

CA FINAL



**V'Smart  
Academy**

# INDIA TOUR



V'Smart Academy

*Special 50  
Questions*

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*Think GST!  
Think Vishal Sir!!*

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## Question 1

M/s. Veer Ltd. being a Garment manufacturer is located in Mumbai has appointed Mr Rudra to procure garments based on a specification given by him. As the same kind of garments are not available in area of Mr. Veer, so Mr. Rudra buys the specified garments on his behalf from M/s XYZ Ltd. and for this activities invoice is issued in the name of principal.

- 1) Whether it is to be treated as a supply under GST? Would your answer differ if invoice is issued in name of an agent Mr Rudra?
- 2) M/s Veer Ltd. transfers 1000 shirts from his factory located in Mumbai to his retail showroom in Delhi so that the same can be sold from there. The factory and retail showroom of M/s Veer Ltd are registered in the States where they are located. Although no consideration is charged, supply of goods from factory to retail showroom constitutes supply. Justify
- 3) On occasion of Diwali, M/s Veer Ltd distributes gift hamper to its employee worth ₹ 3,00,000. Does it qualify as supply? Would your answer be different, if gifts of ₹ 42,000 have been given to a employee?
- 4) Further M/s Veer decided to provide the following relating to information technology software. Compute the value of taxable service and GST liability (Rate of CGST 9% and SGST 9%)?
  1. Development and Design of information technology software: ₹ 15 lakhs
  2. Sale of pre-packaged software, which is put on media: ₹ 52 lakhs.
- 5) Along with above, Mr. Veer also provides bus service, meal coupon, telephone at residence, gives vehicle for official and personal use, uniform, and shoes to its employee. Explain the implication of GST under this case, if:-

- a) These perquisites are provided as per the contract entered between employer and employee.
- b) These perquisites are provided willingly by employer for better performance of employee without any agreement
- 6) M/s Veer Ltd. hires an ambulance for transport facility of a deceased person for performing funeral rituals
- 7) M/s Veer Ltd. enters into an agreement for sale of land to Mr Ajay for a consideration
- 8) M/s Veer Ltd gives clothes from his business stock (on which ITC is taken) to his friend free of cost permanently.

Determine whether the above activities fall under the purview of supply as per Section 7 of CGST Act.

**Answer:-**

- |     |  |
|-----|--|
| (1) | <p><b>Legal Provision:-</b></p> <ul style="list-style-type: none"> <li>➤ Section 7(1)(c) read with Para 3 of Schedule I of CGST Act, 2017 states that supply of goods by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal, shall be treated as supply even if made without consideration.</li> <li>➤ As per CBIC clarification, if invoice for further supply is being issued by agent in his own name, then this activity is treated as supply under para 3 Schedule I, otherwise not.</li> </ul> <p><b>Discussion:-</b></p> <ul style="list-style-type: none"> <li>➤ In the given case, Mr. Rudra (Agent) is appointed just to procure the goods on behalf of Mr. Veer (Principal) and he is issuing invoice also in name of Mr. Veer (Principal).</li> <li>➤ He has not involved himself in the supply or receipt of goods in any way.</li> <li>➤ Hence, Mr. Rudra is not an agent of Mr. Veer for the purpose of para 3 of schedule I.</li> </ul> |
|-----|--|

**Conclusion:-**  
 i) No, it is not to be treated as a supply as per para 3 of Schedule I. This is because the Mr. Rudra (Agent) is issuing invoice in name of the Mr. Veer (Principal).  
 ii) Yes, if invoice is in the name Mr. Rudra (Agent), then this transaction will be treated as supply as per para 3 of Schedule I.

**(2) Legal provision:**  
 ➤ As per section 7(1)(c) read with Para 2 of schedule I of CGST Act, 2017, Supply of goods &/or services between distinct person as u/s 25 in the course or furtherance of business shall be treated as supply even when it is made without consideration.  
 ➤ Section 25(4) of CGST Act, 2017 states that if more than one registration is obtained or is required to be obtained by a person in one or more State, then for each of such registration, he shall be treated as distinct persons.  
**Discussion & Conclusion:**  
 ➤ In given case, factory & retail showroom of M/s Veer Ltd. are registered in the States where they are located. So, both are treated as establishments of distinct person u/s 25(4).  
 ➤ Although, no consideration is charged, supply of goods from factory to retail showroom constitutes supply as per para 2 of schedule I stated above as it is in course or furtherance of business

**(3) Legal Provision:**  
 ➤ As per **section 7(1)(c) read with Para 2 of Schedule I** of CGST Act, 2017, Supply of goods &/or services between related persons is treated as supply even if it is without consideration.  
 ➤ **Proviso to para 2 of schedule I** states that if gifts given by employer to an employee are not exceeding ₹ 50,000 in value in a financial year, then it shall not be treated as supply of goods &/or services.  
 ➤ As per **explanation to section 15**, employer & employee are deemed to be related persons.  
**Discussion & Conclusion:**  
 1) **Diwali gift** to employee worth ₹ 3,00,000 **will qualify as supply** and such supply would be leviable to GST as the employer & employee are related

and value of gift exceeds Rs 50000 in a financial year.  
 2) If **gift of ₹ 42,000** is given instead of ₹ 3,00,000, the same **will not qualify as supply**. This is because, the value of gift is not exceeding ₹ 50,000 in a financial year.

**(4)** 1. It will be treated as supply & as per para 5(d) of schedule II of CGST Act, 2017, it will be classified as supply of service.

Particulars	Rs. In Lakhs
Value of Taxable supply of service	1.5
CGST @ 9% of Rs. 15 Lakhs	1.35
SGST @ 9% of Rs. 15 Lakhs	1.35

2. It will be treated as supply & as per para 5(d) of schedule II of CGST Act, it will be classified as supply of goods.

Particulars	Rs. In Lakhs
Value of Taxable supply of service	52
CGST @ 9% of Rs. 15 Lakhs	4.68
SGST @ 9% of Rs. 15 Lakhs	4.68

**(5) Legal Provision:**  
 ➤ **As per section 7(2) read with para 1 of Schedule III of CGST Act**, any service provided by an employee to employer in the course of or in relation to employment shall be treated neither as a supply of goods nor a supply of services & thus, not taxable.  
 ➤ **As per CBIC Clarification**, if any prerequisites are provided by employer to its employees as per the contractual agreement between them, such prerequisites shall be treated as consideration for employee in relation to his employment & thus, gets covered under para 1 of Schedule III.  
 ➤ **As per para 2 of Schedule I of CGST Act**, gift given by employer to an employee exceeding ₹ 50,000 in value in a financial year is treated as deemed supply & thus, taxable under GST

<b>Discussion &amp; Conclusion:</b>	
(a)	<ul style="list-style-type: none"> <li>➤ In given case, perquisites are provided by employer to employee as per the contract between them &amp; is thus provided in relation to employment.</li> <li>➤ It is not treated as supply under GST as per <b>para 1 of Schedule III</b> &amp; not leviable to GST.</li> </ul>
(b)	<ul style="list-style-type: none"> <li>➤ Here, perquisites are provided by employer to employee without any agreement between them &amp; thus, are not provided in relation to employment.</li> <li>➤ It is not covered under para 1 of Schedule III &amp; thus, taxable. However, GST is payable only on <b>value exceeding of ₹ 50,000</b> in a financial year for an employee as per <b>para 2 of Schedule I</b>.</li> </ul>
(6)	As per section 7(2) read with para 4 of Schedule III of CGST Act, Services of funeral including transportation of the deceased shall be treated neither as a supply of goods nor a supply of services. Thus, there is no levy of GST on such activity as it is out of scope of supply.
(7)	As per section 7(2) read with para 5 of Schedule III of CGST Act, Sale of land shall be treated neither as a supply of goods nor a supply of services. Thus, there is no levy of GST on such activity as it is out of scope of supply.
(8)	<p><b>Legal Provision:</b></p> <ul style="list-style-type: none"> <li>➤ As per Section 7(1)(c) read with para 1 of schedule I of CGST Act, permanent transfer or disposal of business assets where ITC has been availed on such assets shall be treated as supply under GST even when there is no consideration involved.</li> <li>➤ So, if no ITC is availed on such business asset, then it will not be treated as supply under this para.</li> </ul> <p><b>Discussion &amp; Conclusion:</b></p> <p>Business assets also includes stock in trade. Hence, in this case, permanent transfer of business stock free of cost shall be treated as supply under para 1 of schedule I as the M/s Veer Ltd. claimed input tax credit on his purchase of that business stock</p>



## Question 2

M/s XYZ Pvt. Ltd. is a trading company engaged in supply of goods & services & registered under GST

From the following information determine the person liable to pay Goods & Service tax both Supplier and Recipient are located in India:

- a) XYZ Ltd. availed services of Vimal Goods transport agency for transportation of goods by road from factory located in Pune to its Satara depot and paid freight of ₹ 1,00,000 where the GST is charged at the rate applicable. Vimal Goods transport agency is registered under GST & has exercised the option to pay tax under forward charge.  
What will be your answer if GTA has not exercised the option to pay tax under forward charge?
- b) Due to conflicts arise in Company, XYZ Ltd availed Legal services from VHB & Co., Partnership firm of Advocates
- c) Government has provided Infrastructural support services to XYZ Ltd of Rs. 14 Lakh
- d) XYZ Ltd provides Sponsorship services to Mr. Bhagat for a cultural event.
- e) XYZ Ltd. also provides services to Star Industries Ltd., USA, value being ₹ 7 lakhs
- f) Mr. X is an executive director, i.e. an employee of the XYZ Ltd. Out of total remuneration amounting to ₹ 1,25,000, ₹ 60,000 has been declared as salaries in the books of XYZ Ltd and subjected to TDS under section 192 of the Income-Tax Act (IT Act). However, ₹ 65,000 has been declared separately other than salaries in the XYZ Ltd's accounts and subjected to TDS under section 194J of the IT Act as professional services
- g) Rental income received by Maharashtra State Government from renting an immovable property to XYZ Pvt. Ltd
- h) Mr. X, submits a cab request to Speed Cabs for travelling from Pune to Mumbai. Speed Cabs is a mobile application owned and managed by Smart Cab Technologies Ltd. located in India

i) XYZ Ltd has availed the service by way of renting of motor vehicle from Mr. Poonawala for the total consideration of ₹ 1.5 lakhs (including cost of fuel). Mr. Poonawala opted for paying tax @ 5% (i.e. 2.5% CGST & 2.5% SGST) and avail input tax credit of input service received from supplier who is also engaged in same line of business.

Would your answer differ, if such service by way of renting of motor vehicle was taken by manager of XYZ Ltd. on his own A/c?

j) Mr. X visits Goa for Business trip where hotel owner provides accommodation through Electronic Commerce operator "cool trips". The hotel owner is not liable to get registered as per the provisions of section 22(1) of the CGST Act.

Would your answer differ if the ECO Cool Trips does not have a physical presence in India?

k) XYZ Ltd. provides service by way of renting its warehouse to Mr. Chirag (Fruits dealer), registered under GST, for storing perishable goods.

Answer:

(a)

**Legal Provision:-**

- As per section 9(3) of CGST Act, if service of transportation of goods by road is provided by a GTA to a specified recipient, i.e., a body corporate established by or under any law, then **such body corporate is liable to pay tax under reverse charge.**
- However, if the registered GTA has exercised the option to pay tax under forward charge on transportation of goods and also issued a tax invoice to the recipient charging Central Tax at the applicable rates with a declaration thereon, then the **GTA is liable to pay tax under forward charge.**

**Discussion & Conclusion:-**

- In the first case, XYZ Ltd. is a specified recipient, i.e., a body corporate established by or under any law liable to pay freight.

	<ul style="list-style-type: none"> <li>➤ However, GTA has exercised the option to pay tax under forward charge and also issued a tax invoice charging GST at the applicable rate.</li> <li>➤ Therefore, Vimal Goods transport agency is liable to pay GST under <b>forward charge</b>.</li> <li>➤ In the second case, if GTA has not exercised the option to pay tax under forward charge, then XYZ Ltd., being a specified recipient, is liable to tax under reverse charge</li> </ul>
(b)	<p><b>Legal Provision:-</b> As per section 9(3) of CGST Act, if <b>legal services</b> are provided by a <b>firm of advocates</b> to any <b>business entity</b> located in the taxable territory, then the GST is payable on reverse charge basis by recipient.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>➤ In the given case, VHB &amp; Co. is a <b>partnership firm of advocates</b> &amp; provides legal service to a business entity - <b>XYZ Ltd.</b></li> <li>➤ Therefore, <b>XYZ Ltd.</b> is liable to pay GST under reverse charge. [we assume that agg. T/O of XYZ Pvt. Ltd. of P.F &gt; Y. exceeds threshold]</li> </ul>
(c)	<p><b>Legal Provision:-</b> As per section 9(3) of CGST Act, if any service, other than those covered under exception, are provided by the Government to business entity located in a taxable territory, then GST is payable under <b>reverse charge</b> by recipient.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>➤ In given case, the government provides the Infrastructural support services to XYZ Ltd.</li> <li>➤ The Infrastructural support services <b>are not covered under exceptions</b> to services notified under reverse charge.</li> <li>➤ Therefore, the XYZ Ltd. is liable to pay GST under <b>reverse charge</b>.</li> </ul>
(d)	<p><b>Legal Provision:-</b> As per section 9(3) of CGST Act, if sponsorship services are provided by <b>any person to any body corporate or partnership firm</b> located in the taxable territory, then GST is payable under reverse charge by recipient.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>➤ In the given case, sponsorship services have been provided to an <b>individual</b>.</li> </ul>

	<ul style="list-style-type: none"> <li>➤ Thus, the <b>reverse charge</b> provisions <b>will not be attracted</b> here.</li> <li>➤ So, company (XYZ Ltd.) i.e. the <b>supplier</b> is liable to pay GST under <b>forward charge</b></li> </ul>
(e)	<p>RCM would apply only if service provided to registered person <b>located in taxable territory</b>. As Star Industries is located in USA which falls <b>outside the taxable territory</b>, so XYZ Ltd will be liable to pay tax under <b>forward charge</b>.</p> <p><b>Note:-</b> If supplier satisfies conditions of section 16 of IGST Act, then it can avail benefit of zero-rated supply for export to Star Industries Ltd. USA &amp; no GST would be payable.</p>
(f)	<p><b>Legal Provision:-</b></p> <ul style="list-style-type: none"> <li>➤ If director's <b>remuneration is declared as salaries</b> in books of a company and subjected to TDS u/s 192 of the Income-tax Act (IT Act), then that is not taxable being consideration for services by an employee to employer in course of or in relation to his employment as per para 1 of Schedule III.</li> <li>➤ Further, <b>director's remuneration</b> which is declared separately other than salaries in company's accounts and subjected to <b>TDS u/s 194J</b> of IT Act as fees for professional or technical services are <b>outside the scope of Schedule III and is therefore, taxable</b>.</li> <li>➤ As per <b>section 9(3)</b> of CGST Act, if services are provided by director to the company located in taxable territory, then the company is liable to pay tax under reverse charge.</li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>➤ In this case, <b>salary of ₹ 60000 is not taxable as it gets covered under para 1 of Schedule III</b>.</li> <li>➤ Further, ₹ 65,000 declared separately other than salaries by XYZ Ltd's is a consideration for professional services which is <b>outside the scope of Schedule III and is therefore, taxable</b>.</li> <li>➤ The recipient of services i.e. XYZ, is liable to discharge the applicable GST on it on reverse charge basis</li> </ul>

(g)	<p><b>Legal Provision:-</b> As per <b>section 9(3)</b> of CGST Act, if service of renting of immovable property is provided by the Central Government, State Government, Union Territory, or local authority to any registered person located in the taxable territory, then GST is payable under reverse charge by recipient.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>➤ In the given case, XYZ Pvt. Ltd. is <b>registered</b> under GST.</li> <li>➤ So, here, the <b>State Government</b> of Maharashtra provided <b>service of renting of immovable property</b> to a registered person located in taxable territory.</li> <li>➤ Therefore, <b>XYZ Pvt. Ltd.</b> is liable to pay GST under <b>reverse charge</b>.</li> </ul>
(h)	<p><b>Legal Provision:</b></p> <ul style="list-style-type: none"> <li>➤ As per <b>sec 9(5) of CGST Act read with CBIC notification</b>, If services provided by way of transportation of passengers by a Radio-taxi, motor cab, maxi cab, motorcycle, omnibus or any other motor vehicle, then the tax shall be paid by Electronic Commerce operator, if such services are supplied through it.</li> </ul> <p><b>Conclusion:</b></p> <ul style="list-style-type: none"> <li>➤ In the given case, Smart cab Technologies Ltd provides motor cab services to Mr. X.</li> <li>➤ <b>Thus</b>, Smart Cab Technologies Ltd is liable to pay GST</li> </ul>
(i)	<p><b>Legal Provision:</b> As per <b>section 9(3) of CGST Act, 2017 read with relevant notification</b>, If service by way of Renting of any motor vehicles, designed to carry passengers, (where the cost of fuel is included in the consideration charged from the service recipient), provided by any person other than body corporate (paying GST @ 5%, with limited ITC), to a body corporate, then Body corporate (being recipient) is liable to pay tax under reverse charge.</p> <p><b>Discussion &amp; Conclusion:</b></p> <ul style="list-style-type: none"> <li>➤ In the given case, Mr. Poonawala provided service of renting of motor vehicle to XYZ Ltd &amp; opted to pay GST @5%</li> <li>➤ Therefore, XYZ Ltd is liable to pay tax under Reverse Charge</li> <li>➤ However, if such service are provided to any person other than a body corporate, then the above provision will not apply and such service would fall under forward charge and Mr. Poonawala will be liable for payment of tax at the rate of 2.5% CGST &amp; 2.5% SGST.</li> </ul>

(i)	<p><b>Legal Provision:</b></p> <ul style="list-style-type: none"> <li>➤ <b>As per sec 9(5) of CGST Act read with CBIC notification</b>, if services provided by way of accommodation in hotels through ECO, then the tax shall be paid by Electronic Commerce operator.</li> </ul> <p><b>Conclusion:</b></p> <ul style="list-style-type: none"> <li>➤ In the given case, Cool Trips provides hotel accommodation to Mr. X in Goa</li> <li>➤ Thus, person liable to pay GST is the Electronic Commerce Operator –Cool Trips.</li> <li>➤ All the provisions of the GST law shall apply to such Cool trips as if it is the supplier liable for paying the tax in relation to the supply of such services.</li> <li>➤ If Cool Trips does not have a physical presence in India, person liable to pay tax is the person representing the Cool Trips for any purpose in India.</li> </ul>
(k)	<p><b>Legal Provision:</b> As per <b>section 9(3) of CGST Act, 2017</b>, If service provided by any person by way of renting of commercial property to Registered person for the purpose of commercial use, then it will be taxable under Forward charge</p> <p><b>Conclusion:</b></p> <ul style="list-style-type: none"> <li>➤ In the given case, service by way of renting of commercial property have been provided to Mr. Chirag for commercial purpose.</li> <li>➤ Thus, the <b>reverse charge</b> provisions <b>will not be attracted</b> here.</li> <li>➤ So, company (XYZ Ltd.) i.e. the <b>supplier</b> is liable to pay GST under <b>forward charge</b></li> </ul>

### Question 3

**M/s All-in-One, a partnership concern and a registered supplier under GST, is engaged in providing various services under one roof. The concern provides the following information pertaining to supply made/input services availed by it during the month of March 20XX:**

S.No.	Particular	₹
i.	Provided Direct Selling Agent service to Y Bank Ltd.	4,00,000
ii	Provided security services to ABC P. Ltd., a registered person under GST	60,000
ii	Provided security services to PSR Trust, an unregistered person under GST	1,00,000

iii	Provided renting of motor vehicle to Amaze Tours Ltd. and supply value included cost of fuel	75,000
iv	Provided renting of motor vehicle to Priti & Co., CA firm and supply value included cost of fuel	40,000
v	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, 20XX by giving necessary explanations for treatment of various items. Rate of tax for both inward and outward supply is CGST/SGST@ 9% each except renting a vehicle, for which CGST/SGST @ 2.5% each is applicable. M/s All-in-One commenced its business from February, 20XX.**

**All the supplies are intra-State only. [New CA Final Nov 2020 Exam]**

**Answer:- Computation of GST liability of M/s All-In-One for the month of March**

S.No.	Particular	Value (₹)	CGST Payable (₹)	SGST payable (₹)
<b>A</b>	<b>GST liability on outward supply</b>			
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.]	4,00,000	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.] [Note 1 & 2]	-	-	-
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 is payable @ 5%.]	-	-	-
v	Renting of motor vehicle to Priti & Co., CA 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%]
<b>Total GST liability on outward supplies</b>			<b>46,000</b>	<b>46,000</b>
<b>B</b>	<b>GST liability on inward supplies under reverse charge</b>			
	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 20XX, 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	-	-
<b>Total GST liability under reverse charge</b>		Nil	-	-
<b>Total GST Liability for the month of March [A+ B]</b>			<b>46,000</b>	<b>46,000</b>

**Working Note:-** 1) It is assume that security services are the services provided by way of supply of security personnel

2) It is assumed that ABC Pvt.Ltd. pays tax under sec 9 of the CGST Act, 2017



## Question 4

Mr. Amar is running a consultancy firm and also a readymade garment showroom which are registered under same PAN. Turnover of the showroom is ₹ 35 lakhs and Receipt of the consultancy firm is ₹ 15 Lakhs in the current financial year.

Based on above information, Answer the following questions independently.

- Whether Mr. Amar is eligible for Composition Scheme u/s 10(1) of CGST Act (Assume turnover in state of preceding financial year is ₹ 10 Lakhs)?
- If instead of consulting agency, Mr. Amar is running a Restaurant, whether he is eligible for composition?
- If the turnover of Garment showroom is ₹ 1.5 Cr in the preceding financial year and there is no consultancy firm, whether he is eligible for Composition?
- Mr. Amar has registered offices in Maharashtra & Punjab & supplies goods in neighbouring States
- Mr. Akbar who is brother of Mr. Amar is a manufacturer of Building Bricks in State of Maharashtra. His turnover for the year does not exceed ₹ 1.5 Crore. He wants to take advise from Mr. Amar for eligibility of composition levy?
- Can Mr. Amar, having registration in multiple states, opt for payment of tax under composition levy only in one state and not in other state?
- Can Mr. Amar who has opted to pay tax under the composition scheme avail Input Tax Credit on his inward supplies & collect tax on his outward supplies
- Mr. Amar availing composition scheme, under sub-sections (1) & (2) of section 10, in Maharashtra. during a financial year crosses the turnover of Rs. 1.5 Crore in the month of December. Will he be allowed to pay tax under composition scheme for the remainder of the year, i.e. till 31st March?
- What are the penal consequences if Mr. Amar opts for the composition scheme

& he is involved in violation of the conditions?

- Are monthly returns required to be filed by Mr. Amar opting to pay tax under the composition scheme?
- Can the option to pay tax under composition levy be exercised by Mr. Aniket who is relative of Mr. Amar at any time of the year?

**Answer:**

**Legal Provision:-**

- As per section 10(1) read with second proviso thereto,
  - a person providing Restaurant service can opt for composition scheme without any limit for supplying such service &
  - person who opts to pay tax u/s 10(1) may supply services (other than Restaurant service) in current financial year, of value not exceeding higher of:-  
A 10% of turnover in a State or UT in the preceding financial year or  
A Rs. 5 Lakhs.
- As per section 10(2)(a) of CGST Act, if any person is engaged in supply of services except as allowed above, then such person is ineligible for composition levy u/s 10(1).
- As per section 10(2A) of CGST Act, if a registered person is not eligible to opt to pay tax u/s 10(1) & (2) & has aggregate turnover in preceding financial year not exceeding Rs. 50 Lakhs, then such person can opt to pay tax under composition scheme under section 10(2A).
- As per sections 10(2)(c) & 10(2A) of CGST Act, Supplier who is engaged in making any inter-State outward supplies of goods or services is not eligible to opt for composition scheme u/s 10(1) & 10(2A) respectively
- As per section 10(2)(e) of CGST Act, a registered person manufacturing notified goods, one of which is Building Bricks, is not eligible to opt for composition scheme u/s 10(1).

a)	<p><b>No</b>, Mr. Amar is <b>not eligible</b> for composition scheme <b>u/s 10(1)</b> because:-</p> <ul style="list-style-type: none"> <li>➤ he is supplying consultancy service of Rs 15 lakhs in current financial year</li> <li>➤ which is more than the limit allowed Rs. 5 Lakhs (i.e., 10% of Rs. 10 lakhs or Rs. 5 lakhs, whichever is higher)</li> </ul> <p>But, Mr. Amar <b>can opt</b> for composition scheme <b>u/s 10(2A)</b> as his aggregate turnover in preceding financial year Rs.10 Lakhs which is not exceeding Rs.50 Lakhs</p>
b)	<p><b>Yes</b>, as Mr. Amar is providing Restaurant services which <b>are eligible</b> for composition <b>scheme u/s 10(1) read with second proviso to section 10(1)</b> without any limit for providing such service and hence, not becoming ineligible u/s 10(2)(a) also.</p>
c)	<p><b>Yes</b>, Mr. Amar, being a trader, <b>is eligible</b> for composition scheme <b>u/s 10(1)</b> and his aggregate turnover also is not exceeding ₹ 1.5 Crore in the preceding financial year.</p>
d)	<ul style="list-style-type: none"> <li>➤ In the given case, Mr. Amar supplies goods in neighbouring States.</li> <li>➤ Thus, It is not eligible for composition levy u/s 10 as it is making outward inter-state supply</li> </ul>
e)	<ul style="list-style-type: none"> <li>➤ In given case, Mr. Akbar is a manufacturer of Building Bricks which is a notified good u/s 10(2)(e).</li> <li>➤ Therefore, he is not eligible to opt for composition levy scheme u/s 10, even if his aggregate turnover does not exceed 1.5 crore.</li> </ul>
f)	<ul style="list-style-type: none"> <li>➤ No, Mr. Amar shall not be eligible to opt for the composition scheme u/s 10 unless all such registered persons (i.e., branches having separate registration under a single PAN) opt to pay tax under composition scheme.</li> <li>➤ This scheme would be applicable to all registrations separately held by person with same PAN.</li> </ul>
g)	<ul style="list-style-type: none"> <li>➤ <b>No</b>, As per <b>section 10(4)</b> of CGST Act, any taxable person opting to pay tax under the composition scheme u/s 10(1) &amp; 10 (2A)</li> <li>➤ shall neither collect any tax from recipient on supplies made by him nor shall be entitled to any credit of input tax</li> </ul>
h)	<ul style="list-style-type: none"> <li>➤ <b>No</b>. As per <b>section 10(3)</b> of CGST Act, the option availed of by a registered person u/s 10(1) <b>lapses with effect from the day</b> on which his aggregate turnover during a financial year <b>exceeds the threshold limit</b> as specified u/s 10(1) of Rs. 1.5 Crore.</li> </ul>

	<ul style="list-style-type: none"> <li>➤ Once he crosses the threshold, he is required to file an intimation for withdrawal from the scheme in prescribed form <b>within 7 days</b> of the occurrence of such event.</li> <li>➤ After filing such intimation, he may furnish a statement in prescribed form <b>within a period of 30 days from the date from which the option is withdrawn</b> containing details of:- <ul style="list-style-type: none"> <li>➤ stock of inputs and</li> <li>➤ inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn.</li> </ul> </li> </ul>
i)	<p>As per <b>Section 10(5)</b>, if a taxable person has paid tax under the composition scheme though he was not eligible for the scheme, then the person would be <b>liable to penalty in addition to tax payable</b> by him to be <b>determined as per section 73 or 74</b> of CGST Act.</p>
j)	<ul style="list-style-type: none"> <li>➤ <b>No</b>, Person opting to pay tax under composition scheme are required to electronically filed GSTR-4 on yearly basis. Due date of filing <b>GSTR-4 is 30th April</b> following the end of financial year</li> <li>➤ However, they are required to furnish a statement every quarter or part thereof containing the details of payment of self-assessed tax in <b>FORM GST CMP-08</b> till the 18th of the month succeeding such quarter.</li> </ul>
k)	<ul style="list-style-type: none"> <li>➤ No. The option is required to be given electronically in <b>FORM GST CMP-02</b>, prior to the commencement of the relevant financial year.</li> <li>➤ But if Mr. Aniket applied for registration in between the year then he can opt for composition scheme by filling the details in Part B of <b>FORM GST REG-01</b>.</li> </ul>

### Question 5

M/s XYZ Pvt. Ltd. a manufacturer having the only registered place of business in the state of Maharashtra. Determine the eligibility to opt for composition scheme and also compute tax liability of M/s XYZ Pvt. Ltd. on the basis of following information assuming that total value of service provided by the company in Preceding Financial Year (PFY) is within the allowed limit of section 10(1) except interest and restaurant service.

S.No.	Particulars	PFY 20XX-XY(₹)	1st Qtr 20XY-YZ(₹)
1.	Value of taxable supply of goods	90.00 lacs	20.00 lacs
2.	Value of exempt supply of goods	20.00 lacs	5.00 lacs
3.	Value of taxable supply of service	5.00 lacs	1.00 lac
4.	Value of exempt supply of service	3.00 lacs	0.50 lac
5.	Value of supply of restaurant service	15.00 lacs	1.50 lacs
6.	Interest on loan/advances/deposits	4.00 lacs	1.20 lacs

Calculate GST payable under composition scheme for 1st quarter of CFY 20XY-YZ

**Answer:**

**Legal Provision:**

As per section 2(6) of CGST Act, 2017, aggregate turnover means the aggregate value of:

- All taxable supplies (other than inward supplies under RCM)
- Exempt Supplies
- Export of goods or services or both and
- Inter-state supplies of person having same PAN

to be computed on all India basis but it excludes central tax, state tax, union territory tax, integrated tax and cess. As per Explanation 1 to Section 10 aggregate turnover does not includes interest or discount on loan, advances and deposit.

**a) Calculation of aggregate turnover of PFY 20XX-XY under composition scheme**

Particulars	₹ in lacs
Value of taxable supply of goods	90.00
Value of exempt supply of goods	20.00

Value of taxable supply of service	5.00
Value of exempt supply of service	3.00
Value of supply of restaurant service	15.00
<b>Aggregate turnover</b>	<b>133.00</b>

As the aggregate T/O of P.F.Y. does not exceeds 1.5Cr, M/s XYZ is eligible for composition levy.

**b) Calculation of value of supply of service to be allowed in CFY**

The applicable limit is 10% of turnover in state i.e. ₹ 13.3 lakhs or ₹ 5 lakhs whichever is higher (Company having the only registered place of business in the State of Maharashtra. Hence, there Agg. T/o is equals to turnover in state) Actual supply of service in CFY [taxable supply + exempt supply] other than restaurant services = ₹1.5 lakhs which is within limit

**Note:** As per explanation 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.

Interest 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)

**c) Calculation of GST on supply of goods and services except restaurant service**

Particulars	₹ in lacs
Value of taxable supply of goods	20,00,000.00
Value of exempt supply of goods	5,00,000.00
Value of taxable supply of service	1,00,000.00
Value of exempt supply of service	50,000.00
<b>Turnover in State</b>	<b>26,50,000.00</b>
CGST @ 0.5 %	13250.00
SGST @ 0.5 %	13250.00
<b>Total</b>	<b>26,76,500.00</b>

d) Calculation of GST liability on restaurant service

Particulars	₹ in lacs
Value of Supply	1,50,000.00
CGST @ 2.5 %	3,750.00
SGST @ 2.5 %	3,750.00
<b>Total</b>	<b>1,57,500.00</b>

**Note:-**

- i. Manufacturer shall pay composition tax @ 1% of turnover in state which also includes nil rate & wholly exempt supply.
- ii. As per explanation 2 to sec 10 interest on loan to be excluded from Turnover in State. Hence it should not be added for calculation of GST liability.



## Question 6

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

- The wholesale price of the machinery (excluding all taxes and other expenses) at which it is supplied in the ordinary course of the business to various customers is ₹42,00,000. However, the actual price at which the machinery is supplied to an individual customer varies within a range of  $\pm 10\%$  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 every case of supply of machinery.
  - Transportation of machinery to the customer's premises is arranged by Aviant Ltd. through a third-party service provider [Goods Transport Agency (GTA)]. The customer enters into a separate service contract with the GTA and pays the freight directly to it.
  - A cash discount of 2% on the price of the machinery is offered at the time of supply, if the customer agrees to make the payment within 15 days of the receipt of the machinery at his premises. In the event of failure to make the payment within the stipulated time, the company-
    - recovers the discount (no separate amount of GST is recovered) given; and
    - charges simple interest @ 1% per month or part of the month (no separate amount of GST is recovered) on the total amount due from the customer (towards the machinery supplied) from the date of making the supply till the date of payment. However, no interest is charged on the tax dues.
  - For every machinery supplied, Aviant Ltd. receives a price linked subsidy of

₹2,00,000 from its holding company Diligent Ltd.

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

Assume the rates of taxes to be as under:

Calculate the GST payable [CGST, SGST or IGST, as the case may be] on the machinery and support your conclusions with legal provisions in the form of explanatory notes.

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%

Make suitable assumptions, wherever needed. [ICAI Study Material]

Answer:-

Computation of GST liability of Aviant Ltd.

Particulars	₹
Price of machine [Note 1]	40,00,000
Add: Handling and loading charges [Note 2]	10,000

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

**Notes:-**

- (1) **As per section 15(1)**, the value of a supply is the transaction value i.e., the price actually paid or payable for the said supply when the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.
- (2) All incidental expenses charged by the supplier to the recipient of a supply are includible in the value of supply in terms of **section 15(2)(c)**.
- (3) Any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods is includible in the value of supply in terms of **section 15(2)(c)**.
- (4) Transportation cost has not been included in the value of supply of the machinery as it is a separate service contract between the customer and the third-party service provider. The customer pays the freight directly to the service provider.  
The supplier (Aviant Ltd), in this case, merely arranges for the transport and does not provide the transport service on its own account.  
Therefore, there will be no impact from valuation point of view on transport expenses incurred for supply of machinery as the supplier is not the party to such supply of services.

- (5) Subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments are includible in the value of supply in terms of **section 15(2)(e)**.
- (6) Cash discount was deducted by Aviant Ltd. upfront at the time of supply on 1st August, and hence, the same is excluded from the value of supply as it did not form part of the transaction value.
- (7) In the given case-  
the location of the supplier is in Noida (UP); and  
the place of supply of machinery is the place of installation of the machinery i.e., Gurugram (Haryana) in terms of section 10(1)(d) of the IGST Act, 2017.  
Therefore, the given supply is an inter-State supply as the location of the supplier and the place of supply are in two different States [Section 7(1)(a) of IGST Act, 2017]. Thus, the supply will be leviable to IGST in terms of section 5(1) of the IGST Act, 2017.
- (8) The given supply is a composite supply involving supply of good (machinery) and services (handling and loading and installation and commissioning) where the principal supply is the supply of goods.  
As per section 8(a) of CGST Act, 2017, a composite supply is treated as a supply of the principal supply involved therein and charged to tax accordingly. Thus, tax rate applicable to the goods (machinery) has been considered.
- (9) Interest for the delayed payment (which excludes subsidy related amount of Rs 2,00,000 as the same was not recoverable from the recipient) of any consideration for any supply is includible in the value of supply in terms of section 15(2)(d). Further, cash discount recovered will also be includible in the value of supply as now the transaction value i.e., the price actually paid for the machinery is devoid of any discount.  
The cash discount not allowed and interest are inclusive of tax. Thus, tax payable thereon has to be computed by making back calculations in terms of rule 35.
- (10) Invoice for the supply has been issued on 1st August . Thus, the time of supply of goods is 1st August in terms of **section 12(2)(a)**.  
As per section 12(6), the time of supply in case of addition in value by way of interest, late fee, penalty for delayed payment of consideration for goods is the date on which the supplier receives such addition in value. Thus, the time of

supply of interest received and cash discount recovered on account of delayed payment of consideration is 31st October, the date when the full payment was made. The supplier may issue a debit note for such interest and cash discount recovered.

