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Nov'24

Questions & Answer

**LIABILITY TO PAY IN
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Question and Answer

Section 85: Liability in case of transfer of business

Question 1.

Avatar 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 Avatar Industries up to the time of such transfer.

(ICAI Study Material)

Answer:

Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person up to 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, Avatar 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 Avatar Industries up to the time of such transfer.

Section 86: Liability of agent and principal

Question 2.

ABC Manufacturers Ltd. engages Raghav & Sons as an agent to sell goods on its behalf. Raghav & Sons sells goods to Swami Associates on behalf of ABC Manufacturers Ltd. Determine the liability to pay GST payable on such goods as per the provisions of section 86 of the CGST Act.

(ICAI Study Material)

Answer:

Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall, jointly and severally, be liable to pay the tax payable on such goods under this Act.

Thus, in the given case, ABC Manufacturers Ltd. and Raghav & Sons shall, jointly and severally, be liable to pay GST payable on such goods.

Section 88: Liability in case of company in liquidation

Question 3.

Explain the provisions relating to liability for GST in case of company in liquidation (section 88 of the CGST Act, 2017).
(CA Final-MAY 18) & (ICAI study material)

Answer:

The provisions relating to liability for GST in case of company in liquidation provided under section 88 of the CGST Act, 2017 are: -

- Where any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as a liquidator/receiver of assets of a company shall give the intimation of his appointment to the Commissioner within 30 days of his appointment.
- The commissioner shall ascertain the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.
- He shall communicate the details 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.

Section 89: Liability of directors of private company

Question 4.

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.
(CA Final RTP May 22)

Answer:

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 nonrecovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Section 93: Special provisions regarding liability to pay tax, interest or penalty

Question 5.

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. (ICAI Study Material)

Answer:

Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies, then if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

Question 6.

In the question above, would your answer be different if the business carried on by the person who has died, is discontinued after his death.

(ICAI Study Material)

Answer:

Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies, then if a business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

Question 7.

Who will be held liable for payment of tax, interest or penalty after the death of the taxable person? Or 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).

(ICAI study material-amended)

Answer:

In terms of Section 93(1) of the CGST Act, 2017, after the death of the taxable person, the tax, interest or penalty remaining unpaid either determined before the death or otherwise, shall be recovered in the following manner:

- 1) 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; and
- 2) 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.

Question 8.

With reference to provision of section 93(1) of the CGST Act, 2017, 4 discuss the liability to pay tax, interest or penalty on death of a person so liable.

(Nov 23)

Multiple Choice Question

- M/s Harmony Builders was a partnership firm consisting of three partners: Mr. Ramesh, Mr. Suresh, and Mr. Anil. On March 1, 2024, the firm was dissolved due to mutual consent. At the time of dissolution, the firm had outstanding tax liabilities under the CGST Act - Tax Due: ₹350,000 Interest Due: ₹100,000 Penalty Due: ₹50,000

After the dissolution, Mr. Ramesh, Mr. Suresh, and Mr. Anil decided to part ways, but the tax liabilities remained unpaid.

What is the liability of Mr. Ramesh, Mr. Suresh, and Mr. Anil regarding the tax owed by M/s Harmony Builders after its dissolution?

 - Mr. Ramesh, Mr. Suresh, and Mr. Anil are not liable for any tax, interest, or penalty since the firm has been dissolved.
 - Each partner is liable to pay only their share of the tax, interest, and penalty based on their capital contribution to the firm.
 - Mr. Ramesh, Mr. Suresh, and Mr. Anil are jointly and severally liable for the total tax, interest, and penalty amounting to ₹500,000.
 - The tax liability is solely the responsibility of the partner who was managing the accounts of the firm.
- M/s Innovative Designs was a partnership firm comprising three partners: Mr. Ravi, Ms. Sneha, and Mr. Karan. On March 1, 2024, Ms. Sneha decided to leave the partnership, and the firm continued with Mr. Ravi and Mr. Karan as partners. However, due to financial difficulties, M/s Innovative Designs discontinued its business operations on March 1, 2025.

Before discontinuance, the firm had incurred tax liabilities under the CGST Act - Tax Due: ₹350,000 Interest Due: ₹100,000 Penalty Due: ₹50,000

What is the liability of Mr. Ravi and Mr. Karan regarding the tax owed by M/s Innovative Designs for the period before the discontinuance, considering Ms. Sneha left the partnership one year before the discontinuance?

