.
- Rate of exchange and rate of export duty are as under:

	Rate of	Rate of Export

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	Exchange	Duty
On 26th April	1 US \$ = ₹ 70	10%
On 4th May	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 7

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:

- As per section 14(1) of the Customs Act, 1962, assessable value of the export goods is the transaction value of such goods which is the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation.
- As per third proviso to section 14(1) of the Customs Act, 1962, assessable value has to be calculated with reference to the rate of exchange notified by the CBIC on the date of presentation of shipping bill of export.
- As per section 16(1)(a) of the Customs Act, 1962, in case of goods entered for export, the rate of duty prevalent on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation, is considered.

Question 8

A consignment of 800 metric tonnes of edible oil of Malaysian origin was imported by a charitable organization in India for free distribution to below poverty line citizens in a backward area under the scheme designed by the Food and Agricultural Organization. This being a special transaction, a nominal price of US\$ 10 per metric tonne was charged for the consignment to cover the freight and insurance charges. The Customs House found out that at or about the time of importation of this gift consignment there were following imports of edible oil of Malaysian origin:

S N o	Quantity imported in metric tonnes	Unit price in US \$ (CIF)
7.	20	260
8.	100	220

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9.	500	200
10.	900	175
11.	400	180
12.	780	160

The rate of exchange on the relevant date was 1 US \$ = ₹ 70 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 8

Determination of transaction value of the subject goods:-

In the instant case, while determining the transaction value of the goods, following factors need consideration:-

- In the given case, US \$10 per metric tonne has been paid only towards freight and insurance charges and no amount has been paid or payable towards the cost of goods. Thus, there is no transaction value for the subject goods. Consequently, we have to look for transaction value of identical goods under rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [Customs Valuation (DVIG) Rules, 2007].
- 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.
- 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.
- 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.
- 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:

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$$= 800 \times 160 = \text{US } \$ 1,28,000$$

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

Question 9

Foreign Trade International Ltd. has imported one machine from England. It has given the following particulars:

ix)	Price of machine	8,000 UK Pounds
x)	Freight paid (air)	2,500 UK Pounds
xi)	Design and development charges paid in UK	500 UK Pounds
xii)	Commission payable to local agent of exporter @ 2% of price of machine, in Indian Rupees	
xiii)	Date of bill of entry	24th October (Rate BCD 10%; Exchange rate as notified by CBIC ₹ 100 per UK Pound)
xiv)	Date of arrival of aircraft	20th October (Rate of BCD 20%; Exchange rate as notified by CBIC ₹ 98 per UK Pound)
xv)	Integrated tax is 12%	
xvi)	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 9

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

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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 × 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:

- 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]
- 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].
- 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].
- 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].
- 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.
- Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Question 10

Compute the total duty and integrated tax payable under the Customs Law on an imported equipment based on the following information:

- Assessable value of the imported equipment US \$ 10,100**
- Date of bill of entry is 25th April. 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.**

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(iii) **Date of entry inwards is 21st April. 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 10

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.

Question 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 11

Computation of total customs duty and integrated tax payable

Particulars	
Assessable Value	1,00,000
Basic customs duty @ 10%	10,000
Add: Social Welfare surcharge* @ 10% on ₹ 10,000	1000
Sub-total	1,11,000
Integrated tax @ 12% of ₹ 1,11,000	13,320
Total customs duty and integrated tax payable [(2) + (3) + (5)]	24,320

*Social Welfare surcharge is presently exempt on IGST and GST compensation cess

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Question 12

From the following particulars, calculate total customs duty and integrated tax payable:

- (vi) Date of presentation of bill of entry: 20th June [Rate of BCD 20%; Inter-bank exchange rate: ₹ 61.60 and rate notified by CBIC ₹ 70].
- (vii) Date of arrival of aircraft in India: 30th June [Rate of BCD 10%; Inter-bank exchange rate: ₹ 61.80 and rate notified by CBIC ₹ 73.00].
- (viii) Rate of Integrated tax: 12%. Ignore GST Compensation Cess.
- (ix) CIF value 2,000 US Dollars; Air freight 500 US Dollars, Insurance cost 100 US Dollars.
- (x) Social Welfare Surcharge 10%.

Answer 12

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 [Note 1]	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:

5. 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].
6. Rate of exchange notified by CBIC on the date of presentation of bill of entry would be the applicable rate. [Proviso to Section 14(1) of the Customs Act, 1962].
7. 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].
8. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

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Question 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
7.	Freight paid (air) (in USD)	4,500
8.	Design & development charges paid in USA (in USD)	2,500
9.	Commission payable to an agent in India (in ₹)	12,500
10.	Exchange rate notified by CBIC and rate of basic duty is as follows:	
	Date of Bill of Entry	BCD
	8th September	20%
	Date of arrival of aircraft	BCD
	30th September	10%
	The inter-bank rate was 1 USD	₹ 73
11.	Integrated tax	12%
12.	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 13

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

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Total customs duty and integrated tax payable (₹ 1,71,089 + ₹ 17,109 + ₹ 2,27,890)	4,16,088
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Note:

6. 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].
7. 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].
8. 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].
9. 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].
10. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Question 14

Mr. Backpack imported second-hand goods from a UK supplier by air, which was contracted on CIF basis. However, there were changes in prices in the international market between the date of contract and actual importation. As a result of several negotiations, the parties agreed for a negotiated price payable as follows:

Particulars	Contract Price (£)	Changed Price (£)	Negotiated Price (£)
CIF Value	5000	5800	5500
Air Freight	300	600	500
Insurance	500	650	600

Other details for computing assessable value and duty payable are tabled below:

Particulars	Amount
Vendor inspection charges (inspection carried out by foreign supplier on his own, not required under contract or for making the goods ready for shipment)	₹ 600
Commission payable to local agent @ 1% of FOB in local currency	

Date of bill of entry	Basic customs duty	Exchange rate in ₹ (notified by CBIC)
18th February	10%	102
Date of arrival of aircraft	Basic custom duty	Exchange rate in ₹ (notified by CBIC)

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15th February	15%	98
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Inter-bank rate 1 UK Pound = ₹ 106

Compute the assessable value and calculate basic customs duty payable by Mr. Backpack.

Answer 14

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 £
	₹
FOB Value (in ₹) [4,400 £ x ₹ 102] [Note-2]	4,48,800
Add: Vendor inspection charges [Note-3]	Nil
Add: Commission payable to local agent [1% of FOB value] [Note-4] = (US \$ 4,400 × ₹ 102) × 1%	4,488
FOB value as per Customs	4,53,288
Freight [Note-5] [500 £ x ₹ 102]	51,000
Insurance [Note-6] [600 £ x ₹ 102]	61,200
Assessable value	5,65,488
Add: Basic custom duty @ 10% [Note-7] – rounded off	56,548.8 0
Social Welfare Surcharge (10% of ₹ 56,548.80) [rounded off]	5,655
Customs duty payable [rounded off]	62,204

Notes:

- As per Section 14 of the Customs Act, 1962, the value of the imported goods is the transaction value, which means the price actually paid or payable for the goods. In this case, since the contract was re-negotiated and the importer paid the re-negotiated price, the transaction value would be such re-negotiated price and not the contract price.
- 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.
- 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)].
- 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].

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5. 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].
6. Actual insurance charges paid are includible in the assessable value as per rule 10(2)(b) of the Customs Valuation Rules.
7. As per proviso to section 15 of the Customs Act, 1962, rate of duty will be the rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later.

Question 15

F. Ltd. imported a machine from UK in May . 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 20th May 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 25th May 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 15

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]	

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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:

- Licence fee relating to imported goods payable by the buyer as a condition of sale is 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].
- 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].
- 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].
- 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].
- Buying commission is not included in the assessable value [Clause (a)(i) of sub-rule (1) of rule 10 of the Customs Valuation Rules].
- 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].
- Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Question 16

Briefly explain the following with reference to the Customs (Determination of Value of Imported Goods) Rules, 2007:

- Goods of the same class or kind
- Computed value

Answer 16

- 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.
- 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 –

- the cost or value of materials and fabrication or other processing employed in

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producing the imported goods;

- (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;
- (c) the cost or value of all other expenses under sub-rule (2) of rule 10.

Question 17

Whether the assessable value of the warehoused goods which are sold before being cleared for home consumption, should be taken as the price at which the original importer has sold the goods?

Answer 17

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.

Question 18

Explain when are the costs and services as given in rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 be added to the value of the identical goods under rule 4.

Answer 18

As per rule 4(1)(c) of the Customs Valuation (Determination of Value of Imported Goods Rules, 2007) where imported goods are being valued as per rule 4, the value of the identical goods is adjusted to take into account the difference attributable to the commercial level or to the quantity or both. According to rule 4(2) where costs and charges referred to in rule 10 are included in the value of identical goods, adjustment has to be made of the difference in such costs and charges between the imported goods and the identical goods.

Therefore, if the value of the identical goods does not include certain specific costs and charges relating to the imported goods, these are to be included as per rule 10.

Question 19

Examine the validity of the following statements with reference to the Customs Act, 1962 giving brief reasons:

(i) **Service charges paid to canalizing agent are not includible in the assessable value of imports. Such agent imports the goods from foreign sellers and enters into an agreement to sell such goods with buyers in India in high seas.**

(ii) **Charges for “vendor inspection” on the second hand goods carried out by**

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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 19

- (i) The statement is not valid. Since the canalizing agent is not the agent of the importer nor does he represent the importer abroad, purchases in bulk by canalizing agency from foreign seller and subsequent sale by it to Indian importer on high seas sale basis are independent of each other. Hence, the commission or service charges paid to the canalizing agent are includible in the assessable value as these cannot be termed as buying commission [Hyderabad Industries Ltd. v. UOI 2000 (115) ELT 593 (SC)].
- (ii) The statement is valid. As per rule 10(1)(e) of the Customs (Determination of Value of Imported Goods) Rules, 2007, only the payments actually made as a condition of sale of the imported goods by the buyer to the seller are includible in the assessable value.

Thus, charges of vendor inspection on the goods carried out by foreign supplier on his own and not required for making the goods ready for shipment, are not includible in the assessable value of the imported goods [Bombay Dyeing & Mfg. v. CC 1997 (90) ELT 276 (SC)].

Question 20

An importer entered into a contract for supply of crude sunflower seed oil @ U.S. \$ 435 C.I.F./Metric ton. Under the contract, the consignment was to be shipped in the month of July. The period was extended by mutual agreement and goods were shipped on 5th August at old prices.

In the meanwhile, the international prices had gone up due to volatility in market and other imports during the month of August were at higher prices. Department sought to increase the assessable value on the basis of the higher prices of contemporaneous imports.

Decide whether the contention of the Department is correct, with reference to a decided case law, if any.

Answer 20

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'.

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Question 21

BSA & Company Ltd. has imported a machine from U.K. From the following particulars furnished by it, arrive at the assessable value for the purpose of customs duty payable.

	Particulars	Amount
(i)	Price of the machine	10,000 U.K. Pounds
(ii)	Freight (air)	3,000 U.K. Pounds
(iii)	Engineering and design charges paid to a firm in U.K.	500 U.K. Pounds
(iv)	License fee relating to imported goods payable by the buyer as a condition of sale	20% of Price of machine
(v)	Materials and components supplied in UK by the buyer free of cost valued at ₹ 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:

- (iv) Inter-bank exchange rate: ₹ 98 per U.K. Pound.
- (v) CBIC had notified for purpose of section 14 of the Customs Act, 1962, exchange rate of ₹ 100 per U.K. Pound.
- (vi) 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 21

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:

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6. 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].
7. 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.
8. 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].
9. Buying commission is not included in the assessable value [Rule 10(1)(a) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
10. Only ship demurrage charges on chartered vessels are included in the cost of transport of the imported goods. Thus, demurrage charges for delay in clearing the machine from the Airport will not be includible in the assessable value [Explanation to Rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].

Question 22

Briefly explain with reference to the provisions of the Customs Act, the relevant date for determination of rate of duty and tariff valuation for imports through a vehicle where bill of entry is filed prior to the arrival of the vehicle.

Answer 22

As per section 15(1) of the Customs Act, 1962, the relevant date for determination of rate of duty and tariff valuation of goods entered for imports through a vehicle is the date of presentation of bill of entry OR date of arrival of the vehicle, whichever is later.

Therefore, the relevant date for determination of rate of duty and tariff valuation for imports through a vehicle where bill of entry is filed prior to the arrival of the vehicle will be the date of the arrival of the vehicle.

Question 23

With reference to the provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, explain briefly the chief reasons on the basis of which the proper officer can raise doubts on the truth or accuracy of the declared value.

Answer 23

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;

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- (d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
- (e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;
- (f) the fraudulent or manipulated documents.

Question 24

Jagat Corporation Limited imported some goods from US. The details of the transaction are as follows:-

Authority	Rate of exchange
CBIC	1 US \$=₹ 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 24

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:-

- The applicable exchange rate is the rate notified by CBIC [Explanation to section 14(1) of the customs Act, 1962].
- Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Question 25

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Paper 5 – Indirect Tax Laws

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 25

Computation of customs duty and integrated tax payable by ABC Industries Ltd.

Particulars	Amount
CIF value	6,000 US \$
Less: Freight	1,200 US \$
Less: Insurance	1,800 US \$
FOB value	3,000 US \$
Add: Freight (20% of FOB value) [Note 1]	600 US \$
Add: Insurance (actual)	1,800 US \$
CIF	5,400 US \$
Exchange rate as per CBIC [Note 3]	₹ 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:

- 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].
- Rate of exchange determined by CBIC is considered [Clause (a) of the explanation to section 14 of the Customs Act, 1962].
- 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.
- Integrated tax is levied on the sum total of the assessable value of the imported goods,

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customs duties and applicable social welfare surcharge.

Question 26

Compute the total customs duty and integrated tax payable under Customs law on an imported machine, based on the following information:

	US \$
i) Cost of the machine at the factory of the exporter	20,000
ii) Transport charges from the factory of exporter to the port for shipment	800
iii) Handling charges paid for loading the machine in the ship	50
iv) Freight charges from exporting country to India	5,000
v) Buying commission paid by the importer	100
	₹
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	20th January (Rate BCD 20%; Exchange rate as notified by CBIC ₹ 70 per US \$)
Date of entry inward	25th March (Rate of BCD 10%; Exchange rate as notified by CBIC ₹ 75 per US \$)
Integrated tax	12%

Note: Ignore GST Compensation Cess.

Answer 26

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

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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].

Question 27

Kaveri Enterprises imported some goods from Italy. On the basis of certain information obtained through computer printouts from the Customs House, Department alleged that during the period in question, large number of consignments of such goods were imported at a much higher price than the price declared by Kaveri Enterprises. Therefore, Department valued such goods on the basis of transaction value of identical goods as per rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and demanded the differential duty along with penalty and interest from the Kaveri Enterprises. However, Department did not provide these printouts to Kaveri Enterprises.