### Question 7

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 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 Techno's – agents of Kaushal Manufacturers Ltd. in Punjab and Madhya Pradesh respectively. Cardinal Electricals Pvt. Ltd. and Rochester Techno's 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 Techno Mart – 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 Techno Mart. Open market value of the electronic home appliances supplied to Ronn Techno Mart is ₹ 30,00,000. Further, Ronn Techno Mart is not eligible for full input tax credit.

PQR Ltd., a foreign company located at New York, places an order to Kaushal Manufacturers Ltd for delivery of 250 units of electronic home appliances to its branch office located at Pune. Kaushal manufacturers Ltd. raises an invoice as on date of order i.e. 12.01.20XX the cost of each unit was ₹175/-. The amount of consideration for such supply is received in US \$ on 25.01.20XX from the foreign branch i.e. \$ 690.25. As on date

of invoice the following rates are available i.e. Exchange rate of RBI = ₹64.54, CBIC rate = ₹63.94 & Actual bank rate = ₹64.45.

Kaushal Manufacturers Ltd. also provides repair and maintenance services to electronic appliance manufacturers located in India.

Mr. Kaushal also undertakes money changing facility and made the following purchases & sales of Foreign Currency from Nandi Enterprises at Delhi as follows:

(a) 1,00,000 US \$ are purchased at the rate of ₹ 68 per US \$. RBI reference rate for US \$ on that day is ₹ 68.60

(b) US \$ 1,00,000 are converted into UK £ 80,000. RBI reference rate at that time for US \$ is ₹ 68 per US dollar and for UK £ is ₹90 per UK Pound

The company has also furnished the following information for the month of January:

Particulars	Amount (₹)
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 28th 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.

**Additional information:**

- (i) Kaushal manufacturers Ltd. is also dealing in second hand goods from another branch in Delhi which is registered under same PAN. It purchases machinery from Mr Vimal and further sells to Mr Kamal after fabrication & erection. The purchase price is ₹ 5,00,000 whereas the sale price is ₹ 6,20,000. Kaushal manufacturers Ltd. has not taken input tax credit paid on purchase of such goods.
- (ii) Determine the value of supply
- (iii) All the given amounts are exclusive of GST, wherever applicable.
- (iv) Assume the rates of GST to be as under:

Goods/services supplied	CGST	SGST	IGST
Electronic home appliances & Machinery	2.5%	2.5%	5%
Repair and maintenance services	9%	9%	18%
Money changing services	14%	14%	28%

You are required to make suitable assumptions, wherever necessary

**Answer:**

**Computation of gross GST Liability of Kaushal Manufacturers Ltd. for the month of January:-**

Particulars	Value of Supply	IGST(₹)	CGST (₹)	SGST (₹)
Supply of electronic home appliances to consignment agents - Cardinal Electricals Pvt. Ltd. and Rochester Technos of Punjab and Madhya Pradesh respectively [Note 1]	99,00,000	4,95,000 (99,00,000 *5%)	-	-

Supply of electronic home appliances to Ronn Technomart of Noida, Uttar Pradesh [Note 2]	30,00,000	1,50,000 (30,00,000 *5%)	-	-
Supply of electronic home appliances to Pune branch of PQR Ltd. [Note 3]	44,135	2,207 (44,135*5%)	-	-
Supply of services in relation to the purchase or sale of foreign currency, including money changing [Note 4] (a) 60,000 (b) 68,000	1,28,000	-	17,920 (1,28,000*14%)	17,920 (1,28,000*14%)
Supply of electronic home appliances to wholesale dealers of such appliances in Delhi [Note 5]	84,00,000	-	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 6]	-	-	-	-
Supply of Repair and maintenance services to Unitech Ltd., an electronic appliance manufacturer, located in Delhi [Note 7]	8,40,000	-	75,600 (8,40,000 *9%)	75,600 (8,40,000 *9%)
Advance received for repair and maintenance services supplied to Orelec Ltd., an electronic appliances manufacturer, located in Delhi [Note 8]	7,00,000	-	63,000 (7,00,000 *9%)	63,000 (7,00,000 *9%)
Advance received for electronic home appliances to be supplied to Novick Electricals, a wholesale dealer of electronic appliances in Gurgaon, Haryana [Note 9]	-	-	-	-

Buying & Selling of Second-hand goods [Note 10]	1,20,000	-	3000 (1,20,000 *2.5%)	3000 (1,20,000 *2.5%)
<b>Total GST Liability</b>	<b>23,132,135</b>	<b>6,47,207</b>	<b>3,69,520</b>	<b>3,69,520</b>

**Notes:**

1.	<p>➤ <b>As per Rule 29 of CGST Rules 2017</b>, the value of supply of goods between the principal and his agent is the <b>open market value</b> 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.</p> <p>➤ Since open market value is not available, <b>Value of electronic home appliances</b> supplied to consignment agents will be ₹ 99,00,000 [90% of (40,00,000 + 70,00,000)]</p> <p>➤ Further, being an inter-State supply of goods, supply of electronic home appliances to the consignment agents is subject to <b>IGST @ 5%</b>.</p>
2.	<p>➤ In the given case, Kaushal Manufacturers Ltd. owns 75% shares of Ronn Technomart, hence both are related persons as per <b>Explanation to Sec 15 of CGST Act</b>.</p> <p>➤ <b>As per Rule 28 of CGST Rules 2017</b>, 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 Techno Mart 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 Techno Mart, i.e. ₹ 30,00,000 is the value of such goods</p> <p>➤ Further, being an inter-State supply of goods, supply of electronic home appliances to Ronn Techno Mart is subject to <b>IGST @ 5%</b></p>

3.	<p>➤ <b>As per Rule 34 of CGST Rules 2017</b>, If the amount is received in other than Indian rupees, then the rate of exchange for determination of value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 for the date of time of supply of such goods in terms of section 12 of the Act.</p> <p>➤ In the given case the value of taxable supply shall be determined by applying the rate of exchange as notified by the board i.e. ₹63.94 which is as on date of issue of invoice as per sec 12 of CGST act.</p> <p>➤ Thus, the <b>value of taxable supply</b> shall be = \$690.25 * 63.94 = ₹44134.58 ie 44,135</p>
4.	<p>➤ <b>As per Rule 32(2)(a) of the CGST Rules, 2017</b> the value of supply of services for a currency, when exchanged from, or to, Indian Rupees, shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency</p> <p>➤ Thus, value of supply is: = (RBI reference for US \$ - Buying rate of US \$) × Total number of units of US \$ bought = (₹68.6 - ₹68) × 1,00,000 = <b>₹60,000</b></p> <p>➤ Further, In case neither of the currencies exchanged is Indian Rupee, then the value shall be equal to <b>1% of the lesser</b> of the two amounts. The person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI.</p> <p>➤ Hence, in the given case, value of taxable service would be <b>1% of the lower</b> of the following: ➤ US dollar converted into Indian rupees = \$1,00,000 × ₹68 = ₹68,00,000 ➤ UK pound converted into Indian rupees = £80,000 × ₹90 = ₹72,00,000</p> <p>➤ <b>Value of taxable service</b> = 1% of ₹68,00,000 = <b>₹68,000</b></p>
5.	<p>➤ Being an intra-State supply of goods, supply of electronic home appliances to wholesale dealers of said appliances in Delhi is subject to <b>CGST and SGST @ 2.5 % each</b>.</p>



6.	<ul style="list-style-type: none"> <li>⇒ Supply of the electronic home appliances to Anchor Electricals Inc. of USA under LUT is <b>export of goods</b></li> <li>⇒ Export of goods is a zero-rated supply as per <b>Section 16(1) of the IGST Act</b>. A zero-rated supply under LUT is made without payment of integrated tax</li> </ul>
7.	<ul style="list-style-type: none"> <li>⇒ Being an intra-State supply of services, supply of repair and maintenance services to Unitech Ltd. of Delhi is subject to <b>CGST and SGST @ 9% each</b>.</li> </ul>
8.	<ul style="list-style-type: none"> <li>⇒ As per <b>section 13(2) of the CGST Act</b>, 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.</li> <li>⇒ In the given case, invoice is issued within 30 days of the supply of service.</li> <li>⇒ Therefore, time of supply of services will be date of receipt of advance and hence, GST is payable on the advance received in January.</li> </ul>
9.	<ul style="list-style-type: none"> <li>⇒ As per <b>section 12(2) of CGST Act, 2017 read with notification 66/2017</b>, the time of supply of goods shall be <b>earlier</b> of the following dates:- <ul style="list-style-type: none"> <li>a) Date of issue of invoice or</li> <li>b) last date to issue the invoice u/s 31.</li> </ul> </li> <li>⇒ As per <b>notification 66/2017</b>, the time of supply of goods is <b>not on advance received</b> &amp; this is applicable to <b>all registered persons except composition supplier</b></li> <li>⇒ 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.</li> <li>⇒ Thus, said advance will be taxed in March and not in January.</li> </ul>
10.	<ul style="list-style-type: none"> <li>⇒ <b>As per Rule 32(5) of CGST Rules</b>, where a taxable supply is provided by a person dealing in buying and selling of second-hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods,</li> <li>⇒ Thus, the value of supply shall be the difference between the selling price and the purchase price <b>i.e. ₹ 1,20,000</b> (₹ 6,20,000 – ₹ 5,00,000) as per GST Act.</li> </ul>

## Question 8

Determine the Time of supply for the purpose of payment of tax under CGST Act, 2017, in the below cases.

- a) 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	01-03-20XX	10-04-20XX
Date of receipt of advance of ₹ 1,00,000 each	05-03-20XX	12-04-20XX
Date of removal of goods or completion of order	10-03-20XX	15-04-20XX
Date of issue of invoice for full amount	15-03-20XX	20-04-20XX
Date of receipt of balance payment of ₹ 50,000 each	25-03-20XX	25-04-20XX

- b) SRK Limited. received the services of a transporter for road transport of a consignment on 20th May, 20XX. However, the consignment could not be sent immediately on account of a strike in the factory, and instead was sent on 20th July, 20XX. Invoice was received from the transporter on 20th June, 20XX and payment was made on 25th August, 20XX.
- c) SRK Limited. Has purchased the goods taxable on Reverse charge basis from PKL & Co. invoice dated 04/05/20XX.  
SRK Ltd. received the goods on 12/05/20XX & makes payment for the same on 30/05/20XX  
What would be your answer if goods are received on 12/06/20XX
- d) SRK Limited. has purchased for its employees 100 vouchers dated 14/12/20XX worth ₹ 2,000 each for specific footwear from Bata Ltd., a footwear manufacturing company. The vouchers were issued by Bata Ltd. on

15/12/20XX. The vouchers can be encashed at retail outlets of Bata Ltd. The employees of SRK Limited. encashed the same on 01/01/20XY.

- e) An income-tax and money laundering case against Mr. Abraham who is employee of SRK Ltd. , reveals a large volume of undisclosed assets, which he claims as service income from SRK Ltd, (other than salary). On this basis, the GST authorities investigates the GST liability. Dates of provision of service, whether in the first half or the second half of the financial year being scrutinised by income-tax authorities, are not known. Mr. Abraham voluntarily pays GST during the investigation.
- f) SRK Limited supplied fabrics to Mr. Y. The terms were to make the payment within 3 months or else a penalty of 12% p.a. of the invoice value will be charged in case of delayed payment. The invoice was dated 01/01/20XX and Invoice value was ₹75,000. Mr. Y could not make the payment on the due date due to unavoidable reasons. He however made the payment of the invoice value on 01/06/20XX. SRK Limited raised a debit note for the penalty amount. There being dispute on this, the matter was in arbitration which was finally resolved with Mr. Y agreeing to pay half of the penalty amount. The amount was paid by Mr. Y on 1/12/20XX.
- g) SRK Limited jobwork service to Z Ltd. on fabricks. For the month of January, 20XX, the bill amount was ₹ 5,000. Z Ltd. made a payment of ₹ 5,500 with an instruction to adjust the excess payment against next month's bill, and hence the same was adjusted by SRK Ltd. in case of his next month bill payable on 05/03/20XX (invoice issued on same date). What would be your answer, if Z Ltd. make payment of ₹6,500?
- h) SRK Ltd. also have provided embroidery services to Q Ltd. on jobwork basis. The payment is made by Q Ltd. by a demand draft sent on 25th February, which is received and entered in the accounts of SRK Ltd. on 28th February. SRK encashes the demand draft and thereafter, provides the service to Q Ltd. from

3rd March. In the meanwhile, the rate of tax is changed from 1st March 20XX & invoice is issued by SRK Ltd. on 10th March

What will be your answer if rate of tax is changed from 22nd February

i) What would be your answer in (h) if provision of service was completed on 10-08-20XX, and payment received was entered in the books of SRK Ltd. on 11-08-20XX.

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

SRK Ltd. claimed that he is liable to pay IGST @ 5%. But the department took the view that he is liable to pay GST @12%.

Would your answer differ if the payment was credited to the bank account on 14-08-20XX instead of 17-08-20XX?

(j) M/s SRK Ltd. have sold 500 meters of fabrics of value 5 Lakhs on approval or return basis to PQR Ltd. Goods are removed on 10-08-20XX & approval is given by PQR Ltd. on 15-09-20XX. Invoice is issued on same date.

Would your answer differ if PQR Ltd. have given approval on 15-03-20XY?

Answer:

a)	<p><b>TOS in case of Supply of fabrics (Supply of goods):</b></p> <p><b>Legal provision:</b></p> <p>➤ As per <b>section 12(2)</b> of CGST Act, 2017 read with notification 66/2017, the time of supply of goods shall be earlier of the following dates:</p> <p>a) Date of issue of invoice or</p> <p>b) last date to issue the invoice u/s 31.</p> <p>➤ As per <b>notification 66/2017</b>, the time of supply of goods is <b>not on advance received</b> &amp; this is applicable <b>to all registered persons except</b> composition supplier.</p> <p>➤ Further, u/s 31(1), if supply involves movement of goods, a registered person is required to issue a tax invoice before or at the time of removal of goods for supply to the recipient.</p> <p><b>Conclusion: Thus</b>, 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 10.03.20XX.</p>
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<p><b>TOS in case of Jobwork (Supply of services):</b></p> <p><b>Legal provision:</b></p> <p>➤ As per <b>section 13(2)</b> of CGST Act, 2017, <b>the time of supply of services</b> shall be as follows:-</p>		
	<b>Cases</b>	<b>Time of Supply</b>
a)	If the invoice is issued within the period prescribed u/s 31:-	Time of supply shall be earlier of:- -the date of issue of invoice by the supplier or -the date of receipt of Payment.
b)	If the invoice is not issued within the period prescribed u/s 31:-	Time of supply shall be earlier of:- - the date of provision of service or - the date of receipt of payment.
<p>➤ As per <b>section 31(2)</b>, generally, the tax invoice shall be issued within 30 days of supply of service.</p> <p><b>Conclusion:</b></p> <p><b>Thus</b>, the time of supply for advance of ₹ 1,00,000 received for the supply of job work services is 12.04.20XX and for balance payment of ₹ 50,000 is 20.04.20XX</p>		
b)	<p><b>Legal Provision:-</b></p> <p>➤ As per <b>section 9(3)</b> of CGST Act, 2017, if service of transportation of goods by road is provided by GTA to any Body Corporate (which includes company), then GST is payable under reverse charge by body corporate.</p> <p>➤ As per <b>section 13(3)</b> of CGST Act, 2017, the time of supply of service taxable under reverse charge is earlier of the following:</p> <p>a) <b>Date of payment</b> made by the recipient.</p> <p>b) Date immediately <b>following 60 days</b> from date of issue of invoice by the supplier.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>➤ Thus, in the given case, time of supply is earlier of: 25th August, 20XX i.e. the date of payment or</p>	

	<p>20th August, 20XX (61st day from 20th June which is the date of invoice)</p> <p>➤ Therefore, <b>the time of supply is 20th August, 20XX.</b></p> <p><b>Assumption:</b></p> <p>It is assumed that GTA has not exercised the option to pay tax under forward charge on services of transportation of goods supplied by it.</p>
c)	<p><b>Legal Provision:-</b></p> <p>As per <b>section 12(3)</b> of CGST Act, 2017, if <b>supply of goods is taxable under reverse charge</b>, then the time of supply of goods shall be <b>the earliest</b> of the following dates:-</p> <p>a) Date of <b>receipt of goods</b> or</p> <p>b) <b>Date of payment</b> which shall be <b>earlier</b> of following:-</p> <ul style="list-style-type: none"> <li>➤ date entered in the books of account of the recipient or</li> <li>➤ date on which the payment is debited in his bank account.</li> </ul> <p>c) Date immediately <b>following 30 days</b> from date of issue of invoice by the supplier.</p> <p>(Here, date of invoice is relevant only for calculating thirty days from that date.)</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>1) In 1st case, <b>May 12 will be the time of supply</b> of goods taxable under reverse charge being <b>earlier</b> of:-</p> <ul style="list-style-type: none"> <li>➤ Date of receipt of goods i.e. May 12 or</li> <li>➤ Date of payment made i.e. May 30 or</li> <li>➤ June 4 being 31st day from date of invoice which is May 4.</li> </ul> <p>2) In 2nd case, <b>May 30 will be the time of supply</b>, being the earliest of dates mentioned u/s 12(3).</p>
d)	<p><b>Legal Provision:-</b></p> <p>As per section 12(4) of CGST Act, 2017, time of supply of <b>vouchers</b> issued by supplier of <b>goods</b> shall be:-</p> <p>a) the date of issue of voucher if the supply is identifiable at that point; or</p> <p>b) the date of redemption of voucher, in all other cases.</p>

	<p><b>Discussion &amp; Conclusion:-</b></p> <p>➤ In the given case, <b>supply is identifiable</b> at the time of issue of voucher as the vouchers specifically pertains to footwear.</p> <p>➤ Hence, the <b>time of supply</b> of vouchers shall be the <b>date of issue of voucher i.e. 15/12/20XX.</b></p>
e)	<p><b>Legal Provision:-</b></p> <p>As per <b>section 13(5)</b> of CGST Act, 2017, where it is <b>not possible</b> to determine the time of supply under <b>section 13(2), 13(3) and 13(4)</b>, then:-</p> <ul style="list-style-type: none"> <li>➤ <u>In a case where a periodical return has to be filed:-</u> Time of supply shall be the date on which such return is to be filed (i.e. Due date for filing of periodical return) or</li> <li>➤ <u>In any other case:-</u> The time of supply shall be the date on which the tax is paid.</li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <p>➤ In the given case, it is <b>not possible to determine the time of supply using:-</b></p> <ul style="list-style-type: none"> <li>➤ date of invoice,</li> <li>➤ date of provision of service,</li> <li>➤ date of receipt of payment &amp;</li> <li>➤ date of receipt of services in the books of account of the recipient.</li> </ul> <p>➤ On the other hand, Mr. Abraham, being an employee of SRK Ltd., is not a <b>registered person</b> and hence, the <b>periodical return is also not to be filed.</b></p> <p>➤ Therefore, the <b>date of payment</b> of GST by Mr. Abraham will be the <b>time of supply u/s 13(5).</b></p>
f)	<p><b>Legal Provision:</b></p> <p>➤ As per <b>section 12(6)</b> of CGST Act, 2017, the time of supply for the addition in value of supply by way of interest, late fee, or penalty for delayed payment of any consideration shall be the date of receipt of such addition in value by supplier</p> <p><b>Discussion &amp; conclusion:</b></p> <p>➤ Thus, in the given case, the <b>time of supply of Penalty</b> on delayed payment of consideration would be the date on which the supplier has received such additional consideration, i.e. <b>1/12/20XX</b></p>



g)	<p><b>Legal Provision:-</b></p> <p>➤ As per proviso to <b>section 13(2)</b> of CGST Act, if supplier of taxable services receives <b>upto Rs 1000/- in excess of the amount indicated in the tax invoice</b>, then the supplier has the <b>option</b> to take the date of issue of invoice for such excess amount as the time of supply for such excess.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>(i) <b>If Z Ltd makes the payment of ₹ 5,500:-</b></p> <p>➤ In the given case, <b>excess amount paid is ₹ 500</b> (which is not exceeding Rs. 1000) as the January, 20XX bill was for Rs. 5000 &amp; payment made Rs. 5500.</p> <p>➤ Therefore, <b>time of supply</b> of such excess amount is <b>05/03/20XX i.e. date of invoice for such excess as per proviso to section 13(2)</b>.</p> <p>(ii) <b>If Z Ltd makes the payment of ₹ 6,500:-</b></p> <p>➤ Here, the excess payment is ₹ 1500 which exceeds Rs. 1000.</p> <p>➤ In such case, above <b>proviso is not applicable</b>.</p> <p>➤ Therefore, as per section 13(2), the <b>time of supply shall be the date of receipt</b> of such excess advance amount.</p>
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h)	<p><b>Legal Provision:</b></p> <p>➤ As per <b>Sec 14(b)(ii)</b> of CGST Act, where the invoice has been issued and payment is received before the change in rate of tax, the TOS shall be the date of receipt of payment or date of issue of invoice, whichever is earlier</p> <p>➤ As per <b>Sec 14(b)(i)</b> of CGST Act, where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the TOS shall be the date of receipt of payment</p> <p><b>Conclusion:</b></p> <p>➤ As issuance of invoice and receipt of payment (entry of the payment in SRK Ltd. accounts) occurred before the change in rate of tax, the time of supply of service by the online portal is earlier of</p> <ul style="list-style-type: none"> <li>➤ the date of issuance of invoice (10th March) or</li> <li>➤ date of receipt of payment (28th February)</li> </ul> <p>➤ Thus, <b>Time of supply is 28th February</b>.</p> <p>➤ In the second case, payment is received after the change in rate of tax and invoice has issued after the change in rate of tax.</p> <p>➤ Thus, <b>Time of supply is 28th February</b></p>
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i)	<p><b>Legal Provision &amp; Discussion:</b></p> <p>➤ <b>As per section 14 of the CGST Act, 2017</b>, in case of change in rate of tax, date of receipt of payment is earlier of:</p> <ul style="list-style-type: none"> <li>➤ date of entering payment in the books of account of the supplier (11.08.20XX) or</li> <li>➤ date on which the payment is credited to his bank account (17.08.20XX).</li> </ul> <p>➤ 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</p> <p>➤ <b>If goods and/or services have been</b> supplied before the change in rate of tax (10.08.20XX) and the payment has been received before the change in rate of tax (11.08.20XX), but the invoice for the same is issued after the change in rate of tax (23.08.20XX), the time of supply shall be the date of receipt of payment</p> <p><b>Conclusion:</b></p> <p>➤ Since the payment has been credited in the bank within 4 working days from the date of change in the rate of tax, Thus the <b>date of receipt of payment will be 11.08.20XX</b> [i.e., earlier of 11.08.20XX or 17.08.20XX].</p> <p>➤ Therefore, in the given case, the time of supply will be 11.08.20XX and the applicable rate of tax will be rate prevalent at the time of supply, i.e., IGST @ 5%. <b>Therefore, the contention of Mr. SRK Ltd. is correct</b></p> <p>➤ Further, if the date on which the payment is credited to bank account of supplier is 14.08.20XX, the date of receipt of payment will continue to be <b>11.08.20XX [i.e., earlier of 11.08.20XX or 14.08.20XX]</b> 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.</p>
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j)	<p><b>Legal Provision:-</b></p> <p>Where Goods are being sent for approval on Sale/Return basis are removed before Supply taken place, Invoice shall be issued.</p> <p>(a) Before or at the time of Supply or</p>
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(b) 6 months from the date of Removal

Whichever is earlier

**Determination of TOS :-**

TOS in above case shall be determined as per Sec. 12 (2) read with N/No. 66/2017. i.e.

➤ Date of Invoice or

➤ Last date of Invoice

Whichever is earlier.

So, in given case, approval is received within 6 months therefore TOS = date of invoice & Last date of Invoice is same i.e. 15-09-20XX.

Completion of 6 month if acceptance not given within 6 month. Hence, TOS is on 09-02-20XY.

### Question 9

Allfit Laboratories Ltd. is a registered supplier of bulk drugs in Delhi paying tax under regular scheme. It manufactures bulk drugs and supplies the same in the domestic and overseas market. The bulk drugs are supplied within Delhi and in the overseas market directly from the company's warehouse located in South Delhi.

For supplies in other States of India, the company has appointed consignment agents in each such State. However, supplies in Gurgaon (Haryana) and Noida (U.P.) are effected directly from South Delhi warehouse. The drugs are supplied to the consignment agents from the South Delhi warehouse.

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

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

Particulars	(₹)
Advance received towards drug development services to be provided to Orochem Ltd., a drug manufacturer, located in Delhi [Drug development services have been provided in February, 20XX and invoice is issued on 28.02.20XX]	5,00,000
Advance received for bulk drugs to be supplied to Novick Pharmaceuticals, a wholesale dealer of drugs in Gurgaon, Haryana [Invoice for the goods is issued at the time of delivery of the drugs in March, 20XX]	6,00,000
Supply of bulk drugs to wholesale dealers of drugs in Delhi	60,00,000
Bulk drugs supplied to Anchor Pharmaceuticals Inc., USA under 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 Allfit Laboratories Ltd. for the month of January, 20XX with the help of the following additional information furnished by it for the said period:

- Consignments of bulk drugs were sent to Cardinal Pharma Pvt. Ltd. and Rochester Medicos – agents of Allfit Laboratories Ltd. in Punjab and Haryana respectively. Cardinal Pharma Pvt. Ltd. and Rochester Medicos supplied these drugs under their invoices to the Medical Stores located in their respective States for ₹ 60,00,000 and ₹ 50,00,000 respectively.
- Bulk drugs have been supplied to Ronn Medicos – a wholesale dealer of bulk drugs in Gurgaon, Haryana for consideration of ₹ 15,00,000. Allfit Laboratories Ltd. owns 72% shares of Ronn Medicos Pvt. Ltd. Open market value of the bulk drugs supplied to Ronn Medicos Pvt. Ltd. is ₹ 30,00,000.

Further, Ronn Medicos Pvt. Ltd. is not eligible for full input tax credit.

Note:

- All the given amounts are exclusive of GST, wherever applicable.
- Assume the rates of GST to be as under: [CA Final RTP Nov 19]

Goods/Services supplied	CGST	SGST	IGST
Bulk Drugs	2.5%	2.5%	5%
Drug development services	9%	9%	18%

You are required to make suitable assumptions, wherever necessary.

**Answer:- Computation of GST Liability of Allfit Laboratories Ltd. for the month of January, 20XX**

Goods/Services supplied	IGST(₹)	CGST (₹)	SGST(₹)
Advance received for drug development services supplied to Orochem Ltd., a drug manufacturer, located in Delhi [Note - 1]		45,000 [5,00,000 x 9%]	45,000 [5,00,000 x 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 x 2.5%]	1,50,000 [60,00,000 x 2.5%]
Bulk drugs supplied to Anchor Pharmaceuticals Inc., USA [Note - 4]	Nil		
Supply of drug development services to Unipharma Ltd., a drug manufacturer, located in Delhi [Note - 5]		54,000 [6,00,000 x 9%]	54,000 [6,00,000 x 9%]
Supply of bulk drugs to consignment agents - Cardinal Pharma Pvt. Ltd. and Rochester Medicos of Punjab and Haryana [Note - 6]	4,95,000 [99,00,000 x 5%]		
Supply of bulk drugs to Ronn Medicos of Gurgaon, Haryana [Note - 7]	1,50,000 [30,00,000 x 5%]		

<b>Total GST liability</b>	<b>6,45,000</b>	<b>2,49,000</b>	<b>2,49,000</b>
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**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 read with Notification No. 66/2017, 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.  
Thus, GST is not payable at the time of receipt of advance against supply of goods. The time of supply of the advance received for bulk drugs to be supplied to Novick Pharmaceutical 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. Thus, supply of the bulk drugs to Anchor Pharmaceuticals 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.
- As per rule 29 of the CGST Rules**, the value of supply of goods between the principal and his agent is :-
  - the open market value of the goods being supplied, or
  - at the option of the supplier, is 90% of the price charged for the supply of goods of like kind and quality by the recipient to his unrelated customer, where the goods are intended for further supply by the said recipient.

In the given case, since open market value is not available, value of bulk drugs supplied to consignment agents - Cardinal Pharma Pvt. Ltd. and Rochester Medicos - will be ₹ 99,00,000 [90% of (₹ 60,00,000 + ₹ 50,00,000)]. Further, being an inter-State supply of goods, supply of bulk drugs to the consignment agents is subject to IGST @ 5%.

7. If any person directly or indirectly controls another person, such persons are deemed as related persons. [explanation to section 15 of the CGST Act]. In the given case, since Allfit Laboratories Ltd. owns 72% shares of Ronn Medicos, both are related persons.

As per rule 28 of the CGST Rules, the value of supply of goods between related persons (other than through an agent) is the open market value of such goods and not the invoice value. Furthermore, since Ronn Medicos is not eligible for full input tax credit, value declared in the invoice cannot be deemed to be the open market value of the goods.

Thus, open market value of the bulk drugs supplied to Ronn Medicos, i.e. ₹ 30,00,000 is the value of supply of such goods. Further, being an inter-State supply of goods, supply of bulk drugs to Ronn Medicos is subject to IGST @ 5%.

## Question 10

M/s ABC Ltd., a registered supplier of goods at Maharashtra who pays GST under regular scheme, has made the following transactions (exclusive of tax) during July 20XX:

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

\*Balance in E-Credit ledger is including ITC of RCM

Source	Interest (₹)	Penalty (₹)
CGST	1,500	500
SGST	1,500	500
IGST	2,000	500

Based on above information, Answer the following questions independently:-

- Output tax reported under IGST column pertains to the month of February, which was not paid for the said period. Discuss the treatment to be made with the legal provisions.
- Are principles of unjust enrichment applicable for payment made under GST
- Compute the net tax payable in cash while filing the said return as well as the interest payable for the delayed remittance of tax for 60 days.
- What would be your answer, if M/s ABC Ltd transfer amount of interest & penalty available in the electronic cash ledger under the CGST Act to the electronic cash ledger for Integrated tax, Central tax, State tax or Union territory tax or cess & given declaration in FORM GST PMT-09.
- What would be your answer, if entire tax for the month of July has to be paid

through Electronic Credit Ledger except taxes to be paid on reverse charge basis.

Answer:-

- Legal Provision:**  
**Section 49(8) of CGST Act 2017**, 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.

**Discussion & Conclusion:**

  - 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.
  - Since, M/s ABC Ltd., 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 read with Rule 88B of CGST rules 2017.**
- Yes, As per Section 49(9) of the CGST Act, 2017**, every person **who has paid the tax** on goods or services or both under CGST Act shall be **deemed to have passed on the full incidence** of such tax to the recipient of such goods or services or both **unless the contrary is proved by him.**

- c. 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	IGST(₹)	CGST (₹)	SGST(₹)
Output tax payable for July	14,75,000	28,34,000	28,34,000
Less: Utilisation of ITC [Note]	(14,75,000)	(5,88,500)	(5,88,500)
1) IGST: 26,52,000	0	(18,32,000)	0
2) CGST: 18,32,000	0	0	(18,32,000)
3) SGST: 18,32,000			
Amount payable through electronic cash ledger (A)	Nil	4,13,500	4,13,500
Tax payable under reverse charge (B)	36,000	1,44,000	1,44,000
Total amount payable through electronic cash ledger [A+B]	36,000	5,57,500	5,57,500
Interest payable @ 18% per annum (rounded off)	1,065 [36,000* 18%*60/ 365]	16,496 [5,57,500* 18%*60/ 365]	16,496 [5,57,500* 18%*60/ 365]

**Note:**

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

- d. If M/s ABC Ltd. file **FORM GST PMT – 09**, In that case it can utilise the balance of minor head of interest and penalty for payment of CGST & SGST.  
Balance available in interest head is ₹5,000  
Balance available in penalty head is ₹1,500  
Net tax liability payable in cash is ₹5,57,500 + ₹5,57,500 = ₹11,15,000  
Therefore, after declaration liability to pay in cash = ₹11,15,000 - ₹5,000 - ₹1,500 = ₹11,08,500

- e. If entire tax payable for July is paid through Electronic Credit ledger, except for the taxes to be paid under reverse charge basis, then interest under **section 50** is applicable only on the remittance of tax under reverse charge basis and not for tax payable on forward charge basis. Interest payable is given as below:  
IGST: 36,000 \* 18% \* 60/365 = ₹1065  
CGST: 1,44,000 \* 18% \* 60/365 = ₹4261  
SGST: 1,44,000 \* 18% \* 60/365 = ₹4261

**Question 11**

**Mr. A has given the following information**

Month	Opening balance in electronic credit ledger [A]	Eligible ITC (B)	ITC wrongly availed (C)	Total ITC (D) = (A+B+C)	Output liability (E)	Due date of return filing	Actual date of filing Return
April	-	7,00,000	50,000	7,50,000	7,00,000	20 May XX	20 May XX
May	50,000	5,00,000	-	5,50,000	5,00,000	20 Jun XX	20 Jun XX
June	50,000	3,00,000	-	3,50,000	3,30,000	20 Jul XX	20 Jul XX
July	20,000	6,00,000	-	6,20,000	6,10,000	20 Aug XX	18 Aug XX
Aug	10,000	5,00,000	-	5,10,000	5,10,000	20 Sep XX	25 Sep XX

**Determine the date from when interest is applicable in above cases & also calculate the amount of interest if wrongly availed and utilized ITC is reversed in the September return i.e. 20 October 20XX**



**Answer:- Calculation of amount on which interest is payable under rule 88B**

Month	Opening balance in electronic credit ledger [A]	Eligible ITC (B)	ITC wrongly availed (C)	Total ITC (D) = (A+B+C)	Output liability (E)	Closing balance in E-credit ledger (F) = (D-E)	Amount on which interest is applicable
April	-	7,00,000	50,000	7,50,000	7,00,000	50,000	-
May	50,000	5,00,000	-	5,50,000	5,00,000	50,000	-
June	50,000	3,00,000	-	3,50,000	3,30,000	20,000	30,000
July	20,000	6,00,000	-	6,20,000	6,10,000	10,000	10,000
Aug	10,000	5,00,000	-	5,10,000	5,10,000	-	10,000

- 1) Date of filing the return is the date of utilization of ITC.
- 2) Interest is calculated period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount
- 3) Calculation of Interest - As per sec 50(3) read with rule 88B,

**April & May :-** ITC of ₹50000/- was wrongly availed but the same was not utilised, so interest is not applicable.

**June:-** Wrongly availed ITC of ₹50000/- is carried forward to the June month, however ₹30000/- is utilised out of 50000 when we had shortage of eligible ITC (₹30000/-) to adjust against the output liability of ₹330000/-, interest shall be applicable on ₹30000/- as the same is utilised by filing the return of June month i.e. from 20th July 20XX.