 - Ms. Sneha is liable for the total tax, interest, and penalty as she was a partner at the time of discontinuance.
 - Mr. Ravi and Mr. Karan are jointly and severally liable for the total tax, interest, and penalty amounting to ₹500,000.
 - Mr. Ravi and Mr. Karan are not liable for any tax, interest, or penalty since Ms. Sneha left the firm before discontinuance.
 - Mr. Karan is solely liable for the tax due because he was a partner at the time of discontinuance.
- Mr. Ramesh Gupta is a guardian for his minor son, Aarav, and operates a small business on his behalf. The business has incurred tax liabilities under the CGST Act consisting of: Tax Dues: ₹350,000, Interest Due: ₹100,000, Penalty Due: ₹50,000

On June 15, 2024, Mr. Ramesh's guardianship over Aarav is officially terminated due to Aarav reaching the age of majority. The outstanding tax liabilities remain unpaid at the time of termination.

What is the tax liability of Aarav, the beneficiary, after the termination of Mr. Ramesh's guardianship?

 - Aarav is not liable for any tax as the guardianship has been terminated.
 - Aarav is liable to pay the full tax, interest, and penalty amounting to ₹500,000.

- C) Aarav is liable to pay the tax, interest, and penalty due from the taxable person, totaling ₹500,000, up to the time of the termination of the guardianship.
- D) Aarav is only liable for the penalty amount of ₹50,000 since the guardianship has ended.
4. M/s Sharma & Co. is a partnership firm consisting of four partners: Mr. Rajesh Sharma, Ms. Neha Verma, Mr. Amit Desai, and Mr. Karan Jain. The firm has incurred outstanding tax liabilities under the CGST Act totaling ₹1,200,000, which breaks down as follows:
Tax Due: ₹900,000, Interest Due: ₹200,000, Penalty Due: ₹100,000
On July 30, 2024, M/s Sharma & Co. is officially dissolved. The outstanding tax liabilities remain unpaid at the time of dissolution.
What is the tax liability of Mr. Rajesh Sharma, Ms. Neha Verma, Mr. Amit Desai, and Mr. Karan Jain after the dissolution of M/s Sharma & Co.?
- A) None of the partners are liable for any tax as the firm has been dissolved.
- B) Each partner is liable to pay the full tax, interest, and penalty amounting to ₹1,200,000.
- C) Each partner is jointly and severally liable to pay the tax, interest, and penalty due from the firm, totaling ₹1,200,000, even after dissolution.
- D) Each partner is liable only for the penalty amount of ₹100,000 since the firm is no longer operational.
5. M/s Sharma & Co. is a Hindu Undivided Family (HUF) business owned by Mr. Ramesh Sharma and his three sons: Raj, Vikram, and Arjun. Before the partition of the HUF, the business had tax liabilities under the CGST Act totaling ₹500,000, which includes:
Tax Due: ₹400,000, Interest Due: ₹70,000, Penalty Due: ₹30,000
On October 1, 2024, the HUF is partitioned, and the property is divided among the members. After the partition, the tax liabilities remain unpaid.
What is the tax liability of Raj, Vikram, and Arjun after the partition of the HUF?
- A) Raj, Vikram, and Arjun are not liable for any tax as the business has been partitioned.
- B) Each member is liable to pay the full tax, interest, and penalty amounting to ₹500,000.
- C) Each member is liable to pay the tax, interest, and penalty due from the HUF only up to the amount determined before partition, which is ₹500,000.
- D) Each member is jointly and severally liable to pay the tax, interest, and penalty due from the HUF, totaling ₹500,000, even after partition.
6. M/s Classic Interiors was a sole proprietorship owned by Mr. Arjun Sharma, who passed away on July 5, 2024. Before his death, Mr. Sharma had tax liabilities totaling ₹200,000 under the CGST Act, consisting of:
Tax Due: ₹150,000, Interest Due: ₹30,000, Penalty Due: ₹20,000
Following Mr. Sharma's death, his family decided not to continue the business and chose to discontinue it. The estate received by his legal representative, Ms. Neha Sharma, includes:
Cash in bank accounts: ₹80,000, Furniture and fixtures: ₹50,000,
Outstanding receivables from debtors: ₹30,000
What is the tax liability of Ms. Neha Sharma, the legal representative, regarding the tax owed by Mr. Arjun Sharma?
- A) Ms. Neha is not liable for any tax because the business was discontinued.
- B) Ms. Neha is liable to pay the full tax, interest, and penalty due from Mr. Arjun Sharma, amounting to ₹200,000.
- C) Ms. Neha is liable to pay the tax, interest, and penalty due from Mr. Arjun Sharma only up to the value of the estate, which is ₹160,000.
- D) Ms. Neha must pay only the penalty of ₹20,000 as the business has ceased.