Kaveri Enterprises contended that Department's demand was without any basis in law, without any legally admissible evidence and opposed to the principles of natural justice as the computer printouts which formed the basis of such demand had not been supplied to them. Resultantly, they had no means of knowing as to whether any imports of comparable nature were made at the relevant point of time.

You are required to examine the contention of Kaveri Enterprises, with the help of a decided case law, if any.

Answer 27

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The facts of the given case are similar to the case of Gira Enterprises v. CCus. 2014 (307) ELT 209 (SC) decided by the Supreme Court. In the instant case, the Supreme Court observed that since Revenue did not supply the copy of the computer printout, which formed the basis of the conclusion that the appellants under-valued the imported goods, the appellants obviously could not and did not have any opportunity to demonstrate that the transactions relied upon by the Revenue were not comparable transactions.

The Supreme Court held that mere existence of alleged computer printout was not proof of existence of comparable imports. Even if assumed that such printout did exist and content thereof were true, such printout must have been supplied to the appellant and they should have been given reasonable opportunity to establish that the import transactions were not comparable.

In view of the above-mentioned judgment, contention of Kaveri Enterprises is correct.

Question 28

M/s Impex imported some consignment of goods on 1st June. A bill of entry for warehousing of goods was presented on 5th June and the materials were duly warehoused. The goods were subject to duty @ 50% ad valorem. In the meanwhile, on 1st July, 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 1st August 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 1st August could be adopted for purpose of conversion of foreign currency into local currency?**

Answer 28

- 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 1st August, 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. 5th June and not the one prevalent on date of presentation of bill of entry for home consumption i.e., 1st August, would be adopted.

Question 29

Differentiate between deductive value and computed value.

Answer 29

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- (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.

Question 30

What is residual method of valuation? Discuss with reference to the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Answer 30

- (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

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or offer for sale.

- (2) No value shall be determined under the provisions of this rule on the basis of—
- (i) the selling price in India of the goods produced in India;
 - (ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
 - (iii) the price of the goods on the domestic market of the country of exportation;
 - (iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;
 - (v) the price of the goods for the export to a country other than India;
 - (vi) minimum customs values; or
 - (vii) arbitrary or fictitious values.

The residuary method can be considered if valuation is not possible by any other method. [Sanjay Chandiram v. CC 1995 (77) E.L.T. 241 (S.C.)]

Question 31

Enumerate the various costs and services that are to be added under rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 to arrive at the “transaction value”.

Answer 31

- (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.

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- (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 chartered vessels, lighterage or barge charges.

Question 32

In the context of Customs Valuation (Determination of Price of Imported Goods) Rules, 2007, explain the meaning of:

- (i) **Similar goods**
- (ii) **Identical goods**

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Answer 32

RULE 5 – TRANSACTION VALUE OF SIMILAR GOODS

- (1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued.

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

- (2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

RULE 4 – TRANSACTION VALUE OF IDENTICAL GOODS

(1)

- a) 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.

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

- b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

- c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both,

shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

- (2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.
- (3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

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Transaction value of identical goods sold for export to India
Imported at or about the same time as the goods being valued
Identical goods should be sold at the same commercial level and substantially the same quantity If sold at different commercial level/quantity, then adjustment to be made for the difference
Adjustment to be made on account of difference in distance and means of transport used for import of identical goods
In case more than one transaction value of identical goods is available, lowest value may be considered

Question 33

Briefly discuss the provisions relating to date for determining the rate of duty and tariff valuation of imported goods.

Answer 33

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.

Question 34

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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 22nd August, the bill of entry for home consumption was presented by Mr. X on 20th August.

The other details furnished by Mr. X are:

	20th August	22nd August
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-

- value of product 'Z' for the purpose of levying customs duty
- customs duty and tax payable

Answer 34

Computation of assessable value of product 'Z'

Particulars		
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 \$

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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:

- 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 \$.

- Rate of exchange determined by CBIC is to be considered [Clause (a) of the explanation to section 14 of the Customs Act, 1962].
- 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.
- Integrated tax is levied on the sum total of the assessable value of the imported goods and customs duties [Section 3(8) of the Customs Tariff Act, 1962]. SWS leviable on integrated tax have been exempted.

Question 35

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:

	Particulars	Amount
(xi)	Cost of the machine at the factory of the exporter	US \$ 20,000
(xii)	Transport charges from the factory of exporter to the port for shipment	US \$ 1,000
(xiii)	Handling charges paid for loading the machine in the ship	US \$ 100
(xiv)	Buying commission paid by the importer	US \$ 100
(xv)	Freight charges from exporting country to India	US \$ 2,000
(xvi)	Actual insurance charges paid are not ascertainable	---
(xvii)	Charges for design and engineering work undertaken for the	US \$

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	machine in US	5,000
(xvii)	Unloading and handling charges paid at the place of importation	₹ 1,500
(xix)	Transport charges from Mumbai to Cochin port	₹ 25,000
(xx)	Exchange rate to be considered: 1\$ = ₹ 70	

Answer 35

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:

7. 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)].
8. 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].
9. Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of the CVR].
10. 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].
11. 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].
12. 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.

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The loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation are not to be added to the CIF value of the goods.

Question 36

ABC Industries Ltd. of Mumbai imported one machine through vessel from Japan, in the month of November.

The following particulars are made available:

	Particulars	Amount in Japanese Yen (¥)
iv)	Cost upto port of exportation incurred by exporter	6,00,000
v)	Loading charges at port of exportation	25,000
vi)	Freight charges from port of export to port of import in India.	1,00,000

Following additional amounts paid by ABC Industries Ltd:-

	Particulars	Amount in Indian rupees (₹)
vi)	Designing charges, necessary for such machine, paid to consultancy firm in New Delhi	8,00,000
vii)	Commission paid (not the buying commission) to local agent of exporter.	1,25,000
viii)	Actual landing charges paid at the place of importation.	15,000
ix)	Actual insurance charges paid to the place of importation are not ascertainable.	-
x)	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 36

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

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	₹
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:

- 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.
- 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].
- 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.
- 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].
- Cost of insurance, transport, loading, unloading, handling charges associated with transshipment of imported goods to another customs station in India is not included in the assessable value [Rule 10(2) of the CVR].

Question 37

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

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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 37

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-

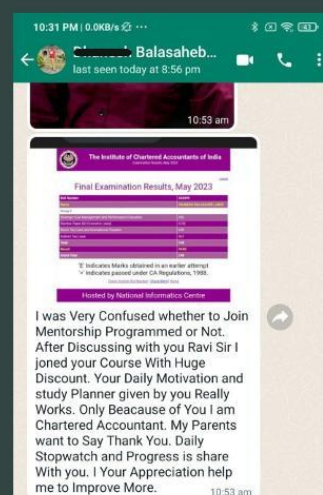
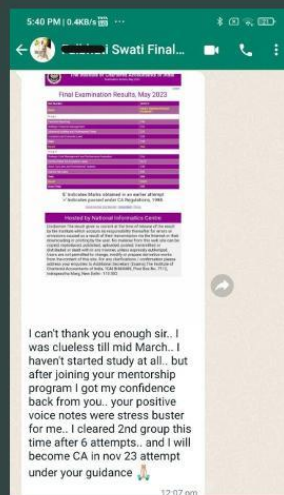
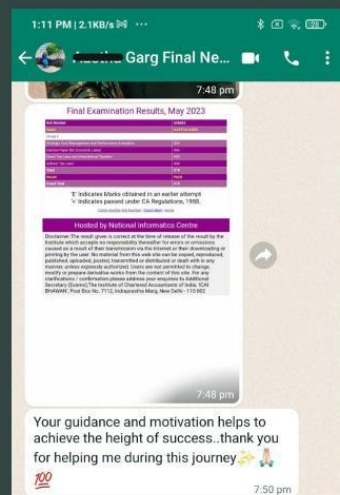
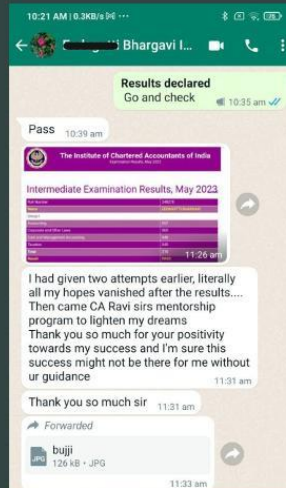
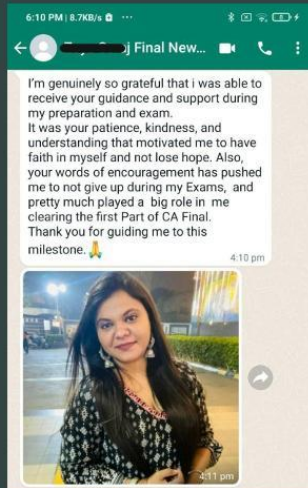
- (a) the cost of materials and fabrication or other processing;
- (b) an amount for profit and general expenses
- (c) the cost or value of all other expenses under rule 10(2) of the said rules.

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

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Chapter 29 Importation And Exportation Of Goods

Attempts wise Distribution

Row Labels	Dec' 21	Jan' 21	Jul' 21	May' 18	Nov' 18	May' 19	May' 22	May' 23	Nov' 19	Nov' 20	Nov' 22	Nov' 23
MCQ												
MTP			Q2									
RTP			Q1									
QA												
MTP				Q14	Q18	Q15	Q16	Q1				Q2
PYP	Q7			Q6			Q8, Q9	Q11	Q13	Q12	Q10	
RTP				Q3						Q4	Q5	Q17

SECTION A

MULTIPLE CHOICE QUESTIONS (MCQ'S)

1. Suhasini Oberoi, an Indian resident who was on a visit to USA, returned after 6 months for contesting in assembly elections of her State. She was carrying with her the following items:

(i)	Personal effects	₹ 59,000
(ii)	Laptop computer	₹ 37,000
(iii)	Jewellery - 25 grams (purchased in USA)	₹ 67,000
(iv)	Music system	₹ 58,000

Compute the customs duty payable by Suhasini Oberoi with reference to the Baggage Rules, 2016.

- (a) ₹ 28,875
 (b) ₹ 62,370
 (c) ₹ 85,085
 (d) ₹ 48,125 (RTP May'21)

Ans: (a)

2. Goods other than restricted goods, including edible items, of value in a licensing year, may be exported as a gift.

- (a) Rs. 1,00,000
 (b) Rs. 2,00,000
 (c) Rs. 5,00,000
 (d) Rs. 10,00,000 (MTP 1 Mark Mar'21)

Ans: (c)

QUESTIONS AND ANSWERS

Question 1

John Biden, aged 32, is a tourist of US origin. He has come to India on a travel visa and carries with him the following articles as part of baggage:

Particulars	Value in ₹
Used personal effects	50,000

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Travel souvenirs	50,000
Laptop	1,20,000
200 gms tobacco [Valued @ ₹ 5 per gram]	1,000
50 cigars [Valued @ ₹ 100 each]	5,000
Fire-arms	80,000

With reference to the Baggage Rules, 2016, determine customs duty payable. Ignore agriculture infrastructure and development cess.

(MTP 5 Marks Apr'23 & Sep'23)

Answer 1

As per rule 3 of the Baggage Rules, 2016, tourist of foreign origin, excluding infant, is allowed duty free clearance of:

- used personal effects and travel souvenirs; and
- Articles up to the value of 7 15,000 (excluding, inter alia, firearms, tobacco exceeding 125 gms and cigars exceeding 25), if carried on in person or in the accompanied baggage of the passenger.

In view of the said provisions, customs duty shall be computed as follows

Particulars	Rs.
Used personal effects	Nil
Travel souvenirs	Nil
Laptop [One laptop computer is exempt when imported into India by a passenger * 18 years of age]	Nil
Tobacco [Rs. 5 X125 gm] [125 gms tobacco can be accommodated in General Free Allowance (GFA)]	625
Cigars [7 100 X 25] [25 cigars can be accommodated in GFA]	2,500
Total value	3,125
Less: GFA	15,000
Baggage on which duty is payable	Nil
Duty payable on baggage	Nil

Note: Firearms, cigars exceeding 25 and tobacco exceeding 125 gms are not chargeable to rate applicable to baggage. These items are charged @ 100% applicable to baggage under Heading 9803 of the Customs Tariff.

Question 2

Gregory Peg of foreign origin has come on travel visa, to tour in India. He carries with him, as part of baggage, the following:

Particulars	Value in ₹
Travel Souvenir	85,000
Other articles carried on in person	1,50,000
120 sticks of cigarettes of ₹100 each	12,000
Fire arm with 100 cartridges (value includes the value of cartridges at @ ₹ 500 per cartridge).	1,00,000

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Determine customs duty payable, if the effective rate of customs duty is 38.50% inclusive of social welfare surcharge, with short explanations where required. Ignore Agriculture infrastructure and development cess. (5 Marks Oct'23) (Old & New SM)

Answer 2

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.

Question 3

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?**

(Old & New SM, RTP May'18)

Answer 3

- (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 CBIC 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 CBIC.
- (iii) The due dates for payment of deferred duty are –

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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.

Question 4

Mr. Samuel, a US resident aged 35 years, has come to India on a tourist visa for a month-long vacation. He carries with him, as part of baggage, the following: (RTP May'20)

Particulars	Value in ₹
Travel souvenirs	85,000
Other articles carried on in person	1,50,000
80 sticks of cigarettes of ₹ 100 each	8,000
30 cartridges of fire arms valuing ₹ 500 each	15,000
One litre wine	15,000

With reference to the Baggage Rules, 2016, determine whether Mr. Samuel will be required to pay any customs duty?

Answer 4

As per rule 3 of Baggage Rules, 2016, tourist of foreign origin, excluding infant, is allowed duty free clearance of

- travel souvenirs; and
- Articles up to the value of ₹ 15,000 (excluding, inter alia, cigarettes exceeding 100 sticks, cartridges of fire arms exceeding 50 and alcoholic liquor or wines in excess of two litres), if carried on in person.

Further, any article the value of which exceeds the duty free allowance admissible to such passenger or member under the Baggage Rules, 2016, is chargeable to customs duty @ 35% [Notification No. 26/2016 Cus. dated 31.03.2016]. The effective rate of duty becomes 38.5% after including social welfare surcharge @ 10% on customs duty.