**Calculation of Interest -**

Amount of wrongly utilized ITC - 30,000  
 Rate of Interest - 18 % p.a  
 Date of utilization of ITC - 20th July 20XX  
 Date of Reversal of ITC - 20th October 20XX  
**Interest = 30,000 \* 18% \* 93 days / 365 = 1376**

**July:-** Out of ₹50000/-, ₹30000/- was already utilised and the balance of ₹20000/- was carried forward to the July month. Since eligible ITC (₹600000/-) is lesser than the output liability of ₹610000/- and the remaining wrongly availed ITC of ₹ 10000 is utilised, therefore interest shall be applicable for ₹10000/- from the date of filling the return i.e. 18th August 20XX.

**Calculation of Interest -**

Amount of wrongly utilized ITC - 10,000  
 Rate of Interest - 18% p.a  
 Date of utilization of ITC - 18th Aug 20XX  
 Date of Reversal of ITC - 20th October 20XX  
**Interest = 10,000 \* 18% \* 64 days / 365 = 316**

**Aug:-** Out of 50000/-, ₹40,000/- was already utilised and the balance of ₹10000/- was carried forward to the Aug month. Since eligible ITC (₹500000/-) is lesser than the output liability of ₹510000/- and the remaining wrongly availed ITC of ₹10000 is utilised, therefore interest shall be applicable for ₹10000/- from the date of filling the return i.e. 25 Sep 20XX.

**Calculation of Interest -**

Amount of wrongly utilized ITC -10,000  
 Rate of Interest - 18% p.a  
 Date of utilization of ITC - 20 September 20XX  
 Date of Reversal of ITC - 20th October 20XX  
**Interest = 10,000 \* 18% \* 31 days / 365 = 153**

**Note:-** For the calculation of no. of days the date of utilization and date of reversal or date of payment of Tax is consider.

# TDS & TCS

## Question 12

Manihar Enterprises, registered in Delhi, is engaged in supply of various goods and services. It has provided the information relating to the supplies made, their contract values in the month of October, 20XX as under:

	Particulars	Total Contract value (Inclusive of GST) (₹)	Payment due in October, 20XX (₹)
1	Supply of stationery to Fisheries Department, Kolkata	2,60,000	15,000
2	Supply of car rental services to Municipal Corporation of Delhi	2,95,000	20,000
3	Supply of a heavy machinery to Public Sector Undertaking located in Uttarakhand	5,90,000	25,000
4	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
5	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
6	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
7	Supply of designer clothes through 'QUICK DEAL', an electronic commerce operator.	1,77,000	1,77,000

8	Mr. A, an e-commerce operator supplying goods through its electronic portal in capacity of an agent. The goods belong to Manihar Enterprises and the consideration for such supplies is received by Mr. A and remitted to Manihar enterprises as per the contractual arrangement.	1,50,000	25,000
9	Supply of goods through Foreign ECO, USMART who does not have place of business in India since they operate from outside, but customers are located in Delhi (India).	2,30,100	50,000

GST rates are as follows:

CGST	9%
SGST	9%
IGST	18%

Based on above information, answer the following questions independently:-

a) State whether the transactions undertaken by Manihar enterprises are subject to TDS or TCS provisions.

If yes, determine the amount of TDS and TCS in each of the transactions.

b) In transaction no.9, given above, whether the foreign e-commerce operator is required to obtain registration.

c) Within how many days the payment is to be made to the government, & if not paid on time, what will be the consequences.

**Answer:-**

**Legal Provision:**

➔ As per section 51 of the CGST Act, 2017, following persons are required to deduct tax at source @ (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** (Excluding GST):-

- a department or establishment of the Central Government or State Government or
- local authority or
- Governmental agencies or
- an authority or a board or any other body,
  - set up by an Act of Parliament or a State Legislature or
  - 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.

➤ **As per section 52 of the CGST Act 2017**, every electronic commerce operator **not being an agent**, shall collect tax at source @ **1% (CGST - 0.5% and SGST - 0.5 %)**,

- on 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,

#### Discussion & Conclusion:

a) **Applicability of TDS or TCS provisions in each of the transactions undertaken by Manihar enterprises and the corresponding amount of TDS or TCS is calculated as under:-**

	Particulars	Total Contract Value (Rs)	Payment Due	IGST (Rs)	CGST (Rs)	SGST (Rs)
1	Supply of stationery to Fisheries Department, Kolkata (Note-1)	2,60,000	15,000	-	-	-
2	Supply of car rental services to Municipal Corporation of Delhi (Note-2)	2,95,000	20,000	-	-	-
3	Supply of a heavy machinery to Public Sector Undertaking located in Uttarakhand (Note-3)	5,90,000	25,000	500	-	-

4	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
5	Interior decoration of Andhra Bhawan located in Delhi (Note-5)	12,39,000	12,39,000	-	-	-
6	Supply of printed books and printed post cards to a West Delhi Post Office (Note-6)	9,72,000	50,000 for books & 20,000 for printed post cards	-	-	-
7	Supply of designer clothes (Note 7)	1,77,000	1,77,000	-	750	750
8	Supply of goods by Manihar enterprises through ECO, Mr.A (Note 8)	1,50,000	25,000	-	-	-
9	Supply of goods through Foreign ECO, USMART who does not have place of business in India. (Note 9)	2,30,100	2,30,100	-	975	975

#### Note:-

1.	<p>➤ 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:  <math>= ₹2,60,000 \times 100 / 118</math>  <math>= ₹2,20,339</math> (rounded off)</p> <p>➤ Since the total value of taxable supply under the contract <b>does not exceed ₹2,50,000</b>, tax is not required to be deducted at source.</p>
2.	<p>➤ 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:</p>

	$= ₹2,95,000 \times 100 / 118$ $= ₹2,50,000$ <p>⇒ Since the total value of taxable supply under the contract <b>does not exceed ₹2,50,000</b>, tax is not required to be deducted at source.</p>
3.	<p>⇒ 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:</p> $= ₹5,90,000 \times 100 / 118$ $= ₹5,00,000$ <p>⇒ Since the total value of taxable supply under the contract <b>exceeds ₹2,50,000</b>, PSU in Uttarakhand is required to deduct tax at source @ 2% (for IGST) of ₹25,000, i.e. <b>₹500</b>.</p>
4.	<p>⇒ 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:</p> $= ₹6,49,000 \times 100 / 118$ $= ₹5,50,000$ <p>⇒ Since the total value of taxable supply under the contract <b>exceeds ₹2,50,000</b> National Housing Bank, Delhi is required to deduct tax at source @ 1% CGST &amp; 1% SGST each of ₹50,000, i.e. <b>₹500 each</b></p>
5.	<p>⇒ <b>As per Proviso to section 51(1) of the CGST Act, 2017</b> stipulates that <b>no tax shall be deducted</b> 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.</p> <p>⇒ <b>Further, as per Section 12(3) of the IGST Act, 2017</b>, 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.</p> <p>⇒ Since the location of the supplier (Manihar Enterprises) and the place of</p>

	<p>supply is Delhi and the State of registration of the recipient - Government of Andhra Pradesh is Andhra Pradesh, no tax is liable to be deducted in the given case.</p>
6.	<p>⇒ 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 <b>exceeds ₹2,50,000</b>.</p> <p>⇒ 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:</p> $= ₹2,72,000 \times 100 / 118$ $= ₹2,30,509 \text{ (rounded off)}$ <p>⇒ Since the total value of taxable supply under the contract <b>does not exceed ₹2,50,000</b>, tax is not required to be deducted at source.</p>
7.	<p>⇒ <b>An electronic commerce operator (ECO)</b> is required to collect Tax at source @ 1% (CGST 0.5% and SGST @ 0.5%) of the <b>net value of taxable supplies</b> made through it by other suppliers</p> <p>⇒ Therefore, the net value of taxable supplies,</p> $= ₹1,77,000 \times 100 / 118$ $= ₹1,50,000$ <p>Thus, 0.5 % of ₹1,50,000 = ₹750 (CGST) &amp; ₹750 (SGST)</p>
8.	<p>⇒ Mr. A, an ECO is supplying goods through the <b>electronic common portal</b> in capacity of an agent on behalf of Manihar enterprises and hence the liability to collect tax at source as per Section 52 <b>shall not</b> arise in this case.</p>
9.	<p>⇒ <b>As per Sec 12 of IGST Act</b>, the Place of supply of goods shall be the location of supplier as the supply is made to unregistered customers and address of such customer is not available in the records of supplier.</p> <p>⇒ If registered supplier is supplying goods or services through a foreign e-commerce operator to a customer in India, such foreign e-commerce operator would be liable to collect tax at source @ 1% (CGST 0.5% and SGST @ 0.5%) of the <b>net value of taxable supplies</b></p> <p>Therefore, the net value of taxable supplies,</p>

$$= ₹2,30,100 \times 100 / 118$$

$$= ₹1,95,000$$

Thus, 0.5 % of ₹1,95,000 = ₹975 (CGST) & ₹975 (SGST)

b) **Yes, Foreign E-commerce operator is required to obtain registration.**

- If foreign e-commerce operator collects tax at source on supply of goods or services, then he would be required to obtain registration in each State / UT.
  - It may be noted that each State/UT has indicated one administrative jurisdiction where all e-commerce operators having business (but not having physical presence) in that state/UT shall register
  - If the foreign e-commerce operator does not have physical presence in a particular State / UT, he may appoint an **agent** on his behalf
- c) Tax has to be paid to the government by the deductor **within 10 days** after the end of the month in which such deduction is made, otherwise interest shall be levied @ **18% p.a.** for the period for which the tax or any part thereof remains unpaid, **as per sec 50(1) read with Rule 88B.**



## Question 13

ABC Ltd. of Bengaluru is a manufacturer and registered supplier of machine. It has provided the following details for the month of November, 20XX.

Details of GST paid on inward supplies during the month

Particular	GST Paid(₹)
Health insurance of factory employees	20,000
Raw materials for which invoice has been received and GST has also been paid for full amount but only 50% of material has been received, remaining 50% will be received in next month.	18,000
Work contractor's service used for installation of plant and machinery.	12,000
Purchase of manufacturing machine directly sent to job worker's premises under challan.	50,000
Purchase of car used by director for the business meetings only.	25,000
Outdoor catering service availed for business meetings	8,000
Rent-a-cab facility availed for employees to fulfil a statutory obligation	40,000
Purchase of 5 apple i-pads which were given as gift to employees	1,00,000
Purchased cement, paint, iron rods and services of architects and interior designers for construction of a commercial complex for one of its clients	55,000
ABC Ltd. availed maintenance & repair services from "Jaggi Motors" for a truck used for transporting its goods.	35,000
Electrical transformers to be used in the manufacturing process	80,000
Computers purchased (Depreciation was claimed on the said GST portion under the Income-Tax Act, 1961)	50,000
Inputs purchased, but stolen from the factory	30,000
Purchase of accessories which were delivered directly to the dealers of the company on the direction of ABC Ltd. [Only invoice was received by ABC Ltd.]	25,000

Purchase of raw materials from Mr. Krishna, a registered person who is paying tax under composition scheme	80,000
Goods purchased from XYZ Ltd., the details of which are not uploaded in GSTR - 1 by XYZ Ltd. but tax is deposited to Government within due date	20,000

ABC 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. Receipts on outward supply (exclusive of GST) for the month of November, 20XX are as follows:

Particular	GST paid (₹)
Receipt from Sale of Machine	25,00,000
Hiring receipts for machine	5,25,000
Service charges for supply of man power operators	12,35,000

Assume all the transactions are inter State and the rates of IGST to be as under:

- (i) Sale of machine 5%
- (ii) Service of hiring of machine 12%
- (iii) Supply of man power operator service 18%

Compute the amount of input tax credit available and also the net GST payable for the month of November 20XX by giving necessary explanations for treatment of various items.

Note: Opening balance of input tax credit is Nil

Answer:-

Computation of net GST payable by ABC Company Ltd.

Particular	GST payable (₹)
Gross GST liability [Refer working note (2) below]	3,36,200
Less: Input tax credit [Refer working note (1) below]	2,97,000
<b>Net GST liability</b>	<b>39,200</b>

**Working Notes:****(1) Computation of Input Tax Credit (ITC) available with ABC Company Ltd. in the month of November 20XX**

Particular	GST (₹)
Health insurance of factory employees [Note – 1]	Nil
Purchase of Raw material [Note – 2]	Nil
Works 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
Rent-a-cab facility availed for employees to fulfil a statutory obligation [Note 7]	40,000
Apple i-pads given as gifts to the employees [Note 8]	Nil
Purchased cement, paint, iron rods and services of architects & interior designers [Note 9]	55,000
Maintenance & repair services [Note 10]	35,000
Electrical transformers to be used in the manufacturing process [Note 11]	80,000
Computers purchased (Depreciation is claimed on GST portion under It Act, 1961) [Note 12]	Nil
Inputs purchased, but stolen from the factory [Note 13]	Nil
Purchase of accessories delivered directly to dealers of company [Note 14]	25,000
Purchase of raw material from Mr. Krishna [Note 15]	Nil
Goods purchased from XYZ Ltd [Note 16]	Nil
<b>Total ITC available</b>	<b>2,97,000</b>

**(2) Computation of gross GST liability**

	Value received (₹)	Rate of GST	GST payable (₹)
Receipt from Sale of machine	25,00,000	5%	1,25,000
Hiring receipts for machine	5,25,000	12%	63,000
Service charges for supply of manpower operators [Note 17]	12,35,000	12%	1,48,200
<b>Gross GST liability</b>			<b>3,36,200</b>

**Notes:**

- As per section 17(5)(b) of the CGST Act 2017**, ITC of health insurance is **blocked** since said services are not obligatory for employer to provide to its employees under any law.
- As per Proviso to section 16(2) of the CGST Act 2017**, Where the goods against an invoice are received in lots/instalments, ITC is allowed upon receipt of the **last lot/instalment**, Thus, ABC Company Ltd. will be entitled to ITC of raw materials on receipt of second instalment in December 20XX
- As per Section 17(5)(c) of CGST Act 2017**, 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.
- As per Section 19(5) of CGST Act, 2017** read with rule 45 of CGST Rules, ITC on capital goods directly sent to job worker's premises under challan is **allowed**.
- As per Section 17(5)(a) of CGST Act 2017**, ITC on motor vehicles is **allowed** only when the same are used for:
  - for making taxable supply of-
    - further supply of such vehicles,
    - transportation of passengers,
    - imparting training on driving, flying, navigating such vehicles and for transportation of goods.

(ii) Since ABC Company Ltd is a supplier of machine and it does not use the car for transportation of goods, ITC thereon will not be available

- 6) **As per Sec 17(5)(b)(i) of the CGST Act 2017**, 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.
- 7) **As per sec 17(5)(b) of the CGST Act 2017**, ITC is **not blocked** on rent-a cab services where the government notifies services which are obligatory for an employer to provide to its employees.
- 8) **As per sec 17(5)(h) of the CGST Act 2017**, ITC in respect of goods that are disposed of by way of gifts is **blocked**.
- 9) **As per Sec 17(5)(d) of the CGST Act, 2017**, ITC on goods and/or services received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account is **blocked** even though such goods and/or services are used in the course or furtherance of business.

In the given case, taxable person has used the goods and services for construction of immovable property for some other person and not on its own account. Thus, **ITC in this case will be allowed**

- 10) **As per section 17(5) (ab) of the CGST Act 2017**, ITC is **allowed** on repair and maintenance services relating to motor vehicles, which are eligible for input tax credit.

Further, **as per section 17(5)(a)**, ITC is allowed on motor vehicles which are used for transportation of goods.

- 11) **As per sec 16(1) of CGST Act 2017**, ITC is **available** on goods used in the course or furtherance of business.
- 12) **As per section 16(3) of CGST Act 2017**, if depreciation has been claimed on the tax component of cost of capital goods and plant and machinery under Income-tax Act, 1961, then ITC is not allowed on the said tax component
- 13) **As per sec 17(5)(h) of CGST Act**, ITC is **blocked** on goods stolen.
- 14) **As per explanation to section 16(2)(b)**, goods delivered to a third person on direction of registered person are deemed to have been received by such registered person. So, **ITC is available to registered person** even though he did not receive the goods.
- 15) **As per sec 17(5)(g) of CGST Act**, ITC is blocked on goods on which tax is paid under composition scheme (Sec 10)

16) As per **section 16(2)(aa)** of CGST Act, **ITC is not available**, if supplier has not reported the invoice in his GSTR-1, even though the tax is deposited to Government within due date, since all conditions are to be satisfied u/s 16(2) to avail ITC.

17) Since machine is always hired out along with operators & operators are supplied only when the machines are hired out, it is a case of composite supply, wherein the principal supply is the hiring out of machines [**Section 2(30) of the CGST Act, 2017 read with section 2(90) of that Act**].

Therefore, service of supply of manpower operators will also be taxed at the rate applicable for hiring out of machines (principal supply), which is **12%, in terms of section 8(a) of the CGST Act, 2017**.

### Question 14

'All-in-One Store' is a chain of departmental store having presence in almost all metro cities across India. Both exempted as well as taxable goods are sold in such Stores.

The Stores operate in rented properties. All-in-One Stores pay GST under regular scheme.

In Mumbai, the Store operates in a rented complex, a part of which is used by the owner of the Store for personal residential purpose.

All-in-One Store, Mumbai furnishes following details for the month of October, 20XX

(1) 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

(2) 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.

(3) 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

- (4) Freight paid to goods transport agency (GTA) for inward transportation of taxable items: ₹1,00,000
- (5) Freight paid to GTA for inward transportation of exempted items: ₹80,000
- (6) Freight paid to GTA for inward transportation of non-taxable items: ₹20,000
- (7) Monthly rent payable for the complex: ₹5,50,000 (one third of total space available is used for personal residential purpose)
- (8) 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
- (9) Salary paid to the regular staff at the Store: ₹2,00,000
- (10) GST paid on inputs used for personal purpose: ₹5,000
- (11) GST paid on rent a cab service availed for business purpose: ₹4,000.
- (12) GST paid on items given as free samples: ₹4,000

Given the above available facts, you are required to compute the following:

- a) Input tax credit (ITC) credited to the Electronic Credit Ledger
- b) Common Credit
- c) ITC attributable towards exempt supplies out of common credit
- d) Eligible ITC out of common credit
- e) Net GST liability for the month of October, 20XX

Notes:

- 1) Wherever applicable, GST under reverse charge is payable @ 5% by All-in-One Stores. Rate of GST in all other cases is 18%.
- 2) All the sales and purchases made by the Store are within Maharashtra. All the purchases are made from registered suppliers. All the other expenses incurred are also within the State.
- 3) Wherever applicable, the amounts given are exclusive of taxes.
- 4) All the necessary conditions for availing the ITC have been complied with

Answer:

**Legal Provision:** As per Sec 17 read with rule 42 of the CGST Rules, 2017, 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.
T <sub>1</sub>	Input tax attributable to inputs and input services intended to be used exclusively for non-business purposes
T <sub>2</sub>	Input tax attributable to inputs and input services intended to be used exclusively for effecting exempt supplies
T <sub>3</sub>	Input tax in respect of inputs and input services on which credit is blocked under section 17(5) of the CGST Act, 2017

**Step 1 : - Computation of total input tax involved [T]**

Particulars	Computation	₹
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 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		45,000
Salary paid to staff at the store [Note 1]		Nil



GST paid on input 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
<b>Total input tax involved in a tax period (October,20XX) [T]</b>		<b>11,57,000</b>

**Step 2 :- Computation of T<sub>1</sub>, T<sub>2</sub>, T<sub>3</sub>, T<sub>4</sub>**

Particulars	₹	remark
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	
<b>Input tax exclusively attributable to non-business purposes [T1]</b>	<b>38,000</b>	
GST paid under reverse charge on freight paid to GTA for inward transportation of exempted items	4,000	Input service of inward transportation of exempted items is <b>exempt</b> vide notification which is exclusively used for effecting exempt supplies
GST paid under reverse charge on freight paid to GTA for inward transportation of non-taxable items	1,000	Input service of inward transportation of non-taxable items is treated as exempt supply which is exclusively used for effecting exempt supplies
<b>Input tax exclusively attributable to exempt supplies [T2]</b>	<b>5,000</b>	

GST paid on rent a cab service availed for business purpose	4,000	<b>As per Sec 17(5)(b)</b> of CGST Act, ITC is <b>blocked</b> on rent-a cab services as the same is not used by All-in-One Store for providing the rent a cab service or as part of a taxable composite or mixed supply. It has been assumed that it is not obligatory for employer to provide such cab service under any law
GST paid on items given as free samples	4,000	<b>As per Sec 17(5)(h)</b> of CGST Act, ITC on goods disposed by way of free samples is blocked
<b>Input tax for which credit is blocked under section 17(5) of the CGST Act, 2017 [T3]</b>	<b>8,000</b>	Since GST paid on inputs used for <b>personal purposes</b> has been considered while computing T1, the same <b>has not been</b> considered again in computing T3
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	
<b>Input tax exclusively attributable to taxable supplies [T4]</b>	<b>9,95,000</b>	

**Step 3 : - Computation & Apportionment of credit**

S.No.	Particulars	Computation (₹)
i.	$C_1 = T - (T_1 + T_2 + T_3)$	11,57,000 - (38,000 + 5,000 + 8,000)
	<b>ITC credited to the electronic Credit ledger</b>	<b>11,06,000</b>
ii.	$C_2 = C_1 - T_4$	11,06,000 - 9,95,000
	<b>Common Credit attributable</b>	<b>1,11,000</b>



iii.	$D_1 = (E / F) \times C_2$ Where, 'E' is the aggregate value of exempt supplies during the tax period i.e. 12,00,000 + 3,00,000 'F' is the total turnover in the State of the registered person during the tax period i.e. 42,00,000 + 12,00,000 + 3,00,000 + *8,00,000 = 65,00,000	$(15,00,000 / 65,00,000) \times 1,11,000$
	<b>ITC attributable towards exempt supplies</b>	<b>25,615</b>
iv.	$C_3 = C_2 - D_1$	1,11,000 - 25,615
	<b>Eligible ITC attributed for effecting taxable supplies</b>	<b>85,385</b>

\* Transfer of items to Store located in Goa is inter-State supply as per section 7 of the IGST Act, 2017 and hence includible in the total turnover & such supply is to be valued as per rule 28 of the CGST Rules, 2017. However, the value declared in the invoice cannot be adopted as the value since the recipient Store at Goa is not entitled for full credit. Therefore, open market value of such goods, which is the value of such goods sold in Mumbai Store, is taken as the value of items transferred to Goa Store.

#### Step 4 Computation of Net GST liability for the month of October, 20XX

S.No.	Particulars	(₹)
i.	Taxable items sold in the store	42,00,000
ii.	Taxable items transferred to Goa Store	8,00,000
	<b>Total Taxable supplies</b>	<b>50,00,000</b>
iii.	<b>GST payable under Forward Charge @ 18%</b>	<b>9,00,000</b>
iv.	<b>Less: ITC</b>	<b>10,80,385</b>
	ITC ₹ 11,06,000	
	Less: ITC reversed ₹ 25,615	
v.	<b>Net GST payable [A]</b>	<b>Nil</b>
vi.	ITC to be carried forward	1,80,385

vii.	GST liability under reverse charge	
	➤ Freight paid to GTA for inward transportation of taxable items [₹1,00,000 × 5%]	5,000
	➤ Freight paid to GTA for inward transportation of exempted items [₹80,000 × 5%]	4,000
	➤ Freight paid to GTA for inward transportation of non-taxable items [₹20,000 × 5%]	1,000
	<b>**Total output tax liability under reverse charge [B]</b>	<b>10,000</b>
	<b>Net GST liability [A] + [B]</b>	<b>10,000</b>

\*\* As per section 49(4) of the CGST Act, 2017 amount available in the electronic credit ledger may be used for making payment towards output tax. However, tax payable under reverse charge is not an output tax in terms of section 2(82) of the CGST Act, 2017. Therefore, tax payable under reverse charge cannot be set off against the input tax credit and thus, will have to be paid in cash.

#### Question 15

XYZ Pvt. Ltd. is a manufacturing company registered under GST in the State of Uttar Pradesh. It manufactures two taxable products 'Alpha' and 'Beta' and one exempt product 'Gama'. On 1st October 20XX, while product 'Beta' got exempted through an exemption notification, exemption available on 'Gama' got withdrawn on the same date

The turnover in state (exclusive of taxes) of 'Alpha', 'Beta' and 'Gama' in the month of October, 20XX was ₹9,00,000, ₹10,00,000, and ₹6,00,000.

XYZ Pvt. Ltd. has furnished the following details:

S. No.	Particulars	Price (₹)	GST (₹)
a.	Machinery 'U' purchased on 01.10.20XX for being used in manufacturing all the three products	2,00,000	36,000
b.	Machinery 'V' purchased on 01.10.20XX for being used in manufacturing product 'Alpha' and 'Gama'	1,00,000	18,000
c.	Machinery 'W' purchased on 01.10.20XX for being exclusively used in manufacturing product 'Beta'	3,00,000	54,000

d.	Machinery 'X' purchased on October 1, three years before 01.10.20XX for being exclusively used in manufacturing product 'Gama'. From 01.10.20XX, such machinery will also be used for manufacturing product 'Beta'.	5,00,000	90,000
e.	Machinery 'Y' purchased on October 1, four years before 01.10.20XX for being exclusively used in manufacturing product 'Beta'. From 01.10.20XX, such machinery will also be used for manufacturing product 'Gama'.	4,00,000	72,000
f.	Machinery 'Z' purchased on October 1, two years before 01.10.20XX for being used in manufacturing all the three products	3,00,000	54,000
g.	Raw Material used for manufacturing 'Alpha' purchased on 05.10.20XX	1,50,000	27,000
h.	Raw Material used for manufacturing 'Beta' purchased on 10.10.20XX	2,00,000	36,000
i.	Raw Material used for manufacturing 'Gama' purchased on 15.10.20XX	1,00,000	18,000

Compute the following for the month of October, 20XX:

(i) Amount of input tax credit (ITC) credited to Electronic Credit Ledger

(ii) Amount of common credit (iii) Common credit attributable to exempt supplies

(iv) GST liability of the company payable through Electronic Cash Ledger

Note: Assume that all the procurements made by the company are from States other than Uttar Pradesh. Similarly, the company sells all its products in States other than Uttar Pradesh. Rate of IGST is 18%. All the conditions necessary for availing the ITC have been complied with. Ignore interest, if any and make suitable assumptions wherever required. (CA Final Rtp May 19)[ICAI Material]

**Answer:- Amount of ITC credited to Electronic Credit Ledger for the month of October**

Particulars	Eligibility	IGST (₹)	Remarks
Capital goods U	Yes	36,000	As per Rule 43(1)(c) of the CGST Rules 2017, 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.
Capital goods V	Yes	18,000	As per Rule 43(1)(b) of the CGST Rules 2017, 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.
Capital goods W	No	-	As per Rule 43(1)(a) of the CGST Rules 2017, 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
Capital goods X Credit on capital goods exclusively used earlier for supplying exempted goods	Yes	90,000	As per Rule 43(1)(c) of the CGST Rules 2017, 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
Capital goods Y Credit on capital goods exclusively used earlier for supplying taxable goods	No	-	ITC in respect of such machinery would have already been credited to the electronic credit ledger

Capital goods Z	No	-	It is used for effecting both taxable and exempt supplies from October 1, two years prior to 01.10.20XX. Therefore, ITC in respect of such machinery would have already been credited to the electronic credit ledger
Raw Material used for manufacturing 'Alpha'	Yes	27,000	As per Rule 42 of the CGST Rules 2017, ITC in respect of inputs used for effecting taxable supplies will be credited in Electronic Credit Ledger
Raw Material used for manufacturing 'Beta'	No	-	<b>As per Rule 42 of the CGST Rules 2017</b> , ITC in respect of inputs used for effecting exempt supplies will not be credited in the electronic credit ledger
Raw Material used for manufacturing 'Gama'	Yes	18,000	<b>As per Rule 42 of the CGST Rules 2017</b> , ITC in respect of inputs used for effecting taxable supplies will be credited in Electronic Credit Ledger
<b>Total</b>		1,89,000	

#### Calculation of amount to be added in output Tax liability

Discription	Calculation	U	X	Y	Z
Amount of input tax credit to be credited to electronic credit ledger (i.e. to claim in monthly return)		36,000	90,000	-	-
<b>Total input tax credit on capital goods used commonly (Tc)</b> [Note 1]		<b>36,000</b>	<b>90,000</b>	<b>72,000</b>	<b>54,000</b>
Credit attributable to tax period (Tm)	$T_c/60$	600	1500	1200	900

Credit to be reversed/Payment (Te)	Tr X E/F (E=10,00,000) (F=25,00,00) Where (Tr=Tm)	240	600	480	360
Period for which reversal to be done	-	60 Months	24 Months	12 months	36 months
Amount to be added in output tax liability for use of capital goods for exempt supply [Note 2] [Tie]			54,000		

$$\begin{aligned} \text{Amount of common Credit} &= 36,000 + 90,000 + 72,000 + 54,000 \\ &= 2,52,000 \end{aligned}$$

$$\begin{aligned} \text{Amount of common Credit Attributable to exempt supply} &= \\ 240 + 600 + 480 + 360 &= 1680 \end{aligned}$$

#### Notes:

1) **As per Rule 43(1)(d) of CGST Rules 2017**, 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

**Further as per Proviso to rule 43(1)(d) of CGST Rules 2017**, 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'

2) **As per Proviso to rule 43(1)(c) CGST Rules 2017 read with N/N 16/2020**, If any capital goods earlier used exclusively for effecting exempt supplies is subsequently also used for effecting taxable supplies, the value of 'A' shall be arrived at by adding the full ITC of such capital goods to electronic credit ledger & used earlier for exclusively exempt supplies, then

**Amount** = ITC x No. of quarter used for exclusive supply of exempt goods from date of invoice x 5% need to be added to output tax liability

Thus, Amount to be added to output tax liability shall be computed as under:  
 $= ₹90,000 \times 5\% \times 12 \text{ quarters} = ₹5004,0$

3) Computation of GST liability of the company for October 20XX payable through Electronic Cash Ledger

S.No	Particular	Amount ₹	Amount ₹
1	IGST payable on 'Alpha' [₹ 9,00,000 x 18%]	1,62,000	
2	IGST payable on 'Beta' [Exempt]	Nil	
3	IGST payable on 'Gama' [₹ 6,00,000 x 18%]	1,08,000	
4	Total IGST payable on outward supply (1+2+3)	2,70,000	
5	Amount to be added in output tax liability for use of capital goods for exempt supply [Tie]	54,000	
6	Total output Tax liability (4+5)		3,24,000
7	ITC available in the Electronic Credit Ledger	1,89,000	
8	Common credit attributable to exempt supplies for the month of October, 20XX (Te)	(1680)	
9	Less: Net ITC (7-8)		(1,87,320)
	<b>IGST payable from Electronic Cash Ledger (6-9)</b>		<b>1,36,680</b>

**Question 16**

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 Lakhs)	Receipts	₹(in Lakhs)
Raw material	3.5	Sales	15
Consumables	1.25		
Transportation charges for bringing the raw material to factory	0.70		
Salary paid to employees on rolls	5.0		
Premium paid on life insurance policies taken for specified employees	1.60		

Audit fee	0.50		
Telephone expenses	0.30		
Bank charges	0.10		

All the above amounts are exclusive of all kinds of taxes, wherever applicable. However, the applicable taxes have also been paid by the company.

Further, following additional details are furnished by the company in respect of the payments and receipts reported by it:

(i) Raw material amounting to ₹ 0.80 lakh is procured from Bihar and ₹ 1.5 lakh is imported from China. Basic customs duty of ₹ 0.15 lakh, social welfare surcharge of ₹ 0.015 lakh and integrated tax of ₹ 0.2997 lakh are paid on the imported raw material.

Remaining raw material is procured from suppliers located in West Bengal. Out of such raw material, raw material worth ₹ 0.30 lakh is procured from unregistered suppliers; the remaining raw material is procured from registered suppliers.

Further, raw material worth ₹ 0.05 lakh purchased from registered supplier located in West Bengal has been destroyed due to seepage problem in the factory and thus, could not be used in the manufacturing process.

- (ii) Consumables are procured from registered suppliers located in Kolkata and include diesel worth ₹ 0.25 lakh for running the generator in the factory.
- (iii) Transportation charges comprise of ₹ 0.60 lakh paid to Goods Transport Agency (GTA) in Kolkata and ₹ 0.10 lakh paid to horse pulled carts. GST applicable on the services of GTA is 5%.
- (iv) Life insurance policies for specified employees have been taken by the company to fulfill a statutory obligation in this regard. The life insurance service provider is registered in West Bengal.
- (v) Audit fee is paid to M/s Goyal & Co., a firm of Chartered Accountants registered in West Bengal, for the statutory audit of the preceding financial year.
- (vi) Telephone expenses pertain to bills for landline phone installed at the factory and mobile phones given to employees for official use. The telecom service provider is registered in West Bengal.



(vii) Bank charges are towards company's current account maintained with a Private Sector Bank registered in West Bengal.

(viii) The break up of sales is as under:

Sales in West Bengal- ₹7 lakh

Sales in States other than West Bengal – ₹3 lakh

Export under LUT- ₹5 lakh

(ix) The opening balance of ITC with the company for the tax period is:

CGST – ₹0.15 lakh

SGST – ₹0.08 lakh

IGST – ₹0.09 lakh

Compute:

(i) ITC available with V-Supply Pvt. Ltd. for the tax period; and

(ii) Net GST payable [CGST, SGST or IGST, as the case may be] from Electronic Cash Ledger by V-Supply Pvt. Ltd. for the tax period.

Note:-

(i) CGST, SGST & IGST rates to be 9%, 9% and 18% respectively, wherever applicable.

(ii) The necessary conditions for availing input tax credit have been complied with by V-Supply Pvt. Ltd., wherever applicable.