7. M/s Jurassic Interiors was a sole proprietorship owned by Mr. David, who passed away on July 5, 2024. Before his death, Mr. David had tax liabilities totaling ₹200,000 under the CGST Act, consisting of:
Tax Due: ₹150,000, Interest Due: ₹30,000, Penalty Due: ₹20,000
Following Mr. David's death, his family decided to continue the business and chose to discontinue it. The estate received by his legal representative, Ms. Emily, includes:
Cash in bank accounts: ₹80,000, Furniture and fixtures: ₹50,000,
Outstanding receivables: ₹30,000
What is the tax liability of Ms. Emily, the legal representative, regarding the tax owed by Mr. David?
- A) Ms. Emily is not liable for any tax because the business was discontinued.
 - B) Ms. Emily is liable to pay the full tax, interest, and penalty due from Mr. David, amounting to ₹200,000.
 - C) Ms. Emily is liable to pay the tax, interest, and penalty due from Mr. David only up to the value of the estate, which is ₹160,000.
 - D) Ms. Emily must pay only the penalty of ₹20,000 as the business has ceased.
8. M/s Heritage Ventures is a business owned by Mr. Thomas, who has passed away. Following his death, the estate has been placed under the control of an Administrator appointed by the court. The estate has accumulated tax liabilities amounting to ₹250,000 due by February 28, 2025. The tax authorities are looking to recover these dues.
In this situation, who is liable for the payment of the tax, interest, or penalty, and how is it recoverable?
- A) The tax will be recoverable from Mr. Thomas's heirs only.
 - B) The tax, interest, or penalty will be levied on the Administrator and recoverable from them.
 - C) The tax liability will fall on the business partners of M/s Heritage Ventures.
 - D) The tax authorities cannot recover any dues as the estate is under Administrator control.
9. M/s Caretaker Enterprises is a business managed by Mr. John, who is the guardian of a minor, Alex, and operates the business on behalf of Alex. As of September 30, 2024, the firm incurred tax liabilities totaling ₹200,000, which were not paid due to financial difficulties. The tax authorities are now assessing the situation regarding the recovery of these dues.
Who is liable for the payment of the tax, interest, or penalty in this scenario, and how is it recoverable?
- A) The tax will be recoverable only from the minor, Alex.
 - B) The tax, interest, or penalty will be levied on Mr. John, the guardian, and recoverable from him.
 - C) The tax liability will be shared equally between the guardian and the minor.
 - D) The business will be closed, and no further recovery will take place.
10. M/s XYZ Associates is a partnership firm engaged in consultancy services. Partner A decided to retire from the firm on May 15, 2024. As of that date, the firm had outstanding tax liabilities amounting to ₹300,000 in taxes, which had not been paid. According to the regulations, Partner A is liable for any tax, interest, or penalty due up to the date of his retirement.
The partners discussed the need to notify the Commissioner of Partner A's retirement and the tax liabilities but were uncertain about the timeline for doing so.

Scenario 1: If the firm submits the intimation of Partner A's retirement to the Commissioner on June 10, 2024 (within one month from the date of retirement).

Scenario 2: If the firm submits the intimation of Partner A's retirement to the Commissioner on July 15, 2024 (after one month from the date of retirement).

By what date will Partner A's liability for the unpaid tax, interest, or penalty be extended in each scenario, and what is the correct liability status?

- A) Liability ends on June 10, 2024, in Scenario 1; liability continues until July 15, 2024, in Scenario 2.
- B) Liability ends on May 15, 2024, in both scenarios.
- C) Liability continues until June 10, 2024, in Scenario 1; liability continues until July 15, 2024, in Scenario 2.
- D) Liability ends on June 10, 2024, in Scenario 1; liability ends on August 15, 2024, in Scenario 2.

11. M/s Alpha Ltd. and M/s Beta Ltd. have been amalgamated in pursuance of an order of the Tribunal effective from January 1, 2024. The Tribunal's order was issued on March 15, 2024. During the period from January 1, 2024, to March 15, 2024, the two companies conducted several transactions between themselves, resulting in the following:

M/s Alpha Ltd. supplied goods worth ₹500,000 to M/s Beta Ltd.

M/s Beta Ltd. supplied services worth ₹300,000 to M/s Alpha Ltd.

Both companies are required to include these transactions in their respective turnover of supply and receipt. The GST rate applicable to these transactions is 18%.

What is the total GST liability for both companies (M/s Alpha Ltd. and M/s Beta Ltd.) for the transactions conducted between January 1, 2024, and March 15, 2024, as a result of the amalgamation?