Accordingly, the customs duty payable by Mr. Samuel will be calculated as under:

Computation of customs duty payable	₹
Travel souvenir	Nil
Articles carried on in person	1,50,000
Cigarettes [Since the number of cigarettes does not exceed 100, the same will be covered within the scope of rule 3 of Baggage Rules, 2016 and thus, be eligible for general free allowance (GFA) or concessional rate of duty applicable to baggage vide Notification No. 26/2016 Cus. dated 31.03.2016, as the case may be.]	8,000
Fire arms cartridge [Since the number of fire arms cartridge does not exceed	15,000

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50, the same will be covered within the scope of rule 3 of Baggage Rules, 2016 and thus, be eligible for GFA or concessional rate of duty applicable to baggage vide <i>Notification No. 26/2016 Cus. dated 31.03.2016</i> , as the case may be.]	
One litre of wine [Since the quantity of wine does not exceed 2 litres, the same will be covered within the scope of rule 3 of Baggage Rules, 2016 and thus, be eligible for GFA or concessional rate of duty applicable to baggage vide <i>Notification No. 26/2016 Cus. dated 31.03.2016</i> , as the case may be.]	15,000
Baggage within the scope of rule 3 of Baggage Rules, 2016	1,88,000
<i>Less:</i> GFA	15,000
Baggage on which duty is payable	1,73,000
Customs duty payable @ 38.5%	66,605

Question 5

John Biden, aged 32, is a tourist of US origin. He has come to India on a travel visa and carries with him the following articles as part of baggage:

Particulars	Value in ₹
Used personal effects	50,000
Travel souvenirs	50,000
Laptop	1,20,000
200 gms tobacco	1,000
[Valued @ ₹ 5 per gram]	
50 cigars [Valued @ ₹ 100 each]	5,000
Fire-arms	80,000
80 cartridges of fire-arms	40,000
[Valued @ ₹ 500 per cartridge]	
1.5 litres wine	5,000
Mobile phone	80,000

With reference to the Baggage Rules, 2016, determine customs duty payable. Ignore Agriculture infrastructure and development cess. (RTP Nov'22)

Answer 5

As per rule 3 of the Baggage Rules, 2016, tourist of foreign origin, excluding infant, is allowed duty free clearance of

- used personal effects and travel souvenirs; and
- Articles up to the value of ₹ 15,000 (excluding, inter alia, fire-arms, cartridges of fire arms exceeding 50, wine in excess of 2 litres, tobacco exceeding 125 gms and cigars exceeding 25), if carried on in person or in the accompanied baggage of the passenger.

In view of the said provisions, customs duty shall be computed as follows

Particulars	₹
Used personal effects	Nil
Travel souvenirs	Nil
Laptop	Nil
[One laptop computer is exempt when imported into India by a passenger ≥ 18 years of age]	
Tobacco [₹ 5 × 125 gm]	625
[125 gms tobacco can be accommodated in General Free Allowance (GFA)]	
Cigars [₹ 100 × 25]	2,500

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[25 cigars can be accommodated in GFA]	
Fire-arms' cartridges [₹ 500 × 50]	25,000
[50 fire-arms' cartridges can be accommodated in GFA]	
1.5 litres wine	5,000
[Wine upto 2 litres can be accommodated in GFA]	
Mobile phone	80,000
[Can be accommodated in GFA]	
Total value	1,13,125
Less: GFA	15,000
Baggage on which duty is payable	98,125
Duty payable on baggage @ 38.50% (including 10% Social welfare surcharge) [rounded off]	37,778

Note: Firearms, cartridges of firearms exceeding 50, cigars exceeding 25 and tobacco exceeding 125 gms are not chargeable to rate applicable to baggage [Notification No. 26/2016 Cus. dated 31.03.2016]. These items are charged @ 100% applicable to baggage under Heading 9803 of the Customs Tariff.

Question 6

State the salient features of "Deferred duty payment facility" with reference to Customs Act, 1962 and rules thereunder. (PYP 5 Marks May'18)

Answer 6

The salient features of "Deferred duty payment facility" are as under:-

- Under section 47 of the Customs Act, 1962, the Central Government has permitted importers certified under Authorized Economic Operator programme as Authorized Economic Operator - AEO (Tier-Two) and AEO (Tier-Three) to make deferred payment of import duty. AEO means Authorized Economic Operator certified by the Directorate General of Performance Management under CBEC.
- An eligible importer intending to avail the benefit of deferred payment shall intimate to the Principal Commissioner/Commissioner of Customs, having jurisdiction over the port of clearance, his intention to avail the said benefit who on being satisfied with the eligibility of the importer will allow him to pay the duty by due dates.

• Due dates for deferred payment of import duty—

S. No.	Goods corresponding to Bill of Entry returned for payment from	Due date of payment of duty (excluding holidays)
1.	1 st day to 15 th day of any month	16 th day of that month
2.	16 th day till the last day of any month other than March	1 st day of the following month
3.	16 th day till the 31 st day of March	31 st March

- The eligible importer shall pay the duty electronically except where Assistant/Deputy Commissioner of Customs allow payment by any other mode for reasons to be recorded in writing.
- If there is default in payment of duty in full by due date more than once in 3 consecutive months, deferred duty

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payment facility 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.

[Note: Any of the five points stated above may be mentioned.]

Question 7

Mr. X, an Indian resident, returns to India on 10.04.2023 after visiting France for 3 months. On his return to India, he brings with him following articles:

- Used personal effects like clothes etc. valued at ₹ 1,75,000
- Music system valued at 1,20,000
- Jewellery valued at ₹ 1,30,000 measuring 20 grams brought by Mr. 'X'
- Laptop worth ₹ 1,20,000
- Wine 1 litre worth ₹ 6,000
- Mobile phone worth ₹ 50,000

You are required to determine the taxable value of baggage with reference to the Baggage Rules, 2016.

(PYP 5 Marks Dec'21)

Answer 7

Computation of taxable value of baggage

Used personal effects [Duty free clearance is allowed.]	Nil
Music system	1,20,000
Jewellery [Duty free jewellery allowance is not available to Mr. X since he did not reside abroad for more than 1 year.]	1,30,000
Laptop [One laptop computer is exempt when imported into India by a passenger ≥ 18 years of age]	Nil
1 litre wine [Can be accommodated in general free allowance]	6,000
Mobile phone	50,000
Total value	3,06,000
Less: General duty free baggage allowance of ₹ 50,000	50,000
Taxable value of baggage	2,56,000

6 It has been most logically assumed that Mr. X ≥ 18 years of age.

Question 8

Joginder & Co. imported goods valued at ₹ 12,00,000 vide a bill of entry presented before the proper officer on 15th December 2023, on which date the rate of customs duty was 20%. The proper officer decided that the goods should be subject to chemical test and therefore, the same were provisionally assessed at a value of ₹ 12,00,000 and Joginder & Co. paid provisional duty of ₹ 2,40,000 on the same date after fulfilling the requirements for provisional assessment. What are the conditions which are to be complied before payment is made for

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the purpose of provisional assessment?

Determine the amount of interest payable, if any, under section 18 of the Customs Act, 1962 assuming that the payment of the final duty is assessed on 31st January 2024 at ₹ 3,80,000 and the balance duty is paid on the same day. (PYP 5 Marks May'22)

Answer 8

Before, the provisional assessment of duty, the importer shall execute a bond for the purpose of undertaking to pay on demand the deficiency between the duty as may finally assessed and the duty provisionally assessed and shall furnish prescribed amount of security for the payment of the duty deficiency.

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

$$= ₹ 1,40,000 \times 15\% \times 62/365$$

$$= ₹ 3,567 \text{ (rounded off)}$$

Question 9

Mr. Cliff Paul, a resident and citizen of USA, visits India on a business tour. He made declaration to the proper officer about his baggage under section 77 of the Customs Act, 1962 for the purpose of clearance. During the scrutiny of the declaration, proper officer found that some of the articles declared in baggage brought with him were prohibited to be entered in India and were detained by the officer.

Although Mr. Paul did not insist to clear those articles, value of those articles was very high and it was a difficult situation for him. You are required to advise any procedure prescribed under customs law to overcome the situation. Give your advice on the basis of relevant statutory provisions.

(PYP 3 Marks May'22)

Answer 9

Where the baggage of a passenger contains any prohibited article which has been declared by him 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.

In the given case, proper officer has detained the prohibited article declared and brought by Mr. Cliff Paul. Such articles shall be returned to him on his leaving India.

Further, if for any reason, he is not able to collect it at the time of his leaving India, the said article may be returned to him through any other passenger authorized by him and leaving India or as cargo consigned in his name.

Question 10

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Kiara of Indian origin, came to India on tour with her baby of 1 year. She brought following goods:

1.	Personal effects	50,000
2.	Used personal effects of infant	10,000
3.	New camera	45,000
4.	Mobile phone	12,500
5.	Cigarette sticks 70	1,000
6.	Wine - 2 litres	18,000
7.	Travel souvenirs	5,000
8.	Laptop	90,000

Indicate the taxability or taxable value in respect of each item in the table and calculate customs duty payable rounded off to the nearest rupee in accordance with law. There is no need for any notes to support the conclusions regarding taxability or taxable amount. (PYP 5 Marks Nov'22)

Answer 10

Particulars	₹
Personal effects	Nil
Used personal effects of infant	Nil
New camera	45,000
Mobile phone	12,500
Cigarette sticks 70	1,000
Wine -2 litres	18,000
Travel souvenirs	Nil
Laptop	Nil
Total	76,500
Less: General Free Allowance	50,000
Baggage on which duty is payable	26,500
Duty payable on baggage @ 38.50% (including 10% Social welfare surcharge) [rounded off]	10,203

Note: In the above solution, it has been assumed that Kiara is returning from a country other than Nepal, Bhutan and Myanmar. However, in case it is assumed that Kiara is returning from Nepal, Bhutan or Myanmar, General Free Allowance is ₹ 15,000 instead of ₹ 50,000. In that case, duty payable on baggage @ 38.50% will be ₹ 23,678.

Question 11

Mr. Noddy, aged 40 years and a citizen of Australia, is on a solo trip to India for 1 month to meet his Indian friend residing in Mumbai. He carries with him following articles as part of baggage:

Particulars	Value in ₹
Used personal effects	80,000
Other articles carried on in person	1,00,000
65 cartridges of fire arms @ ₹ 1,000 per cartridge	65,000
150 gms of tobacco @ ₹ 10 per gram	1,500

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Mobile phone	50,000
50 cigars of ₹ 100 each	5,000
Used personal effects of his infant child for donation	10,000

With reference to the Baggage rules 2016, indicate the taxability and taxable value in respect of each item in the table under baggage rules or otherwise. Also calculate the customs duty payable on baggage rounded off to the nearest rupee in accordance with law. Ignore agriculture infrastructure and development cess. (PYP 5 Marks May'23)

Answer 11

		Taxable value under Baggage Rules
Used personal effects	[Allowed duty free]	NIL
Other articles carried on in person	Taxable	1,00,000
50 cartridges of fire arms		50,000 (50 x ₹ 1,000)
125 gms of tobacco		1,250 (125 gm x ₹ 10)
Mobile phone		50,000
25 cigars of ₹ 100 each		2,500 (25 cigars x ₹ 100)
Used personal effects of his infant child	[Taxable.]	10,000
Total		2,13,750
Less: General Free Allowance		15,000
Baggage on which duty is payable @ 38.50% (including 10% Social welfare surcharge)		1,98,750
Duty payable on baggage¹²		76,519 (rounded off)

1 Cartridges of fire arms exceeding 50, tobacco exceeding 125 gms and cigars exceeding 25 are not chargeable to rate of 38.50% as applicable to baggage vide Notification No. 26/2016 Cus. dated 31.03.2016. These items are charged @ 100% applicable to baggage under Heading 9803 of the Customs Tariff.

Question 12

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 29.04.2023. The technical report was received on 05.05.2023. Discuss about the time limit available to the officer for finalizing the provisional assessment as per law and guide Mr. X as to when his provisional assessment will be finalized. (PYP 5 Marks Nov'20)

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Answer 12

The proper officer can finalize the provisional assessment within 2 months of receipt of a chemical or other test report, where the provisional assessment is ordered for that reason. The Commissioner of Customs may allow a further time period of 3 months in case the proper officer is not able to finalize the provisional assessment within the period of 2 months. Thus, in the given case, provisional assessment will be finalized by 05.07.2023 [within 2 months of receipt of test report (05.05.2023)]. However, if the proper officer is not able to finalize the provisional assessment by 05.07.2023, the Commissioner may allow a further period of 3 months, i.e., till 05.10.2023 to the proper officer to finalize the provisional assessment.

Question 13

Padmavati, an Indian resident (36 years old) who was on a visit to China, returned after 6 months. She was carrying with her the personal effects and jewellery 25 grams (purchased in China) worth ₹ 75,000 each. Further, she was carrying a laptop computer worth ₹ 60,000 and a music system worth ₹ 50,000 with her. Compute the customs duty payable by Padmavati with reference to the Baggage Rules, 2016. Ignore Agriculture infrastructure and development cess. (MTP 5 Marks Mar'23 & Nov'21, Old & New SM, PYP 5 Marks Nov'19)

Answer 13

Computation of customs duty payable by Padmavati

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 Padmavati 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

EXAMINERS' COMMENTS ON THE PERFORMANCE OF EXAMINEES:

Majority of the examinees were unaware of the baggage rules pertaining to jewellery. They were ignorant of the provision that jewellery allowance is available to the passenger only upon residing abroad for more than one year.

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	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.

Question 16

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? (MTP 5 Marks Apr'22)

Answer 16

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 day (including holidays) preceding the day 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]. However, the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival.

Yes, a bill of entry can be filed in advance. It can be presented within 30 days of the expected arrival of the aircraft/vessel/vehicle by which the goods have been shipped for importation into India vide proviso to section 46(3) of the Customs Act, 1962.

In the given case also, the time period as described above will be available - with reference to the date of arrival of vessel/aircraft - for filing the bill of entry.

Question 17

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 as personal computer for ₹ 52,000. What is the customs duty payable? Ignore Agriculture infrastructure and development cess. (MTP 5 Marks Oct'22, New SM) (Same concept different figures Oct'21, Oct'18, Mar'18, Mar'22, RTP Nov'23)

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Answer 17

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.

One laptop computer when imported into India by a passenger of the age of 18 years or above (other than member of crew) as baggage is exempt from whole of the customs duty [Notification No. 11/2004 Cus. dated 08.01.2004].

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

Question 18

Shyam 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, 2023
Date of final re-assessment	2nd February, 2024
Duty demand for 1st consignment	Rs. 1,80,000
Refund for the 2nd consignment	Rs. 4,20,000
Date of refund made by the department	28th April, 2024
Date of payment of duty demanded	5th February, 2024

Determine the interest payable and receivable, if any, by Shyam Lal on the final re-assessment of the two consignments, with suitable notes thereon. (MTP 5 Marks Aug'18)

Answer 18

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, Shyam Lal is liable to pay following interest in respect of 1st consignment:

$$= \text{Rs. } 1,80,000 \times 15\% \times 67/365$$

$$= \text{Rs. } 4,956 \text{ (rounded off)}$$

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 (28.04.2024) within 3 months from the date of re - assessment of duty (02.02.2024), interest is not payable to Shyam Lal on duty refunded in respect of 2nd consignment.