You are required to make suitable assumptions, wherever necessary. [ICAI Study Material]

Answer:-

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

Sl. No.	Particulars	ITC			
		IGST *₹	CGST *₹	SGST *₹	Total ₹
1.	Opening balance of ITC	9,000	15,000	8,000	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(ii)]	29,970			29,970

Raw material purchased from unregistered suppliers within West Bengal [Refer Note 1(iii)]		Nil	Nil	Nil
Raw material destroyed due to seepage [Refer Note 1(iv)]		Nil	Nil	Nil
Remaining raw material purchased from West Bengal [Refer Note 1(i)] [₹ 3.5L - ₹ 1.5L - ₹ 0.80L - ₹ 0.30L - ₹ 0.05L = ₹ 0.85L]		7,650	7,650	15,300
Total ITC for raw material	44,370	7,650	7,650	59,670
Consumables [Refer Note 2]		9,000	9,000	18,000
Transportation charges for bringing the raw material to factory [Refer Note 3]		1,500	1,500	3,000
Salary paid to employees on rolls [Refer Note 4]	Nil	Nil	Nil	Nil
Premium paid on life insurance policies taken for specified employees [Refer Note 5]		14,400	14,400	28,800
Audit fee [Refer Note 6]		4,500	4,500	9,000
Telephone expenses [Refer Note 6]		2,700	2,700	5,400
Bank charges [Refer Note 6]		900	900	1,800
Total ITC available for the tax period	53,370	55,650	48,650	1,57,670

Computation of net GST payable

Particulars	IGST* 18%	CGST* 9%	SGST* 9%	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	54,000	63,000	63,000	1,80,000
Less: ITC available for being set off [Note 8 and Note 9]	(53,370)	(55,650)	(48,650)	(1,57,670)
Net GST payable from Electronic Cash Ledger [A]	630	7,350	14,350	22,330



GST payable on inward supply of GTA services under reverse charge through Electronic Cash Ledger [Note 3 and 10] [B]		1500	1,500	3000
<b>Net GST payable through Electronic Cash Ledger [A] + [B]</b>	<b>630</b>	<b>8,850</b>	<b>15,850</b>	<b>25,330</b>

**Notes :-**

- (1) (i) Credit of input tax (CGST & SGST/ IGST) paid on raw materials used in the course or furtherance of business is available in terms of section 16(1).  
(ii) IGST paid on imported goods qualifies as input tax in terms of section 2(62). Therefore, credit of IGST paid on imported raw materials used in the course or furtherance of business is available in terms of section 16(1).  
(iii) Tax on intra-State procurements made by a registered person from an unregistered supplier is levied only on notified categories of goods and services. [Section 9(4)].  
(iv) ITC is not available on destroyed inputs in terms of section 17(5)(h).
2. Consumables, being inputs used in the course or furtherance of business, input tax credit is available on the same in terms of section 16(1). However, levy of CGST on diesel has been deferred till such date as may be notified by the Government on recommendations of the GST Council [Section 9(2)]. Hence, there being no levy of GST on diesel, there cannot be any ITC.
3. In respect of intra-State road transportation of goods undertaken by a GTA, who did exercise the option to pay tax on its services under forward charge @12%, for any person registered under the GST law, CGST is payable under reverse charge by the recipient of service. The person who pays or is liable to pay freight for the transportation of goods is treated as the person who receives the service. Thus, V-supply Pvt. Ltd. will pay GST under reverse charge on transportation service received from GTA.  
Further, tax payable under section 9(3) of the CGST/SGST Act qualifies as input tax in terms of 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.

Therefore, since no GST is paid on such services, there cannot be any ITC on such services.

4. Services by employees to employer in the course of or in relation to his employment is not a supply in terms of section 7 read with para 1 of Schedule III to the CGST Act. Therefore, since no GST is paid on such services, there cannot be any ITC on such services
5. ITC on supply of life insurance service is not blocked if it is obligatory for an employer to provide such service to its employees under any law for the time being in force. [Proviso to section 17(5)(b)]. Therefore, GST paid on premium for life insurance policies will be available as ITC in terms of section 16(1) as the said service is used in the course or furtherance of business.
6. Audit fee, telephone expenses and bank charges are all services used in the course or furtherance of business and thus, credit of input tax paid on such service will be available in terms of section 16(1).
7. Export of goods is a zero rated supply in terms of section 16(1)(a) of the IGST Act. A zero rated supply under LUT is made without payment of integrated tax [Section 16(3)(a) of the IGST Act].
8. Since export of goods is a zero rated supply, there will be no apportionment of ITC and full credit will be available [Section 16 of the IGST Act read with section 17(2) of the CGST Act].
9. As per **section 49(5) read with rule 88A**, ITC of-  
(i) IGST is utilised towards payment of IGST first and then CGST and SGST in any proportion and in any order.  
(ii) CGST is utilised towards payment of CGST and IGST in that order.  
ITC of CGST shall be utilized only after ITC of IGST has been utilised fully.  
(iii) SGST is utilised towards payment of SGST and IGST in that order.  
ITC of SGST shall be utilized only after ITC of IGST has been utilised fully.
10. **Section 49(4)** lays down that the amount available in the electronic credit ledger may be used for making payment towards output tax.  
However, tax payable under reverse charge is not an output tax in terms of section 2(82). Therefore, tax payable under reverse charge cannot be set off against the ITC and thus, will have to be paid in cash.
- \*11. CGST and SGST are chargeable on intra-State inward and outward supplies and IGST is chargeable on inter-State inward and outward supplies.

## Question 17

'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.
- (iii) 'Bright Minds', a coaching institute in Kanpur. The Institute provides coaching for Institute of Banking Personnel Selection (IBPS) Probationary Officers Exam.
- (iv) '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.	Particular	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 learning]	4,00,000	80,000	2,20,000	2,40,000
(vii)	Hire charges for buses used to transport students and faculty from their residence to college and back	4,80,000	5,50,000	1,30,000	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)	3,20,000	2,60,000	1,80,000	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)	6,00,000	4,00,000	3,75,000	4,65,000
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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.	Particular	KIT	Nanhi Mutthi	Bright Minds	Gyan Vaibhav
		(₹)	(₹)	(₹)	(₹)
(i)	Tuition fee	35,00,000	15,00,000	20,00,000	25,00,000
(ii)	Transport fee charged from students	5,00,000	6,00,000	1,30,000	8,50,000
(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 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.	4,60,000		2,40,000	6,10,000

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%.

(ii) Except catering service, wherever relevant, all the conditions necessary for availing the ITC have been complied with. [CA Final MTP March 19][CA Final RTP Nov 19][ICAI Study Material]

Answer:-

Legal Provision:-

➤ The "educational institution" means an institution providing services by way of:-

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

➤ It is clarified by CBIC that the Central and State Educational Boards shall be treated as Educational Institutions only for providing services by way of conduct of examination to students.

➤ Exemption notification **exempts selected services** provided to an educational institution as under:-

- transportation of students, faculty and staff,
- catering, including any mid-day meals scheme sponsored by Central Government, State Government or Union territory,
- security or cleaning or house-keeping services performed in such educational institution,
- services relating to admission to, or conduct of examination by, such

institution, or

(v) supply of online educational journals or periodicals.

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

⇒ **Also, supply of online educational journals or periodicals is not exempt when provided to an educational institution providing:-**

(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.

**Discussion & Conclusion:-**

⇒ In given case, **all the engineering courses** including distance learning post graduate engineering programme run by KIT **are recognised by law** [The All India Council for Technical Education (AICTE)]. Thus, since KIT imparts education as a part of a curriculum for obtaining a qualification recognised by Indian law, **it is an educational institution.**

⇒ Similarly, **Nanhi Mutthi and Gyan Vaibhav**, being a pre-school and a higher secondary school respectively, **are also educational institutions.**

⇒ But **Bright Minds**, being a coaching centre, training candidates to secure a banking job, is **not an educational institution** & hence, none of the above selected services will be exempt when provided to Bright Minds.

⇒ Accordingly, the amount of GST payable on goods and services received by these educational institutions during April to September is computed as under:-

Particular	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 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%]
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 [Nanhi Mutthi 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 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 [Catering service provided to preschool and the higher secondary school is exempt irrespective of whether the same is provided within or outside the premises of the preschool and the higher secondary school]	16,000 [3,20,000 x 5%]	Exempt	9,000 [1,80,000 x 5%]	Exempt

Security and housekeeping services for the institution(s) [Security and housekeeping service provided to pre-school and the higher secondary school for the student event organised in a banquet hall will be taxable as only the security and housekeeping service provided within the premises of the pre-school and the higher secondary school are exempt.]	1,08,000 [6,00,000 x 18%]	Exempt	67,500 [3,75,000 x 18%]	14,400 [80,000 x 18%]
<b>Total GST payable on goods and services received by the educational institutions</b>	<b>2,62,000</b>	<b>14,400</b>	<b>2,06,460</b>	<b>98,880</b>

- (ii) (1) Services provided by an entity registered under section 12AA of the Income-tax Act, 1961 by way of charitable activities are exempt. 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
  - 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/preschool/ coaching

institute/higher secondary school. Therefore, the education services provided by the Sarvshiksha Trust is not exempt under above exemption.

- Services provided by an educational institution to its students, faculty and staff are exempt. 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%.
- 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.
- 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]	<u>12,000</u>
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)]	1,97,460
<b>Net GST payable from Electronic Cash Ledger</b>	<b>1,97,940</b>

### Question 18

Determine whether the following transactions are liable to GST. Briefly explain the applicable statutory provisions in support of your conclusions.

- 1) 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.  
What will be your answer, if IIM has conducted an entrance test examination for various courses run by it and charged entrance fees from the applicants
- 2) Housekeeping service provided by M/s. Clean Well to Him Varsha Montessori school, a play school, for cleaning its playground and classrooms - ₹ 25,000 per month.
- 3) India Corporations Ltd., a Public Sector Undertaking (PSU), has taken loan from a banking company - Wellness Bank. The loan was guaranteed by the Central Government. India Corporations Ltd. defaulted in the repayment of such loan.
- 4) Vedanta Hospital, Gurgaon has its own restaurant – Annapurna Bhawan – in the basement which supplies food to its in-patients (patients admitted in the hospital) as per the advice of the doctor/nutritionist. Annapurna Bhawan also supplies food to other patients (who are not admitted) or their attendants or visitors. The food is prepared by the employees of the hospital, and nothing is outsourced to any third-party vendors.

- 5) Mr. Ashok, a senior advocate from Mumbai, provided legal consultancy services to Mr. Sagar who is also an individual advocate having turnover of ₹15 lakhs in preceding financial year
- 6) Mr. Sam & Mr. Harry appointed a panel of 3 arbitrators for settlement of their personal dispute as per the Arbitration and Conciliation Act, 1996 & paid a fee of Rs. 1 lakh.
- 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.
- 8) Kesar Maharaj, a renowned classical dancer gave a classical dance performance in an auditorium. The consideration charged for the said performance is ₹ 98,500. Is Kesar Maharaj liable to pay GST on the consideration received for the said performance, if such performance is not for promotion of any product/services?  
Will your answer be different if Kesar Maharaj gives Coaching in recreational activities relating to arts?  
What would be your, if Kesar Maharaj gives a contemporary Bollywood style dance performance in TV Serial?
- 9) Minimum balance charges collected by Dhanvarsha Bank from current account and saving account holders
- 10) Ram, an agriculturist, has stored sugarcane in a warehouse. He has taken fumigation services in the said warehouse from Gupta Pest Control Co. for which he paid the consideration of ₹ 6,000.
- 11) The Resident Welfare Association (RWA) of Blue Heaven Housing Society in Delhi provides the following information.
  - a) Monthly subscription of ₹ 5,50,000 which is collected from member families (₹ 5,500 each from 100 families)
  - b) Electricity charges amounting ₹ 3,50,000 levied by State Electricity Board on the members of RWA [The same was collected from members and remitted to the Board on behalf of members.]

c) Proceeds from sale of entry tickets of ₹ 40,000 to a cultural programme conducted by the RWA in the park of Blue Heaven Housing Society [₹ 5,000 each member]

Answer:

1)	<p><b>Legal Provision:-</b></p> <ul style="list-style-type: none"> <li>➤ all the IIMs fall under purview of “educational institutions” as they provide education as a part of a curriculum for obtaining a qualification recognized by law for the time being in force.</li> <li>➤ Further, the services provided by an educational institution to its students, faculty and staff are exempt from GST vide exemption notification.</li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>➤ However, in given case, services have been provided by the educational institution (viz. IIM, Indore), to the multinational companies. Thus, the same is <b>not exempt</b> from GST.</li> <li>➤ In the second case, since Indian Institute of management (IIM) is an educational institution providing services by way of conduct of entrance examination against entrance fee, the same is <b>exempt</b>.</li> </ul>
2)	<p><b>Legal Provision:-</b></p> <ul style="list-style-type: none"> <li>➤ House-keeping services provided to an educational institution, which is providing pre-school education and a higher secondary school or equivalent, are <b>exempt</b> from GST, if such services are performed in such educational institution.</li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>➤ In given case, house-keeping services provided to Him Varsha Montessori Play School are <b>exempt from GST</b>, since housekeeping services have been performed in such play school itself.</li> </ul>
3)	<p><b>Legal Provision:-</b></p> <ul style="list-style-type: none"> <li>➤ Services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings (PSUs) by guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions are <b>exempt</b> from GST.</li> </ul>

	<p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>➤ In present case, Central Government has guaranteed the loan taken by India Corporations Ltd. [a PSU], from Wellness Bank, [a banking company].</li> <li>➤ Thus, service provided by Central Government by way of guaranteeing the loan is <b>exempt</b> from tax</li> </ul>
4)	<p><b>Legal Provision:-</b></p> <ul style="list-style-type: none"> <li>➤ Health care services provided by a clinical establishment, an authorised medical practitioner or paramedics are exempt from GST.</li> <li>➤ As per <b>CBIC clarification, food supplied</b> by the hospital canteen to the in-patients as advised by the doctor/nutritionists is <b>a part of composite supply</b> of healthcare services and is not separately taxable. Thus, it is <b>exempt</b> from GST.</li> <li>➤ However, other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are <b>taxable</b>.</li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>➤ In given case, <b>GST is not applicable on the food supplied</b> 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 <b>taxable</b></li> </ul>
5)	<p><b>Legal Provision:-</b></p> <ul style="list-style-type: none"> <li>➤ Legal service provided by a senior advocate to a business entity with an aggregate turnover up to such amount in preceding financial year as makes it eligible for exemption from registration under GST Acts is exempted under GST.</li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>➤ In given case, the turnover of Mr. Sagar in preceding financial year is <b>not exceeding the threshold limit</b> of Rs. 20 lakhs applicable for registration &amp; thus, legal service provided to him by Mr. Ashok is exempt.</li> </ul>
6)	<ul style="list-style-type: none"> <li>➤ Services provided by arbitral tribunal to any person other than a business entity is exempt.</li> <li>➤ Since Mr. Sam &amp; Mr. Harry are not business entities &amp; hence, the given service is exempt.</li> </ul>

<p>7) <b>Yes, the contention of the Department is correct.</b>  <b>Legal Provision:-</b>          ➤ As per <b>exemption notification</b>, carrying out an <b>intermediate production process as job work</b> 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.          ➤ Further, as per <b>CBIC clarification</b>, <b>milling of paddy is not an intermediate production process</b> 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 <b>not usually carried out</b> by cultivators, but by rice millers.          ➤ Milling of paddy into rice also <b>changes its essential characteristics</b>.  <b>Discussion &amp; Conclusion:-</b>          ➤ Therefore, in given case, milling of paddy into rice <b>cannot be</b> an intermediate production process in relation to cultivation of plants for food, fibre or other similar products or agricultural produce.          ➤ Hence, milling of paddy into rice is <b>not eligible for exemption</b> and GST is payable on the same.</p>	<p><b>specifically exempted</b> if it is provided by an individual.          ➤ If Kesar Maharaj gives a contemporary Bollywood style dance performance in TV Serials, then such performance will not be eligible for exemption because the performance is not in folk or classical art forms of dance. Hence, <b>GST would be payable</b> on the same.</p>
<p>8) <b>Legal Provision:-</b>          ➤ Performance by an artist in folk or classical art forms of music, dance or theatre <b>is exempt</b> from GST, if consideration charged for such performance is not more than ₹ 1,50,000. However, exemption will <b>not apply</b> to service provided by such artist as brand ambassador.          ➤ Training or coaching service in recreational activities relating to arts or culture <b>by an individual</b> is exempt from GST.  <b>Discussion &amp; conclusion:</b>          ➤ In given case, classical dance performance by Kesar Maharaj <b>is exempt</b> from GST as consideration is ₹ 98,500 which does not exceed ₹ 1,50,000 &amp; also, he is not promoting anything. Hence, <b>he is not liable to pay GST</b>.          ➤ If Kesar Maharaj (an individual) provides coaching in recreational activities relating to arts, then he is <b>not liable to pay GST</b> as this service is</p>	<p>9) <b>Legal Provision:-</b>          ➤ Services of extending deposits, loans or advances where consideration is represented by interest or discount (other than interest involved in credit card services) are <b>exempt</b>.          ➤ 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 <b>are not exempt</b> and liable to GST.  <b>Discussion &amp; Conclusion:-</b>          ➤ In view of the above, minimum balance charges collected by Dhanvarsha Bank from current account and saving account holders <b>are not exempt and are liable to GST</b>.</p>
<p>8) <b>Legal Provision:-</b>          ➤ Performance by an artist in folk or classical art forms of music, dance or theatre <b>is exempt</b> from GST, if consideration charged for such performance is not more than ₹ 1,50,000. However, exemption will <b>not apply</b> to service provided by such artist as brand ambassador.          ➤ Training or coaching service in recreational activities relating to arts or culture <b>by an individual</b> is exempt from GST.  <b>Discussion &amp; conclusion:</b>          ➤ In given case, classical dance performance by Kesar Maharaj <b>is exempt</b> from GST as consideration is ₹ 98,500 which does not exceed ₹ 1,50,000 &amp; also, he is not promoting anything. Hence, <b>he is not liable to pay GST</b>.          ➤ If Kesar Maharaj (an individual) provides coaching in recreational activities relating to arts, then he is <b>not liable to pay GST</b> as this service is</p>	<p>10) <b>Legal Provision:-</b>          ➤ Services by way of fumigation in a warehouse of agricultural produce are <b>not exempt</b> from GST.  <b>Discussion &amp; Conclusion:-</b>          ➤ In the present case, since Gupta Pest Control Co. provides services by way of fumigation in the warehouse of sugarcane [being an agricultural produce], said services are <b>taxable</b> and GST is payable on the same.</p>
	<p>11) <b>Legal Provision:-</b>          ➤ Supply of service by unincorporated body or a non-profit entity registered under any law to its own members by way of reimbursement of charges or share of contribution <b>upto ₹ 7,500 per month per member</b> for sourcing goods or services from a third person for common use of its members in a housing society or residential complex <b>is exempt</b>.</p>

**Discussion & conclusion:**

- |    |  |
|----|--|
| a) | It is exempt as collection is not exceeding ₹ 7500 per month per member.   |
| b) | The collection is done as a ' <b>pure agent</b> ' & thus, shall <b>not be included in value</b> as per Rule 33 of CGST Rules   |
| c) | The limit of ₹ 7,500 as discussed above is available for reimbursement of common expenses & not for other charges. This service is not covered under any other exemption & hence, taxable. |

## Question 19

Mahadev Enterprises, a sole proprietorship firm, opened a shopping complex dealing in supply of goods at multiple locations, i.e. in Himachal Pradesh, Uttarakhand and Tripura in the month of June.

It has furnished following details made at such multiple locations for the month of June:

Particulars	Himachal Pradesh (₹)	Uttarakhand (₹)	Tripura (₹)
Intra- State supply of taxable goods	21,50,000	-	7,00,000
Intra- State supply of exempted goods	-	-	6,00,000
Intra- State supply of non-taxable goods	-	21,00,000	40,000
Value of inward supplies on which tax is payable on reverse charge basis		Nil	5,00,000
Value of outward supplies on which tax is payable on reverse charge basis	1,00,000	-	-

\*excluding GST

With the help of the above-mentioned information, answer the following questions giving reasons:-

- 1) Determine whether Mahadev Enterprises is liable to be registered under GST law and what is the threshold limit of taking registration in this case.
- 2) Explain with reasons whether your answer in (1) will change in the following independent cases:-
  - a) If Mahadev Enterprises is dealing in taxable supply of goods only from Himachal Pradesh. (assume no branch Uttarakhand & Tripura)
  - 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 & notified hand-made goods) amounting to ₹4,00,000.

- d) If Mahadev Enterprises is exclusively dealing in taxable supply of Pan Masala from Himachal Pradesh

Determine eligibility of registration in following independent cases

- 3) If Mahadev enterprises engaged in wholesale cum retail trading of goods in the State of Tripura. Its aggregate turnover during the financial year is ₹ 9,00,000 which consists of ₹ 8,00,000 as Intra-State supply and ₹ 1,00,000 as Inter-State supply. Whether Mahadev enterprises is required to obtain registration?

What would be your answer if Mahadev enterprises is also acting as agent of Mr. Shanidev of Delhi.

- 4) Apart from above, Mahadev enterprises is also engaged in the business of buying and selling of shares on his own account from the secondary market and its income from this activity is assessed as business income under the Income-tax Act 1961. During the year its total sales from shares was ₹ 90 lakh. Comment

- 5) If Mahadev Enterprises supplying house-keeping services through an e-commerce website owned and managed by Hi-Tech Indya Pvt Ltd. The turnover of Mahadev Enterprises in the current financial year is ₹ 18 lakh. Advise Mahadev enterprises as to whether it is required to obtain GST registration

- 6) If the aggregate turnover of Mahadev enterprises in the state of Uttarakhand exceeded ₹ 20 lakh on 25th August, 20XX. It applies for registration on 19th September, 20XX and is granted registration certificate on 29th September, 20XX. Determine the effective date of registration  
What will be your answer, if Mahadev enterprises submits the application for registration on 27th September, 20XX and is granted registration on 5th October, 20XX?



What would be your answer if it applied for registration on GST portal but missed to submit the details of its bank account. Its tax consultant advised that prior submission of bank details is mandatory to obtain registration. Examine whether the advice of Mahadev Enterprise's tax consultant is correct

7) Assuming that Mahadev Enterprises has two trading units located in Himachal Pradesh. Unit one located in Shimla is engaged in trading of food items and another unit located in Manali is engaged in trading of garments. Can separate registration be granted for its two units though located in same state? Explain.

8) Due to few errors in Registration certificate of Mahadev Enterprises, it decided to make amendment in registration Certificate. Discuss the procedure for amendment of registration under CGST Act and rules thereto?

9) Mahadev enterprises required to file return under section 39(1) for each month or part thereof, but it has not furnished returns for a continuous period of 6 months. Explain whether proper officer can cancel the registration of Mahadev enterprises on his own.

If yes, then discuss all the other situations also, where proper officer can do so.

Also discuss the circumstances where registration is liable to be cancelled by proper officer otherwise than on his own motion also.

10) What would be your answer in given case (9) above if Mahadev Enterprises applied for revocation of cancellation of registration and the order for revocation of cancellation of registration was passed. What are the provisions regarding filing returns before making such an application of revocation of cancellation of registration in the given case?

**Answer:-**

**Legal Provision:-**

➤ As per section 22 of CGST Act 2017 read with Notification No. 10/2019, 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 supply of services or supply of both goods and services is as under:-
  - ₹ 10 lakh for the Special Category States of Mizoram, Tripura, Manipur and Nagaland.
  - ₹ 20 lakh for the rest of India.
- The threshold limit for a person making exclusive intra-state supplies of goods:-
  - ₹ 10 lakh for the Special Category States of Mizoram, Tripura, Manipur and Nagaland.
  - ₹ 20 lakh for the States of Arunachal Pradesh, Meghalaya, Puducherry, Sikkim, Telangana and Uttarakhand.
  - ₹ 40 lakh for rest of India.
- However, the higher threshold limit of ₹ 40 lakh is not available to persons engaged in making supplies of notified goods, one of which is Pan masala.
- As per section 2(6) of CGST Act, 2017, "aggregate turnover" means the aggregate value of all:-
  - taxable supplies,
  - exempt supplies (wholly exempt, nil rated & Non-taxable)
  - exports &
  - inter-State supplies
 of persons having the same Permanent Account Number, to be computed on all India basis but excludes:-
  - central tax, State tax, Union territory tax, integrated tax and cess &
  - the value of inward supplies on which tax is payable by a person on reverse charge basis.

**Discussion:-**

In given case, the state-wise aggregate turnover of Mahadev Enterprises is computed as under:-

Particulars	Himachal Pradesh (₹)	Uttarakhand (₹)	Tripura (₹)
Intra- State supply of taxable goods	21,50,000	-	7,00,000
Intra- State supply of exempted goods	-	-	6,00,000

Intra- State supply of non-taxable goods [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 aggregate turnover]	-	21,00,000	40,000
Value of inward supplies on which tax is payable on reverse charge basis [Specifically excluded from the Aggregate turnover]	-	-	-
Value of outward supplies on which tax is payable on reverse charge basis	1,00,000	-	-
<b>Aggregate Turnover</b>	<b>22,50,000</b>	<b>21,00,000</b>	<b>13,40,000</b>

Ü Mahadev Enterprises is engaged in **exclusive intra-State supply of goods** from Himachal Pradesh, Tripura and Uttarakhand. However, since it 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**.

#### Conclusion :-

1)	<ul style="list-style-type: none"> <li>➤ Mahadev Enterprises <b>is liable to be registered</b> under GST law with the aggregate turnover of ₹56,90,000 (computed on all India basis) in <b>Himachal Pradesh &amp; Tripura</b> since the applicable threshold limit of registration in this case is <b>₹10 lakh</b>.</li> <li>➤ Further, he is <b>not liable to be registered in Uttarakhand</b> since he is not making any taxable supply from Uttarakhand.</li> </ul>		
2)	<table border="1"> <tr> <td>a)</td> <td> <ul style="list-style-type: none"> <li>➤ If Mahadev Enterprises is dealing in taxable supply of goods only from Himachal Pradesh, the applicable threshold limit of registration would be <b>₹40 lakh</b>.</li> <li>➤ Thus, it will not be <b>liable for registration</b> as its aggregate turnover would be <b>₹22,50,000</b>.</li> </ul> </td> </tr> </table>	a)	<ul style="list-style-type: none"> <li>➤ If Mahadev Enterprises is dealing in taxable supply of goods only from Himachal Pradesh, the applicable threshold limit of registration would be <b>₹40 lakh</b>.</li> <li>➤ Thus, it will not be <b>liable for registration</b> as its aggregate turnover would be <b>₹22,50,000</b>.</li> </ul>
a)	<ul style="list-style-type: none"> <li>➤ If Mahadev Enterprises is dealing in taxable supply of goods only from Himachal Pradesh, the applicable threshold limit of registration would be <b>₹40 lakh</b>.</li> <li>➤ Thus, it will not be <b>liable for registration</b> as its aggregate turnover would be <b>₹22,50,000</b>.</li> </ul>		

b)	<ul style="list-style-type: none"> <li>➤ If Mahadev Enterprises is dealing in taxable supply of goods and services only from Himachal Pradesh, then <b>higher threshold limit of ₹ 40 lakh will not be applicable</b> as the same applies only in case of exclusive supply of goods.</li> <li>➤ Therefore, the applicable <b>threshold limit will be ₹ 20 lakh</b> and hence, Mahadev Enterprises <b>will be liable</b> to registration.</li> </ul>
c)	<ul style="list-style-type: none"> <li>➤ In case of inter-State supplies of taxable goods other than notified handicraft goods or notified hand-made products, <b>section 24 requires compulsory registration</b> irrespective of the quantum of aggregate turnover.</li> <li>➤ Thus, Mahadev Enterprises <b>will be liable</b> to registration.</li> </ul>
d)	<ul style="list-style-type: none"> <li>➤ Though the enhanced threshold limit for registration of ₹ 40 lakh is available to Himachal Pradesh, the same will not be applicable if the person is engaged in supply of notified goods, one of which is Pan Masala.</li> <li>➤ In view of the same, the applicable threshold limit for Mahadev Enterprises is ₹20 lakh.</li> <li>➤ Thus, it is liable to be registered under GST as its aggregate turnover exceeds the said threshold limit.</li> </ul>

3)

#### Legal Provision:-

- As per **section 24** of CGST Act, 2017, person making **interstate taxable supply of goods (other than taxable supply of handicraft goods)** are compulsorily required to obtain registration irrespective of the quantum of aggregate turnover.
- As per **Explanation to section 22** of CGST Act, 2017, aggregate turnover includes all supplies made by the taxable person,
  - whether on his **own account or**
  - made on **behalf of all his principals**.
- If agent issues invoice in his own name, then section 24 gets attracted, otherwise he is liable to register u/s 22 if his aggregate turnover crosses the threshold limit for registration

	<p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>➤ In the first case, Mahadev enterprises is making <b>inter-state taxable supply of goods</b>. Thus, it is <b>required to obtain registration compulsorily</b> under GST laws even though its aggregate turnover does not exceed the threshold limit applicable u/s 22.</li> <li>➤ In the second case, since Mahadev enterprises is also acting as an agent of Mr. Shanidev of Delhi, it is required to obtain registration compulsorily under GST laws irrespective of the quantum of aggregate turnover.</li> </ul> <p><b>Assumption:-</b> It is assumed that agent is issuing <b>invoice</b> for further supply in <b>his own name</b>.</p>
4)	<ul style="list-style-type: none"> <li>➤ A supplier is liable to obtain registration in a State/Union Territory from where he makes taxable supply of goods and/or services.</li> <li>➤ Shares are excluded from the definition of goods as well as services &amp; hence, <b>buying and selling of shares is not a supply</b> of goods and/or services under GST law.</li> <li>➤ Thus, Mahadev enterprises is <b>not liable to obtain registration</b> since it is not engaged in making a taxable supply of goods and/or services.</li> </ul>
5)	<p><b>Legal Provision:-</b></p> <ul style="list-style-type: none"> <li>➤ As per <b>section 24(ix)</b>, person who supply goods or services or both, <b>other than</b> supplies specified under section 9(5), through electronic commerce operator (ECO) who is required to collect tax at source u/s 52, is mandatorily required to obtain registration irrespective of its turnover.</li> <li>➤ However, if ECO is liable to pay tax on behalf of the suppliers of services under section 9(5), the <b>suppliers of such services are entitled for threshold exemption</b>.</li> <li>➤ Further, <b>Section 2(45)</b> defines ECO as any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.</li> <li>➤ <b>Notification issued under section 9(5) specifies services of housekeeping, except</b> where 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 suppliers</li> </ul>

	<p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>➤ 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) and it is presumed that Hi-Tech Indya is an <b>ECO which is required to collect tax at source u/s 52</b>.</li> <li>➤ However, house-keeping services provided by Mahadev Enterprises, which is not liable for registration under section 22(1) as its turnover is less than ₹20 lakh through an ECO, is a <b>service notified u/s 9(5)</b>.</li> <li>➤ Thus, Mahadev Enterprises will be entitled for threshold exemption for registration and <b>will not be required to obtain registration</b> even though it supplies services through ECO.</li> </ul>						
6)	<p><b>Legal Provision:-</b></p> <ul style="list-style-type: none"> <li>➤ As per <b>section 22</b> read with <b>section 25</b> of CGST Act, a supplier, whose aggregate turnover in a financial year exceeds ₹ 20 lakh in a State other than Manipur, Mizoram, Nagaland, Tripura, is liable to apply for registration <b>within 30 days</b> from the date of becoming liable to registration.</li> <li>➤ Where the <b>application is submitted within</b> the said period, the effective date of registration is the date on which the person <b>becomes liable to registration</b> - <b>otherwise</b> it is the <b>date of grant of registration</b>.</li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>➤ In given case, applicable turnover limit for registration is ₹ 20 lakh as Uttarakhand is not a Special Category State.</li> </ul> <table border="1" style="width: 100%;"> <tr> <td style="width: 5%;">(i)</td> <td>Since Mahadev enterprises applied for registration within 30 days of becoming liable to registration, the effective date of registration is 25th August, 20XX.</td> </tr> <tr> <td>(ii)</td> <td>In this case, since Mahadev enterprises applies for registration after the expiry of 30 days from the date of becoming liable to registration, the effective date of registration is 5th October, 20XX.</td> </tr> <tr> <td>(iii)</td> <td>➤ <b>No</b>, the <b>advice</b> of Mahadev Enterprise's consultant that prior submission of bank details is mandatory to obtain registration is</td> </tr> </table>	(i)	Since Mahadev enterprises applied for registration within 30 days of becoming liable to registration, the effective date of registration is 25th August, 20XX.	(ii)	In this case, since Mahadev enterprises applies for registration after the expiry of 30 days from the date of becoming liable to registration, the effective date of registration is 5th October, 20XX.	(iii)	➤ <b>No</b> , the <b>advice</b> of Mahadev Enterprise's consultant that prior submission of bank details is mandatory to obtain registration is
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(iii)	➤ <b>No</b> , the <b>advice</b> of Mahadev Enterprise's consultant that prior submission of bank details is mandatory to obtain registration is						

	<p><b>no more valid in law.</b></p> <p>⇒ A new <b>rule 10A</b> has been inserted in the CGST Rules, 2017 to allow the registered person to furnish details of bank account which is in name of the registered person &amp; obtained on Permanent Account Number (PAN) of the registered person, or any other information, as may be required on the common portal in order to comply with any other provision, soon after obtaining certificate of registration and a GSTIN.</p> <p>⇒ But the information shall be furnished not later than 45 days from earlier of:-</p> <ul style="list-style-type: none"> <li>➤ the date of grant of registration certificate or</li> <li>➤ the date on which the return required under section 39 is due to be furnished.</li> </ul> <p>⇒ In case of a proprietorship concern, the PAN of the proprietor shall also be linked with his Aadhaar number.</p>	<p><b>Discussion &amp; Conclusion:-</b></p> <p>⇒ In given case, if Mahadev Enterprises, satisfies all the above conditions, separate registration <b>can be granted</b> to it even though the two units are located in same state.</p>
7)	<p><b>Yes, separate registration can be granted</b> for two units under same PAN located in same state.</p> <p><b>Legal Provision:-</b></p> <p>⇒ As per <b>section 25(2)</b> of CGST Act read with <b>rule 11</b> of CGST Rules, a person having multiple places of business within a State or a Union territory can be granted separate registration in respect of each of its place of business subject to the following conditions:-</p> <ul style="list-style-type: none"> <li>➤ Such person has more than one place of business as defined section 2(85),</li> <li>➤ Such person shall not pay tax under section 10 for any of his places of business if he is paying tax under section 9 for any other place of business, and</li> <li>➤ GST is to be paid on supply made between these separately registered places of business of such person &amp; tax invoice shall be issued for such supply.</li> </ul> <p>⇒ Separate registration application is to be filed for each place of business in Form GST REG-01.</p>	<p>8) As per <b>section 28</b> of CGST Act 2017 <b>read with rule 19</b> of CGST Rules 2017, the procedure for amendment of registration is as under:-</p> <p>1) <b>For any changes</b> in particulars furnished in application for registration/UIN, registered person shall submit an application electronically at common portal, either at time of obtaining registration/UIN or as amended from time to time, <b>within 15 days</b> of such change along with related documents.</p> <p>2) If change relates to <b>core fields of information</b>, proper officer may approve or reject amendments in registration particulars &amp; amendment shall take effect from the date of occurrence of event warranting such amendment.</p> <p>3) If change relates to <b>non-core fields</b>, registration certificate shall stand amended upon submission of application for amendment on Common Portal.</p> <p>(4) If a change in the constitution of any business results in change of PAN of a registered person, he shall apply for fresh registration because GSTIN is PAN based. Any <b>change in PAN would warrant a new registration</b>.</p>
		<p>9) ⇒ <b>Yes, the proper officer can cancel the registration of Mahadev enterprises on his own after opportunity of being heard to it.</b></p> <p>⇒ As per <b>section 29(2)</b> of CGST Act, 2017 <b>read with rule 21</b> of CGST Rules, 2017, the circumstances under which <b>proper officer can cancel the registration on his own</b> of a registered person after giving the person an <b>opportunity of being heard</b> are as under:-</p> <p>(1) A registered person has <b>contravened any of the following provisions</b> of the GST law:-</p> <ul style="list-style-type: none"> <li>a) he does not conduct any business from the declared place of business.</li> <li>b) he issues invoice/bill without supply of goods or services or both in violation of the provisions of GST law.</li> <li>c) he violates the provisions of anti-profiteering.</li> <li>d) he violates the provisions relating to furnishing of bank details.</li> </ul>

- e) He avails input tax credit in violation of the provisions of section 16 of CGST Act or the rules made thereunder.
- f) furnishes the details of outward supplies in FORM GSTR-1 under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods.
- g) violates the provision of rule 86B.
- h) being a registered person required to file return under section 39(1) for each month or part thereof, has not furnished returns for a continuous 6 months.
- i) being a registered person required to file return under proviso to section 39(1) for each quarter or part thereof, has not furnished returns for a continuous 2 tax periods.
- (2) A person paying tax under **composition levy** has furnished the return for a financial year **beyond 3 months** from the due date of furnishing the said return.
- (3) Voluntarily registered person has **not commenced the business within 6 months** from the date of registration.
- (4) Registration was obtained by means of **fraud, wilful misstatement or suppression of facts.**
- **Further As per section 29(1) of CGST Act 2017**, following are the circumstances where proper officer may cancel the registration either:-
- on his own motion or
  - on an application filed by the registered person or
  - on an application filed by his legal heirs, in case of death of such person.
    - (a) If the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged, or otherwise disposed of.
    - (b) If there is any change in the constitution of the business.
    - (c) If the taxable person is no longer liable to be registered under section 22 or section 24 or intend to optout of the registration voluntarily made under section 25(3).
- Proper officer shall **not cancel** registration **without giving person an opportunity of being heard.**

10)

**Legal Provision:-**

- As per **section 30** of CGST Act, 2017 **read with Rule 23** of CGST Rules, 2017, where the **registration is cancelled suo-motu** by the appropriate officer, the registrant seeking revocation of the order, **has to apply for the revocation** of cancellation **within 30 days** from the date of service of the order of cancellation of registration.
- Further, it has to furnish **all the returns due** till the date of such cancellation **before the application for revocation can be filed.**
- Further, it should also pay any amount due as tax along with any amount payable towards interest, penalty, and late fee in respect of the said returns.