- A) M/s Alpha Ltd. has a turnover from supply to M/s Beta Ltd. of ₹500,000 and hence its GST liability is 90,000
- B) M/s Beta Ltd. has a turnover from supply to M/s Alpha Ltd. of ₹300,000 and hence its GST liability is 54,000
- C) M/s AB Ltd, the amalgamated entity turnover is 8,00,000 and hence its GST liability is 1,44,000
- D) a&b

12. M/s XYZ Pvt. Ltd. was ordered into liquidation, and a liquidator was appointed on March 1, 2024. The liquidator sent an intimation of his appointment to the Commissioner of GST on the same day. The Commissioner, upon receiving the intimation, decided to conduct an inquiry to assess the potential tax liabilities of the company.

By what date must the Commissioner notify the liquidator of the amount deemed sufficient to cover any tax, interest, or penalty that may be payable by M/s XYZ Pvt. Ltd.?

- A) March 31, 2024
- B) June 1, 2024
- C) May 30, 2024
- D) June 30, 2024

13. M/s Alpha Tech Pvt. Ltd., a private company, had outstanding tax liabilities amounting to ₹500,000 in tax and ₹50,000 in interest due for the financial year 2022-23. The due date for payment of these taxes was December 31, 2023. On April 1, 2024, M/s Alpha Tech Pvt. Ltd. converted itself into M/s Alpha Tech Ltd., a public company. After the conversion, the department initiated an inquiry regarding the outstanding dues.
- what is the amount of liability that can be recovered by the dept from the directors of the private ltd company after the conversion?
- a)550000 b)50000
c)500000 d)nil

Answer:

Q.	Ans	Reason
1.	c	
2.	b	According to the provisions regarding the discontinuance of a partnership firm, every person who was a partner at the time of discontinuance remains jointly and severally liable for any tax, interest, or penalty due from the firm for any period before its discontinuance. Since Mr. Ravi and Mr. Karan were partners at the time of discontinuance, they are both responsible for the total outstanding liability of ₹500,000, regardless of Ms. Sneha's departure a year earlier.
3.	c	
4.	c	According to the provisions, upon the dissolution of a firm, every partner remains jointly and severally liable for the tax, interest, and penalty due from the firm up to the time of dissolution. Therefore, Mr. Rajesh Sharma, Ms. Neha Verma, Mr. Amit Desai, and Mr. Karan Jain are all liable for the total outstanding amount of ₹1,200,000, irrespective of the firm's dissolved status.
5.	d	Under Section 93(2), upon partition of an HUF or AOP, each member/group remains jointly and severally liable for the tax, interest, or penalty due from the taxable person up to the time of the partition. Therefore, Raj, Vikram, and Arjun are liable for the full amount of ₹500,000 regardless of the partition.
6.	c	Since the business has been discontinued, Ms. Neha's liability is limited to the extent that the estate can meet the tax obligations. The total tax, interest, and penalty due amount to ₹200,000, but the available estate value is ₹160,000. Therefore, she can only pay up to that amount from the estate.
7.	b	
8.	b	Since the estate of Mr. Thomas is under the control of an Administrator appointed by the court, the tax, interest, or penalty related to the business is levied upon and recoverable from the Administrator. The law allows for the enforcement of tax obligations against the appointed entity managing the estate as if the original taxable person were conducting the business himself. Thus, option B is correct.

9.	b	Since Mr. John is the guardian operating the business on behalf of the minor, Alex, any tax, interest, or penalty that arises from the business activities will be levied upon and recoverable from Mr. John. The law stipulates that the tax obligations of a minor or incapacitated person can be recovered from their guardian, trustee, or agent as if the minor were conducting the business themselves. Therefore, option B is correct.
10.	a	In Scenario 1, since the firm notified the Commissioner on June 10, 2024 (within one month of Partner A's retirement), Partner A's liability for any unpaid taxes, interest, or penalties will end on that date. Therefore, he will only be liable for taxes, interest, or penalties up to May 15, 2024. In Scenario 2, since the firm did not notify the Commissioner until July 15, 2024 (after one month), Partner A's liability for the unpaid tax, interest, or penalty will continue until the date the intimation is received by the Commissioner (July 15, 2024). Thus, the correct answer is A.
11.	d	
12.	b	The Commissioner must notify the liquidator within 3 months (90 days) from the date he receives intimation of the appointment of the liquidator. Since the intimation was received on March 1, 2024, the notification must be made by June 1, 2024.
13.	d	No liability can be collected from the directors after conversion.

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