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SECTION B

Question Illustration 1

M/s Pipli Imports Ltd. imported certain goods, which were unloaded in the customs area on 1st October. When order for clearance was passed by proper officer on 5th October, 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 1

The facts of the case are similar to the case of Board of Trustees v. UOI (2009) 241 ELT 513 (Bom HC DB), wherein the High Court held that considering the language of section 45(3), the liability to pay duty is of the person, in whose custody the goods remain as an approved person under section 45 of the Act. Therefore, section 45(3) applies only to the private custodians who are required to be approved by Principal Commissioner/ Commissioner of Customs under section.

45(1). Accordingly, the major ports and airports covered under Major Port Trust Act, 1963 who do not require any approval under section 45(1), are not covered by section 45(3). Thus, the Department cannot demand duty from Port Trust on the pilferage under section 45(3) of the Customs Act, 1962.

Section 45(3) of the Customs Act, 1962 holds the custodian responsible only in respect of the customs duty in respect of pilfered goods. It does not extend to the value of goods lost. However, the Port Trust, as bailee of the goods, is liable for value of the goods to the importer.

Question Illustration 2

Mr. Krishna Bhansali, has imported some garments from Paris. He is unable to make self-assessment under section 17(1) of the Customs Act, 1962 because of differential rates for different kinds of material and hence has made a request in writing to the proper officer for provisional assessment pending technical testing. Is he eligible to apply for provisional assessment? Discuss.

Answer 2

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

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assessment. While 'unable' is not about willingness but deficiency of information to make an accurate determination of the liability, in this case Mr. Bhansali satisfies the criterion because he lacks the information necessary to classify the goods pending technical testing.

Question 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	12 th December, 2022
Date of final re-assessment	2 nd February, 2023
Duty demand for 1st consignment	₹ 1,80,000
Refund for the 2nd consignment	₹ 4,20,000
Date of refund made by the department	28 th April, 2023
Date of payment of duty demanded	5 th February, 2023

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 3

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:

$$= ₹ 1,80,000 \times 15\% \times 67/365$$

$$= ₹ 4,956 \text{ (rounded off)}$$

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 (28.04.2023) within 3 months from the date of re-assessment of duty (02.02.2023), interest is not payable to Moris Lal on duty refunded in respect of 2nd consignment.

Question Illustration 4

Mr. Sujoy, an Indian entrepreneur, went to London to explore new business opportunities on 01.04.2023. 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 15.04.2023:

- (d) used personal effects worth ₹ 80,000,
- (e) 2 music systems each worth ₹ 50,000,
- (f) the jewellery brought by Mr. Sujoy worth ₹ 48,000 [20 grams] and the jewellery brought by his wife worth ₹ 96,000 [40 grams].

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With reference to Baggage Rules, 2016, determine whether Mr. and Mrs. Sujoy will be required to pay any customs duty?

Answer 4

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 ₹ 50,000 if these are carried on the person or in the accompanied baggage of the passenger.

Thus, there is no customs duty on used personal effects and travel souvenirs and general duty free baggage allowance is ₹ 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.

Question 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? Ignore Agriculture infrastructure and development cess.

Answer 5

- (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-
- Used personal effects and travel souvenirs without any value limit.
 - 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

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above (other than member of crew) as baggage is exempt from whole of the customs duty [Notification No. 11/2004 Cus. dated 08.01.2004].

- (3) Accordingly, there will be no customs duty on used personal effects (worth ₹ 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

Question 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 6

As per section 78 of the Customs Act, 1962, the relevant date for determination of rate of duty in case of clearance of baggage is the date on which a declaration is made in respect of such baggage under section 77.

Question Illustration 7

State the difference between transit and transshipment of goods under the provisions of the Customs Act.

Answer 7

	Transit	Transshipment
(i)	Section 53 of the Customs Act, 1962 provides for transit of goods.	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.	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.	In transshipment of goods, continuity in the records is not maintained as the goods are transferred to another conveyance.

Note: The rates of duties, wherever mentioned in the illustrations/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.

Question 8

'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 th May	Vessel entered the Indian territorial waters.
25 th May	Import manifest was delivered to the customs authorities
27 th May	XML Ltd filed bill of entry for the goods
29 th May	Entry inwards granted to the vessel

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The rate of customs duty on the goods was increased from 8% to 10% on 28th May.

At what rate should XML Ltd. pay the customs duty on the goods imported by it?

Answer 8

Rate of duty will be 10%, because the bill of entry is deemed to have been filed on the date of entry inward though it was actually filed before the rate of duty increased.

Question 9

Write a brief note on self-assessment in customs under the Customs Act, 1962.

Answer 9

- (a) Duty to be self-assessed by the importer/exporter: An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85 (i.e. stores allowed to be warehoused without assessment of duty), self-assess the duty, if any, leviable on such goods.
- (b) Verification by proper officer: The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

Further, the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

For the purposes of verification, the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

Some major importers have been given the green channel clearance facility. It means clearance of goods is done without routine examination of the goods. They have to make a declaration in the declaration form at the time of filing of bill of entry. The appraisal is done as per normal procedure except that there would be no physical examination of the goods. Only marks and number are to be checked in such cases. However, in rare cases, if there are specific doubts regarding description or quantity of the goods, physical examination may be ordered by the senior officers/investigation wing like Special Intelligence and Investigation Branch (SIIB).

- (c) Reassessment of duty by the proper officer if self-assessment not done correctly: Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.
- (d) Speaking order for re-assessment to be passed unless the importer agrees with the reassessment: Where any re-assessment done is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within 15 days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

Question 10

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State briefly the provisions of the Customs Act, 1962 relating to payment of interest in case of provisional assessment.

Answer 10

Interest is payable from the first day of the month in which the provisional assessment began. Refer section 18.

Question 11

What is meant by 'boat notes'?

Answer 11

Boat notes are issued to cover transport of cargo to or from vessels that cannot come into the port. Refer 'Restrictions on goods being water-borne'. (section 35)

Question 12

Discuss the provisions regarding transit of goods and transshipment of goods without payment of duty under the Customs Act.

Answer 12

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.

Question 13

Explain in brief the duty exemption to baggage under section 79(1) of the Customs Act, 1962.

Answer 13

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

- 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;
- 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

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used by the family including the person; and (c) gifts and souvenirs.

Question 14

What is the relevant date for determining the rate of duty and tariff valuation in respect of goods imported/exported by post?

Answer 14

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.

The rate of duty and tariff value applicable to any goods exported by post or courier shall be the rate and valuation in force on the date on which the exporter delivers such goods to the postal authorities or the authorized courier for exportation.

Question 15

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 15

Vessel / aircraft must call or land only at a notified customs port or airport, unless otherwise permitted, and except in an emergency. Refer section 29 of the Customs Act.

Question 16

Explain briefly the meaning of entry inwards and entry outwards with reference to the customs law.

Answer 16

Entry inwards is permission to begin unloading of the imported goods, and entry outwards is permission to begin loading of export goods. Refer section 31 and section 39.

Question 17

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 17

Authorised economic operators and those importers who are paying ₹ 10,000 or more per bill of entry. They will pay through ICEGATE. Refer para "Mandatory E-payment of duty".

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Question 18

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 18

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.

Question 19

Can the customs audit cover a person who is not an exporter or importer?

Answer 19

Yes, persons dealing with the goods can also be audited. Refer section 99A and related regulations.

Question 20

A fishing trawler is operating 10 nautical miles from the baseline. Is it entitled to duty-free stores?

Answer 20

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

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which are foreign naval vessels taking part in a naval exercise.

India: [Section 2(27)] includes the territorial waters of India.

The definition of India is an inclusive definition and includes not only the land mass of India but also the territorial waters of India. The territorial waters extend to 12 nautical miles into the sea from the appropriate base line. Hence No it is entitled to duty-free stores.

Question 21

What are the circumstances under which assessment is done provisionally under section 18?

Answer 21

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)].

Where, pursuant to the provisional assessment under sub-section (1), if any document or information is required by the proper officer for final assessment, the importer or exporter, as the case may be, shall submit such document or information within prescribed time, and the proper officer shall finalise the provisional assessment within prescribed time and in prescribed manner [Sub- section (1A)].

Question 22

State the provisions of transshipment of goods without payment of duty under section 54 of the Customs Act, 1962.

Answer 22

- (1) Where any goods imported into a customs station are intended for transshipment, a bill of transshipment shall be presented to the proper officer in the prescribed form. Where the goods are being transferred under an international treaty or bilateral agreement between the Government of India and Government of a foreign country, a declaration for transshipment instead of a bill of transshipment shall be presented to the proper officer in the prescribed form.
- (2) Subject to the provisions of sections 11 (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 transshipment to any place outside India, such goods may be allowed to be so transhipped without

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payment of duty.

- (3) Where any goods imported into a customs station are mentioned in the arrival manifest or import manifest or the import report, as the case may be, as for transshipment:-
- 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
 - to any other customs station and the proper officer is satisfied that the goods bonafide intended for transshipment to such customs station, the proper officer may allow the goods to be transhipped without payment of duty, subject to such conditions as may be prescribed for the due arrival of such goods at the customs station to which transshipment is allowed.

Question 23

Explain the procedure prescribed in Customs Act, 1962 in case of goods not cleared, warehoused or transhipped within 30 days after unloading.

Answer 23

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).

- 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.
- The auctioned goods shall be handed over to the successful bidder after assessment and out-of-charge orders given by the proper officer, on payment of dues.

In the case of sensitive goods like animals, foodstuffs and hazardous goods etc. the custodian with the approval of the proper officer can sell the goods even before the expiry of the 30 days limit. Similarly, in the case of arms or ammunition, which cannot be sold in public auction, the disposal is regulated by the rules made in this regard.

Question 24

Write short notes on:

- Export general manifest**
- Boat note (or restriction on goods being water borne)**

Answer 24

- 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

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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. The export general manifest or report is the consolidated report of all such Bills of Lading/Air Consignment Notes/Railway Receipts/Lorry Receipts issued

- (b) 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.

Question 25

Discuss briefly:

- (a) **Temporary detention of baggage**
 (b) **Relevant date for rate of duty and tariff valuation in respect of goods imported and exported by post**

Answer 25

- (a) 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. This is temporary detention of baggage. Same as Answer to Question 7.

Question 26

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 26

- (i) the importer shall present the bill of entry before the end of the day (including holidays) preceding the day 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 the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival. Further, a bill of entry may be presented at any time not exceeding thirty days prior to the expected arrival of

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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—
- on the date of presentation of the bill of entry in the case of self- assessment; or
 - 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
 - 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.

- (iii) Time limit for delivery of IGM/IR: The person-in-charge of a vessel, or an aircraft, or a vehicle, carrying imported goods or any other person as may be specified by the Central Government, by notification in the Official Gazette, in this behalf shall, in the case of a vessel or an aircraft, deliver to the proper officer an arrival manifest or import manifest by presenting electronically prior to the arrival of the vessel or the aircraft, as the case may be, and in the case of a vehicle, an import report within twelve hours after its arrival in the customs station, in the prescribed form.

Particulars	Import Document	Time limit for presentation of IM/IR	Mode of presentation
Where the imported goods are brought in a vessel	Arrival manifest or import manifest	Any time prior to the arrival of the vessel	Electronic filing*
Where the imported goods are brought in an aircraft	Arrival manifest or import manifest	Any time prior to the arrival of the aircraft	Electronic filing*
Where the imported goods are brought in a vehicle	Import Report	Within twelve hours after its arrival in the customs station	Manual filing

Question 27

State in brief the provisions of the Customs Act, 1962 relating to filing of “Arrival manifest or import manifest/ Report”.

Answer 27

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After ensuring that the vessels or aircraft are landed only in approved customs port or airport, further duty is cast upon the person in charge of the vessel to deliver the arrival manifest or import manifest.

Arrival manifest or import manifest or import report is a detailed information to customs about goods in the vessels/aircrafts which have been brought in at any port/airport for unloading at that particular port/international airport as also that which would be carried further for other ports/airports. Declarations of such cargo has to be made in a prescribed form (which is termed 'Import General Manifest' or IGM) and in prescribed manner. Imports via land route require filing of declaration (called 'Import Report').

Goods involved in an export may also be carried in the import conveyance (vessel or other), without such goods being delivered in India. The IM/IR must also contain details of goods meant for export and carried by the conveyance. Similar provision for including details of 'imported goods' is required by section 41 in export manifest to be filed by person-in-charge of a conveyance carrying export goods before departure of conveyance.

Time Limit is as per Answer to Question 19 (iii).

If the arrival manifest or import manifest or the import report or any part thereof, is not delivered to the proper officer within the specified time and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-charge would be liable to a penalty up to ₹ 50,000. The person delivering the arrival manifest or import manifest or import report shall make and subscribe a declaration as to the truth of its contents as a footnote thereof.

Belated filing of IGM: Arrival manifest or import manifest or import report filed belatedly may also be accepted by the proper officer on valid justified grounds. Amendment to IGM: If the proper officer is satisfied that the arrival manifest or import manifest or import report is in any way incorrect or incomplete and there is no fraudulent intention, he may permit it to be amended or supplemented. [Section 30(3)]. Subsequent amendment of IGM will not be treated as late filing. [CBIC's Customs Manual 2015, chapter 2] However, the CBIC has cautioned (circular supra) that this should not be used to circumvent the penal provisions for late filing.

Question 28

Write a brief note on the declaration made by the owner of baggage.

Answer 28

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. Baggage declaration form: In exercise of these powers, the form of the baggage declaration has been prescribed and standardized. Transit or transshipment 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.

Question 29

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State and summarise the provisions and procedure in the Customs Act, 1962 governing preparation and filing of a bill of entry.

Answer 29

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.

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 goods may be cleared for home consumption or for deposit in a warehouse or for transit or transshipment. Therefore, there are three types of Bills of Entries prescribed for these three different purposes.

Form I (White) – for home consumption.

Form II (Yellow) – for warehousing (into bond).

Form III (Green) – for clearance of warehoused goods for home consumption (ex- bond).

When Bill of Entry is filed electronically, it is in four copies:

- Original, meant for the customs authorities for assessment and collection of duty;
- Duplicate, intended as an authority to the custodian of the cargo to release cargo to the importer from his custody;
- Triplicate, as a copy for record for the importer; and
- 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:—

- the accuracy and completeness of the information given therein;
- the authenticity and validity of any document supporting it; and
- 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

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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 day (including holidays) preceding the day 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 the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival.

Further, a bill of entry may be presented at any time not exceeding thirty days prior to the expected arrival of the aircraft/vessel/vehicle by which the goods have been shipped for importation into India.

However, where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay prescribed charges for late presentation of the bill of entry.

Question 30

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 30

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:

- 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;
- the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;
- 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;
- the export duty as specified in section 26;
- drawback of duty payable under sections 74 and 75.

In all other cases, the amount of such refund and interest shall be credited to the Consumer Welfare Fund [Sub-section 5].

Question 31

State the procedure for clearance of goods imported by post.

Answer 31

In the case of goods imported by post the agency for the carriage of goods is the Government of India be it through sea, air or land. The control of the Customs Department is only on goods, whether imported or exported

- on which there is a duty; and
- which are subject to prohibition or restriction under the Customs Act or any other law

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for the time being in force.