**Discussion & Conclusion:-**

- Thus, in the given case, **before making an application** for revocation of cancellation of registration, Mahadev Enterprises should **file all returns due** for the period.



## Question 20

Mr. Jai, a registered supplier, engaged in goods as well as services in Pune, Maharashtra. Some of the goods sold by him are exempt whereas some are taxable. You are required to answer the following questions:-

- 1) Whether Mr. Jai is required to issue a tax invoice in all cases, even if he is selling the goods to the end consumers?
- 2) Mr. Jai is supplying taxable goods to Mr. Vijay. He submits the account of total supplies made during the 2-month period on the 25th of alternate month. Do Mr. jai have to issue an invoice each time by dispatching the goods?
- 3) Mr Jai has sent 500 units on 20th of May 20XX of Microwaves for exhibition at Mumbai on sale or return basis. Out of the said 500 units, 300 units have been sold on 28/07/20XX at the exhibition. Out of remaining 200 units, 150 units have been brought back to Pune on 25/11/20XX and balance 50 units have neither been sold nor brought back.

Explain the provisions under GST law relating to issue of invoices with exact dates on which tax invoices need to be issued by Mr. Jai.

- 4) Mr. Jai is also engaged in constructing a building for a client. The client is required to pay him on the completion of plinth, 1st floor, and 2nd floor. When should the invoice be raised in this case?

What would be your answer, if payment is to be made by client on 1st day of each quarter under the terms of contract.

- 5) For constructing a building for a client, Mr. Jai had undertaken a contract for supplying manpower for 28 days for ₹ 28,000/-. However, after 10 days, the service has stopped. Should Mr jai. raise an invoice?
- 6) Mr. Jai has provided catering services for an event of Birthday Party to his friend at Mumbai on 5th June, 20XX. Payment for the event was made on 19th June, 20XX. Determine the time of issue of invoice.
- 7) If Mr. Jai has opted for composition levy scheme in the current

financial year. Advice whether it is mandatory for him to issue a tax invoice. If not, what is the other document to be issued by him.

He also wishes to know whether the issue of concerned document can be dispensed with under any circumstances. You are required to advise him.

- 8) Mr. Jai has received advance payment with respect to services to be supplied to his client. His accountant asked him to issue the receipt voucher with respect to such services to be supplied. However, he is apprehensive as to what would happen in case a receipt voucher is issued, but subsequently no services are supplied. You are required to advise Mr. Jai regarding the same
- 9) Mr. Jai has availed transport services from an unregistered Goods transport Agency, on which Mr. Jai is liable to pay tax under reverse charge. He wishes to know whether he is required to issue an invoice. Please advise him.
- 10) Mr. 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?
- 11) Mr. Jai wishes to know whether it's necessary to show tax amount separately in the tax invoices issued to the customers.

Answer:

- 1)
  - ⇒ No, he is **not required** to issue tax invoice in all cases.
  - ⇒ As per **section 31(1)** of CGST Act, every registered person supplying taxable goods is required to issue a 'tax invoice'.
  - ⇒ As per **section 31(3)©**, every registered person supplying exempted goods is required to issue a bill of supply instead of tax invoice.
  - ⇒ As per **Rule 46A** of CGST Rules, if a registered person is supplying taxable as well as exempted goods &/or services to an unregistered person, a **single "invoice-cum-bill of supply"** may be issued 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:-
  - value of the goods supplied < ₹200,
  - the recipient is unregistered; **and**
  - 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.
- Further, as per **Rule 55** of CGST Rules, 2017, the **tax invoice** is also **not required to be issued** under the CGST Act, 2017 in the case of:-
  - a) supply of liquid gas where the quantity at the time of removal from the place of business of the supplier is not known,
  - b) transportation of goods for job work,
  - c) transportation of goods for reasons other than by way of supply, or
  - d) such other supplies as may be notified by the Board.

2) **Legal Provision:-**

- As per the **definition of Continuous Supply of Goods**, it means a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline, or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis and **includes** supply of such goods notified by Government
- As per **section 31(4)** of CGST Act, 2017, in **continuous supply of goods** where successive statement of accounts or successive payments are involved, the invoice shall be issued **before or at the time:-**
  - each such statement is issued or, as the case may be
  - each such payment is received.

**Discussion & Conclusion:-**

- **No**, invoice is not required to be issued each time the goods are dispatched.
- Since the given instance is a case of continuous supply of goods, tax invoice has to be issued **latest by the time of submitting the statement every time** (i.e. 25th of Alternate Month).

3) **Legal Provision:**

- **As per Sec 31(7)**, Where the goods being sent for sale or return are removed before the supply takes place, the tax invoice shall be issued
  - before or at the time of supply or
  - 6 months from the date of removal, **whichever is earlier**

**Discussion & Conclusion:**

- In the given case, 500 units of microwaves have been sent for exhibition on sale or return basis out of which 300 units are sold before 6 months from the date of removal
- Thus, tax invoice for 300 units needs to be issued before or at the time of supply of such goods, i.e. upto 28/07/20XX.
- Remaining 200 (150+ 50) units have neither been sold nor brought back till the expiry of 6 months from the date of removal goods, i.e. 20/11/20XX.
- Thus, tax invoice for 200 units needs to be issued upto 20/11/20XX.

4) **Legal Provision:-**

- As per the **definition of Continuous supply of service**, it means supply of 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
- As per **section 31(5)(c)** of CGST Act, if payment is linked to the completion of an event in case of continuous supply of services, the invoice shall be issued on or before the date of **completion of that event.**
- As per **section 31(5)(a)** of CGST Act, 2017, If due date of payment is ascertainable from the contract of continuous supply of services, invoice shall be issued **on or before such due date of payment.**

**Discussion & Conclusion:-**

- The given case is a case of continuous supply of services.
- Since the payment is linked to the completion of plinth, 1st floor and 2nd floor (i.e., milestones set in the contract), an invoice shall be raised **on or before the date of completion of the plinth, 1st floor and 2nd floor**, respectively.
- In the second case, Since the due date of payment is ascertainable from the contract, invoice shall be issued **on or before the due date of payment**

5)	<p><b>Yes, Mr Jai shall raise an invoice as under:-</b></p> <p><b>Legal Provision:-</b></p> <p>➤ As per <b>section 31(6)</b> of CGST Act, 2017, If supply of services ceases under a contract before the completion of supply:-</p> <ul style="list-style-type: none"> <li>➤ invoice shall be issued at the time when the supply ceases &amp;</li> <li>➤ such invoice shall be issued to the extent of supply made before such cessation.</li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <p>➤ In the given case, the contract to provide manpower was for 28 days but the service is stopped after 10 days only &amp; thus, the <b>invoice shall be issued on the 10th day.</b></p> <p>➤ Further, the Value of such invoice shall be <b>proportionate</b> to supply made in 10 days i.e. <b>₹10,000</b></p>	<p>subject to the <b>condition that:</b></p> <ul style="list-style-type: none"> <li>➤ the recipient is not a registered person; and</li> <li>➤ the recipient does not require such bill of supply,</li> </ul> <p><b>and he shall issue a consolidated bill of supply</b> for such supplies at the close of each day in respect of all such supplies.</p>
6)	<p><b>Legal Provision:-</b></p> <p>➤ As per <b>section 31(2)</b> of CGST Act, 2017, a registered person [other than an insurer/ banking company/ financial institution, including an NBFC] supplying taxable services shall issue a tax invoice <b>before or after the provision of service, but within a period of 30 days</b> from the date of supply of service.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>➤ In the given case, invoice has to be issued within 30 days from 5th June, 20XX (date of supply of service), i.e. on or <b>before, 5th July, 20XX.</b></p>	<p>8) <b>Legal Provision:-</b></p> <p>➤ As per <b>section 31(3)(d)</b> of CGST Act, 2017, <b>on receipt of advance payment</b> for any supply of goods and/or services, a registered person shall issue a receipt voucher or any other document evidencing receipt of such payment &amp; containing prescribed particulars.</p> <p>➤ As per <b>section 31(3)(e)</b> of CGST Act, 2017, if a registered person issues a Receipt Voucher for advance payment received for supply of goods &amp;/or services, but subsequently:-</p> <ul style="list-style-type: none"> <li>➤ <b>No supply</b> is made &amp;</li> <li>➤ <b>No tax invoice</b> is issued for the same,</li> </ul> <p>then he may issue a <b>Refund Voucher against such advance payment</b> to the person who had made the payment.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>➤ Mr. Jai is required to <b>issue a receipt voucher at the time of receipt of advance</b> payment with respect to services to be supplied to his client.</p> <p>➤ In the given case, subsequently no services are supplied by Mr. Jai, and no tax invoice is issued in pursuance thereof, Mr. Jai <b>may issue a refund voucher</b> against such payment to his client.</p>
7)	<p><b>Legal Provision:-</b></p> <p>➤ As per <b>section 31(3)(c)</b> of CGST Act, 2017, a registered person paying tax under section 10 (i.e. under composition levy) shall issue a bill of supply instead of a tax invoice, containing such particulars and in such manner as may be prescribed.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>➤ In the given case, Mr. Jai is paying tax under composition scheme. Therefore, he cannot issue tax invoice. Instead, he shall <b>issue a Bill of Supply.</b></p> <p>➤ <b>In the second case, Yes,</b> Mr. Jai (supplier) may not issue a bill of supply if the value of the goods or services or both supplied is less than ₹ 200</p>	<p>9) <b>Legal Provision:</b></p> <p>➤ The <b>Recipient is liable to pay tax</b> on reverse charge basis if he receives supply of such goods &amp;/or services which are notified under <b>section 9(3) &amp; 9(4)</b> of CGST Act, 2017</p> <p>➤ As per <b>section 31(3)(f)</b>, when a registered person receives supply of goods &amp;/or services which are liable to pay tax on reverse charge basis <b>from an unregistered person</b>, then Invoice is to be issued by recipient on the date of receipt of goods &amp;/or services.</p> <p>➤ As per <b>section 31(3)(g)</b>, a registered person who is liable to pay tax under section 9(3)/9(4) of CGST Act shall issue a payment voucher <b>at the time of making payment</b> to the supplier.</p>

	<p><b>Discussion &amp; conclusion:</b></p> <ul style="list-style-type: none"> <li>➤ Thus, a recipient who is liable to pay tax as per section 9(3) has to issue invoice only when supplies have been received from an unregistered supplier</li> <li>➤ Mr. Jai has availed services of GTA (unregistered person) on which he is liable to pay tax under reverse charge u/s 9(3).</li> <li>➤ He is <b>required to issue an invoice for GTA services availed by him &amp; issue a payment voucher</b> at time of making payment to GTA.</li> </ul>
10)	<ul style="list-style-type: none"> <li>➤ As per <b>Rule 46A</b> of CGST Rules, if a registered person is supplying taxable as well as exempted goods &amp;/or services to an unregistered person, a <b>single “invoice-cum-bill of supply”</b> may be issued for all such supplies.</li> <li>➤ Thus, there is <b>no need to issue a tax invoice and a bill of supply separately</b> to the school student for supply of taxable and exempted goods respectively.</li> </ul>
11)	<ul style="list-style-type: none"> <li>➤ As per <b>section 33</b> of CGST Act, if a <b>supply is made for a consideration</b>, then every person who is liable to <b>pay tax</b> for such supply shall prominently indicate the amount of tax which shall form part of the price at which such supply is made in all documents relating to assessment, tax invoice &amp; other like documents.</li> <li>➤ As per <b>rule 46</b> of CGST Rules, a tax invoice shall contain the details of amount of tax charged in respect of taxable goods or services (CGST, SGST, IGST, UTGST or Cess).</li> </ul>

### Question 21

Answer the following questions with respect to credit notes & debit notes: -

- 1) What are the circumstances under which "Credit Notes" and "Debit Notes" needs to be issued by a registered person?
- 2) What are the tax implications on issue of a Credit Note and Debit Note?
- 3) What is the time limit to declare the details of a Credit Note and Debit Note issued under GST?
- 4) Mention the requirements for claiming a reduction in output tax liability by issuing Credit Note.

- 5) Is it correct to state that, Debit Note can be issued only for increasing tax liability by supplier?
- 6) Kartik & Co., a registered supplier under GST, provides the following information regarding various tax invoices issued by it during the month of March:-
  - (i) Value of supply charged in invoice no. 1 was ₹ 2,50,000 against the actual taxable value of ₹ 2,30,000.
  - (ii) Tax charged in invoice no. 4 was ₹ 32,000 against the actual tax liability of ₹ 68,000 due to wrong HSN code being chosen while issuing invoice.
  - (iii) Value charged in invoice no. 8 was ₹ 3,20,000 as against the actual value of ₹ 4,20,000 due to wrong quantity considered while billing.

Kartik & Co. asks you to answer the following:-

  - a) Who shall issue a debit/ credit note under CGST Act?
  - b) Whether debit note or credit note has to be issued in each of the above circumstances?
  - c) What is the maximum time-limit available for declaring the credit note in the GST Return?

Answer:

- 1)
  - As per **section 34(1)** of CGST Act, the circumstances under which **credit note** needs to be issued by a registered person are:-
    - a) The **taxable value declared** in the invoice **is more** than the actual value of the supply,
    - b) The **tax charged** in the invoice **is more** than the actual tax payable for the supply,
    - c) The goods supplied are **returned** by the recipient,
    - d) The recipient found that the goods or services or both supplied are deficient i.e. the **quantity received** by the recipient is **less** than what has been declared in the tax invoice and the customer chooses to retain the same.
  - However, reduction in output tax liability of supplier shall **not be permitted**, if the incidence of tax and interest on such supply has been passed on to any other person.
  - Further As per **section 34(3)** of CGST Act, 2017, the circumstances under which debit note needs to be issued by a taxable person are:-



	<p>a) The <b>taxable value declared</b> in the invoice is less than the actual value of the supply</p> <p>b) The <b>tax charged</b> in the invoice is <b>less</b> than the actual tax payable in respect of the supply</p> <p>c) The <b>quantity received</b> by the recipient <b>is more</b> than what has been declared in the tax invoice and the customer chooses to retain the same</p>
2)	As per <b>section 34</b> of CGST Act, 2017, on issue of a Credit Note under GST, there is a <b>reduction in output tax liability</b> (subject to doctrine of unjust enrichment) whereas, on issue of a Debit Note under GST, there is an <b>increase in the output tax liability</b> of the registered person issuing the same.
3)	<p>➤ Details of credit note issued by a registered supplier shall be declared:- In the return for the month during which such credit note is issued but <b>Till the earlier of:-</b></p> <ul style="list-style-type: none"> <li>➤ 30th November following the end of F.Y. in which such supply was made, or</li> <li>➤ Date of furnishing of the relevant annual return.</li> </ul> <p>➤ However, debit note issued by a registered person in relation to a supply of goods &amp;/or services shall be declared <b>in the return for the month during which it is issued.</b></p>
4)	<p>The below requirements must be met for claiming a reduction in output tax liability by issuing Credit Note under <b>section 34</b> of CGST Act, 2017:-</p> <p>a) It can be proven that the <b>incidence of tax and interest</b> have not been passed on to any person.</p> <p>b) The details of the credit note are <b>declared within the prescribed timelines.</b></p> <p>c) The recipient of the supply should <b>accept credit note in his return of inward supply</b> and reduce his claim of input tax credit to the extent of reduction in tax liability.</p>
5)	<p><b>Yes</b>, Debit Note can be issued only for increasing tax liability by the supplier.</p> <p>➤ Debit note are akin to '<b>supplementary invoice</b>'.</p> <p>➤ They are issued by the supplier for recording <b>increase in taxable value or tax charged</b> in the supply under section 34 of CGST Act, 2017.</p>

6)	<p><b>Yes</b>, Debit Note can be issued only for increasing tax liability by the supplier.</p> <p>➤ Debit note are akin to '<b>supplementary invoice</b>'.</p> <p>➤ They are issued by the supplier for recording <b>increase in taxable value or tax charged</b> in the supply under section 34 of CGST Act, 2017.</p>
i)	The debit/credit note shall be issued by the registered person who has supplied the goods and/or services, i.e. Kartik & Co.
ii)	<p><b>Yes</b>, debit/credit note need to be issued in each of the circumstances as under:-</p> <p>a) A <b>credit note</b> is required to be issued as the taxable value in invoice no. 1 exceeds the actual taxable value.</p> <p>b) A <b>debit note</b> is required to be issued as the tax charged in the invoice no. 4 is less than the actual tax payable.</p> <p>c) A <b>debit note</b> is required to be issued as the value of supply charged in the invoice no. 8 is less than the actual value</p>
iii)	<p>The details of the credit note <b>cannot be declared later than:-</b></p> <ul style="list-style-type: none"> <li>➤ 30th November following the end of the financial year in which such supply was made or</li> <li>➤ the date of furnishing of the relevant annual return, whichever is earlier.</li> </ul>



## Question 22

Sindhi Toys Manufacturers, registered in Punjab, sold electronic toys to retail seller in Gujarat, at a value of ₹ 48,000 (excluding GST leviable @ 18%). Now, it wants to send the consignment of such toys to the retail seller in Gujarat. You are required to advise Sindhi Toys Manufacturers on the following issues:-

1. When is an e way bill required to be generated under GST?
2. In given case, whether e-way bill is mandatorily required to be generated in respect of such movement of goods?

Whether e-way bill is required to be generated even if the goods are to be moved to another State for replacement under warranty where the consignment value is more than ₹ 50000?

If the toys in the given case are sold for ₹ 40000 (excluding GST leviable @ 18%) and there is also a supply of exempted goods of ₹ 25000, whether e-way bill is required to be issued?

3. Who is required to generate the e-way bill in the given case?
4. Assume that the sales order in the given case is of ₹ 1,20,000 (inclusive of GST leviable @ 18%). While checking the stock, it is found that order worth ₹ 55,000 can be fulfilled from the company's Ludhiana (Punjab) store and remaining goods worth ₹ 65,000 can be sent from its Amritsar (Punjab) store. Both the stores are instructed to issue separate invoices for the goods sent to retail seller in Gujarat. The goods are transported in a single conveyance owned by Radhey Transporters. You are required to advise Sindhi Toys Manufacturers with regard to issuance of e-way bill(s).
5. In the given case, assume that the transporter moves the goods Punjab to Mumbai which actually had to be moved to Gujarat. For completing the movement of goods from Mumbai to Gujarat, transporter now hands over the goods to another transporter. Explain the procedure regarding e-way bill to be followed by consignor & transporter as per provisions of GST law & rules made thereunder.

6. What is the time limit to accept/ reject the e-way bill for supplier or recipient, as the case may be?
7. Whether e-way bill is required to be generated if the goods in given case are transported by a non-motorised conveyance?
8. In the given case, assume that Sindhi Toys Manufacturers hands over the goods for transportation on Friday to the transporter. However, assigned transporter starts the movement of goods from consignor's warehouse to its depot located at distance of 650 Km on Monday. Answer the following questions:-
  - a) When will the e-way bill be generated?
  - b) E-way bill will be valid for how many days?
  - c) When does the validity period of e-way bill ends?
9. What will be the consequences for non-issuance of e-way bill?
10. If there is a mistake, incorrect or wrong entry in e-way bill, can e-way bill be corrected or edited?

Answer:-

- 1) ⇒ **Consignment value exceeding Rs 50000:-** As per Rule 138(1), if **registered person causes movement** of goods of **consignment value exceeding Rs 50000:-**
  - in relation to a supply or
  - for reasons other than supply or
  - due to inward supply from an unregistered person,
 e-way bill needs to be generated prior to the commencement of movement of goods.
- ⇒ **Mandatory generation of e-way bill even if consignment value is not exceeding ₹ 50,000 in following cases:-**
  - a) **Interstate Job Work:-** If goods are sent by a principal located in one State/ Union Territory to a job worker located in any other State/

<p>Union Territory, e-way bill shall be generated either by the principal or job worker (if registered), irrespective of the consignment value.</p> <p>b) <b>Interstate transportation of handicraft goods:-</b> If specified handicraft goods are transported from one State/ Union Territory to another State/ Union Territory by a person who is exempted from obtaining registration u/s 24 of CGST Act, 2017, e-way bill shall be generated by the said person irrespective of the consignment value.</p> <p>⇒ <b>Voluntary generation of e-way bill:-</b> A registered person or the transporter may voluntarily generate an e-way bill even if consignment value is <math>\leq</math> Rs. 50,000.</p>	<p>consignment value exceeds ₹ 50,000, <b>e-way bill is mandatorily required to be issued</b> in the given case.</p> <p>b) In second case, the goods to be moved to another State for replacement under warranty is not a 'supply'. Since the consignment value exceeds ₹ 50,000, e-way bill <b>is required</b> to be <b>mandatorily</b> generated.</p> <p>c) In the third case, the consignment value is ₹ <b>47200</b> (i.e., ₹ 40,000 + ₹ 7200). Here, ₹25,000 will not be included as it is an exempt supply. Thus, e-way bill is <b>not required to be issued</b> as consignment value is not exceeding ₹50000.</p>
<p>2) <b>Legal Provision:-</b></p> <p>⇒ As per <b>Rule 138(1)</b> of CGST Rules, if <b>registered person causes movement</b> of goods of <b>consignment value exceeding Rs 50000:-</b></p> <ul style="list-style-type: none"> <li>➤ in relation to a supply or</li> <li>➤ for reasons other than supply or</li> <li>➤ due to inward supply from an unregistered person,</li> </ul> <p>e-way bill needs to be generated <b>prior</b> to the commencement of movement of goods.</p> <p>⇒ As per <b>CBIC Clarification</b>, 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.</p> <p>⇒ As per <b>explanation 2 to rule 138(1)</b>, the consignment value of goods shall be:-</p> <ul style="list-style-type: none"> <li>➤ value as per section 15 as declared in an invoice, bill of supply or delivery challan,</li> <li>➤ <b>including</b> CGST, SGST, UTGST, IGST and cess charged, if any, in the document but</li> <li>➤ it <b>excludes</b> the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.</li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <p>a) Accordingly, in the first case, the consignment value will be as follows:-</p> <p><math>\text{₹}48,000 \times 118\% = \text{₹}56,640.</math></p> <p>Since the movement of goods is in relation to supply of goods and the</p>	<p>3) ⇒ <b>An e-way bill contains 2 parts namely:-</b></p> <ul style="list-style-type: none"> <li>➤ <b>Part A</b> to be furnished by registered person who is causing movement of goods of consignment value exceeding ₹50,000/- and</li> <li>➤ <b>Part B</b> (transport details) is to be furnished by person who is transporting the goods.</li> </ul> <p>⇒ <b>Goods transported by registered person by Road:-</b></p> <p>E-way bill shall be generated by furnishing information in Part B- by the <b>registered person as a consignor or the recipient as the consignee</b>, whosoever transports goods by road:-</p> <ul style="list-style-type: none"> <li>➤ whether in his own conveyance or</li> <li>➤ a hired one or</li> <li>➤ a public conveyance.</li> </ul> <p>⇒ <b>Goods transported by Railways or Air or Vessel:-</b></p> <p>E-way bill shall be generated by the <b>registered person</b>, being the supplier or the recipient, who shall, either before or after the commencement of movement, furnish, on common portal, the information in Part B.</p> <p>⇒ <b>Goods not transported by registered person but handed over to transporter:-</b></p> <p>If e-way bill is not generated by registered person &amp; goods are handed over to transporter for transportation of goods by road,</p> <ul style="list-style-type: none"> <li>➤ the <b>registered person</b> shall furnish information relating to the transporter in Part B on the common portal and transporter shall</li> </ul>

	<p>generate e-way bill on the basis of information furnished by registered person in Part A.</p> <p>➤ <b>If E-way Bill is not generated i.e. consignment value not exceeding Rs 50000:-</b></p> <p>In case of transport of goods by road, if consignor/consignee has not generated e-way bill &amp; the aggregate of consignment value of goods carried in the conveyance is &gt; ₹ 50,000, then <b>prior</b> to the movement of goods:-</p> <ul style="list-style-type: none"> <li>➤ Transporter <b>shall generate e-way bill</b> on basis of invoice or bill of supply or delivery challan only in respect of inter-State supply &amp;</li> <li>➤ He <b>may also generate a consolidated</b> e-way bill.</li> </ul>
4)	<p><b>Legal Provision:-</b></p> <ul style="list-style-type: none"> <li>➤ As per <b>rule 138</b> of CGST Rules, e-way Bill is required to be generated mandatorily, if the goods are moved in relation to a supply and the consignment value [including CGST, SGST/UTGST, IGST and cess charged] <b>exceeds ₹ 50,000.</b></li> <li>➤ As per CBIC Clarification, if multiple invoices are issued by the supplier to one recipient, <b>multiple e-way bills have to be generated—one e-way bill for each invoice</b>, irrespective of the fact whether the same or different consignors or consignees are involved.</li> <li>➤ Each invoice is considered as <b>separate consignment</b> for the purpose of generating e-way bills.</li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>➤ In given case, Sindhi Toys Manufacturers would be required to prepare <b>two separate</b> 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.</li> <li>➤ Multiple invoices cannot be clubbed to generate one e-way bill. However, after generating all these e-way bills, <b>one consolidated e-way bill can be prepared</b> for transportation purpose, if goods are going in one vehicle.</li> </ul>

5)	<p><b>Legal Provision:-</b></p> <ul style="list-style-type: none"> <li>➤ <b>Before such transfer and further movement of goods</b>, the following persons shall update the details of conveyance in Part-B of E-way Bill:- <ul style="list-style-type: none"> <li>➤ the consignor or the recipient, who has provided information in Part A, or</li> <li>➤ the transporter.</li> </ul> </li> <li>➤ Further, the consignor or the recipient, who has furnished the information in Part A, or the transporter, <b>may assign</b> the e-way bill number to another registered or enrolled transporter for updating the information in Part B for further movement of the consignment.</li> <li>➤ But, Once the transporter updates details of conveyance in Part B, then consignor/recipient shall not be allowed to assign the e way bill number to another transporter.</li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>➤ In given case, only one e-way bill is required to be issued.</li> <li>➤ Part A of e-way bill can be filled by either Sindhi Toys Manufacturers or recipient of goods or first Transporter on the appropriate authorisation.</li> <li>➤ Thus, on reaching Mumbai, Sindhi Toys Manufacturers or the recipient of the goods who has filled Part A of e-way bill, or first transporter can, before the transfer and further movement of goods, <b>update the details of conveyance in Part B of e-way bill.</b></li> <li>➤ Further, on reaching Mumbai, Sindhi Toys Manufacturers or recipient of goods, or first transporter <b>can assign the said e-way bill</b> to second transporter who will thereafter update details of conveyance in Part B.</li> <li>➤ Once the details of conveyance are updated by second transporter in Part B, Sindhi Toys Manufacturers or recipient shall not be allowed to assign e-way bill number to another transporter.</li> </ul>
6)	<ul style="list-style-type: none"> <li>➤ As per <b>Rule 138(12)</b> of CGST Rules, the information furnished in Part A of e-way bill by the recipient/ transporter or by the supplier/ transporter, as the case may be, shall be accepted or rejected by the supplier/recipient within the <b>Earlier</b> of:- <ul style="list-style-type: none"> <li>➤ <b>72 hours</b> of details being made available to him on common portal or</li> <li>➤ <b>Time of delivery</b> of goods.</li> </ul> </li> </ul>

	<p>⇒ If such supplier/ recipient does not communicate his acceptance or rejection within this time, then it shall be deemed to be accepted.</p>
7)	<p>⇒ <b>No</b>, As per <b>Rule 138(14)</b> of CGST Rules, e-way bill is <b>not required to be generated</b>, if goods are being transported by a non-motorised conveyance.</p>
8)	<p>a) E-way bill <b>will be generated before commencement of movement</b> of goods by transporter on Monday.</p> <p>b) As per <b>Rule 138(10)</b> of CGST Rules, the validity period of e-way bill is one day from relevant date upto 200 km and one additional day for every 200 km or part thereof thereafter.</p> <p>Thus, the validity period in the given case, is <b>4 days</b>.</p> <p>It is assumed that goods transported are not over dimensional cargo.</p> <p>c) The period of validity shall be counted from the time at which the e-way bill has been generated and each day shall be counted as the period <b>expiring at midnight of the day immediately following</b> the date of generation of e-way bill.</p> <p>Thus, in given case, the e-way bill will be valid till <b>mid-night of Friday</b>.</p>
9)	<p>⇒ It is mandatory to generate e-way bill in all cases where the consignment value of goods being transported <b>exceeds ₹ 50,000/-</b> and it is not otherwise exempted under rule 138(14).</p> <p>⇒ If e-way bills required are not issued as per rule 138, the same will be considered as <b>contravention</b> of rules.</p> <p>⇒ As per <b>section 122(1)</b> of CGST Act, a taxable person who transports any taxable goods without e-way bill shall be liable to a <b>penalty of ₹ 10,000/- or tax evaded, whichever is higher</b>.</p> <p>⇒ Moreover, as per <b>section 129(1)</b>, if any person transports any goods or stores any goods while they are in transit in contravention of GST Act or Rules made thereunder, <b>all such goods and conveyance</b> used as a means of transport for carrying the said goods <b>and documents</b> relating to such goods and conveyance <b>shall be liable to detention or seizure</b>.</p>
10)	<p>⇒ <b>No</b>, the e-way bill once generated <b>cannot</b> be edited or corrected.</p> <p>⇒ Only option is <b>cancellation</b> of e-way bill within 24 hours of generation and <b>generate a new one</b> with correct details.</p> <p>⇒ But e-way bill cannot be cancelled if it has been verified in transit as per Rule 138B.</p>

## Question 23

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.

It has approached you regarding the following:-

1. Advise GoToDress about accounts & other records to be maintained u/s 35(1) of CGST Act, 2017.
2. It opted for composition scheme in current financial year. Discuss the records which are not to be maintained by a supplier opting for composition levy as enumerated in rule 56 of GST Rules, 2017.
3. GoToDress engages Raghav & Sons as an agent to sell goods on its behalf wherein the invoice for supply or procurement on behalf of GoToDress is issued by Raghav & Sons in its own name. For the purpose, GoToDress 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).
4. GoToDress is planning to start a manufacturing unit to manufacture garments on its own in next financial year. Consequently, is there any specific set of records to be maintained by it? Mention.
5. GoToDress is also providing customer support service to address their customers' grievances. Is there any specific set of details to be maintained by a supplier of service? Mention.
6. For the construction of one of its showroom, GoToDress availed the services of a works contractor - ABC Ltd. (registered under GST). Is there any specific set of records to be maintained by provider of works contract service? If yes, mention them.
7. The transporter of GoToDress is not registered under GST. Whether such unregistered transporter is required to maintain any records under CGST Act, 2017? Also explain, if any other unregistered persons are required to

maintain records under GST.

8. GoToDress wants to know whether the entries can be erased in the registers? What shall be the treatment of the same?
9. Ascertain the period for which the books of accounts or other records need to be maintained?

Answer:-

- |    |   |
|----|---|
| 1) | <p>➤ GoToDress, a registered person, shall keep &amp; maintain a <b>true and correct account</b> of following at his principal place of business as mentioned in certificate of registration <b>under section 35(1)</b> of CGST Act, 2017:-</p> <ul style="list-style-type: none"> <li>➤ production or manufacture of goods,</li> <li>➤ inward and outward supply of goods or services or both,</li> <li>➤ stock of goods,</li> <li>➤ input tax credit availed,</li> <li>➤ output tax payable &amp; paid,</li> <li>➤ other prescribed particulars.</li> </ul> <p>➤ The accounts &amp; other particulars may be maintained in <b>electronic form</b> stored on any electronic device &amp; shall be authenticated with a <b>digital signature under rule 56</b>.</p> <p>➤ If <b>more than one</b> place of business is specified in the certificate of registration, the accounts relating to each place of business <b>should be kept at such places</b> of business.</p> |
| 2) | <p>As per <b>rule 56(2) &amp; (4)</b> of CGST Rules, following records are <b>not required</b> to be maintained by supplier who has opted for composition scheme but are required to be maintained by a normal tax payer:-</p> <p><b>i) Stock of goods:-</b></p> <ul style="list-style-type: none"> <li>➤ Accounts of stock in respect of goods received and supplied by him.</li> <li>➤ Such accounts shall contain particulars of the opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way</li> </ul>   |



	<p>of gift or free sample and the balance of stock including raw materials, finished goods, scrap and wastage thereof.</p> <p><b>ii) Details of tax:-</b></p> <p>➤ 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.</p>
3)	<p>As per <b>rule 56(11) of CGST Rules</b>, every agent shall maintain accounts depicting the following:-</p> <p>a) Particulars of authorisation received by him from each principal to receive or supply goods or services on behalf of such principal separately,</p> <p>b) Particulars including description, value and quantity (wherever applicable) of goods or services received on behalf of every principal,</p> <p>c) Particulars including description, value and quantity (wherever applicable) of goods or services supplied on behalf of every principal,</p> <p>d) Details of accounts furnished to every principal and</p> <p>e) Tax paid on receipts or on supply of goods or services effected on behalf of every principal.</p>
4)	<p><b>Yes</b>, as per <b>rule 56(12)</b> of CGST Rules, apart from other records, every registered person <b>manufacturing goods</b> shall maintain <b>monthly production accounts</b> showing quantitative details of:-</p> <p>a) Raw materials or services used in the manufacture, and</p> <p>b) Goods manufactured including the waste and by products thereof.</p>
5)	<p><b>Yes</b>, as per <b>rule 56(13)</b> of CGST Rules, every registered person <b>supplying services</b> shall additionally maintain the accounts showing quantitative details of:-</p> <p>a) Goods used in the provision of services,</p> <p>b) Details of input services utilised and</p> <p>c) Services supplied.</p>

6)	<p><b>Yes</b>, as per <b>rule 56(14)</b> of CGST Rules, ABC Ltd., being a registered person executing works contract, shall keep separate accounts for works contract showing:-</p> <p>a) the names and addresses of the persons on whose behalf the works contract is executed,</p> <p>b) description, value and quantity (wherever applicable) of goods or services received for the execution of works contract,</p> <p>c) description, value and quantity (wherever applicable) of goods or services utilized in the execution of works contract,</p> <p>d) the details of payment received in respect of each works contract and</p> <p>e) the names and addresses of suppliers from whom he received goods or services.</p>
7)	<p>➤ <b>Yes</b>. As per <b>section 35(2)</b> of CGST Act read with <b>rule 58</b> of CGST Rules, unregistered transporters shall:-</p> <p>➤ obtain a <b>unique enrolment number</b> on GST common portal and</p> <p>➤ <b>maintain records</b> 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.</p> <p>➤ <b>Every owner/ operator of warehouse/ godown/ any other place</b> used for storage of goods is also required to maintain records under GST even if it is unregistered.</p>
8)	<p>➤ <b>No</b>, as per <b>rule 56(8)</b> of CGST Rules, any entry in the register, accounts and documents shall <b>not be erased</b>, effaced or overwritten.</p> <p>➤ All incorrect entries (other than those of clerical nature) <b>shall be scored out</b> under attestation and then the correct entry shall be recorded.</p> <p>➤ If registers &amp; other documents are maintained electronically, a log of every entry edited or deleted shall be maintained.</p>
9)	<p>➤ As per <b>section 36</b> of CGST Act, every registered person who is required to keep and maintain books of account or other records as per section 35(1) shall retain them for <b>72 months from the due date</b> of furnishing of annual return for the year pertaining to such accounts and records.</p> <p>➤ But if registered person is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or</p>

Appellate Tribunal or court which is filed by him or by Commissioner, or is under investigation for an offence under Chapter XIX, then he **shall retain** the books of account and other records **pertaining to the subject matter** of such appeal or revision or proceedings or investigation:-

- for **1 year** after final disposal of such appeal/ revision/ proceedings/ investigation, **or**
- **for the period specified above, whichever is later.**

## Question 24

Mr. X is a registered person under GST with the following turnover from various branches across India:-

Branch Location	Turnover of Branch in preceding financial year (₹)
Haryana	1.2 Crores
Lucknow	75 lakhs
Maharashtra	2.9 Cr

On the basis of above information, Answer the following questions:

- 1) Advise Mr. X regarding filing of monthly statement of outward supplies i.e. GSTR 1
- 2) If Mr. X wants to opt for the QRMP scheme in current financial year only for Maharashtra branch, can he do so?
- 3) What is the due date of payment of tax in the first quarter of the current financial year, if Mr. A opts for the QRMP scheme?
- 4) Mr. X took various inward supplies from different suppliers which are as follows

Sr. No.	Name of supplier	ITC (₹)	Remark
1	PQR Ltd.	18,000	Goods purchased (ITC available)
2	ABC Ltd.	22,000	A registered person who has taken registration just 1 month before. (Suppose term prescribed in the rule is 1 month)
3	DEF & Co.	2,000	Person making default in payment of taxes
4	Bluffer Traders	10,000	Availed ITC more than the ITC which can be availed

Calculate the amount of Input Tax Credit (ITC) that is available to Mr. X u/s 38.

- 5) Mr. X has filed GSTR 1 for the quarter ended in September 20XX before the due date. Later in the month of February next year, he discovers error in the GSTR 1 of August month and want to revise it. Advise him on the future course of action.
- 6) What are the cases where a registered person is debarred from furnishing details of outward supplies in GSTR-1/IFF?
- 7) Mr. X has filed GSTR 3B before the due date u/s 39 but some changes are to be made so he wants to revise the return. Advise Mr. X regarding rectification of error.
- 8) Mr. X has purchased goods from Mr. Umesh (a registered person from Mumbai). Mr. Umesh has not paid the amount of GST to the government. Mr. X took the ITC while filing the return. Is Mr. X required to reverse the ITC?  
 Mr. Umesh paid the GST amount to the government after 3 years. Can Mr. X take the ITC now?
- 9) Is Mr. X is required to file an annual return also. If yes, what is the due date for the same. Also mention the Exceptions for Furnishing an annual return.
- 10) Mr. X has applied for cancellation of GST registration in the month of March. The consultant of Mr. X has suggested to furnish the final return in the month of September. He has advised Mr. X 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 Mr. X. Whether the advice given by the consultant of Mr. X is correct? Examine

- 11) Mr. X failed to file the return for the quarter ended in December 20XX. Explain the legal recourse available to the tax officer, if any.
- 12) State the Late fee u/s 39 if return for the quarter ended in December 20XX is filed on 15th Jan?
- 13) Is it compulsory for Mr. X to file return by himself, If no, then who is required to furnish returns for Mr. X during a tax period.

Answer:-

1)	<p><b>Legal Provision:</b></p> <p>⇒ As per <b>section 37</b> of CGST Act, GSTR-1 for a particular month is filed on or <b>before the 11th day</b> of immediately succeeding month i.e. on monthly basis.</p> <p>⇒ However, to ease the compliance requirement, GSTR-1 can be filed quarterly by a registered person with <b>aggregate turnover upto Rs 5 crore in preceding financial year</b> under the QRMP Scheme.</p> <p>⇒ Under QRMP Scheme, for the first and second months of a quarter, the details of outward supplies can be furnished up to a cumulative value of Rs 50 Lakhs in each of the months using invoice furnishing facility (IFF) electronically on common portal from the 1st day of the month succeeding such month till the <b>13th day of the said month</b>.</p> <p><b>Discussion &amp; Conclusion:</b></p> <p>⇒ In view of the same, Mr. X <b>can file its GSTR-1 on quarterly basis</b> if it has opted to furnish the outward supply related details on quarterly basis and filing IFF on monthly basis as his aggregate turnover does not exceed ₹ 5 crore in the preceding financial year.</p>
2)	<p><b>Legal Provision:-</b></p> <p>⇒ Opting of QRMP scheme is <b>GSTIN wise</b> &amp; thus, implies that some GSTINs for a PAN can opt for the QRMP scheme and remaining GSTINs may not opt for the said scheme.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>⇒ In given case, Mr. X <b>can opt for the QRMP scheme</b> only for Maharashtra Branch as the option to avail QRMP scheme is GSTIN wise and therefore <b>distinct person as defined u/s 25</b> of CGST Act have option to avail QRMP for one or more GSTIN.</p>

3)	<p>⇒ Tax is to be paid under the QRMP scheme using challan <b>PMT-06</b> as follows:-</p> <ul style="list-style-type: none"> <li>➤ For the <b>first two</b> months - by 25th of succeeding month and</li> <li>➤ For the <b>last</b> month - along with return for the Quarter i.e. on or before <b>22nd or 24th</b> of the month succeeding such Quarter.</li> </ul> <p>⇒ Tax can be paid using <b>any</b> of the methods i.e. Fixed Sum Method or Self-Assessment method.</p>																														
4)	<p><b>Legal Provision:-</b></p> <p>As per section 38 of CGST Act, the <b>ITC is not available to the following persons</b> on account of details of the supplies furnished under section 37(1) by the supplier:-</p> <ul style="list-style-type: none"> <li>⇒ Person who has taken new registration (upto the prescribed time period).</li> <li>⇒ Registered person who has defaulted in payment of tax and such default has continued for prescribed time period.</li> <li>⇒ Registered person who availed ITC in excess of the credit that can be availed by him as per GSTR-2B during prescribed period, by prescribed limit.</li> </ul> <p><b>Discussion &amp; Conclusion:</b></p> <p>The ITC available to Mr. X is calculated as under:-</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>S.No.</th> <th>Name of supplier</th> <th>ITC (₹)</th> <th>Available Yes/No</th> <th>Available Amount</th> </tr> </thead> <tbody> <tr> <td>1)</td> <td>PQR Ltd.</td> <td>18,000</td> <td>Yes</td> <td>18,000</td> </tr> <tr> <td>2)</td> <td>ABCLtd.</td> <td>22,000</td> <td>No</td> <td>-</td> </tr> <tr> <td>3)</td> <td>DEF &amp; Co.</td> <td>2,000</td> <td>No</td> <td>-</td> </tr> <tr> <td>4)</td> <td>Bluffer Traders</td> <td>10,000</td> <td>No</td> <td>-</td> </tr> <tr> <td colspan="4"><b>Total ITC</b></td> <td><b>18,000</b></td> </tr> </tbody> </table>	S.No.	Name of supplier	ITC (₹)	Available Yes/No	Available Amount	1)	PQR Ltd.	18,000	Yes	18,000	2)	ABCLtd.	22,000	No	-	3)	DEF & Co.	2,000	No	-	4)	Bluffer Traders	10,000	No	-	<b>Total ITC</b>				<b>18,000</b>
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5)	<p>⇒ The mechanism of filing revised return for any correction of errors/omission is <b>not available</b> under GST but the rectification of errors/omission is <b>allowed</b> in the subsequent returns.</p> <p>⇒ The error can be rectified by furnishing appropriate particulars in the <b>“Amendment Tables”</b> contained in GSTR-1.</p> <p>⇒ Thus, Mr. X who discovered an error in GSTR-1 for quarter ended in</p>																														

	<p>September 20XX <b>cannot revise it.</b></p> <p>⇒ However, he should <b>rectify said error in the GSTR-1 filed for the month of February</b> and should pay the tax and interest, if any, in case of short payment, in the return to be furnished for February.</p> <p>⇒ However, as per <b>section 37(3)</b> of CGST Act, the rectification of details furnished in GSTR-1 <b>shall not be allowed after:</b></p> <p>a) 30th November following the end of the financial year to which such details pertain or</p> <p>b) furnishing of the relevant annual return, whichever is <b>earlier.</b></p>						
6)	<p>The following are the cases where a registered person is <b>debarred</b> from furnishing details of outward supplies in GSTR-1/IFF:-</p> <table border="1"> <tr> <td>1)</td> <td><b>Registered person (other than QRMP Scheme):-</b></td> <td>He shall not be allowed to furnish the details of outward supplies in Form GSTR-1, if he <b>has not furnished the return</b> in Form GSTR-3B for <b>preceding one month.</b></td> </tr> <tr> <td>2)</td> <td><b>Registered person (opting for QRMP Scheme):-</b></td> <td>He shall not be allowed to furnish the details of outward supplies in Form GSTR-1 or using IFF, if he <b>has not furnished the return</b> in Form GSTR-3B for <b>preceding tax period.</b></td> </tr> </table>	1)	<b>Registered person (other than QRMP Scheme):-</b>	He shall not be allowed to furnish the details of outward supplies in Form GSTR-1, if he <b>has not furnished the return</b> in Form GSTR-3B for <b>preceding one month.</b>	2)	<b>Registered person (opting for QRMP Scheme):-</b>	He shall not be allowed to furnish the details of outward supplies in Form GSTR-1 or using IFF, if he <b>has not furnished the return</b> in Form GSTR-3B for <b>preceding tax period.</b>
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7)	<p>⇒ As per <b>section 39(9)</b> of CGST Act, any omission or incorrect particulars discovered in the returns filed u/s 39 can be rectified in the return to be filed for the month or quarter during which such omission or incorrect particulars are noticed.</p> <p>⇒ <b>But the maximum time limit for making rectification is earlier of:-</b></p> <p>➤ 30th November following the end of the financial year to which such details pertain or</p> <p>➤ Actual date of furnishing of relevant annual return.</p> <p>⇒ Any tax payable as a result of such error or omission will be paid <b>along with interest.</b></p> <p><b>Exception:</b> Error/omission discovered on account of scrutiny, audit, inspection, or enforcement activities by tax authorities cannot be rectified u/s 39(9) of CGST Act.</p>						

8)	<p><b>Legal Provision:-</b></p> <p>⇒ As per <b>section 41</b> of CGST Act, if Input Tax Credit (ITC) is availed by a registered person, as self-assessed in his return on inward supplies of goods or services or both, but the tax payable whereon has <b>not been paid</b> by supplier, then the recipient shall reverse such ITC availed by him along with the applicable interest in prescribed manner.</p> <p>⇒ However, if supplier pays such tax later, the recipient <b>may re-avail the ITC reversed</b> by him in prescribed manner without any time limit.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>⇒ In given case, the <b>ITC claimed by Mr. X is required to be reversed along with interest.</b></p> <p>⇒ However, when Mr. Umesh makes the payment of GST to the government, Mr. X will be <b>allowed to re-claim</b> the credit of such amount in her GSTR 3B.</p> <p>⇒ In case, where Mr. Umesh pays the amount of GST after 3 years, Mr. X <b>would be eligible to re-claim it as there is no time limit</b> to re-claim the ITC.</p>
9)	<p>⇒ As per <b>sec 44 of CGST Act 2017, Every registered person</b> is required to file an annual return electronically in prescribed form.</p> <p>⇒ <b>However, the following persons are not required to file annual return:-</b></p> <p>➤ Casual Taxable Person,</p> <p>➤ Non-resident taxable person,</p> <p>➤ Input Service Distributors and</p> <p>➤ Persons paying tax under section 51 or 52.</p> <p>⇒ <b>Section 44 is not applicable</b> to any department of Central Government/ State Government/ local authority, whose books of account are subject to audit by the Comptroller &amp; Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for time being in force.</p> <p>⇒ On the recommendations of Council, Commissioner may exempt any class of registered persons from filing annual return by a notification.</p>



	<p><b>Due date to furnish Annual return:-</b></p> <p>➔ Annual return for a financial year shall be filed by <b>31st December of Next financial year.</b></p> <p>➔ Due date <b>may be extended</b> by Commissioner.</p>
10)	<p><b>No</b>, the advice of the consultant is <b>not correct.</b></p> <p><b>Legal Provision:-</b></p> <p>➔ As per <b>section 45</b> of CGST Act read with <b>rule 81</b> of CGST Rules, every registered person who is required to furnish GSTR-3B and whose registration has been surrendered or cancelled is required to file a final return.</p> <p>➔ The final return has to be filed <b>within 3 months</b> of the <b>later</b> of:-</p> <ul style="list-style-type: none"> <li>➤ date of cancellation or</li> <li>➤ date of order of cancellation.</li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <p>➔ In the given case, the <b>registration</b> of the Mr. X has <b>not been cancelled.</b></p> <p>➔ Therefore, the requirement of filing final return will arise only when the registration of company gets cancelled.</p>
11)	<p>➔ As per <b>section 46</b> of CGST Act, the proper officer has to first issue a notice to Mr. X in prescribed form, electronically, requiring her to furnish the return <b>within 15 days.</b></p> <p>➔ If Mr. X fails to file return within the given time, the proper officer shall proceed to assess the tax liability along with applicable interest and penalty payable by the defaulter to the best of his judgement taking into account all the relevant material available with him.</p>
12)	<p>➔ As per <b>section 47(1)</b> of CGST Act, if there is a <b>delay in furnishing</b> of Returns (including returns under QRMP Scheme) under section 39 by registered person by the due dates, then he is <b>liable to pay late fee</b> which is <b>LOWER</b> of:-</p> <ul style="list-style-type: none"> <li>➤ ₹200 (100 + 100) for every day during which such failure continues or</li> <li>➤ ₹10,000 (5,000 + 5,000).</li> </ul> <p>➔ However, as per the CBIC notification, the total late fees payable under section 47 by the registered person who fails furnish Form GSTR-3B by the due date shall be as follows:-</p>

	<p>1) <b>For the registered persons who have nil outward supplies in the tax period or whose total tax payable in the GSTR-3B is Nil:-</b></p> <ul style="list-style-type: none"> <li>➤ late fee = ₹200 (100 + 100) per day of default but maximum is ₹ 500 (250 + 250).</li> </ul> <p>2) <b>For the registered persons other than those covered in (1) above (i.e. there is outward supply in GSTR-1 or there is tax payable as per GSTR-3B):-</b></p> <ul style="list-style-type: none"> <li>i) if the aggregate turnover is not exceeding ₹1.5 crores in the preceding financial year:- <ul style="list-style-type: none"> <li>➤ late fee = Rs. 200(100 + 100) per day of default but maximum is ₹ 2,000 (1000 + 1000).</li> </ul> </li> <li>ii) if the aggregate turnover is exceeding ₹1.5 crores but not exceeding ₹ 5 Crores in the preceding financial year:- <ul style="list-style-type: none"> <li>➤ late fee = Rs. 200 (100 + 100) per day of default but maximum is ₹ 5000 (2,500 + 2,500).</li> </ul> </li> </ul> <p>3) <b>For the registered persons other than those covered in (1) and (2) above:-</b></p> <ul style="list-style-type: none"> <li>➤ late fee = ₹200( 100 + 100) per day of default but maximum is ₹ 10,000 (5000 + 5,000).</li> </ul>
13)	<p>➔ No, Mr. X 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.</p> <p>➔ As per section 48(2) of CGST Act, a registered person may authorise an approved GSTP to furnish:-</p> <ul style="list-style-type: none"> <li>➤ the details of outward supplies under section 37, and</li> <li>➤ the return under section 39 or</li> <li>➤ annual return under section 44 or</li> <li>➤ final return under section 45 and</li> <li>➤ to perform other prescribed functions.</li> </ul> <p>➔ Thus, the GSTP can furnish the specified documents or information on behalf of registered person with prior authority of the registered person.</p> <p>➔ However, there is no specific return furnishing mechanism for GSTP to disclose the activities carried out by it for any of the registered person during a tax period.</p>

## Question 25

Sudama Industries Ltd., registered in the State of Jammu & Kashmir, manufactures plastic pipes for other suppliers on job-work basis.

On 10th January, 2021, 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. It also instructed its supplier Dawson Ltd. to send a machine directly to the job worker, Sudama Industries Ltd., outside its factory to carry out certain operations on plastic. The machine was sent by the supplier on 10th January, 2021 and was received by the job worker on 13th January, 2021.

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 (inclusive of own coating material used) and returned half of the manufactured pipes through delivery challan to Plasto Manufacturers on 20th October, 2021 in the same financial year whereas the remaining pipes were directly sold to the customer on behalf of Plasto Manufacturers on the same day. It also returned the machine to the principal, Plasto Manufacturers on 11th January, 2024 but it failed to return the mould back. During the course of this job work, waste is generated which is sold by Sudama Industries Ltd. for ₹ 45,000.

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 & Kashmir) for ₹ 7.5 lakh on 20th October, 2021.

Examine the scenario and offer your views on the following issues with reference to the provisions relating to job work under the GST laws:-

1. Is there any difference between the manufacture of plastic pipes by Sudama Industries Ltd. for Plasto Manufacturers and for Solid Pipes?
2. Whether sending of plastic and moulds to Sudama Industries Ltd. by Plasto

Manufacturers is a supply and a taxable invoice needs to be issued for the same?

3. Whether Sudama Industries Ltd. can use its own material even when it is manufacturing the plastic pipes on job-work basis?
4. Whether Sudama Industries Ltd. should include the value of free of cost plastic and moulds supplied by Plasto Manufacturers in its job charges?
5. Can Sudama Industries Ltd. take ITC of inputs used by him additionally in the process of job work?
6. Can Plasto Manufacturers retain the ITC availed by them on the machine and moulds?

What would be your answer if Sudama Industries Ltd. carried out the job work, but did not return the machine to Plasto Manufacturers & accordingly, what action under the GST Act is required to be taken by Plasto Manufacturers.

What would be your answer, if instead of machine, plastic was directly sent to Sudama Industries Ltd. by the supplier of Plasto Manufacturers?

7. Whether the pipes belonging to principal which are directly supplied from the premises of Sudama Industries Ltd. will be included in the aggregate turnover of the Sudama Industries Ltd.? Who shall be liable to pay tax on such supply?
8. 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?
9. Who is responsible for the maintenance of proper accounts related to job work?
10. Assuming GST rate for plastic pipes as 28%, for related waste as 12% and standard rate for services as 18%, you are required to compute the GST liability of Sudama Industries Ltd. Also, give reason(s) for inclusion or exclusion of the value of plastic and moulds in the job charges for the purpose of payment of GST by Sudama Industries Ltd.

11. Whether the provisions of job work would be applicable, if in question, exempted or non-taxable goods were sent for job work instead of taxable goods?

12. When an e-way bill is required to be generated in case of job work?

13. Sudama Industries Ltd. & Plasto Manufacturers, both of them, wants to know about the registration requirement under GST, if their aggregate turnover does not exceed ₹20 lakhs threshold applicable for registration.

Answer:-

1)	<p><b>Legal Provision:-</b></p> <p>⇒ <b>Section 2(68)</b> of CGST Act gives the meaning of job work as any <b>treatment or process</b> undertaken by a person on <b>goods</b> (inputs or capital goods) <b>belonging to another</b> registered person (i.e. Principal) &amp; the expression "job worker" shall be construed accordingly.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>⇒ When goods are manufactured by Sudama Industries Ltd. for <b>Plasto Manufacturers</b>, it is <b>job work</b> as the process is undertaken on inputs (plastic &amp; moulds) supplied by principal (Plasto Manufacturers).</p> <p>⇒ When goods are manufactured for <b>Solid Pipes</b>, it is <b>manufacture on own account</b> as the pipes are manufactured from company's own raw material.</p> <p>⇒ Further, processing or treatment on job work basis is <b>a supply of service</b> as per <b>para 3 of Schedule II</b> to CGST Act and manufacture of pipes on own account is <b>a supply of goods</b>.</p>
2)	<p><b>Legal Provision:-</b></p> <p>⇒ As per <b>section 143</b> of CGST Act, registered principal may send goods (<b>inputs or capital goods</b>) to a job worker for job work <b>without payment of tax</b>.</p> <p>⇒ But on completion of job work or otherwise, the Principal shall:-</p> <ul style="list-style-type: none"> <li>➤ either <b>bring back</b> the goods to his place of business or</li> <li>➤ supply (including export) the same directly from the place of business of job worker <b>within 1 year or 3 years</b> from sending the inputs or capital goods</li> </ul>

	<p>respectively to the job worker or direct receipt by the job worker from the supplier.</p> <p>⇒ Time limit of 3 years to return goods is <b>not applicable to moulds, dies, jigs, fixtures &amp; tools</b>.</p> <p>⇒ If the above time frame of 1 year or 3 years is <b>not adhered to</b>, the activity of sending the goods for job work shall be <b>deemed to be a supply</b> by the principal on the day when the said inputs/ capital goods were sent out by him.</p> <p>⇒ Thus, sending goods for <b>job work is not a supply as such, but it acquires the character of supply</b> 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 of job worker within 1/3 years of being sent out.</p> <p>⇒ Further, <b>rule 45</b> of CGST Rules states that inputs, semi-finished goods or capital goods being sent for job work shall be sent <b>under the cover of a delivery challan</b> issued by the principal.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>⇒ The sending of plastic and moulds by Plasto Manufacturers to Sudama Industries Ltd. (job worker) is <b>not a supply</b> as the manufactured pipes <b>are received back within</b> the stipulated time and the provisions relating to return of goods are <b>not applicable in case of moulds</b>.</p> <p>⇒ Plasto Manufacturers need <b>not issue a taxable invoice</b> for sending the inputs to Sudama Industries Ltd. but should send the inputs under the <b>cover of a challan as per rule 45</b>.</p>
3)	<p><b>Yes.</b> As per CBIC Clarification, job worker <b>can use his own goods</b> for providing the services of job work <b>in addition</b> to the goods received from the principal.</p>
4)	<p><b>Legal Provision:-</b></p> <p>⇒ As per <b>section 15(2)(b)</b> of CGST Act, value of supply includes any amount that the supplier is liable to pay in relation to supply but which has been incurred by the recipient of supply and not included in the price actually paid or payable for the goods &amp;/or services.</p>

	<p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>➤ As Sudama Industries Ltd. is manufacturing the plastic pipes <b>on job work basis, it should not include</b> the value of free of cost plastic &amp; moulds supplied by Plasto Manufacturers in its job charges.</li> <li>➤ The scope of supply of Sudama Industries Ltd. is to manufacture plastic pipes from the raw material supplied by Plasto Manufacturers &amp; thus, it is <b>not liable to pay for raw material.</b></li> <li>➤ Therefore, <b>value of plastic &amp; moulds should not be included</b> in its job charges <b>u/s 15(2)(b)</b> even though the same is incurred by Plasto Manufacturers (recipient of job work service).</li> </ul>	
5)	<ul style="list-style-type: none"> <li>➤ <b>Yes</b>, the Sudama Industries Ltd. <b>is eligible to take input tax credit (ITC) of inputs used by him additionally</b> in the process of job work because the value of such additional inputs is included in the value of the supply of job work services being a composite supply &amp; taxable in the hands of the job worker.</li> <li>➤ However, it <b>cannot take ITC of goods supplied to him</b> by the Plasto Manufacturers (i.e. the principal) for Job work.</li> </ul>	<p><b>returned within the specified time period of 3 years</b> from the date its receipt (i.e. 13th January, 2021) by Sudama Industries Ltd.</p> <p>Plasto Manufacturers is <b>entitled to take and retain ITC</b> of moulds, even if Sudama Industries Ltd. does not return the <b>moulds</b> to Plasto Manufacturers. It shall <b>not be considered as a supply</b> of mould to Sudama Industries Ltd. by Plasto Manufacturers &amp; thus, Plasto Manufacturers <b>will be eligible to retain ITC availed by them on such mould.</b></p> <p>b) If the machine is <b>not returned</b> by Sudama Industries Ltd. within 3 years from 13th January, 2021 (date of receipt of capital goods by job worker), it shall be <b>deemed</b> that such <b>machine had been supplied</b> by Plasto Manufacturers to Sudama Industries Ltd. <b>on 13th January, 2021</b> and Plasto Manufacturers shall be liable to <b>pay the tax along with applicable interest.</b></p> <p>However, if it applies for extension, then commissioner can further grant extension upto 2 years and <b>no tax will be payable</b> in that case.</p>
6)	<p><b>Legal Provision:-</b></p> <ul style="list-style-type: none"> <li>➤ As per <b>section 19</b> of CGST Act, the capital goods directly sent to a job worker are required to be returned to the principal <b>within 3 years [extendible by another 2 years]</b> from the date of receipt of such capital goods by the job worker, otherwise it shall be deemed that such capital goods had been supplied by principal to job worker on the day when the capital goods were received by job worker.</li> <li>➤ In such a case, <b>principal can avail</b> the credit of tax paid on such capital goods even if they are directly sent to a job worker for job work without being first brought to his place of business.</li> <li>➤ The aforesaid time period of <b>3 years does not apply to</b> moulds and dies, jigs and fixtures or tools sent out for job work.</li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <p>a) Plasto Manufacturers is <b>entitled to take and retain ITC</b> on capital goods (machine) directly sent to job worker (Sudama Industries Ltd.) for job work without being brought into its premises since the said <b>machine was</b></p>	<p>c) Plasto Manufacturers <b>would be still eligible to retain ITC availed</b> by them on such plastic because as per <b>section 19</b> of CGST Act, the <b>principal shall be entitled to take credit of input tax</b> on inputs even if the inputs are directly sent to a job worker for job work without being first brought to his place of business. However, such inputs are required to be</p> <ul style="list-style-type: none"> <li>- <b>returned</b> to the principal <b>or</b></li> <li>- <b>supplied</b> from the place of business of the job worker <b>within 1 years [extendible by another 1 year]</b> from the date of receipt of such inputs by the job worker.</li> </ul> <p>7) a) <b>No.</b> As per <b>explanation (ii) to section 22</b>, after the completion of job work, supply of goods by a registered job worker shall be treated as the supply of goods by the principal &amp; the value of such goods shall <b>not be included in aggregate turnover</b> of registered job worker.</p> <p>b) <b>Section 143</b> allows Sudama Industries Ltd. to directly sell the pipes on behalf of Plasto Manufacturers where the liability to pay tax is of Plasto Manufacturers and not Sudama Industries Ltd.</p>



Hence, **Plasto Manufacturers is liable to pay GST** on sale of pipes by Sudama Industries Ltd.

However, as per **proviso to sec 143(1)**, Plasto Manufacturers must declare the premises of Sudama Industries Ltd. as an '**Additional Place of Business**'.

8) As per **proviso to section 143(1)** of CGST Act, the goods can be supplied directly by the principal from the place of business of job worker without declaring it as additional place of business **only in two circumstances** as under:-

- i) Where the job worker is registered under section 25 or
- ii) Where the principal is engaged in supply of goods notified by the Commissioner.

9) As per **section 143(2)** of CGST Act, it is completely the responsibility of **principal (i.e. Plasto Manufacturers)** to maintain proper accounts of job work related inputs and capital goods.

10) **Legal Provision:-**

- As per **para 3 of Schedule II** to CGST Act, any treatment or process applied to another person's goods is a supply of services and is accordingly subject to GST rate applicable for services.
- As per **section 143(5)** of CGST Act, if job worker is registered, then any waste generated during the job work may be supplied by the job worker directly from his place of business on payment of tax.

**Discussion & Conclusion:-**

- In given case, Sudama Industries Ltd. (job worker) undertakes the process of manufacturing the plastic pipes for Plasto Manufacturers (principal).
- This **activity is classified as service under para 3 of Schedule II** though it also supplied a special type of lamination material for coating the pipes & thus, the job charges will be taxed at 18% as applicable for services.
- The **value of plastic & moulds will not be included** in value of taxable supply made by Sudama Industries Ltd. as the supply of plastic & moulds does not fall within the scope of supply to be made by Sudama Industries Ltd.
- Since Sudama Industries Ltd. is registered, the tax leviable on supply of waste generated during the job work will have to be paid by it as per section 143(5). Such supply will be treated as supply of goods and subject to GST

rate applicable for related waste.

Also Sudama Ind. Ltd. make its own supply of ₹7.5 Lakhs

➤ **Accordingly, the GST liability of Sudama Industries Ltd. will be computed as under:-**

Particulars	Taxable Value (₹)	GST (₹)
Own supply of plastic pipes (GST @ 28%)	7,50,000	2,10,000
Job Charges (GST @ 18%)	2,00,000	36,000
Sale of metal waste (GST @ 12%)	45,000	5,400
<b>Total GST payable (A)+ (B)</b>	<b>9,95,000</b>	<b>2,51,400</b>

11) ➤ **No**, As per **section 143** of CGST Act, the provisions relating to job work are applicable only to a **registered person who** intends to send taxable goods for further processing on job work basis.

➤ In other words, **section 143 is not applicable to:-**

- a registered person sending exempted or non-taxable goods on job work or
- an unregistered person.

12) ➤ An e-way bill is required to be generated by every registered person who causes movement of goods of **consignment value exceeding 50000** even in cases where such movement is **for reasons other than for supply** (e.g. in case of movement for job work).

➤ However, for **interstate movement** of goods for job work, **e-way bill shall be generated** either by the principal or by the registered job worker irrespective of consignment value.

13) ➤ **For the Principal:-** It is at the **option** of principal to **register & avail the benefit of section 143** of CGST Act which is applicable only to a registered person.

➤ **For the job worker:-** As per CBIC clarification, irrespective of fact whether principal & the job worker are located in same State or in different States, a job worker is required to obtain registration **only if his aggregate turnover** in a financial year **exceeds threshold limit applicable u/s 22 of CGST Act.**



## Question 26

Kulbhushan & Sons, registered under GST in Uttar Pradesh, 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. He has approached Mr. Rohan, a tax consultant, regarding the following issues:-

1. Whether Kulbhushan & Sons was right in applying for payment of tax on goods supplied by it on provisional basis? Within how many days, proper officer should have pass order allowing payment of tax on provisional basis? State the time limit for the finalization of provisional assessment.
2. Determine the interest payable, if any, by Kulbhushan & Sons in the above case.
3. 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 05th June, determine the interest receivable, if any, by Kulbhushan & Sons in the given case.

What would be your answer, if tax was refunded to it on 15th June instead of 05th June?

4. Can the return and particulars furnished by Kulbhushan & Sons be scrutinized under GST? Explain the related provisions.
5. Whether the GST law provides for the assessment, if Kulbhushan & Sons fails to furnish the returns u/s 39 or 45 even after the service of a notice under section 46? Explain.
6. Once an assessment order is passed by proper officer, can it be withdrawn under CGST Act, 2017? If yes, mention those cases.
7. Assume that Kulbhushan & Sons is served a notice for audit by the tax authority under GST law on 10th July. The records and other documents as sought by tax authority have been made available by Kulbhushan & Sons on 25th July. The tax authority visits its office located in Noida, Uttar Pradesh on 8th August for conducting audit. Determine the time-limit within which audit u/s 65 of the CGST Act, 2017 is required to be completed assuming that no extension is permitted in the given case.