The customs have no concern over other goods or other mail

Question 32

Briefly explain the following with reference to the provisions of the Customs Act, 1962:

- (i) **Bill of export**
- (ii) **Import report**
- (iii) **Imported goods**
- (iv) **Entry**
- (v) **Prohibited goods**
- (vi) **Customs port**
- (vii) **Goods**
- (viii) **Stores**
- (ix) **Conveyance**
- (x) **Dutiable goods**
- (xi) **Customs area**
- (xii) **Adjudicating Authority**
- (xiii) **Foreign going vessel or aircraft**
- (xiv) **Assessment**

Answer 32

- (i) Bill of export [Section 2(5)]: means a bill of export referred to in section 50 to be filed when goods are exported via land route
- (ii) Arrival manifest or Import manifest or 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: [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 [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 [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 [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: [Section 2(22)] "Goods" includes
 - a) vessels, aircrafts and vehicles
 - b) stores
 - c) baggage
 - d) currency and negotiable instruments and

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- e) any other kind of movable property
- (viii) 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 [Section 2(9)]: includes a vessel, an aircraft and a vehicle.
- (x) Dutiable goods: [Section 2(14)] means any goods:-
- which are chargeable to duty and
 - on which duty has not been paid.
- In order to be dutiable, any article must first satisfy both the following conditions:-
- The article should fall within the ambit of the word goods [defined under sec 2(22)].
 - The article should find a mention in the Customs Tariff.
- (xi) 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 [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: [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:-
- 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.
 - 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 [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 —
- the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;

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- (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;
- any other specific factor which affects the duty, tax, cess or any other sum payable on such goods, and includes provisional assessment, self-assessment, reassessment and any assessment in which the duty assessed is nil.

Question 33

With reference to the facility, 'Clear first-Pay later' extended to importers under the customs law, answer the following questions:

- (v) **What is the objective of the facility?**
- (vi) **Who is eligible to avail this scheme?**
- (vii) **What are the due dates for payment of duty under this facility?**
- (viii) **What are the circumstances when the deferred payment facility will not be available?**

Answer 33

- (v) '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.
- (vi) 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 CBIC 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 CBIC.

- (vii) 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

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3	16th day till the 31st day of March	31st March
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(viii) 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.

Question 34

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. Ignore Agriculture infrastructure and development cess.

Answer 34

As per rule 3 of Baggage Rules, 2016, tourist of foreign origin, excluding infant, is allowed duty free clearance of

- travel souvenirs; and
- Articles up to the value of ₹ 15,000 (excluding inter alia fire arms, cartridges of fire arms exceeding 50 and cigarettes exceeding 100 sticks), if carried on in person.

Computation of customs duty payable	₹
Travel souvenir	Nil
Articles carried on in person	1,50,000
Cigarettes [100 sticks can be accommodated in General Free Allowance (GFA)]	10,000
Fire arms cartridge (50 cartridges can be accommodated in GFA)	25,000
Baggage than can be accommodated in GFA	1,85,000
Less: GFA	15,000
Baggage on which duty is payable	1,70,000
Duty payable @ 38.50% (including 10% Social welfare surcharge)	65,450

Note: Fire arms, cartridges of firearms exceeding 50 and cigarettes exceeding 100 sticks are not chargeable to rate applicable to baggage [Notification No. 26/2016 Cus. dated 31.03.2016]. These items are charged @ 100% applicable to baggage under Heading 9803 of the Customs Tariff.

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Question 35

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 35

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 day (including holidays) preceding the day 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]. However, the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival.

Yes, a bill of entry can be filed in advance. It can be presented within 30 days of the expected arrival of the aircraft/vessel/vehicle by which the goods have been shipped for importation into India vide proviso to section 46(3) of the Customs Act, 1962.

In the given case also, the time period as described above will be available - with reference to the date of arrival of vessel/aircraft - for filing the bill of entry.

Question 36

Laxmi Company imported goods valued at ₹ 10,00,000 vide a Bill of Entry presented before the proper officer on 15th December, 2022, 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, 2023.

- (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, 2023 and that the final duty is assessed on 31st January, 2023 at ₹ 4,00,000 and the balance duty is paid on the same day.**

Answer 36

- 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.

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- 2) Section 18 of the Customs Act, 1962 further stipulates that the importer is liable to pay interest, on any amount payable consequent to the final assessment order @ 15% p.a. from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

Accordingly, amount of interest payable will be

$$= [₹ 1,50,000 \times 15\% \times 51/365] + [₹ 50,000 \times 15\% \times 62/365]$$

$$= ₹ 3,144 + ₹ 1,274 = ₹ 4,418$$

Question 37

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. Ignore Agriculture infrastructure and development cess.

Answer 37

- 1) As per the Baggage Rules, 2016, an Indian resident arriving from a country other than Nepal, Bhutan, or Myanmar, is allowed duty free clearance of-
- Used personal effects and travel souvenirs without any value limit.
 - Articles [other than certain specified articles] up to a value of ₹ 50,000 carried as accompanied baggage [General duty free baggage allowance].
- Further, such general duty free baggage allowance of a passenger cannot be pooled with the general duty free baggage allowance of any other passenger.
- 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)
- 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.
 - Duty payable on personal computer after exhausting the duty free baggage allowance will be ₹ 58,000 – ₹ 50,000 = ₹ 8,000.
 - Effective rate of duty for baggage = 38.50% [including Social Welfare Surcharge]
 - Therefore, total customs duty = ₹ 3,080.

Question 38

Mrs. X, an Indian resident (36 years old) who was on a visit to China, returned after 6 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

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(iv)	Music system	₹ 50,000
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Compute the customs duty payable by Mrs. X with reference to the Baggage Rules, 2016. Ignore Agriculture infrastructure and development cess.

Answer 38

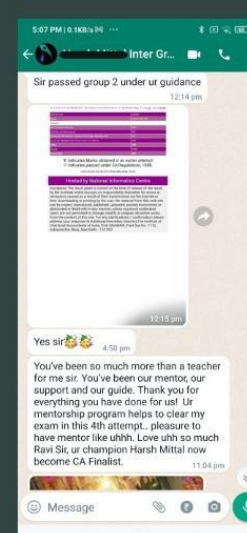
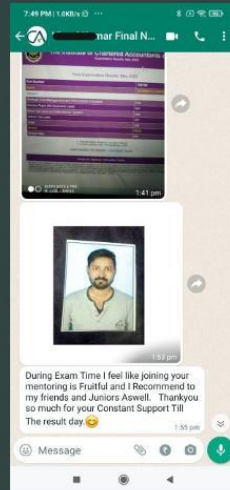
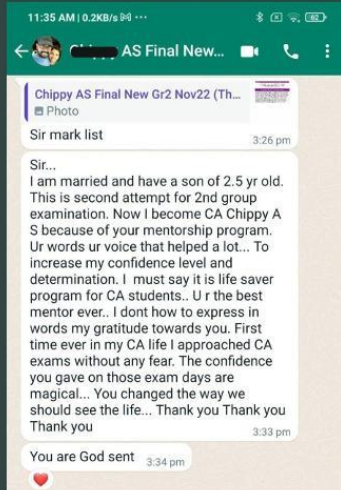
Computation of customs duty payable by Mrs. X

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

Paper 5 – Indirect Tax Laws

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Paper 5 – Indirect Tax Laws

Chapter 30 Warehousing

Attempts wise Distribution

Row Labels	Dec' 21	Jan' 21	Jul' 21	May' 18	Nov' 18	May' 19	May' 22	May' 23	Nov' 19	Nov' 20	Nov' 22	Nov' 23
MCQ												
MTP							Q2					
RTP							Q1					
QA												
MTP				Q1								Q4
RTP						Q6	Q5	Q2			Q3	

SECTION A

MULTIPLE CHOICE QUESTIONS (MCQ'S)

1. Which of the following statements is correct in respect of warehousing under customs?

- Special warehouses are not under physical control of the customs authorities (i.e. not under lock of customs). Control is record based.
- The importer of warehoused goods is required to submit bond for an amount equal to twice the duty amount involved.
- In case of imported goods for use in any 100% EOU, the warehousing period for capital goods is till their ex-bonding and for goods other than capital goods, it is till their ex-bonding/consumption.
- In case of imported goods for use in any 100% EOU, the warehousing period for goods other than capital goods is 1 year from the date of order permitting deposit of goods in warehouse.

(RTP May'22)

Ans: (c)

2. What is the relevant date for determining rate of duty in case of warehoused goods cleared for home consumption?

- Date of presentation of into-bond bill of entry
- Date of presentation of ex-bond bill of entry i.e. bill of entry for home consumption
- Date of payment of duty
- Date of import of goods into India (MTP 1 Mark Mar'22)

Ans: (b)

QUESTIONS AND ANSWERS

Question 1

Paper 5 – Indirect Tax Laws

Vipul imported certain goods in May. An 'into bond' bill of entry was presented on 14th May and goods were cleared from the port for warehousing. Assessable value on that date was US \$ 1,00,000. The order permitting the deposit of goods in warehouse for 4 months was issued on 21st May. Vipul deposited the goods in warehouse on the same day but did not clear the imported goods even after the warehousing period got over on 21st September.

A notice was issued under section 72 of the Customs Act, 1962, demanding duty and interest. Vipul cleared the goods on 14th October. Compute the amount of duty and interest payable by Vipul while removing the goods on the basis of the following information:

Particulars	14 th May	21 st September	14 th October
Rate of exchange per US \$ (as notified by Central Board of Indirect taxes & Customs)	₹ 65.20	₹ 65.40	₹ 65.50
Basic customs duty	15%	10%	12%

Integrated Tax leviable under section 3(7) of the Customs Tariff Act is exempt. Ignore agriculture and infrastructure development cess. (MTP 5 Marks Mar'18)

Answer 1

Computation of import duty payable by Vipul

Particulars	Amount (US \$)
Assessable value	1,00,000
	Amount (₹)
Value in Indian currency (US \$ 1,00,000 x ₹ 65.20) [Note 1]	65,20,000
Customs duty @ 10% [Note 2]	6,52,000
Add: Social welfare surcharge @ 10% on ₹ 6,52,000	65,200
Total customs duty payable	7,17,200

Notes:

- 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 prevalent on the date on which the into bond bill of entry is presented for warehousing under section 46 of the Customs Act, 1962.
- Goods which are not removed within the permissible period are deemed to be improperly removed in terms of section 72 of the Customs Act, 1962 on the day they should have been removed [Kesoram Rayon v. CC 1996 (86) ELT 464 (SC)]. The applicable rate of duty in such a case is the rate of duty prevalent on the last date on which the goods should have been removed.

As per section 61 of the Customs Act, 1962, if goods remain in a warehouse beyond a period of 90 days from the date on which the order permitting deposit of goods in warehouse under section 60 is made, interest is payable @ 15% p.a., on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods.

Therefore, interest payable will be computed as under:

Paper 5 – Indirect Tax Laws

Period of 90 days commencing from the date of order made under 60 expires on	19 th August
No. of days for which interest shall be payable [12 days of August + 30 days of September + 14 days of October]	56 days
Interest payable = ₹ 7,17,200 × $\frac{15}{100}$ × $\frac{56}{365}$ (rounded off)	₹ 16,505

Question 2

BL Ltd. imported Super Kerosene Oil (SKO) and stored it in a warehouse. An ex-bond bill of entry for home consumption was filed and duty was paid as per the rate prevalent on the date of presentation of such bill of entry; and the order for clearance for home consumption was passed.

On account of highly combustible nature of SKO, the importer made an application to permit the storage of such kerosene oil in the same warehouse until actual clearance for sale/use. The application was allowed. However, the rate of duty increased when the goods were actually removed from the warehouse.

The Department demanded the differential duty. The company challenged the demand. Whether it will succeed? Discuss briefly taking support of decided case(s), if any. (Old & New SM, RTP May'23)

Answer 2

Yes, the company will succeed. The facts of the given situation are similar to the case of CCus vs. Biecco Lawrie Ltd. 2008 (223) ELT 3 (SC) wherein the Supreme Court has held that where duty on the warehoused goods is paid and out of charge order for home consumption is made by the proper officer in compliance of the provisions of section 68, the goods allowed to be retained for storage in the warehouse as permitted under section 49 of the Customs Act are not treated as warehoused goods and importer would not be required to pay anything more.

Section 49 of the Customs Act, 1962 inter alia also provides that imported goods entered for home consumption if stored in a public warehouse, or in a private warehouse on the application of the importer and if the same cannot be cleared within a reasonable time, shall not be deemed to be warehoused goods for the purposes of this Act, and accordingly the provisions of Chapter IX shall not apply to such goods.

Question 3

Niryaat Exporters imported some goods on 1st January. The goods were not meant for being used in an 100% EOU, STP unit, EHTP unit. The goods were cleared from the Mumbai port for warehousing on 8th January by presenting an 'into Bond' Bill of Entry. The assessable value of the goods was US \$ 10,000. On 8th January, the exchange rate was ₹ 66 per US \$ and the rate of basic customs duty was 15%. The order permitting the deposit of goods in warehouse for 4 months was issued under section 60 of the Customs Act, 1962 on 15th January. The goods were thereafter deposited in a warehouse at Pune and were cleared

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from Pune warehouse on 31st May. The rate of basic customs duty was 12% and exchange rate was ₹ 68.75 per 1 US \$ on 31st May. IGST @ 10% is applicable on said goods. Further, the rate of basic customs duty was 12% and exchange rate was ₹ 67 per 1 US \$ on 15th May. IGST @ 12% is applicable on said goods. Ignore agriculture and infrastructure development cess.

You are required to compute: (a) total customs duty payable and (b) interest, if any, payable. (RTP Nov'22)

Answer 3

Computation of import duty payable by Niryaat Exporters

Particulars	Amount (US \$)
Assessable value	10,000
Value in Indian currency (US \$ 10,000 x ₹ 66) [Note 1]	6,60,000
Customs duty @ 12% [Note 2]	79,200
Add: Social welfare surcharge @ 10% on ₹ 79,200	7,920
Total customs duty payable	87,120

Notes:

- 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 prevalent on the date on which the into bond bill of entry is presented for warehousing under section 46 of the Customs Act, 1962.
- Goods which are not removed within the permissible period are deemed to be improperly removed in terms of section 72 of the Customs Act, 1962 on the day they should have been removed [Kesoram Rayon v. CC 1996 (86) ELT 464 (SC)]. The applicable rate of duty in such a case is the rate of duty prevalent on the last date on which the goods should have been removed.

Computation of interest payable by Niryaat Exporters

As per section 61 of the Customs Act, 1962, if goods (not meant for being used in an 100% EOU, STP unit, EHTP unit) remain in a warehouse beyond a period of 90 days from the date on which the order permitting deposit of goods in warehouse under section 60 of the Customs Act, 1962 is made, interest is payable (@ 15% p.a.), on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods.