Answer:-

- |   |   |
|---|---|
| 1 | <p>a) <b>Yes</b>, As per <b>section 60</b> of CGST Act, the taxable person may request the proper officer in writing giving reasons for payment of tax on a provisional basis, if he is unable to determine:-</p> <ul style="list-style-type: none"> <li>➤ value of goods or services or both or</li> <li>➤ rate of tax applicable thereto.</li> </ul> <p>Thus, Kulbhushan &amp; Sons <b>was right in applying</b> for payment of tax on goods supplied by it on provisional basis since it was unable to determine the value of the goods supplied</p> <p>b) The proper officer shall pass an order allowing payment of tax on provisional basis <b>within 90</b> days from the date of receipt of request &amp;</p> |
|---|---|

	<p>shall specify the value or rate for payment of tax.</p> <p>c) Proper officer shall pass the final assessment order <b>within 6 months</b> from the date of communication of the order of provisional assessment. On sufficient cause being shown &amp; for reasons to be recorded in writing, the time limit may be <b>extended</b> as follows:-</p> <ul style="list-style-type: none"> <li>➤ by Joint Commissioner/ Additional Commissioner for further period <b>not exceeding 6 months</b></li> <li>➤ &amp; by Commissioner for such further period <b>not exceeding 4 years.</b></li> </ul>
2	<p><b>Legal Provision:-</b></p> <ul style="list-style-type: none"> <li>➤ As per <b>section 60(4)</b> of CGST Act, 2017, if tax liability as per final assessment is higher than under provisional assessment <b>i.e. tax becomes due</b> consequent to order of final assessment, <ul style="list-style-type: none"> <li>➤ registered person shall be liable to <b>pay interest</b> on tax payable on supply of goods but not paid on the due date u/s 50(1) read with rule 88B at 18% p.a.,</li> <li>➤ <b>from</b> first day after the due date of payment of tax on 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.</li> </ul> </li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>➤ In this case, due date for payment of tax on goods cleared on 25th January under provisional assessment is <b>20th February.a</b></li> <li>➤ Kulbhushan &amp; Sons is liable to pay following <b>interest</b> u/s 60(4) on goods supplied:- <math display="block">= ₹1,80,000 \times 18\% \times 48/365 \text{ days}</math> <math display="block">= ₹4,261 \text{ (rounded off)}</math> </li> </ul>
3	<p><b>Legal Provision:-</b></p> <ul style="list-style-type: none"> <li>➤ As per <b>section 60(5)</b> of CGST Act, if tax liability as per final assessment is less than in provisional assessment i.e. <b>tax becomes refundable</b> consequent to the order of final assessment, <ul style="list-style-type: none"> <li>➤ registered person shall be <b>paid interest</b> u/s 56 at 6% p.a.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>➤ from the date immediately after the expiry of 60 days from the date of receipt of application u/s 54(1) till the date of refund of such tax.</li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>➤ In given case, since refund is made on 05th June which is <b>within 60 days</b> from the date of receipt of application of refund (09th April), <b>interest is not payable</b> to Kulbhushan &amp; Sons on tax refunded.</li> <li>➤ However, if refund is made on 15th June i.e. <b>after 60 days</b> from date of receipt of application of refund (09th April), <b>interest is payable</b> to Kulbhushan &amp; Sons on tax refunded as under:- <math display="block">= ₹4,20,000 \times 6\% \times 7/365 \text{ days}</math> <math display="block">= ₹483 \text{ (rounded off)}</math> </li> </ul>
4	<ul style="list-style-type: none"> <li>➤ <b>Yes.</b> As per <b>section 61</b> of CGST Act, Proper officer may scrutinize the return &amp; related particulars furnished by Kulbhushan &amp; Sons (registered person) to <b>verify correctness</b> of return.</li> <li>➤ The proper officer <b>shall issue notice</b> to it to inform the discrepancy and seek the explanation thereto and where possible, <b>quantify</b> the amount of tax, interest and any other amount payable in relation to such discrepancy.</li> <li>➤ The registered person shall furnish an explanation for the discrepancy <b>within 30 days or within further period permitted</b> from the date of service of notice.</li> <li>➤ If <b>proper explanation is not furnished</b> for the discrepancy detected in return filed by the registered person while conducting scrutiny, the proper officer may:- <ol style="list-style-type: none"> <li>(i) Proceed to <b>conduct audit</b> of the registered person under scrutiny <b>u/s 65,</b></li> <li>(ii) <b>Direct</b> the registered person under scrutiny to get his records including books of account examined &amp; <b>audited</b> by a Chartered Accountant or a Cost Accountant nominated by the commissioner i.e. <b>special audit</b> u/s 66,</li> <li>(iii) Undertake procedures of <b>inspection, search &amp; seizure u/s 67,</b> or</li> <li>(iv) Initiate proceeding to <b>determine the tax and other dues u/s 73 or 74.</b></li> </ol> </li> </ul>

5	<p>⇒ <b>Yes</b>, as per <b>section 62</b> of CGST Act, if Kulbhushan &amp; Sons (registered person) <b>fails to furnish the return</b> u/s 39 or 45 even after the service of a notice under section 46, the proper officer may:-</p> <ul style="list-style-type: none"> <li>➤ proceed to <b>assess his tax liability</b> to the best of his judgement taking into account all the relevant material available or gathered and</li> <li>➤ issue an <b>assessment order within 5 years</b> from the due date for furnishing the annual return for the financial year to which non-payment of tax relates.</li> </ul>
6	<p><b>Assessment order passed by the proper officer may be withdrawn in following cases:-</b></p> <p><b>i) Assessment of non-filers of returns:-</b></p> <ul style="list-style-type: none"> <li>⇒ As per <b>section 62</b> of CGST Act, 2017, the best judgement order passed by the proper officer shall automatically stand withdrawn, if a registered person files a valid return within 30 days of the service of the best judgment assessment order.</li> <li>⇒ However, <b>the liability to pay interest u/s 50(1) or late fee u/s 47 shall continue.</b></li> </ul> <p><b>ii) Summary Assessment:-</b></p> <ul style="list-style-type: none"> <li>⇒ As per <b>section 64(2)</b> of CGST Act, 2017, Additional/ Joint Commissioner <b>may withdraw</b> summary assessment order:- <ul style="list-style-type: none"> <li>a) on <b>an application</b> filed by taxable person <b>within 30 days</b> from the date of receipt of order or</li> <li>b) <b>on his own motion</b>, if he finds such order to be erroneous.</li> </ul> </li> <li>⇒ Additional/ Joint Commissioner may instead follow the procedures laid down in <b>section 73 or section 74</b> to determine the tax liability of such taxable person.</li> </ul>
7	<p><b>Legal Provision:-</b></p> <ul style="list-style-type: none"> <li>⇒ As per <b>section 65(4)</b> of CGST Act, 2017, audit shall be completed <b>within 3 months</b> from the date of commencement of audit. However, Commissioner can extend it by a <b>further period not exceeding 6 months.</b></li> <li>⇒ Further, the <b>commencement of audit means the later</b> of the following:-</li> </ul>

	<ul style="list-style-type: none"> <li>➤ the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or</li> <li>➤ the actual institution of audit at the place of business of the taxpayer.</li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>⇒ Accordingly, in given case, the <b>date of commencement of audit is later of:-</b> <ul style="list-style-type: none"> <li>➤ date on which records &amp; other documents are made available by Kulbhushan &amp; Sons, i.e. <b>25th July or</b></li> <li>➤ actual institution of audit at the place of business of Kulbhushan &amp; Sons, i.e. 8th August.</li> </ul> </li> <li>⇒ Thus, the <b>date of commencement of audit is 8th August</b> &amp; audit shall be completed <b>within 3 months</b> from the date of commencement of audit (8th August).</li> </ul>
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**Question 27**

Motopower Pvt. Ltd., registered under GST, is engaged in the manufacture of 5-seater luxury cars at its factories located in the States of Rajasthan, Uttar Pradesh and Gujarat.

The company has obtained registration in each of these States. 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 provided to Gujarat Government administration	2.50
Security services	0.70		
General insurance of cars manufactured	2.50		
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 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 Gujarat to its owner registered in Gujarat.
- (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 Gujarat.
- (v) Works contract services, availed from Chitra Builders, Gujarat, 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 a firm of Chartered Accountants - 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) Automobile Association is registered in the State of Gujarat.

(ix) 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

(x) 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. Assume that except diesel, no other input/input services is used in providing car renting service.

(xi) Services provided to Gujarat Government administration are under a Health Training programme. 51% of the total expenditure for said programme is borne by Gujarat Government.

(xii) 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 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. [CA Final RTP Nov 22]

Answer:-

Computation of ITC available with Motopower Pvt. Ltd. for the given tax period

S. No.	Particulars	Value of Supply ₹	ITC			
			IGST* ₹	CGST* ₹	SGST* ₹	Total ₹
1	Opening balance of ITC		35,000	50,000	26,000	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
5	Security services [Refer Note 4]	70,000	Nil	Nil	Nil	Nil
6	General insurance of cars manufactured [Refer Note 5]	2,50,000	—	22,500	22,500	45,000
7	Works contract services [Refer Note 6]	1,60,000	—	14,400	14,400	28,800
8	Audit fee [Refer Note 7]	50,000	Nil	Nil	Nil	Nil
9	Bank charges [Refer Note 8]	10,000	-	900	900	1,800
10	Membership of Automobile Association [Refer Note 9]	10,000	-	900	900	1,800
<b>Total ITC available for the tax period</b>			<b>1,07,000</b>	<b>1,04,450</b>	<b>80,450</b>	<b>2,91,900</b>



### Computation of net GST payable

Particulars	Value Supply ₹	ITC			
		IGST* ₹	CGST* ₹	SGST* ₹	Total ₹
Intra-State sales in Gujarat	14,00,000	-	1,26,000	1,26,000	2,52,000
Inter-State sales other than Gujarat	6,00,000	1,08,000	-	-	1,08,000
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
Income from services provided to Gujarat Government [Note 12]	2,50,000	-	22,500	22,500	45,000
<b>Total output tax liability</b>		<b>1,08,000</b>	<b>1,49,750</b>	<b>1,49,750</b>	<b>4,07,500</b>
Less: ITC available for being set off [Note 13, Note 14 and Note 15]		(1,07,000)	(1,04,450)	(80,450)	(4,07,500)
<b>Net GST payable from Electronic Cash Ledger</b>		<b>1,000</b>	<b>45,300</b>	<b>69,300</b>	<b>1,15,600</b>

#### 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 - Motopower Pvt. Ltd., 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 machinery fixed to earth by foundation or structural support that are used for making outward supply and includes such foundation/ structural support. Thus, 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 & 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 from 2017-18 onwards exceed 10 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.
- 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, apportionment of ITC is not required and instead, 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 exceed ₹50 lakh, provisions of rule 86B are not applicable and Motopower Ltd. can discharge its entire output tax liability for said period from the 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 rate of CGST and SGST applied is 2.5% and 2.5% respectively.

**Section 12 of IGST Act:- POS of Services if location of Supplier AND location of recipient is in India**

### Question 28

Answer the following questions independently:-

1. Mr. A (a Chartered Accountant registered in New Delhi) makes a supply of service to his client Mr. B (registered in Noida, Uttar Pradesh). Apart from this, Mr. A provides Consultancy services to his client Mr. C who is a resident of New Delhi but is not registered under GST. The address of Mr. C is available in the records of Mr. A. You are required to determine the place of supply in respect of the supply(ies) involved in the given scenario.

What will be your answer if the address of Mr. C is not available in the records of Mr. A.

2. KTS Builders (Mumbai) is constructing a factory building for PLM Pvt. Ltd. (Kolkata), in New Delhi. Shah and Shah, an architectural firm at Kolkata, has been hired by KTS Builders to draw up a plan for the same. One of the architects of this firm travels to New Delhi to visit the site & stays in a hotel there. Mr. X, a consulting engineer based in Gujarat, renders professional services in respect of an immovable property of KTS Builders located in Australia. You are required to determine the place of supply in respect of the supply(ies) involved in the given scenario.

3. Mr. Timmy Ferreira, a makeup artist at Kolkata, goes to Jaipur, Rajasthan for doing the makeup of Ms. Simran Kapoor, a Bollywood actress based in Mumbai. They both had lunch together in a restaurant at Jaipur. You are

required to determine the place of supply in respect of the supply(ies) involved in the given scenario.

4. 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.

5. 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. Determine the place of supply.

State your answer if Mr. Aatmaram was registered under GST in Gujarat.

6. Mr. Shyam, an unregistered person, based in Gurugram, Haryana books a two-way air journey ticket from New Delhi to Mumbai on 5th December. He leaves New Delhi on 10th December in a late-night flight and lands in Mumbai the next day. He leaves Mumbai on 14th December in a morning flight and lands in New Delhi the same day. You are required to determine the place of supply in respect of the supply(ies) involved in the given scenario.

Answer some other scenarios as well in this case independently:-

- What would be your answer if Mr. Shyam is registered under GST in Chennai, Tamil Nadu?
  - What would be your answer if Mr. Shyam buys pre-paid Delhi Metro Card from Delhi Metro (New Delhi) for hassle free commute in the National Capital Region where his address is available in the records of Delhi Metro. What will be your answer if Mr. Shyam's address is not available in the records of Delhi Metro.
7. 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. Determine the place of supply.

8. 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. Determine the place of supply.
9. 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. His brother-Mr. X, a registered person in Ranchi, Jharkhand, buys shares from a broker in Patna on NSE, Mumbai. Bholunath's wife goes to Kullu-Manali and takes some services from ICICI Bank in Manali even though she is not having any account with such bank. You are required to determine the place of supply in respect of the supply(ies) involved in the given scenario.
10. Ms. B (unregistered resident of Kolkata) goes to her native place Patna, Bihar and buys a medical insurance policy for her parents there from Safe Insurers, Patna (registered in Bihar). Determine the place of supply.

Answer:-

1) **Legal Provision:-**

As per **section 12(2)** of IGST Act, the place of supply of services **other than** those specified under sections 12(3) to 12(14) shall be as under:-

- a) If supply is made to registered person, place of supply shall be the location of **registered recipient**.
- b) If supply is made to an unregistered person, place of supply shall be:-
  - the **location of recipient** if the address is available in the records of supplier &
  - the **location of supplier** in other cases.

**Discussion & Conclusion:-**

- i) In case of service provided to Mr. B, since the supply is made to a registered person, the place of supply is the location of the registered recipient i.e., **Noida, Uttar Pradesh**.
- ii) In case of service provided to Mr. C whose address is available in the records of Mr. A, the place of supply shall be the location of Mr. C i.e. **New Delhi**.

	<p>iii) If the address of Mr. C is not available in the records of Mr. A, the place of supply shall be the location of Mr. A which is <b>New Delhi</b>.</p>
2)	<p><b>Legal Provision:-</b></p> <p>➤ As per <b>section 12(3)</b> of IGST Act, the place of supply of services shall be the location where the <b>immovable property is located or intended to be located</b> for the following services supplied:-</p> <ul style="list-style-type: none"> <li>➤ Services supplied directly in relation to an immovable property including services provided by architects, engineers, etc.</li> <li>➤ Lodging accommodation services provided by hotel, etc.</li> </ul> <p>➤ However, if the immovable property is located or intended to be located outside India, the place of supply shall be the <b>location of the recipient</b>.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>i) The place of supply of construction service is the location of factory building i.e., <b>New Delhi</b>.</p> <p>ii) The place of supply of architectural service is the place where the building is intended to be located i.e., <b>New Delhi</b>.</p> <p>iii) The place of supply of lodging accommodation service is the location where the hotel is located i.e., <b>New Delhi</b>.</p> <p>iv) Since the immovable property is located <b>outside India</b>, the place of supply of service provided by Mr. X is the <b>location of recipient i.e., Mumbai</b> and not the place where the immovable property is located (Australia).</p>
3)	<p><b>Legal Provision:-</b></p> <p>➤ As per <b>section 12(4)</b> of IGST Act, the place of supply of restaurant and catering services &amp; beauty treatment service shall be the location where the services are actually performed.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>i) The place of supply of beauty treatment service provided by Mr. Timmy Ferreira is <b>Jaipur, Rajasthan</b> where the service of doing makeup is actually performed.</p> <p>ii) The place of supply of restaurant service taken by them is <b>Jaipur, Rajasthan</b> where the service is actually performed.</p>

4)	<p><b>Legal Provision:-</b></p> <p>➤ As per <b>section 12(5)</b> of IGST Act, the place of supply for services in relation to training &amp; performance appraisal provided to:-</p> <ul style="list-style-type: none"> <li>a) a registered person shall be the location of such <b>registered recipient</b>,</li> <li>b) an unregistered person shall be the location where the services are <b>actually performed</b>.</li> </ul> <p>➤ As per section 12(3) of IGST Act, the place of supply of accommodation services provided in any immovable property for organizing any official/business function including services relating to such function at such property shall be the location at which the <b>immovable property is located</b>.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>In given situation, <b>two supplies</b> are involved. The place of supply in respect of each is as under:-</p> <p>i) For the Services provided by Mindsharp Associates to Dobriyal Technocrats Ltd. (a registered recipient) by providing motivational training to its top management,</p> <ul style="list-style-type: none"> <li>➤ the place of supply shall be the location of Dobriyal Technocrats Ltd., i.e. <b>Gurgaon, Haryana</b>.</li> </ul> <p>ii) For the service provided by Hotel Chumchum to Mindsharp Associates by way of accommodation of conference hall along with the rooms of Hotel Chumchum for the training programme,</p> <ul style="list-style-type: none"> <li>➤ the place of supply shall be the location of the Hotel Chumchum, i.e. <b>Neemrana, Rajasthan</b>.</li> </ul>
5)	<p><b>Legal Provision:-</b></p> <p>➤ As per <b>section 12(8)</b> of IGST Act, for supply of services by way of transportation of goods, <b>including</b> mail or courier, the place of supply shall be as under:-</p> <ul style="list-style-type: none"> <li>➤ If recipient is registered, place of supply shall be <b>location of such registered person</b>.</li> <li>➤ If the recipient is not registered, the place of supply shall be the place where the <b>goods are handed over for their transportation</b>.</li> </ul> <p>➤ If goods are transported outside India, place of supply shall be <b>destination</b> of such goods.</p>



	<p><b>Discussion &amp; Conclusion:-</b></p> <p>i) Since in given case, recipient Aatmaram is an unregistered person, the place of supply is the location where goods are handed over to Gokul Carriers for their transportation, i.e. <b>Kanpur</b>.</p> <p>ii) However, if Aatmaram was a registered person under GST, then place of supply shall be location of such registered person i.e. <b>Gujarat</b>.</p>
6)	<p><b>Legal Provision:-</b></p> <p>➤ As per <b>section 12(9)</b> of IGST Act, if the passenger transportation service is provided to:-</p> <p>a) a registered person, the place of supply shall be the <b>location of such registered person</b>,</p> <p>b) an unregistered person, the place of supply shall be the place where the <b>passenger embarks on the conveyance for a continuous journey</b>.</p> <p>➤ But if right to passage is issued for future use &amp; point of embarkation is not known at the time of issue of right to passage, the place of supply of this service shall be determined u/s <b>section 12(2)</b>.</p> <p>➤ As per <b>section 12(2)</b> of IGST Act, the place of supply of services <b>other than</b> those specified under sections 12(3) to 12(14) made to an unregistered person shall be:-</p> <ul style="list-style-type: none"> <li>➤ the <b>location of recipient</b> if the address is available in the records of supplier &amp;</li> <li>➤ the <b>location of supplier</b> in other cases.</li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <p>(I) In the given case, the <b>return journey</b> is treated as a <b>separate</b> journey, even if the tickets for onward and return journey are issued at the same time.</p> <p>Thus, being an unregistered person, the place of supply for outward &amp; return journeys are the locations where the <b>unregistered person embarks</b> on the conveyance for the continuous journey, i.e. <b>New Delhi and Mumbai respectively</b>.</p> <p>(ii) If Mr. Shyam is registered, then the <b>place of supply</b> is the location of registered recipient i.e., <b>Chennai, Tamil Nadu for both the journeys</b>.</p> <p>(iii) In this case, pre-paid metro card is given for future use &amp; point of embarkation is not known at the time of its issue. Thus, the <b>place of</b></p>

	<p><b>supply u/s 12(2)</b> shall be the address of Mr. Shyam i.e. <b>Gurugram, Haryana</b> as he is an unregistered person.</p> <p>(iv) If address of Mr. Shyam is not available in the records of Delhi Metro, the place of supply will be location of Supplier i.e. <b>New Delhi</b>.</p>
7)	<p><b>Legal Provision:-</b></p> <p>➤ As per <b>section 12(10)</b> of IGST Act, place of supply of services supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle shall be the location of first scheduled point of departure of such conveyance for the journey.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>➤ Thus, the place of Supply of service in given case is <b>Bangkok</b> i.e. the location of first scheduled point of departure of aircraft for the journey.</p>
8)	<p><b>Legal Provision:-</b></p> <p>➤ As per <b>section 12(11)</b> of IGST Act, the place of supply of services of installation of fixed telecommunication line is the location where the telecommunication line is installed for receipt of services.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>➤ Thus, the place of supply of service is <b>Kolkata</b> in this case i.e. the location where the telecommunication line is installed.</p>
9)	<p><b>Legal Provision:-</b></p> <p>➤ As per <b>section 12(12)</b> of IGST Act, the place of supply of banking &amp; other financial services (including stock broking services) provided to any person shall be the <b>location of the recipient of services in the records of the supplier</b>.</p> <p>➤ However, if the location of recipient of services is not available in the records of supplier, the place of supply shall be the <b>location of the supplier</b> of services.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>i) In case of service received by Bholunath, the place of supply is the location of recipient of services in the records of the supplier bank, i.e. <b>New Delhi</b>.</p> <p>ii) In case of service received by Bholunath's brother- Mr. X, the place of supply is the location of recipient of services in records of supplier i.e. <b>Ranchi, Jharkhand</b>.</p>



	iii) The place of supply of service received by Bholunath's wife is the location of supplier of services i.e. <b>Kullu-Manali, Himachal Pradesh</b> as the location of recipient of services is not available in the records of supplier.
10)	<p><b>Legal Provision:-</b></p> <p>➔ As per <b>section 12(13)</b> of IGST Act, the place of supply of insurance services provided to:-</p> <p>a) a registered person shall be the location of such <b>registered recipient &amp;</b></p> <p>b) an unregistered person shall be the <b>location of recipient of services in the records</b> of supplier.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>➔ The place of supply is the location of recipient of services in the records of supplier i.e. <b>Patna</b> as the medical insurance policy is taken by an unregistered person.</p>

## Question 29

Answer the following independent questions:-

1. 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. Explain whether the said supply will amount to export of service? Also state the nature of transaction. [CA Final RTP May 2018][ICAI Study Material]
2. 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. [ICAI Study Material]

3. 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 be treated as a zero-rated supply and decides that no tax is payable under LUT although the rate applicable to such services for domestic supplies is CGST - 9%, SGST - 9% and IGST - 18%.

State the provisions relating to the above supply of service and explain whether the stand taken by M/s Ankit Enterprises is correct and also determine the tax, if applicable, as the goods are now moving out of Haryana. [CA Final Nov 2020 Exam-New]

What is the place of supply if tools in case (1) are exported without being put to any use in India.

4. 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 Indian vendor for purchase of specified goods. ABC Pvt. Ltd. charges its foreign customer cost plus 10% mark up for services provided by it. For the month of December, 20XX, the company has charged US \$ 1,00,000 (exclusive of GST) to its foreign customer. With reference to provisions of GST law, examine whether company is liable to pay IGST or CGST & SGST.

Note:- GST@18% is applicable on supply of the support services provided by

Answer :-

1)	<p><b>Legal Provision:-</b></p> <ul style="list-style-type: none"> <li>➤ As per <b>section 13(2)</b> of IGST Act, if the location of supplier or location of recipient of services is outside India, the place of supply of services, except those specified in section 13(3) to 13(13), shall be the <b>location of recipient of services.</b></li> <li>➤ As per <b>section 2(6)</b> of IGST Act, <b>export of services means</b> the supply of any service when,—             <ul style="list-style-type: none"> <li>a) the supplier of service is located in India,</li> <li>b) the recipient of service is located outside India,</li> <li>c) the place of supply of service is outside India,</li> <li>d) the payment for such service has been received by supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by Reserve Bank of India and</li> <li>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 of IGST Act.</li> </ul> </li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>➤ The given case does not fall under any of the specific situation u/s 13(3) to 13(13) and thus, the place of supply of services u/s 13(2) is the location of recipient of services, i.e. <b>USA.</b></li> <li>➤ Since all five conditions for export of service are fulfilled in given case, it <b>will be considered as an export of service</b> which is treated as inter-state supply &amp; thus, liable to IGST.</li> </ul>
2)	<p><b>Legal Provision:-</b></p> <ul style="list-style-type: none"> <li>➤ As per <b>section 13(2)</b> of IGST Act, if the location of supplier or location of recipient of services is outside India, the place of supply of services, except those specified in section 13(3) to 13(13), shall be the <b>location of recipient of services.</b></li> <li>➤ As per <b>section 2(11)</b> of IGST Act, <b>import of services means</b> the supply of any service where supplier of service is located outside India, the recipient</li> </ul>

	<p>of service is located in India and the place of supply of service is in India.</p> <ul style="list-style-type: none"> <li>➤ As per reverse charge notification, 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 <b>tax is payable by the recipient of service under reverse charge.</b></li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>➤ Here, the supplier of service is located outside India &amp; recipient of service is located in India.</li> <li>➤ Since the given service is not covered under any of the specific provisions of section 13, the place of supply of service will be <b>Rajasthan (India)</b> which is the location of the recipient of service u/s 13(2).</li> <li>➤ <b>Hence, it is an import of services</b> for a consideration from an unrelated person and the same <b>tant amounts to supply as per section 7(1)(b)</b> of CGST Act and are liable to GST.</li> <li>➤ XY Ltd. will pay GST under <b>reverse charge</b> on ₹ 8000 paid by it to the attorney in UK.</li> </ul>
3)	<p><b>Legal Provision:-</b></p> <ul style="list-style-type: none"> <li>➤ <b>One of the conditions</b> for a supply of service to qualify as <b>export</b> of service is that the place of supply of said service must be outside India.</li> <li>➤ As per <b>section 13(3)(a)</b> of IGST Act, for service supplied in respect of goods which are required to be made physically available by the recipient, the place of supply shall be the <b>place of performance.</b></li> <li>➤ As per <b>second proviso to section 13(3)(a)</b> of IGST Act, if services are supplied for goods which are temporarily imported into India for repairs, any other treatment or process and exported after such repairs, treatment or process without being put to any use in India other than which is required for such repairs or treatment or process, then the place of supply shall be the location of recipient of service <b>u/s 13(2).</b></li> </ul> <p><b>Discussion &amp; Conclusion for (1):-</b></p> <ul style="list-style-type: none"> <li>➤ In given case, the <b>place of supply</b> of services provided by M/s Ankit Enterprises is the place where the services are actually performed, i.e., <b>in India as the tools to be exported have been used</b> in India for 3 months</li> </ul>

before their export & thus, service supplied **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** as per section 8(2) of IGST Act.

⇒ Therefore, since the place of supply is in India & the supply is not an intra-State supply, the same is an **inter-State supply of service** as per **section 7(5)(c)** of IGST Act.

⇒ It is liable to IGST of ₹1,83,051 (₹12,00,000/118 x 18).

#### Discussion & Conclusion for (2):-

⇒ In second case, the place of supply shall be determined as per **section 13(2)** and not as per section 13(3)(a) as the tools are **re-exported without using** them in India for any other purpose.

⇒ Thus, the place of supply of service is the location of recipient i.e. **Australia**.

#### 4) Legal Provision:-

⇒ As per the definition, **intermediary** means a broker, an agent or any other person, who **arranges or facilitates the supply** of goods &/or services or securities, between two or more persons. It **does not include** a person who makes supplies of above on his own account.

⇒ As per **section 13(8)** of IGST Act, if either supplier or recipient is located outside India, the place of supply in case of intermediary services is the **location of the supplier**.

#### Discussion:-

⇒ In given 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**.

⇒ As the supplier (ABC Pvt. Ltd.) is located in India & recipient is located outside India, the place of supply of intermediary services is the **location of supplier (ABC Pvt. Ltd.) which is New Delhi**.

#### Conclusion:-

⇒ Since location of supplier and the place of supply of services are in the **same State (New-Delhi)**, supply is an **intra-state supply** & thus,

leviable to **CGST & SGST**.

⇒ **Assuming that** the given rate of exchange is prevailing on the date of time of supply of services, the CGST and SGST liability will be worked out as under:-

**CGST = ₹5,85,000 (US \$1,00,000 x 65 x 9%) &**

**SGST = ₹5,85,000 (US \$1,00,000 x 65 x 9%).**

## Question 30

Mr. Ashok is a chartered accountant who started his own practice just before 2 months. He approaches M/s ABC Consultants, a well know firm of chartered accountants, to obtain consultancy regarding following issues of his various clients and as well as to upgrade his own knowledge:-

1. Rajul has been issued a show cause notice (SCN) on 31.12.2022 under section 73(1) of the CGST Act, 2017 on account of short payment of tax during the period between 01.07.2018 and 31.12.2018. He has been given an opportunity of personal hearing on 15.01.2023. Advise Rajul as to what should be the written submissions in the reply to the show cause notice issued to him.

If in above case, the SCN is issued on 31.01.2022 and Rajul is given an opportunity of personal hearing on 15.02.2022, based on which she contends that the show cause notice issued to her is time-barred in law. Examine the technical veracity of contention of Rajul.

If in above case, assuming that Rajul 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 u/s 73(9) & (11) of CGST Act 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.

2. A person is chargeable with tax under section 73. He decides to pay the amount of demand along with interest before issue of notice. Is there any immunity available to such person?

What will be the answer if the person decides to pay the amount of demand along with interest within 30 days of issue of notice?

What will be the answer if the person decides to pay the amount of demand along

with interest within 30 days of issue of order?

3. 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.

What will be the answer, if in above case, the department initiated penal proceedings against Inoba Bhave for recovery of penalty u/s 73 of CGST Act for failure to pay GST and issued show cause notice on 23-06-20XX which was received by Inoba Bhave on 24-06-20XX. Inoba Bhave deposited the tax along with interest on 26-06-20XX and informed department on the same day.

4. PQR Ltd. has been issued a show cause notice (SCN) on 31.01.2024 under section 74(1) of the CGST Act, 2017 on account of short payment of tax during the period between 01.07.2018 and 31.12.2018. PQR Ltd. contends that the show cause notice issued to it is time-barred in law. Examine the technical veracity of the contention of PQR Ltd.
5. Discuss the amount of tax and penalty to be paid, if any, in the following independent cases where show cause notices are issued u/s 74 of CGST Act, 2017:-

S.No.	Date on which credit was taken wrongly	Amount of ITC taken wrongly (₹ in lakh)	Present status
1	31st January, 20XX	200	Adjudication order passed on 26th July, 20ZZ demanding the entire amount of credit with interest and imposing amount equal to the credit as penalty.
2	30th June, 20XX	250	Adjudication order passed on 26th August, 20ZZ demanding the entire amount of credit with interest and imposing amount equal to the credit as penalty.
3	30th October, 20XX	120	Show cause notice has been issued on 5th September, 20ZZ demanding the entire amount of credit with interest and proposing penalty equal to 100% of the credit taken.
4	30th January, 20YY	50	Statement of the Managing Director has been recorded on 6th September, 20ZZ 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 20-09-20ZZ.

6. 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, 20XX. He clears the dues on 20th April, 20XX. However, the Department, on verification, identifies additional suppression of ₹ 2,00,000 in the same month of January, 20XX. 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 25.05.20XX and the taxpayer complies with the adverse adjudication order on 27.06.20XX. Determine tax, interest & penalty payable at each stage.

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 M/s ABC Consultants for seeking the advice on the same. M/s ABC Consultants is required to advise it elaborating the relevant provisions.

Answer:-

- 1 a) The written submissions in reply to SCN issued to Rajul are as follows:-
- (i) The show cause notice (SCN) issued for normal period of limitation under section 73(1) of CGST Act, 2017 is **not sustainable**.
  - (ii) The said SCN **shall be issued at least 3 months prior** to the time limit specified for issuance of order under section 73(10). The adjudication order under section 73(10) has to be issued **within 3 years** from the due date for furnishing of annual return for the financial year to which the short-paid tax relates to.  
As per **section 44**, the due date of filing annual return for a financial year is 31st December following the end of such financial year. Thus, the SCN under section 73(1) can be issued **within 2 years and 9 months** from the due date for furnishing of annual return for the financial year to which the short-paid tax relates to.
  - (iii) The SCN has been issued for the period between 01.07.2018 to 31.12.2018 which falls in the financial year (FY) 2018-19. The due date for furnishing annual return for FY 2018-19 is 31.12.2019 and 3 years' period from due date of filing annual return lapses on 31.12.2022. Thus, **the SCN under section 73(1) ought to have been issued latest**



	<p><b>by 30.09.2022.</b></p> <p>(iv) Since the notice has been issued after 30.09.2022, the <b>entire proceeding is barred by limitation and deemed to be concluded under section 75(10).</b></p> <p>b) The <b>contention of Rajul is not valid in law</b> as the SCN under section 73(1) ought to have been issued <b>latest by 30.09.2022.</b> Since in the given case, the notice has been <b>issued on 31.01.2022, notice is not time-barred.</b></p> <p>c) The decision of the adjudicating authority is <b>not correct</b> in law.</p> <p>The provisions of section 73(11) of 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 return in Form GSTR-3B because tax along with applicable interest has already been paid.</p> <p>Thus, penalty under section 73(11) is not payable in such cases although a general penalty may be imposed since the tax has been paid late in contravention of provisions of CGST Act, as clarified by CBIC.</p>
2	<p>a) <b>Yes</b>, as per <b>section 73</b> of CGST Act, a person chargeable with tax <b>shall have an option</b> to pay the amount of tax along with interest payable thereon under section 50 as ascertained either on his own or ascertained by the proper officer. <b>Penalty is not payable in this case.</b> On such payment, no notice shall be issued by the proper officer with respect to the tax so paid.</p> <p>b) <b>Yes</b>, the option will still be available to him.</p> <p>If a person chargeable with tax pays the said tax along with interest payable under section 50 within 30 days of issue of the notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.</p> <p>c) <b>No, there will be no such option available to him.</b></p> <p>The person is required to pay tax along with interest payable under section 50 and a penalty equal to the higher of 10% of tax or Rs 10000, irrespective of whether such payment is made within 30 days of the</p>

	<p>communication of the order or after 30 days.</p>
3	<p><b>Legal Provision:-</b></p> <p>➤ As per <b>section 73</b> of CGST Act, 2017, if 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.</p> <p>➤ Thus, option to pay tax before issuance of show cause notice or within 30 days of issuance of show cause notice to avoid penalty is not available in case of self-assessed tax.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>a) The due date for payment of tax collected on 18th April is 20th May.</p> <p>➤ However, since tax is actually paid on 26th June, interest @ 18% p.a. is payable for the period for which the tax remains unpaid [i.e. from 21st May to 26th June=37 days] as per section 50 of CGST Act, 2017 read with rule 88B of CGST Rules as under:-</p> <p>Interest payable = ₹15,50,000 × 18% p.a. × 37/365 = ₹28,282 (rounded off).</p> <p>➤ <b>Consequently, the penalty as per section 73(9) which is equivalent to the higher of the following is payable by Inoba Bhave:-</b></p> <ul style="list-style-type: none"> <li>➤ ₹1,55,000 which is 10% of tax ₹15,50,000 or</li> <li>➤ ₹10,000.</li> </ul> <p>➤ Therefore, the penalty of ₹ <b>1,55,000</b> will have to be paid by Inoba Bhave.</p> <p>b) <b>The answer will be same as mentioned in (a) above because</b> the self-assessed tax is not paid within 30 days from due date of payment of such tax &amp; thus, option to pay tax within 30 days of issuance of show cause notice to avoid penalty is not available in this case.</p>
4	<p>The contention of PQR Ltd. is <b>not valid</b> in law.</p> <p><b>Legal Provision:-</b></p> <p>➤ As per section 74(2) of CGST Act, the SCN should be issued at least 6 months prior to the time limit specified in section 74(10) for issuance of order.</p>

➤ As per **section 74(10)**, the proper officer shall issue the adjudication order:-
 

- **within 5 years** from the due date for furnishing of Annual Return for financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or
- **within 5 years** from the date of erroneous refund.

 ➤ Thus, the time-limit to issue **show cause notice is 4 years and 6 months** from the due date of filing annual return for the financial year to which the demand pertains.
   
 ➤ As per **section 44**, the due date of filing annual return for a financial year is **31st December** following the end of such financial year.

**Discussion & Conclusion:-**

➤ In given case, the SCN is issued for the period between 01.07.2018 to 31.12.2018 which falls in the financial year (FY) 2018-19.

➤ The due date for furnishing annual return for the FY 2018-19 is 31.12.2019 and 5 years' period from due date of filing annual return lapses on 31.12.2024.