Therefore, interest payable will be computed as under:

Period of 90 days commencing from the date of order made under section 60 expires on	16th April
No. of days for which interest shall be payable [14 days of April + 31 days of May]	45 days
Interest payable = ₹ 87,120 × $\frac{15}{100}$ × $\frac{45}{365}$ (rounded off)	₹ 1,611

Question 4

Elaborate the provisions relating to the owner's right to deal with warehoused goods under section 64 of the Customs Act, 1962. (MTP 5 Marks Sep'22)

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Sun Traders imported goods from Japan and got them warehoused. Subsequently, a local vendor approached Sun Traders for purchasing said goods, but it first wishes to check the goods to ensure that the goods match its requirements. Can Sun Traders show the goods to the local vendor for sale? You are required to advise Sun Traders with regard to its right to deal with the warehoused goods under the Customs Act, 1962. (MTP 5 Marks Sep'23)

Answer 4

Yes, Sun Traders can show the goods to the local vendor for sale. When the imported goods are warehoused, the temporary possession and the custody of the goods are passed on to the warehouse keeper. However, the remaining titular rights of the goods vest with the owner. Thus, the owner has every access to the goods.

In the course of his dealings with the goods, he may:

- (a) inspect the goods;
- (b) ensure that the goods do not deteriorate or get damaged during storage in the warehouse;
- (c) sort the goods; or
- (d) show the goods for sale.

Question 5

Radheysham is engaged in manufacture of goods in Rajasthan. It imported certain goods for using in the manufacture of the finished goods in the month of May. However, it did not clear the goods from the port for home consumption. Instead, it presented an 'into bond' bill of entry on 14th May. Assessable value on that date was US \$ 2,35,000. The order permitting the deposit of goods in warehouse for 4 months was issued on 21st May. Radheysham deposited the goods in warehouse on the same day, but did not clear the imported goods even after the warehousing period got over on 21st September. A notice was issued under section 72 of the Custom Act, 1962, demanding duty and interest. Radheysham cleared the goods on 14th October. Customs duty paid on removal of the goods is ₹ 8,28,000. You are required to compute interest payable on such removal, explaining the provisions of the Customs Act, 1962 assuming that the imported goods are not meant for being used in an 100% EOU, STP unit, EHTP unit. (RTP May'22)

Answer 5

As per section 61(2) of the Customs Act, 1962, if goods (not meant for being used in an 100% EOU, STP unit, EHTP unit) remain in a warehouse beyond a period of 90 days from the date on which the order permitting deposit in a warehouse is made, interest is payable @ 15% p.a., on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods. Therefore, in the given case, interest payable will be computed as under:

- (i) Period of 90 days commencing from the date of order permitting deposit in a warehouse expires on – 19th August.

Paper 5 – Indirect Tax Laws

- (ii) No. of days for which interest shall be payable = 56 days [12 days of August + 30 days of September + 14 days of October]
- (iii) Interest payable = ₹ 8, 28,000 × $\frac{15}{100}$ × $\frac{56}{365}$ = Rs. 19,055 (rounded off)

Question 6

- (i) **With reference to section 70 of the Customs Act, 1962, briefly discuss the conditions to be satisfied for remission of duty in case of volatile goods.**
- (ii) **Enumerate the goods specified as volatile for the purposes of remission of duty under the provisions of Customs Act, 1962. (RTP May'19)**

Answer 6

- (i) As per section 70 of the Customs Act, 1962, the conditions to be satisfied for remission of duty in case of volatile goods are:
- The goods should be found deficient in quantity at the time of delivery from the warehouse;
 - The deficiency should be on account of natural loss, i.e. evaporation etc. and not due to pilferage or thefts.
- (ii) The following goods have been specified as volatile for the purpose of remission of duty vide *Notification No. 03/2016 Cus. (NT) dated 11.01.2016*:
- aviation fuel, motor spirit, mineral turpentine, acetone, methanol, raw naphtha, vaporizing oil, kerosene, high speed diesel oil, batching oil, diesel oil, furnace oil and ethylene dichloride, kept in tanks;
 - wine, spirit and beer, kept in casks
 - liquid helium gas kept in containers
 - crude stored in caverns

SECTION B

Question Illustration 1

'X', an importer, imported some goods and deposited them in the warehouse on 12th April. These goods were re-exported without payment of duty on 15th August. With reference to the Customs Act, 1962, discuss whether any interest under section 61 of the Customs Act, 1962 is payable by 'X'?

Answer 1

As per section 61(2) of the Customs Act, 1962, if goods remain in a warehouse beyond a period of 90 days from the date on which the order under section 60(1) is made, interest is payable @ 15% on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods.

In *Pratibha Processors v. UOI 1996 (88) ELT 12 (SC)*, the Apex Court has held that when goods at the time of removal from warehouse are wholly exempted from payment of duty, the liability to pay interest cannot be saddled on a non-existing duty. Liability to pay interest under section 61(2) of the Customs Act is solely dependant upon the exigibility or actual liability to pay duty. In case the liability to pay duty is nil, then, the interest will also be nil.

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Therefore, since in this case the goods have been re-exported without payment of duty, no interest is payable by 'X'.

If no customs duty is payable at the time of clearance of goods from warehouse, no interest is payable. Interest is mere 'accessory' to principal.

Goods which are not removed from the warehouse after the expiry of the period permitted for warehousing or extended, are deemed to be improperly removed in terms of section 727. The rate of duty applicable in such case will be the rate in force on the date of deemed removal, i.e. the date on which the permitted period or its permitted extension comes to an end. When the demand notice is issued is not relevant for determining the rate of duty.

Section 15(1)(b) has no application in such cases where the goods are removed from warehouse beyond the permitted period of warehousing; it is applicable only to the cases where a bill of entry is presented for removal from warehouse under section 688.

Question 2

Interest free period of ninety (90) days under section 61(2) in respect of warehoused goods commences from the date on which an into-bond bill of entry in respect of such goods is presented. Comment on the validity of the statement.

Answer 2

Invalid. As per section 61, if goods remain in a warehouse beyond a period of 90 days from the date on which the order permitting deposit of goods in a warehouse under section 60(1) is made, interest is payable @ 15% on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods.

In other words, the relevant date for determining the commencement of the period of 90 days is the date of order made under section 60 permitting removal of goods from the customs station for deposit in a warehouse, and not the date on which into-bond bill of entry in respect of such goods is presented.

Question 3

"If manufacturing operations are carried out on warehoused goods and finished products are cleared for home consumption, then appropriate duty of customs should be levied on the quantity of the warehoused goods contained in the waste or refuse arising out of such manufacturing process."

Examine the validity of the said statement in the context of section 65 of the Customs Act, 1962 dealing with manufacture and other operations in relation to warehoused goods.

Answer 3

The said statement is valid.

Section 65 lays down that if the finished products arising as a result of operations carried out in the warehouse are cleared for home consumption, import duty would be charged on the quantity of the warehoused goods contained in the waste or refuse arising from such operations.

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Question 4

Enumerate the circumstances under which goods are considered to have been removed improperly from a warehouse under the Customs Act.

Answer 4

Section 72 provides that in any of the following circumstances the goods shall be considered to have been removed improperly from a warehouse–

- where any warehoused goods are removed from a warehouse in contravention of section 71 of the Customs Act;
- where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under section 61 to remain in a warehouse;
- where any goods in respect of which a bond has been executed under section 59 and which have not been cleared for home consumption or export are not duly accounted for to the satisfaction of the proper officer.

Question 5

Vipul imported certain goods in May. An 'into bond' bill of entry was presented on 14th May and goods were cleared from the port for warehousing. Assessable value on that date was US \$ 1,00,000. The order permitting the deposit of goods in warehouse for 4 months was issued on 21st May. Vipul deposited the goods in warehouse on the same day but did not clear the imported goods even after the warehousing period got over on 21st September.

A notice was issued under section 72 of the Customs Act, 1962, demanding duty and interest. Vipul cleared the goods on 14th October. Compute the amount of duty and interest payable by Vipul while removing the goods on the basis of the following information:

Particulars	14 th May	21 st September	14 th October
Rate of exchange per US \$ (as notified by Central Board of Indirect taxes & Customs)	₹ 65.20	₹ 65.40	₹ 65.50
Basic customs duty	15%	10%	12%

Integrated Tax leviable under section 3(7) of the Customs Tariff Act is exempt. Ignore agriculture and infrastructure development cess.

Answer 5

Computation of import duty payable by Vipul

Particulars	Amount (US \$)
Assessable value	1,00,000
	Amount (₹)
Value in Indian currency (US \$ 1,00,000 x ₹ 65.20) [Note 1]	65,20,000
Customs duty @ 10% [Note 2]	6,52,000
Add: Social welfare surcharge @ 10% on ₹	65,200

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6,52,000	
Total customs duty payable	7,17,200

Notes:

- 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 prevalent on the date on which the into bond bill of entry is presented for warehousing under section 46 of the Customs Act, 1962.
- Goods which are not removed within the permissible period are deemed to be improperly removed in terms of section 72 of the Customs Act, 1962 on the day they should have been removed [Kesoram Rayon v. CC 1996 (86) ELT 464 (SC)]. The applicable rate of duty in such a case is the rate of duty prevalent on the last date on which the goods should have been removed.

As per section 61 of the Customs Act, 1962, if goods remain in a warehouse beyond a period of 90 days from the date on which the order permitting deposit of goods in warehouse under section 60 is made, interest is payable @ 15% p.a., on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods.

Therefore, interest payable will be computed as under:

Period of 90 days commencing from the date of order made under 60 expires on	19 th August
No. of days for which interest shall be payable [12 days of August + 30 days of September + 14 days of October]	56 days
Interest payable = ₹ 7,17,200 × $\frac{15}{100}$ × $\frac{56}{365}$ (rounded off)	₹ 16,505

Question 6

BL Ltd. imported Super Kerosene Oil (SKO) and stored it in a warehouse. An ex-bond bill of entry for home consumption was filed and duty was paid as per the rate prevalent on the date of presentation of such bill of entry; and the order for clearance for home consumption was passed.

On account of highly combustible nature of SKO, the importer made an application to permit the storage of such kerosene oil in the same warehouse until actual clearance for sale/use. The application was allowed. However, the rate of duty increased when the goods were actually removed from the warehouse.

The Department demanded the differential duty. The company challenged the demand. Whether it will succeed? Discuss briefly taking support of decided case(s), if any.

Answer 6

Yes, the company will succeed. The facts of the given situation are similar to the case of CCus vs. Biocco Lawrie Ltd. 2008 (223) ELT 3 (SC) wherein the Supreme Court has held that where duty on the warehoused goods is paid and out of charge order for home

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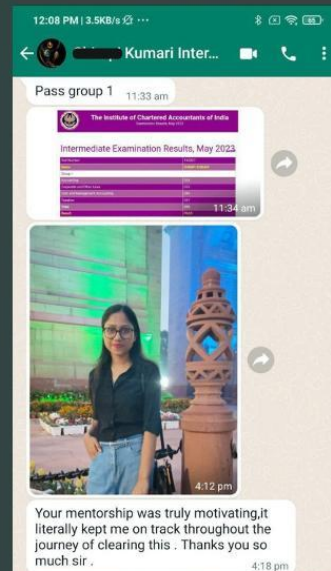
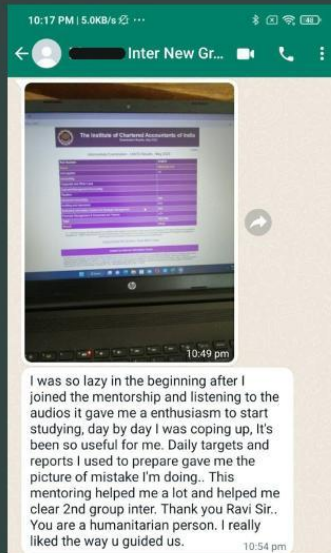
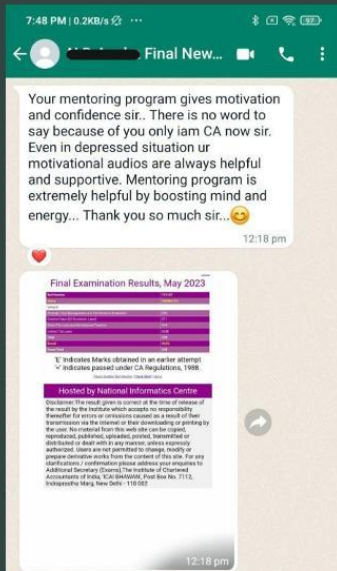
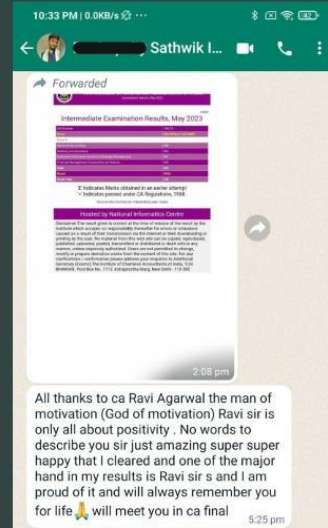
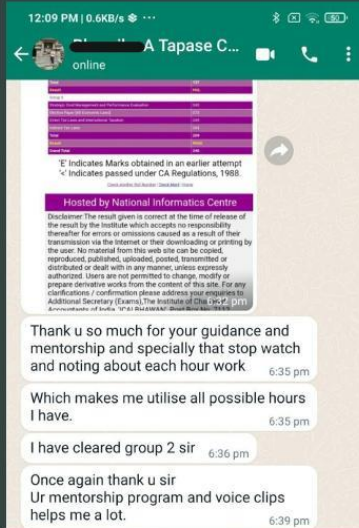
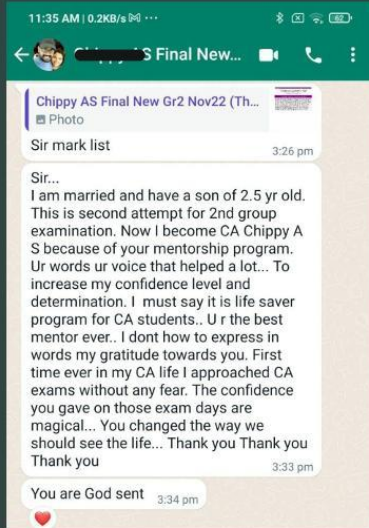
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Paper 5 – Indirect Tax Laws

Chapter 31 Refund

Attempts wise Distribution

Row Labels	Dec' 21	Jan' 21	Jul' 21	May' 18	Nov' 18	May' 19	May' 22	May' 23	Nov' 19	Nov' 20	Nov' 22	Nov' 23
MCQ												
MTP						Q1						
RTP										Q2		
QA												
MTP			Q1, Q2							Q7, Q8		
PYP		Q5									Q6	
RTP	Q4				Q3							

SECTION A MULTIPLE CHOICE QUESTIONS (MCQ'S)

1. In which of the following cases, the refund under section 27 of the Customs Act, 1962 is credited to the consumer welfare fund?
- If the importer proves that there is no unjust enrichment;
 - Where goods are imported for non-personal use of an individual;
 - If the amount of refund relates to drawback under sections 74 and 75 of the Customs Act, 1962
 - If the amount relates to export duty paid on goods which have been returned to exporter as specified under section 26 of the Customs Act, 1962.

(MTP 1 Marks Apr'19)

Ans: (b)

2. Which of the following statements is/are incorrect in relation to refund provisions under the Customs Act, 1962? (RTP Nov'20)
- Interest on delayed refund is payable to the applicant only if duty ordered to be refunded is not refunded within 3 months from the date of receipt of application.
 - If imports were made by an individual for his personal use, the amount of duty found refundable, is paid to the applicant instead of being credited to the Consumer Welfare Fund.
 - Application for refund has to be made within 1 year of payment of duty where duty is paid under protest.
 - Doctrine of unjust enrichment is applicable if refund of duty is relatable to drawback of duty payable under sections 74 and 75.
 - (i) and (iv)
 - (i) and (ii)
 - (iii) and (iv)
 - (ii), (iii) and (iv)

Ans:(c)

Paper 5 – Indirect Tax Laws**QUESTIONS AND ANSWERS****Question 1**

M/s. QTE 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 QTE 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? (MTP 5 Marks Mar'21)

Answer 1

Section 18 of the Customs Act, 1962 (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 of the Customs Act, 1962 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 QTE does not produce any evidence of bearing the burden of duty.

Question 2

Nikky 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 Nikky Sales was asked to pay Rs. 12 lakh, which it paid. After six months, upon detailed scrutiny of the verification report and taking legal opinion on it, Nikky Sales filed a claim for refund of Rs. 8 lakh on the ground that the differential amount should be Rs. 4 lakh only and that there were factual errors in the verification report. Is this the correct mode of redressal for Nikky Sales? What will be the likely outcome of the claim? Discuss on the basis of case law, if any. (MTP 5 Marks Apr'21)

Answer 2

Nikky Sales received an order finalizing provisional assessment on the basis of a verification report, and requiring payment of Rs. 12 Lakh. 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.

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Question 3

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. (MTP 5 Marks Mar'23 RTP Nov'18 Old & New SM)

Answer 3

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

Question 4

Rishabh Traders is engaged in trading of cast iron moulds. It imported a total of 600 units of cast iron moulds in two consignments of 200 and 400 units which has been valued at ₹ 1,500 per unit. The customs duty on the imported moulds has been assessed at ₹ 250 per unit. Rishabh Traders sells the moulds for ₹ 2,030 per unit after adding its profit margin of ₹ 280 per unit.

After one month of selling the entire consignment of cast iron moulds, Rishabh Traders 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. Rishabh Traders files an application for refund for ₹ 50,000 (200 X 250). You are required to determine whether the unjust enrichment is attracted in the given case? (RTP Nov'21)

Answer 4

As per section 27 of the Customs Act, 1962, the importer or his agent, or the buyer who has been charged the duty by the importer, has to establish that he has not passed the burden of duty to another person, in order to be given refund of duty. Otherwise, the refund amount is credited to the Consumer Welfare Fund.

First proviso to section 27(2) of the Customs Act, 1962, inter alia, provides that the amount of refund shall be paid to the applicant instead of being credited to the fund in case where such amount is relatable to the duty paid by the importer/exporter, if he had not passed on the incidence of such duty and interest to any other person and in case where such amount is relatable to the duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry.

Rishabh Traders' invoices establish that it collected ₹ 250 per unit (duty amount) on 600 moulds from the buyer(s). However, it paid the extra import duty on 200 moulds.

This payment, in the normal course, was made before the order permitting the clearance of the goods and excess payment of duty on 200 units would be evident from the bill of entry. Thus, Rishabh Traders' case falls within the exceptions to unjust enrichment as discussed above. Hence, it will be able to refute the charge of unjust enrichment.

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Question 5

- (i) Explain the provisions of Customs Act, 1962 relating to computation of limitation for submission of refund application. (PYP 2 Marks Jan 21)
- (ii) Would the period of limitation for claiming refund applicable to refund of amount paid on account of duty paid twice under mistake? Briefly discuss with reference to legal provisions and case law. (PYP 3 Marks Jan'21)

Answer 5

- (i) The period of limitation for submission of refund application is one year and it is computed in the following manner:

In case where	the time limit of one year should be calculated from
refund claim is filed by the importer/exporter	date of payment of duty/interest
refund claim is filed by another person, from whom duty was collected	the date of purchase of goods
goods are exempt from duty by a special order	date of issue of such exemption order
duty is paid provisionally	the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment
refund arises as a result of any judgement/decreed/order/direction of the Appellate Authority/ Appellate Tribunal/Court	date of such judgement/ decree/ order/ direction

The limitation of one year is not applicable if duty is paid under protest.

- (ii) The High Court, in Parimal Ray v. CCus. 2015 (318) ELT 379 (Cal.), has ruled that the 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 the duty or excess duty but is simply money paid to the account of Government.

Hence, limitation of one year applicable to refunds of customs duty will not apply to refunds of amount paid to the Government by mistake. In view of the same, the limitation period of one year will not apply to the duty paid twice by mistake.

Question 6

What are the exceptions provided under sub-section (2) of section 27 of the Customs Act, 1962 in which refund of duty and interest may be paid to the applicant? (PYP 5 Marks Nov'22)

Answer 6

The amount of duty and interest found refundable is to be paid to the applicant only in following situations:

- if the importer or the exporter, as the case may be, has not passed on the incidence of such duty and interest to any other person.
- if imports were made by an individual for his personal use.
- if amount found refundable relates to export duty paid on goods which has returned to exporter as specified in section 26.
- if amount relates to drawback of duty payable.
- if the duty or interest was borne by a notified class of applicants.

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- f) if excess duty paid by the importer before order permitting clearance of goods for home consumption is made where such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry.
- g) if excess duty paid by the importer before an order permitting clearance of goods for home consumption is made where the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.
- h) if the buyer has not passed on the incidence of such duty and interest to any other person.

Question 7

Mr. N has, over three consignments of 200, 400 and 400 units, imported a total of 1,000 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? (MTP 5 Marks Oct'20)

Answer 7

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.

Question 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 Rs. 12 lakhs, which it paid. After six months, upon detailed scrutiny of the verification report and taking legal opinion on it, Acme Sales filed a claim for refund of Rs. 8 lakhs on the ground that the differential amount should be Rs. 4 lakhs only and that there were factual errors in the verification report. Is this the correct mode of redressal for Acme Sales? What will be the likely outcome of the claim? Discuss on the basis of case law, if any. (MTP 5 Marks May'20)

Answer 8

Acme Sales received an order finalizing provisional assessment on the basis of a verification report, and requiring payment of Rs. 12 Lakhs. They did not contest this order, but made the payment, and allowed the appeal period of sixty days to lapse. After appeal became time-barred they filed a claim for refund in which they challenged the order. This was a backdoor method of seeking relief against the order; it also asked an officer of the same rank to review the order passed; and it sought to bypass the time limitation for appeal by presenting the appeal as a claim for refund. The Supreme

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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.

SECTION B

Question 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 1

The bar of unjust enrichment applies in case of refund of customs duty under section 27(2) of the Customs Act, 1962.

The principle of unjust enrichment will not apply to refund of duty on car imported for personal use, as clause (b) of the proviso to sub-section (2) of section 27 of the Customs Act, 1962 stipulates that in case of imports made by an individual for his personal use, the refund should not be credited to consumer welfare fund, but shall be paid to the applicant.

Question 2

Explain the provisions of Customs Act, 1962 relating to computation of limitation for submission of refund application.

Answer 2

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

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customs authorities cannot grant a refund which is filed beyond the maximum permissible period.

Question 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 3

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.

Question 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 4

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

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the Tribunal in the case of SRF Ltd. v. CCus. Chennai 2006 (193) ELT 186 (Tri. - LB) has held that the doctrine of unjust enrichment would be applicable in case of imported capital goods used captively for manufacture of excisable goods. As regards the relevance of the fact that price remained the same before and after the capital goods were imported, the Larger Bench also clarified that uniformity in price before and after assessment does not lead to inevitable conclusion that duty burden has not been passed, as such uniformity may be due to various reasons. In view of this, the contentions of XYZ Ltd are liable to be rejected.

Question 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 5

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

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their shelf life or their recommended storage before use period.

Question 6

What is the minimum monetary limit prescribed in the Customs law below which no refund shall be granted?

Answer 6

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.

Question 7

Explain the doctrine of unjust enrichment with respect to refund of duty.

Answer 7

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.

Question 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 lakh, 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 lakh on the ground that the differential amount should be ₹ 4 lakh 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.

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Answer 8

Acme Sales received an order finalizing provisional assessment on the basis of a verification report, and requiring payment of ₹ 12 lakh. They did not contest this order, but made the payment, and allowed the appeal period of sixty days to lapse. After appeal became time-barred they filed a claim for refund in which they challenged the order. This was a backdoor method of seeking relief against the order; it also asked an officer of the same rank to review the order passed; and it sought to bypass the time limitation for appeal by presenting the appeal as a claim for refund. The Supreme Court has held, in the case of Priya Blue Industries Limited, 2004 (172) ELT 145 (SC), that such a refund claim is not permissible for all these reasons. A person who is aggrieved with an assessment order cannot seek refund without filing an appeal against the assessment order.

Question 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 9

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.

Question 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 10

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Chapter 32 Foreign Trade Policy

Attempts wise Distribution

Row Labels	Dec' 21	Jan' 21	Jul' 21	May' 18	Nov' 18	May' 19	May' 22	May' 23	Nov' 19	Nov' 20	Nov' 22	Nov' 23
MCQ												
MTP								Q1			Q2	
QA												
MTP			Q1, Q12	Q8	Q9	Q10				Q11		Q2
PYP					Q5	Q7						
RTP						Q3, Q6						Q4

SECTION A MULTIPLE CHOICE QUESTIONS (MCQ'S)

1. As per Foreign Trade Policy 2015-2020 2023, goods, including edible items, of value not exceeding _____ in a licensing year, may be exported as a gift, except items mentioned as restricted for exports in ITC(HS).
- (a) ₹ 5,00,000
(b) ₹ 50,000
(c) ₹ 25,00,000
(d) ₹ 10,00,000 (MTP 2 Marks Mar'23)

Ans: (a)

2. Which of the following privileges are granted to the Status Holders as per Foreign Trade Policy 2015-2020 2023?
- (i) Authorisation and custom clearances for both imports and exports may be granted on self- declaration basis.
(ii) Two Star Export Houses and above are permitted to establish export warehouses.
(iii) Input-Output norms may be fixed on priority within 7 days by the Norms Committee.
(iv) Exemption from furnishing of bank guarantee in Schemes under FTP. Choose the most appropriate option.
- (a) (i), (ii) and (iv)
(b) (i), (ii) and (iii)
(c) (i), (ii), (iii) and (iv)
(d) (i) and (ii) (MTP 2 Marks Sep'22)

Ans: (a)

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QUESTIONS AND ANSWERS

Question 1

Enumerate the various matters in respect of which policies and regulations are framed under FTP.

(MTP 5 Marks Apr'21, May'20, Old SM)

Answer 1

Following issues are covered under FTP **2023** 2015-2020 ~~(Now applicable upto 31.03.2022 as per amendment)~~

- ~~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.

The FTP covers the policies and regulations with respect to the following matters:

Chapter No.	Contents of Foreign Trade Policy
1	Legal framework and trade facilitation
2	General provisions regarding imports and exports
3	Developing districts as export hubs
4	Duty exemption remission schemes
5	Export promotion Capital Goods (EPCG) Scheme
6	Export Oriented Units (EOUS), Electronics Hardware Technology Parks (EHTPS), Software Technology Parks (STPS) and Bio-Technology Parks (BTPS)
7	Deemed exports
8	Quality Complaints and Trade Disputes
9	Promoting cross border trade in digital economy
10	Scomet: special chemicals, organisms, materials, equipment and technologies
11	Definitions

Provisions relating to Special Economic Zone (SEZ) are contained in a separate Act and are not part of FTP. However, provisions of SEZ are closely related to Foreign Trade Policy.

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Handbook of Procedures (HBP 2023) has 11 corresponding chapters which mainly deal with procedural aspects of the foreign trade policy.

Question 2

Write a short note on the import of samples and gifts as per the provisions of the Foreign Trade Policy 2023. (MTP 5 Marks Sep'23)

Answer 2

Import of samples of even 'restricted' items, is allowed without import authorisation. Exceptions are defence / security items, seeds, bees, and new drugs; these need authorisation. Duty free import of samples upto Rs. 3,00,000 for all exporters shall be allowed subject to terms and conditions of customs notification as amended.

Import of gifts (including those purchased from e-commerce portals) through post / courier, where customs clearance is sought as gifts, is prohibited. Exceptions are 'rakhi' and life - saving medicines. Gifts, however, can be imported upon payment of applicable customs duties. If duty leviable on rakhi is upto Rs. 100, no duty will be collected on the same.

Question 3

A star export house wishes to import goods which are exempt from duty under Foreign Trade Policy (FTP), subject to fulfilment of export obligation. However, Customs Notification giving effect to the FTP is yet to be issued. Can the export house import the goods claiming exemption from duty under FTP in the absence of Customs Notification? (RTP May'19)

Answer 3

- (i) No. The exemptions extended by Foreign Trade Policy can be taken only when the exemption notification is issued under the relevant tax laws. The provisions of FTP cannot override tax laws.

Question 4

Briefly explain duties which are exempted in case of imports under Advance Authorisation. (RTP Nov'23)

Answer 4

Imports under Advance Authorisation are exempted from payment of:

- Basic Customs Duty,
- Additional Customs Duty,
- Education Cess,
- Anti- dumping Duty,
- Countervailing Duty,
- Safeguard Duty,
- Transition Product Specific Safeguard Duty, wherever applicable.

However, specified deemed exports as given under are not exempted from payment of applicable anti-dumping duty, countervailing duty, safeguard duty and transition product specific safeguard duty, if any:-

- Supply of capital goods against EPCG authorisation

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- Supply to goods to UN or international organisations for their official use or supplied to projects financed by them.

It may be noted that imports under Advance Authorisation for physical as well as deemed exports are also exempt from whole of the Integrated Tax and Compensation Cess.

Question 5

Payal Company, a unit located in Agri Export Zone has made exports of machineries worth US \$ 30 lakh per annum (on an average) during the last three years and in the current year. It wants to export certain goods for export promotion on free of cost basis, which are worth ₹ 25 lakh. 1 US \$ = ₹ 50. Examine whether Payal Company can export, export promotion goods on free of cost basis as proposed. (PYP 5 Marks Nov'18)

Answer 5

Status holders are entitled to export freely exportable items on free of cost basis for export promotion subject to an annual limit of ₹ 1 crore or 2% of average annual export realization during preceding 3 licensing years, whichever is lower.

All exporters of goods having an import-export code (IEC) number shall be eligible for recognition as a status holder. Payal Company, upon achieving export performance of US \$ 12 million [₹ 30 lakh x 4] during current and previous 3 financial years, is eligible for status recognition as One Star Export House.

Being a unit in Agri Export Zone, exports of Payal Company is eligible for grant of double weightage for calculation of export performance for grant of status of One Star Export House. However, the same is not relevant for Payal Company as it is already eligible for grant of One Star Export House on the basis of its export performance without taking the benefit of double weightage.

Therefore, being a Status Holder, Payal Company is entitled to export freely exportable items on free of cost basis for export promotion as under:

- ₹ 1 crore or
- 2% of ₹ 1500 lakh [US \$ 30 lakh² x ₹ 50] which is ₹ 30 lakh whichever is lower.

Thus, Payal Company can export goods worth ₹ 25 lakh for export promotion on free of cost basis.

Question 6

State export categories/sectors which are ineligible for duty credit scrip entitlement under Merchandise Exports from India Scheme (MEIS) RoDTEP. of Foreign Trade Policy.

(PYP 2.5 Marks May'19, RTP May'19, RTP May'20)

OR

Nirav Shah used some duty paid inputs for manufacture of the export products. However, for the rest of the inputs, he wants to apply for advance authorization. Can he do so? Advise him with reference to the Foreign Trade Policy 2015-2020 2023. (PYP 2.5 Marks May'19)

Answer 6

The following export categories /sectors are ineligible for duty credit scrip entitlement

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under MEIS:-

- (i) ~~Supplies made from DTA units to SEZ units~~
- (ii) ~~Export of prescribed imported goods~~
- (iii) ~~Exports through trans shipment, i.e., exports that are originating in third country but trans-shipped through India;~~
- (iv) ~~Deemed Exports;~~
- (v) ~~SEZ/ EOU /EHTP/ BTP /FTWZ products exported through DTA units;~~
- (vi) ~~Export products which are subject to minimum export price or export duty.~~
- (vii) ~~Exports made by units in FTWZ.~~

Ineligible supplies/ items/ categories under RoDTEP

Following categories of exports/exporters shall not be eligible for rebate under the scheme:

Exports through trans-shipment, meaning thereby exports that are originating in third country but trans-shipped through India	
Export products which are subject to minimum export price or export duty	
Products which are restricted/prohibited for export under FTP	
Deemed Exports	
Supplies of products manufactured by DTA units to SEZ/FTWZ units.	
Products manufactured in EHTP and BTP	
Products manufactured partly or wholly in a warehouse under section 65 of the Customs Act	
Products manufactured or exported availing the benefit of Notification No. 32/1997 Cus. dated 01.04.1997 ²¹ (job work and re-export of goods supplied by the foreign supplier)	
Exports for which the electronic documentation in ICEGATE EDI has not been generated/ exports from non-EDI ports	
Goods which have been taken into use after manufacture	
Products manufactured or exported in discharge of EO against an AA/DFIA/Special AA issued under a duty exemption scheme of relevant FTP	Inclusion of exports made under these categories in RoDTEP scheme will be decided later.
Products manufactured/exported by a unit licensed as 100% EOU in terms of the provisions of FTP or by any of the units situated in Free Trade Zones(FTZ)/Export processing Zones (EPZ)/Special Economic Zones (SEZ).	

²¹ Goods which are imported for execution of an export order placed on the importer by the supplier of goods for jobbing are exempt from basic customs duty, IGST and GST compensation cess subject to conditions specified therein.

OR

Yes, he can do so. In case of part duty free and part duty paid imports, both advance authorization and drawback are available.

Drawback can be obtained for any duty paid material, whether imported or indigenous, used in goods exported, as per prescribed drawback rates. Advance authorization can be used for importing duty free material.

Drawback allowed must be mentioned in the application for advance authorization. In such case, All Industry Brand Rates are not applicable. The manufacturer has to get specific brand rate fixed from the Commissioner for these exported goods.

Question 7

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Nirav Shah used some duty paid inputs for manufacture of the export products. However, for the rest of the inputs, he wants to apply for advance authorization. Can he do so? Advise him with reference to the Foreign Trade Policy 2015-2020 2023. (PYP 2.5 Marks May'19)

Answer 7

Yes, he can do so. In case of part duty free and part duty paid imports, both advance authorization and drawback are available. Drawback can be obtained for any duty paid material, whether imported or indigenous, used in goods exported, as per prescribed drawback rates. Advance authorization can be used for importing duty free material. Drawback allowed must be mentioned in the application for advance authorization. In such case, All Industry Brand Rates are not applicable. The manufacturer has to get specific brand rate fixed from the Commissioner for these exported goods.

Question 8

Discuss the key similarities and differences between Advance Authorization and DFIA (Duty Free Import Authorization) schemes. (Old & New SM, MTP 5 Marks Mar'18, PYP 5 Marks May'22)

Answer 8

In both DFIA and Advance Authorization schemes, import of inputs, oil and catalyst which are consumed/ utilized in the process of production of export product are permitted without payment of customs duty. Validity period for both the schemes is 12 months from the date of issue.

Key differences between DFIA and Advance Authorization schemes are as follows –

- (i) 'Advance Authorization' is not transferable. DFIA is transferable after export obligation is fulfilled.
- (ii) Advance Authorization scheme requires 15% value addition, while in case of DFIA, minimum 20% value addition is required.
- (iii) Advance Authorization and / or material imported under Advance Authorization is subject to 'Actual User' condition. No DFIA shall be issued for an input which is subject to pre-import condition or where SION prescribes 'Actual User' condition or certain other specified inputs with pre import condition.
- (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 Authorization can be issued even if SION for that product is not fixed. DFIA can be issued only if SION has been fixed for that product to be exported.
- (v) Duty Free Import Authorization shall be exempted only from payment of Basic Customs Duty (BCD). Drawback as per rate determined and fixed by Customs authority shall be available for duty paid inputs, whether imported or indigenous, used in the export product. Imports under Advance Authorization are exempted from payment of Basic Customs duty, Additional Customs duty, Education cess, Anti- dumping duty, Countervailing duty, Safeguard duty and Transition Product Specific Safeguard duty, wherever applicable.

However, specified deemed exports are not exempted from payment of applicable anti-dumping duty, countervailing duty, safeguard duty and transition product

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specific safeguard duty, if any. Imports under Advance Authorization for physical as well as deemed exports are also exempt from whole of the Integrated Tax and Compensation Cess.

Question 9

Discuss the privileges granted under FTP to Status Holders. (New & Old SM)

OR

Indicate five benefits available to "Status Holders" under the reward scheme of Foreign Trade Policy 2015-2020 2023. There is no need to define the term "status holder".

(MTP 5 Marks Aug'18 & Oct'18, MTP 5 Marks Oct'23 & Apr'23, PYP 5 Marks May'18)

Answer 9

Status holders are eligible for privileges as under:

- (a) Authorization and custom clearances for both imports and exports on self-declaration basis.
- (b) Fixation of Input Output Norms on priority i.e. within 60 days by Norms Committee.
- (c) Exemption from compulsory negotiation of documents through banks. Exception are remittance/ receipts.
- (d) Exemption from furnishing of Bank Guarantee in Schemes under FTP unless otherwise specified.
- (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 Industrial Entrepreneurs Memorandum (IEM) / Industrial License (IL) /Letter of Intent (LOI)) as originating from India with a view to qualify for preferential treatment under specified agreements.
- (g) Status holders shall be entitled to export freely exportable items on free of cost basis for export promotion subject to a specified annual limit.
- (h) The status holders would be entitled to preferential treatment and priority in handling of their consignments by the concerned agencies.

Question 10

Briefly explain as to how FTP is linked with customs laws. (MTP 5 Marks Mar'19, Old SM)

Answer 10

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

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detailed conditions. Ministry of Finance/ Tax Authorities cannot question the decision of authorities under the Ministry of Commerce (so far as the issue of authorization etc. is concerned).

Decision of Director General of Foreign Trade (DGFT) is final and binding in respect of
(a) Interpretation of any provision of foreign trade policy or provision of Handbook of Procedures, Appendices, Aayat Niryat Forms (b) Classification of any item in ITC(HS).

Question 11

What are the salient features of Duty-Free Import Authorization Scheme (DFIA)? Which duties are exempted under this scheme? (MTP 5 Marks Oct'20)

Answer 11

DFIA is issued to allow duty free import of inputs, oil and catalyst which are required for production of export product. The goods imported are exempt ONLY from basic customs duty.

DFIA shall be issued on post export basis for products for which SION have been notified. Separate DFIA shall be issued for each SION and each port.

No DFIA shall be issued for an export product where SION prescribes 'Actual User' condition for any input.

Holder of DFIA has an option to procure the materials/ inputs from indigenous manufacturer/STE in lieu of direct import against Advance Release Order (ARO)/ Invalidation letter/ Back to Back Inland Letter of Credit. However, DFIA holder may obtain supplies from EOU/EHTP/BTP/STP/SEZ units, without obtaining ARO or Invalidation letter.

Drawback as per rate determined and fixed by Customs authority shall be available for duty paid inputs, whether imported or indigenous, used in the export product.

DFIA or the inputs imported against it can be transferred after the fulfillment of the export obligation. A minimum 20% value addition is required for issuance of DFIA except for items in gems and jewellery sector.

Question 12

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? (MTP 5 Marks Mar'21)

Answer 12

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

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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~~ **GST** Departments

SECTION B

Question 1

Mr. Ayush Bhandari wants to import samples from US. State in brief policy for import of samples.

Answer 1

Import of samples of even 'restricted' items, is allowed without import authorisation. Exceptions are defence / security items, seeds, bees, and new drugs; these need authorisation.

Duty free import of samples upto ₹ 3,00,000 for all exporters shall be allowed subject to terms and conditions of customs notification as amended.

Question 2

State salient aspects of Advance authorisation for annual requirements to exporters.

Answer 2

Annual Advance authorisation would be issued to exporters having past export performance in at least preceding two financial years, to enable them to import the inputs required by them on annual basis.

Advance authorization for annual requirement shall only be issued for items, notified in SION and not on basis of ad hoc norms under self-declared authorisations where SION does not exist.

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.

Question 3

Mr. X is desirous to know the benefits of deemed exports under FTP. You are required to discuss the same with reference to FTP

Answer 3

Deemed exports shall be eligible for any/ all of following benefits in respect of manufacture and supply of goods, qualifying as deemed exports, subject to specified terms and conditions:

- a. Advance Authorisation/ Advance Authorisation for Annual requirement/ DFIA
- b. Deemed Export Drawback Refund of drawback on the inputs used in manufacture and supply under the deemed exports category can be claimed on 'All Industry Rate'

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of Duty Drawback Schedule provided no CENVAT credit has been availed by supplier of goods on excisable inputs or on 'Brand rate basis' upon submission of documents evidencing actual payment of basic custom duties.

- c. Refund of terminal excise duty for specified excisable goods Supply of goods will be eligible for refund of terminal excise duty provided recipient of goods does not avail CENVAT credit/rebate on such goods and supply is eligible under that category of deemed exports.

Question 4

Discuss the key similarities and differences between Advance Authorization and DFIA (Duty Free Import Authorization) schemes.

Answer 4

In both DFIA and Advance Authorization schemes, import of inputs, oil and catalyst which are consumed/ utilised in the process of production of export product are permitted without payment of customs duty. Validity period for both the schemes is 12 months from the date of issue.

Key differences between DFIA and Advance Authorisation schemes are as follows –

- (vi) 'Advance Authorisation' is not transferable. DFIA is transferable after export obligation is fulfilled.
- (vii) Advance Authorisation scheme requires 15% value addition, while in case of DFIA, minimum 20% value addition is required.
- (viii) Advance Authorisation and / or material imported under Advance Authorisation is subject to 'Actual User' condition. No DFIA shall be issued for an input which is subject to pre-import condition or where SION prescribes 'Actual User' condition or certain other specified inputs with pre import condition.
- (ix) 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.
- (x) Duty Free Import Authorisation shall be exempted only from payment of Basic Customs Duty (BCD). Drawback as per rate determined and fixed by Customs authority shall be available for duty paid inputs, whether imported or indigenous, used in the export product. Imports under Advance Authorisation are exempted from payment of Basic Customs duty, Additional Customs duty, Education cess, Anti- dumping duty, Countervailing duty, Safeguard duty and Transition Product Specific Safeguard duty, wherever applicable.

However, specified deemed exports are not exempted from payment of applicable anti-dumping duty, countervailing duty, safeguard duty and transition product specific safeguard duty, if any. Imports under Advance Authorisation for physical as well as deemed exports are also exempt from whole of the Integrated Tax and Compensation Cess.

Question 5

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Discuss the privileges granted under FTP to Status Holders.

Answer 5

Status holders are eligible for privileges as under:

- (i) Authorisation and custom clearances for both imports and exports on self-declaration basis.
- (j) Fixation of Input Output Norms on priority i.e. within 60 days by Norms Committee.
- (k) Exemption from compulsory negotiation of documents through banks. Exception are remittance/ receipts.
- (l) Exemption from furnishing of Bank Guarantee in Schemes under FTP unless otherwise specified.
- (m) Two Star Export Houses and above are permitted to establish export warehouses.
- (n) Manufacturers who are also status holders (Three Star/Four Star/Five Star) will be enabled to self-certify their manufactured goods (as per their Industrial Entrepreneurs Memorandum (IEM) / Industrial License (IL) /Letter of Intent (LOI)) as originating from India with a view to qualify for preferential treatment under specified agreements.
- (o) Status holders shall be entitled to export freely exportable items on free of cost basis for export promotion subject to a specified annual limit.
- (p) The status holders would be entitled to preferential treatment and priority in handling of their consignments by the concerned agencies.

Question 6

With reference to the provisions of FTP, 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) **IEC is a unique 12 digit PAN based alphanumeric code allotted to a person for undertaking any export/ import activities**

Answer 6

- (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:** IEC is a unique 10-digit alphanumeric number allotted to a person for undertaking export/ import activities.

Question 7

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?

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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 7

Status Holders are exporter firms recognised as 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 \$ [FOB/ FOR (as converted)] during current and all the three preceding financial years.

Thus, export performance of Red Sky Pvt. Ltd. and Black Night Pvt. Ltd. would have been at least 3 million US \$ [FOB/ FOR (as converted)] during current and all the three preceding FYs.

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

Status category	Export Performance Threshold In USD Million
One Star Export House	3
Two Star Export House	15
Three Star Export House	50
Four Star Export House	200
Five Star Export House	800

previous three financial years should be as indicated below:

Question 8

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 with reference to the provisions of Foreign Trade Policy for the supplies made by it?

Answer 8

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.

Question 9



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