➤ Thus, **the SCN ought to have been issued latest by 30.06.2024** but it is issued on 31.01.2024 and hence, the **notice is not time-barred.**

5	S.No	Date on which credit was taken wrongly	Amount of ITC taken wrongly (₹ in lakh)	Tax & penalty under section 74
	1	31st January, 20XX	200	Adjudication order is passed on 26th July, 20ZZ and payment is made on 20.09.20ZZ i.e., <b>after 30 days</b> of the communication of the adjudication order. 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 20XX	250	Adjudication order is passed on 26th August, 20ZZ and payment is made on 20.09.20ZZ i.e., <b>within 30 days</b> of the communication of the adjudication order. 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, 20XX	120	Show cause notice is issued on 5th September 20ZZ and payment is made on 20.09.20ZZ i.e., <b>within 30 days</b> 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 October, 20XX	50	<p><b>Alternative-I:</b> 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.</p> <p><b>Alternative-II:</b> It is assumed that show cause notice has not yet been issued.</p>

			Payment made on 20.09.20ZZ 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.
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6	<p>➤ As per <b>explanation 2 to section 74</b> of CGST Act, 2017, 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 GST law, or failure to furnish any information on being asked for, in writing, by the proper officer.</p> <p>➤ The given question can be answered on the basis of <b>2</b> assumptions i.e. the suppression accepted at ₹12 lakh may be <b>assumed to be either the value or the tax amount.</b></p> <p><b>Alternative 1:- ₹ 12 lakh is assumed to be the value of suppression and tax rate is assumed to be 18%.</b> (Note-1) <b>Tax, interest and penalty payable before the issue of the SCN:-</b> In case of short payment of tax by reason of suppression of facts, if 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 <b>Interest (Assumption 1)</b> = ₹ 2,16,000 × 18% × 90/365 = ₹ 9,587 (rounded off) [From 21st January to 20th April] (Note-2) or <b>Interest (Assumption 2)</b> = ₹ 2,16,000 × 18% × 59/365 = ₹ 6,285 (rounded off) [From 21st February to 20th April] (Note-3) <b>Penalty</b> = ₹ 2,16,000 × 15% = ₹ 32,400 <b>Tax, interest and penalty payable after the adjudication order:-</b></p>
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<p>In case of short payment of tax by reason of suppression of facts, if taxpayer pays short-paid tax &amp; applicable interest after 30 days of communication of adjudication order, penalty equal to 100% of such tax is payable. Value suppressed = ₹2,00,000 Tax @ 18% = ₹36,000 <b>Interest (Assumption 1)</b> = ₹ 36,000 × 18% × 158/365 = ₹ 2,805 (rounded off) [From 21st January to 27th June] (Note-2) or <b>Interest (Assumption 2)</b> = ₹ 36,000 × 18% × 127/365 = ₹ 2,255 (rounded off) [From 21st February to 27th June] (Note-3) <b>Penalty</b> = ₹ 36,000 × 100% = ₹ 36,000</p> <p><b>Alternative 2:- ₹12 lakh is assumed to be the suppressed amount of tax. Tax, interest and penalty payable before the issue of the SCN:-</b> 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 <b>Interest (Assumption 1)</b> = ₹ 12,00,000 × 18% × 90/365 = ₹ 53,260 (rounded off) [From 21st January to 20th April] (Note-2) or <b>Interest (Assumption 2)</b> = ₹ 12,00,000 × 18% × 59/365 = ₹ 34,915 (rounded off) [From 21st February to 20th April] (Note-3) <b>Penalty</b> = ₹12,00,000 × 15% = ₹1,80,000</p> <p><b>Tax, interest and penalty payable after the adjudication order:-</b> In case of short payment of tax by reason of suppression of facts, if taxpayer pays such short-paid tax and applicable interest after 30 days of communication of adjudication order, penalty equal to 100% of such tax is payable.</p>
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Tax payable = ₹2,00,000

**Interest (Assumption 1)** = ₹ 2,00,000 × 18% × 158/365 = ₹ 15,584  
(rounded off)

[From 21st January to 27th June] (Note-2) or

**Interest (Assumption 2)** = ₹ 2,00,000 × 18% × 127/365 = ₹ 12,526  
(rounded off)

[From 21st February to 27th June] (Note-3)

**Penalty** = ₹2,00,000 × 100% = ₹2,00,000

**Notes:-**

- 1) Any other tax rate may also be assumed. Answer will change accordingly.
- 2) It has been assumed that the information has been suppressed in the return/statement/report filed in January and thus, interest would become payable from 21st January in this case.
- 3) It has been assumed that suppression activity took place in January but reported in the return/ statement/ report filed in February and thus, interest is payable from 21st February in this case.

7

- As per **section 76** of CGST Act, 2017, **it is mandatory for Subharti Enterprises to pay amount collected** from other person representing tax under this Act, to the Government.
- As per section 76, every person who has collected from any other person any amount as representing the tax under GST and has not paid the said amount to the Government, **shall pay the said amount to the Government irrespective of whether the supplies in respect of which such amount was collected are taxable or not.**
- If any amount is required to be paid to Government as above but has not been paid, **proper officer may serve a notice on the person liable** to pay such amount requiring him to show cause as to:-
  - why the amount specified in notice should not be paid by him to the Government and
  - why a penalty equal to the amount specified in the notice should not be imposed on him.
- After considering the representation (if any) made by the person on whom

show cause notice (SCN) is served, the **proper officer shall determine the amount due** from him and such person shall pay the amount so determined.

- In addition to paying the amount determined by the proper officer, the said person shall also be **liable to pay interest thereon under section 50** which shall be payable from the date of collection of such amount by him to the date of payment of the same 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 31

Ranjan intends to start selling certain goods in Delhi. However, he is not able to determine:-

- a) The classification of the goods proposed to be supplied by him [as the classification of said goods has been contentious] and
- b) The place of supply if he supplies said goods from Delhi to buyers in U.S.

Ranjan's tax advisor has advised him to apply for the advance ruling in respect of these issues. He told Ranjan that the advance ruling would bring him certainty and transparency in respect of the said issues and would avoid litigation later. Ranjan agreed with his view, but has some apprehensions.

In view of the information given above, you are required to advise Ranjan with respect to following:-

- 1) The tax advisor asks Ranjan to get registered under GST law before applying for the advance ruling as only a registered person can apply for the same. Whether Ranjan needs to get registered?
- 2) Ranjan wants to obtain a list of questions for which advance ruling can be sought & accordingly, can Ranjan seek advance ruling for the following:-
  - a) whether the goods proposed to be supplied by Ranjan amounts to supply of goods under GST law and if yes, advance ruling to determine the classification of said goods?
  - b) To determine the place of supply, if he supplies said goods from Delhi to buyers in U.S?
- 3) Ranjan is doubtful whether he can seek advance ruling in relation to an activity/ transaction already being undertaken. Whether Ranjan's doubt is correct?
- 4) Ranjan is apprehensive that Authority for Advance Ruling may take years to pronounce its ruling. Whether his apprehension is correct? Also guide

him regarding the procedure followed by AAR on receipt of application for Advance Ruling u/s 98 of CGST Act, 2017.

- 5) 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?
- 6) The tax advisor is of view that order of AAR is final & is not appealable. Whether tax advisor's view is correct? If yes, explain it with reference to sections 100 & 101 of CGST Act.
- 7) Ranjan wants to know whether further appeal can be filed before the High Court or Supreme Court against the ruling of AAAR?
- 8) 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?
- 9) Ranjan wants to know that can an advance ruling given be nullified?

[ICAI Study Material] [CA Final RTP May 18 Exam] [CA Final MTP March 19] [CA Final RTP May 22]

Answer:-

1	<p><b>Legal Provision:-</b></p> <p>➔ As per <b>section 95©</b> of CGST Act, 2017, Advance ruling under GST can be sought by a registered person or a person desirous of obtaining registration under GST law.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>Therefore, it is <b>not mandatory</b> for a person seeking advance ruling to be registered.</p>
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2	<p><b>Legal Provision:-</b></p> <p>➤ As per section 97(2) of CGST Act, 2017, <b>Advance Ruling can be sought for the following questions:-</b></p> <ul style="list-style-type: none"> <li>a) classification of any goods &amp;/or services,</li> <li>b) applicability of a notification issued under provisions of GST Act(s),</li> <li>c) determination of time and value of supply of goods &amp;/or services,</li> <li>d) admissibility of input tax credit of tax paid or deemed to have been paid,</li> <li>e) determination of the liability to pay tax on any goods &amp;/or services,</li> <li>f) whether applicant is required to be registered,</li> <li>g) whether any particular thing done by applicant with respect to any goods or services or both amounts to or results in a supply of goods &amp;/or services, within the meaning of that term.</li> </ul> <p>➤ One of the <b>questions/matters</b> on which advance ruling can be sought:-</p> <ul style="list-style-type: none"> <li>➢ is to determine whether any particular thing done by the applicant with respect to any goods or services or both <b>is a supply</b> of goods or services or both under GST <b>and</b></li> <li>➢ also the classification of any goods or services or both.</li> </ul> <p>➤ Determination of <b>place of supply is not one of the specified questions/matters</b> on which advance ruling can be sought under section 97(2).</p> <p>➤ As per section 96 of CGST Act, 2017, AAR is constituted under the respective SGST Act / UTGST Act and not under the CGST Act &amp; hence, the Ruling given by AAR of one State/ Union Territory shall be applicable only within the jurisdiction of the concerned State/ Union Territory.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>➤ Ranjan <b>can seek advance ruling to determine</b></p> <ul style="list-style-type: none"> <li>➢ whether supply of goods proposed to be undertaken amounts to supply of goods under GST law and</li> <li>➢ also the classification of said goods.</li> </ul> <p>➤ Questions to determine place of supply cannot be raised with AAR &amp; hence, Ranjan <b>cannot seek advance ruling to determine place of supply</b> of goods proposed to be supplied by him.</p>	<p><b>Note:-</b> Above answer is based on view taken by CBIC in its E-flier issued on advance ruling. E-flier is available on CBIC's website. However, it can be also be argued that question relating to determination of the liability to pay tax on goods and/or services as provided under section 96(2)(e) of the CGST Act, 2017 encompasses within its ambit the question relating to place of supply. This is so because place of supply is one of the factor to determine whether supply is leviable to CGST &amp; SGST or IGST.</p>
		<p>3</p> <p><b>Legal Provision:-</b></p> <p>➤ As per <b>definition of advance ruling u/s 95(a)</b> of CGST Act, 2017, advance ruling decision can be provided by Authority to an applicant on matters/questions specified in section 97(2), in relation to supply of goods &amp;/or services <b>being undertaken or proposed</b> to be undertaken by applicant.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>➤ <b>Advance ruling can be sought</b> not only for activities/transactions proposed to be undertaken but also for activities/transactions <b>already undertaken</b> by the applicant.</p> <p>➤ Hence, Ranjan <b>can seek advance ruling</b> for supply of goods being already undertaken by him.</p>
		<p>4</p> <p>➤ <b>No</b>, Ranjan's view is <b>not correct because</b> as per <b>section 98(6)</b> of CGST Act, 2017, AAR shall pronounce its ruling in writing within 90 days from the date of receipt of application.</p> <p>➤ <b>The procedure to be followed by the Authority for Advance Ruling (AAR) on receipt of the application for advance ruling under section 98 of CGST Act, 2017 is as under:-</b></p> <ol style="list-style-type: none"> <li>1) Upon receipt of an application, AAR shall <b>send a copy</b> of application to the officer in whose jurisdiction the applicant falls and call for all relevant records.</li> <li>2) The AAR may then <b>examine</b> the application along with the records. After hearing the applicant or his authorised representative and the concerned officer or his authorised representative, AAR will pass an order either admitting or rejecting the application.</li> </ol>

	<p>3) <b>Application will not be admitted</b> if question raised in application is already pending or decided in any proceedings in the case of an applicant under any of provisions of GST Act.</p> <p>4) If application is <b>rejected</b>, order should be a speaking order giving the reasons for rejection and only after giving an opportunity of being heard to the applicant.</p> <p>5) If application is <b>admitted</b>, AAR shall pronounce its advance ruling on question specified in application after examining further material placed before it by applicant or obtained by Authority.</p> <p>6) Before giving the ruling, <b>AAR must give</b> an opportunity of being heard to the applicant or his authorised representative and concerned officer or his authorised representative.</p> <p>7) If there is a <b>difference of opinion</b> between the members of AAR, they shall refer the point or points on which they differ to the Appellate Authority for hearing the issue.</p> <p>8) The Authority shall <b>pronounce its advance ruling</b> in writing <b>within 90 days</b> from the date of receipt of application.</p> <p>9) <b>A copy of the advance ruling</b> duly signed by members and certified in prescribed manner shall be sent to the applicant, the concerned officer and the jurisdictional officer.</p>
5	<p><b>Legal Provision:-</b></p> <p>➤ As per section 103(2) of CGST Act, 2017, advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>➤ 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.</p>
6	<p>➤ <b>No, the tax advisor's view is not correct.</b></p> <p>➤ The concerned officer, jurisdictional officer or applicant aggrieved by any advance ruling may appeal to the Appellate Authority for Advance Ruling (AAAR).</p>

	<p>➤ Such appeal must be filed <b>within 30 days [extendible by another 30 days]</b> from the date on which the ruling sought to be appealed against is communicated.</p> <p>➤ After hearing the parties to the appeal, the AAAR must pass an <b>order confirming or modifying</b> the ruling appealed against <b>within 90 days</b> of the filing of an appeal.</p> <p>➤ If members of AAAR <b>differ on any point</b> referred to in appeal, it shall be deemed that no advance ruling can be issued for the question under appeal.</p> <p>➤ A <b>copy</b> of advance ruling pronounced by AAAR is sent to applicant, concerned officer, jurisdictional officer and the Authority.</p>
7	<p><b>No.</b> As the <b>GST Act(s) do not provide</b> for any appeal against the ruling of AAAR, no further appeals shall lie and the ruling of AAAR <b>shall be binding</b> on the applicant and the jurisdictional officer in respect of applicant. However, Writ Jurisdiction may lie before the High Court or Supreme Court.</p>
8	<p><b>Legal Provision:-</b></p> <p>➤ <b>As per section 103 of CGST Act, 2017</b>, advance ruling pronounced by AAR or AAAR is binding only on the applicant who had sought it and on the concerned officer or the jurisdictional officer in respect of the applicant.</p> <p>➤ The advance rulings are given in personem and not in rem, that is, <b>not to the whole world</b> and therefore, rulings cannot apply to other similar cases.</p> <p>➤ This implies that an advance ruling <b>is not applicable to similarly placed other taxable persons</b> in the State. It is only limited to the person who has applied for an advance ruling.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>➤ In given case, Sambhav will <b>not be able to apply the classification</b> of goods that will be decided in the advance ruling order to be obtained by Ranjan, to the goods supplied by him in Delhi.</p>
9	<p>➤ <b>Yes.</b> As per <b>section 104(1)</b> of CGST Act, an <b>advance ruling shall be held as void-ab-initio</b>, if the AAR or AAAR finds that the advance ruling was obtained by the applicant by fraud or suppression of material facts or</p>

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 32

Mr. Pankaj, an unregistered person under GST, purchases goods supplied by Mr. Raman, who is a registered person in Uttar Pradesh, without receiving tax invoice from Mr. Raman & thus helps in tax evasion by Mr. Raman. In another transaction, Raman issued an invoice on 15th April involving input tax credit (ITC) of ₹ 25 lakh to his customer – M/s Runaway Traders who utilised the same. No supply of goods was involved in this transaction between the two traders. Raman conducted this transaction at the instance of its tax consultant who was not a qualified professional. In the same month, Raman 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%. He deposited the tax @ 18% on these goods to the Government on the due date and retained the remaining tax collected.

Department initiated prosecution proceedings against Mr. Raman who had evaded GST of ₹ 4.2 crores. Department also issued a summon to Raman to appear before the central tax officer to produce the books of accounts in an inquiry conducted on him. He has approached the Commissioner with a request for compounding the offence. After considering the request, the Commissioner has directed him to pay an amount of ₹ 2.5 crores as compounding amount.

Raman instructed Ashok Transporters to deliver certain taxable goods to Mahavir Enterprises in Uttar Pradesh on 10th January, 20XX. The value of the goods is ₹ 6,80,000 which are chargeable to CGST & SGST @ 9% each. 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 Raman after giving it an opportunity of being heard.

In previous financial year, the goods of Mr. Raman were confiscated on the ground that he has not accounted for the goods that are liable to tax under the CGST Act, 2017. Details are as follows:-

Cost of goods for Raman before GST	₹ 15,00,000
Market value of goods	₹ 20,00,000
GST payable on such goods	₹ 3,60,000

Mangeshwar is the younger brother of Pankaj. Mangeshwar is registered person under GST who has made a breach in payment of tax amounting to ₹ 6,100. Assessing Authority has imposed a penalty as per law applicable to the breach. Invoking the provisions of section 126, Mangeshwar argues that it is a minor breach and therefore, no penalty is imposable. In another instance, Mangeshwar has omitted certain details in documentation that is not easily rectifiable. This has occurred due to the gross negligence of his accountant and he makes a plea that he was unaware of it and therefore no penalty should be levied. Mangeshwar voluntarily writes accepting a major procedural lapse from his side and requests the officer to condone the lapse as the loss caused to the revenue was not significant. Also, a lapse on the part of Mangeshwar has no specific penalty provision under the CGST Act, 2017. He is very confident that no penalty should be levied without a specific provision under the Act. You are required to advise them on the following matters:-

1. What disciplinary action may be taken by tax authorities to curb cases where purchases are made without receiving tax invoice by Mr. Pankaj and on whom?

Determine the amount of penalty leviable under CGST Act, 2017, if any, on the persons involved in respect of the transaction between:-

- Raman and M/s Runaway Traders,
- Raman and Suraksha Enterprises.

2. Determine the amount of penalty, if any, that may be imposed on Raman, if he fails to appear before the central tax officer on issue of summon.

3. Can the department impose an adhoc penalty 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. If the department issues such SCN, Should Mr. Raman proceed to pay for penalty or challenge SCN issued by department?

4. Whether Raman can apply for compounding of the offence as the prosecution has been launched?

Indicate the minimum and maximum limits for compounding amount.

Is the amount fixed by the Commissioner in this case within the limits prescribed under the law?

What is the consequence of decision of commissioner allowing the request for compounding the offence?

5. You are required to determine the amount of penalty payable under CGST Act if Raman does not come forward for the payment of penalty for the seized goods. Further, discuss the suitable course of action for Ashok Transporters if it intends to get its truck released in this case.

Determine the amount of penalty payable in case of seized goods, if such goods were exempted from GST and value remains the same i.e. ₹ 6,80,000?

What will be your answers for all above questions, if Raman comes forward for the payment of penalty for the seized goods.

6. Raman wants to know from you as to how the confiscated goods are to be released from the Department. Also, determine the maximum amount of fine in lieu of confiscation leviable under section 130 of CGST, Act, 2017 on:-

(i) The goods liable for confiscation.

(ii) On the conveyance used for carriage of such goods.

7. Discuss, what action may be taken by the Assessing Authority under GST law for each of the breaches made by Mangeshwar.

Answer :-

1 Legal Provision:-

➤ As per **section 122(1)** of CGST Act, if a taxable person-

- a) makes a supply of goods without issue of any invoice with regard to such supply, or
- b) issues any invoice without supply of goods, or
- c) takes or utilises ITC without actual receipt of goods, fully or partially, in contravention of the provisions of GST law or rules made thereunder,
- d) collects any tax in contravention of the provisions of CGST Act, but fails to pay the same to the Government within 3 months from the date on which such payment becomes due,

then such person shall be **liable to pay a penalty** which shall be **higher of** the following:-

- ₹10,000 or
- an amount equivalent to the tax evaded or ITC availed of or passed on.

➤ Further, as per **section 122(1A)**, any person at whose instance above transactions are conducted shall be liable to a penalty of an amount equivalent to ITC availed of or passed on.

➤ As per **section 122(3)**, a **penalty extending to ₹ 25,000** shall be levied on **any person who** aids or abets the above offence.

Discussion & Conclusion:-

For transaction between Pankaj and Raman:-

➤ In given case, since **Mr. Raman**, a taxable person, has supplied goods without invoice, he is punishable with **penalty u/s 122(1)** which will be **higher** of following:-

- (i) ₹10,000/- or
- (ii) 100% of tax evaded.

➤ Since Mr. Pankaj helped in tax evasion by **Mr. Raman**, he is punishable with



<p>penalty u/s 122(3) which may extend to ₹25,000.</p> <p>➤ Further, as per <b>section 132</b>, imprisonment would be as follows:-</p> <p><b>(i) In case of first-time offence, if:-</b></p> <p>(a) tax evaded &gt; ₹5 crore, imprisonment upto 5 years &amp; fine,</p> <p>(b) tax evaded exceeds ₹2 crore but &gt; ₹5 crore, imprisonment upto 3 years &amp; fine,</p> <p>(c) tax evaded exceeds ₹1 crore but ≤ ₹2 crore, imprisonment upto 1 years &amp; fine.</p> <p><b>(ii) In case of subsequent offence:-</b></p> <p>Imprisonment would be (without limit of amount of tax involved) up to 5 years &amp; fine.</p> <p><b>Penalty in case of transaction between Raman &amp; M/s Runaway Traders:-</b></p> <p>➤ In given case, Raman issued invoice without supply of goods and M/s Runaway Traders utilised the ITC on the same. Thus, <b>both are liable to pay a penalty of ₹25 lakhs each.</b></p> <p>➤ Also, the <b>tax consultant will be liable to pay a penalty of ₹25 lakhs</b> since the transaction was conducted at his instance.</p> <p><b>Penalty in case of transaction between Raman &amp; Suraksha Enterprises:-</b></p> <p>➤ In given case, Raman collected tax at wrong rate (i.e. 28%), <b>but fails to deposit full tax collected</b> to Government i.e. he deposits only tax @ 18% thereby retaining the remaining tax collected.</p> <p>➤ Thus, the <b>penalty that can be imposed on Raman is ₹50,000</b> which is <b>higher</b> of the following:-</p> <p>a) ₹10,000 or</p> <p>b) Tax evaded ₹50,000 i.e. <math>[(₹5,00,000 \times 28\%) - (₹5,00,000 \times 18\%)]</math>.</p>	<p><b>2 Legal Provision:-</b></p> <p>➤ As per <b>Section 122(3)</b> of CGST Act, 2017, if any person to whom a summon is issued for appearance to give evidence or produce a document in an inquiry <b>fails to appear</b> before the officer of central tax, then he shall be liable to a <b>penalty which may extend to ₹25,000.</b></p>
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<p><b>Discussion &amp; Conclusion:-</b></p> <p>➤ In given case, if Raman fails to appear before the central tax officer, then a <b>penalty upto ₹25,000</b> can be imposed on him.</p>	<p><b>3 Legal Provision:-</b></p> <p>➤ The levy of penalty is subject to a <b>certain disciplinary regime</b> 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 CGST Act.</p> <p>➤ <b>Accordingly—</b></p> <ul style="list-style-type: none"> <li>➤ penalty <b>cannot be imposed without issue of a show cause notice and proper hearing</b> in the matter, affording an opportunity to the person proceeded against to rebut the allegations levelled against him,</li> <li>➤ penalty is to <b>depend on the totality of the facts and circumstances</b> of the case &amp; also <b>commensurate with the degree and severity of breach</b> of provisions of law or rules alleged,</li> <li>➤ the <b>nature of the breach</b> is to be specified clearly in the order imposing the penalty,</li> <li>➤ the <b>provisions of the law</b> under which the penalty has been imposed is to be specified.</li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <p>➤ In the given case, since SCN to be issued to Mr. Raman suffers from <b>lack of clarity about nature of breach</b> which has taken place and about <b>provision of law</b> under which penalty is to be imposed, <b>SCN issued by department may be challenged.</b></p>
<p><b>4 Legal Provision:-</b></p> <p>➤ As per <b>section 138</b> of CGST Act, 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.</p> <p>➤ As per <b>section 138</b> of CGST Act, 2017, the <b>minimum limit</b> for compounding amount is to be the <b>higher</b> of the following amounts:-</p> <ul style="list-style-type: none"> <li>- 50% of tax involved, or</li> <li>- ₹10,000.</li> </ul> <p>➤ The <b>upper limit</b> for compounding amount is to be <b>higher</b> of the following</p>	

<p>amounts:- - 150% of tax involved or - ₹30,000.</p> <p>⇒ If taxable person pays the compounding amount decided by Commissioner, no further <b>proceedings shall be initiated</b> under GST law against the accused person in respect of the same offence and any criminal proceedings already initiated for the said offence shall stand abated.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>(I) In given case, <b>Mr. Raman can apply for compounding</b> of offence even though prosecution has been instituted or launched against him.</p> <p>(ii) The minimum limit for compounding is <b>₹ 2.10 crores</b> i.e. [(50% x ₹ 4.2 crores) or ₹10,000, whichever is higher] and The maximum limit for compounding is <b>₹ 6.3 crores</b> i.e. [(150% x ₹ 4.2 crores) or ₹30,000, whichever is higher].</p> <p>(iii) Thus, amount fixed by Commissioner at <b>₹ 2.5 crores is within limits</b> prescribed under law.</p> <p>(iv) On payment of compounding amount decided by Commissioner, the criminal proceedings that have been initiated against Mr. Raman in respect of said offence, shall stand abated.</p>	<p>⇒ As per <b>first proviso to section 129(6)</b>, transporter can get the conveyance released on <b>payment of penalty as mentioned in the order or ₹ 1 lakh</b>, whichever is <b>less</b>.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p><b>(i) Penalty where owner of goods does not come forward for payment of penalty:-</b></p> <p>➤ In given case, if Raman failed to come forward for the <b>payment of penalty, the penalty payable under the CGST Act is ₹ 3,40,000</b> which is <b>higher</b> of the following:- a) 50% of value of goods i.e. (50% of ₹ 6,80,000) = ₹ 3,40,000 or b) 200% of the tax payable on such goods i.e. (200% of ₹ 6,80,000 × 9%) = ₹ 1,22,400.</p> <p>➤ Further, the transporter of goods can get its <b>truck released upon payment of ₹ 1,00,000</b> which is the lower of the following under CGST Act:- a) Penalty as mentioned in the order (as calculated above) = ₹ 3,40,000 or b) ₹ 1,00,000.</p> <p>➤ If goods are exempted from GST, then the <b>amount payable for release of goods detained shall be ₹ 25,000</b> which is the <b>lesser</b> of:- - 5% X ₹ 6,80,000 = ₹ 34,000 or ₹ 25,000.</p> <p><b>(ii) Penalty where owner of goods comes forward for payment of penalty:-</b></p> <p>➤ If Raman comes forward for the payment of penalty, the <b>penalty payable under CGST Act is ₹ 1,22,400</b> which is 200% of tax payable on such goods i.e. (200% of ₹ 6,80,000 × 9%).</p> <p>➤ Further, the transporter of goods can get its <b>truck released upon payment of ₹ 1,00,000</b> which is the lower of the following under CGST Act:- a) Penalty as mentioned in the order (as calculated above) = ₹ 1,22,400 or b) ₹ 1,00,000.</p> <p>➤ If goods are exempted from GST, then the <b>amount payable for release of goods detained shall be ₹ 13,600</b> which is the <b>lesser</b> of:- - 2% X ₹ 6,80,000 = ₹ 13,600 or ₹ 25,000.</p>
<p><b>5 Legal Provision:-</b></p> <p>⇒ The penalty payable under <b>section 129(1)</b> of CGST Act, 2017 to release the detained/ seized goods is as under:-</p> <p>a) <b>200% of the tax</b> payable on goods detained or seized, if the owner of goods comes forward for payment of penalty,</p> <p>b) <b>Higher of 50% of the value</b> of goods or 200% of the tax payable on goods detained or seized, if the owner of goods does not come forward for payment of penalty.</p> <p>⇒ However, for exempted goods, amount payable for release of goods detained/ seized shall be:-</p> <p>a) <b>Lesser of 2%</b> of the value of goods or <b>₹ 25,000</b>, if the owner of goods comes forward for payment of penalty,</p> <p>b) <b>Lesser of 5%</b> of the value of goods or <b>₹ 25,000</b>, if the owner of goods does not come forward for payment of penalty.</p>	

**6 Legal Provision:-**

- As per **section 130(2)** of CGST Act, 2017, in case of goods liable for confiscation, the **maximum** amount of fine leviable in lieu of confiscation shall be [**Market value** of the goods confiscated – **Tax** chargeable thereon].
- **Aggregate** of such fine and penalty leviable **shall not be less than** the penalty equal to 100% of the tax payable on such goods.
- 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**.

**Discussion & Conclusion:-**

Raman can get his confiscated goods released on payment of such redemption fine and penalty.

(i) The fine leviable in lieu of confiscation of goods = ₹ 20,00,000 - ₹ 3,60,000 = **₹16,40,000**.

(ii) Therefore, the fine leviable in lieu of confiscation of conveyance = **₹3,60,000**.

**7 Legal Provision:-**

- As per **section 126(1)** of CGST Act, 2017, any **minor breaches** of tax regulations or any omission or mistake in documentation which is **easily rectifiable and made without fraudulent intent/gross negligence** is not liable for penalty.
- A breach shall be considered as “minor breach”, if tax involved is **less than ₹ 5,000**.
- As per section 126(5), if there is a **voluntary disclosure** of breach **prior** to its discovery by the officer, proper officer may consider this fact as a mitigating factor when quantifying the penalty.
- No penalty shall be imposed unless the opportunity of being heard has been given to the person on whom penalty is imposed.
- Further, as per **section 125**, if there is **no specific penalty** for contravention of any of the provisions of the Act or any rules, it shall be liable to a **penalty upto ₹25,000**.

**Discussion & Conclusion:-**

- Breach made by Mangeshwar is not a 'minor breach' since amount involved

- is not less than ₹5,000.
- Also, omission in documentation is not easily rectifiable & has occurred due to gross negligence.
- Thus, the **penalty is imposable**.
- Since Mangeshwar has **voluntarily disclosed** the breach of procedural requirement to the officer, proper officer may consider this fact as a mitigating factor when quantifying the penalty.
- The quantum of penalty will depend on the facts and circumstances of the case, and shall be commensurate with the degree and severity of the breach.
- Therefore, **general penalty upto ₹25,000 may be imposed** on Mangeshwar in the absence of specific penalty for any contravention.

## Question 33

Answer the following independent cases:-

1 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 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 adjudicating authority. The adjudicating authority issued the adjudication order on 23rd April and the same is communicated to the taxpayer - Anirudh Ltd. - on 28th April. Anirudh Ltd., aggrieved by the order of the adjudicating authority filed an appeal to the Appellate Authority on 26th July.

Advise Anirudh Ltd. regarding the following:-

- (i) With reference to section 121, specify the orders against which no appeals can be filed.
- (ii) Briefly examine whether appeal filed to Appellate Authority is within the time limit prescribed.
- (iii) Assume in above case that adjudicating authority passed order on 3rd March (communicated same day to Commissioner). Commissioner directs his subordinate officer to file review application with Appellate Authority. Subordinate officer filed review application on 23rd September. Examine whether review application filed is within time limit prescribed.
- (iv) 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?
- (v) Appellate Tribunal has discretion to refuse to admit any appeal. Examine correctness of statement.
  - (vi) 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.
  - (vii) 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?
  - (viii) Assuming Anirudh Ltd. loses at all levels, would there be any interest liability on Anirudh Ltd.?

2 The original adjudicating authority confirmed a demand of GST of ₹ 42,50,000 with interest and imposed a penalty of ₹ 4,25,000 in its order dated 1st September, 20XX. Assessee filed an appeal before appellate authority challenging the demand as well as penalty.

The internal audit party, after an audit of the records of the assessee, submitted a note to the Commissioner that actual amount demanded should have been ₹ 48,50,000. While the issue was pending before the appellate authority, based on the note, the Commissioner stayed the order of original authority and issued a show cause notice on 15th March, 20YY, proposing revision of the order of the original authority and revise the demand on the basis of the audit note. Examine the correctness of action taken by Commissioner.

<b>3</b>	<p><b>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.</b></p> <p><b>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.</b></p>
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**Answer :-**

<b>1</b>	<p><b>i)</b> As per <b>section 121</b> of CGST Act, 2017, <b>no appeal</b> shall lie against any decision taken or order passed by a CGST officer, if it relates to any of the following matters:-</p> <ol style="list-style-type: none"> <li>a) An order of Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer,</li> <li>b) An order pertaining to seizure or retention of books of account, register &amp; other documents,</li> <li>c) An order sanctioning prosecution under the CGST Act or</li> <li>d) An order passed under section 80 of CGST Act (payment of tax &amp; other amounts in instalments).</li> </ol>
	<p><b>ii) Legal Provision:-</b></p> <ul style="list-style-type: none"> <li>➤ As per <b>section 107</b> of CGST Act, 2017, a person aggrieved by any decision/order of an adjudicating authority can file an appeal to the Appellate Authority <b>within 3 months</b> from the date of communication of such decision/order.</li> <li>➤ The Appellate Authority can <b>condone</b> the delay in filing of appeal <b>by 1 month</b> if it is satisfied that there was a sufficient cause for such delay.</li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>➤ In given case, relevant date for computing the period of 3 months (for</li> </ul>

	<p>filing the appeal to Appellate Authority) is 28th April (date of communication of order) &amp; not 23rd April.</p> <ul style="list-style-type: none"> <li>➤ Accordingly, an appeal can be filed by Anirudh Ltd. to Appellate Authority <b>within 3 months</b> from the date of communication of order (28th April), <b>i.e. 28th July.</b></li> <li>➤ Thus, Anirudh Ltd. <b>has filed the appeal within the time limit</b> prescribed under GST law.</li> </ul>
<b>iii)</b>	<p><b>Legal Provision:-</b></p> <ul style="list-style-type: none"> <li>➤ As per <b>Section 107</b> of CGST Act, 2017, by an order, Commissioner may direct any officer subordinate to him to apply to Appellate Authority <b>within 6 months</b> from the date of communication of said decision/order to determine specified points arising out of it.</li> <li>➤ The Appellate Authority can <b>condone</b> the delay in filing of appeal <b>by 1 month</b> if it is satisfied that there was sufficient cause for such delay</li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>➤ In present case, Commissioner directs his subordinate officer to file a review application with the Appellate Authority which should have been filed <b>till 3rd September</b> (i.e. within 6 months from the date of communication of order).</li> <li>➤ But subordinate officer filed application on <b>23rd September, i.e. after 3rd September.</b></li> <li>➤ Thus, <b>appeal has not been filed within the time limit</b> prescribed under the GST law.</li> <li>➤ However, Appellate Authority <b>can condone</b> delay in filing of appeal <b>upto 3rd October</b> (i.e. up to 1 month) if it is satisfied that there was sufficient cause for such delay.</li> </ul>
<b>iv)</b>	<p><b>Yes</b>, as per <b>section 112</b> of CGST Act, Anirudh Ltd. <b>can file</b> an appeal against the order of the first Appellate Authority to the Appellate Tribunal. <b>National Bench/Regional Benches of the Tribunal</b> will have jurisdiction to hear the appeal as place of supply is one of the issues in dispute.</p>



v)	<p>⇒ The statement is <b>partially correct</b>.</p> <p>⇒ As per <b>section 112</b> of CGST Act, though Appellate Tribunal does <b>have power to refuse</b> to admit appeal, it <b>cannot refuse to admit any</b> appeal. It can refuse to admit appeal where-</p> <p>a. the tax or input tax credit involved or</p> <p>b. the difference in tax or the difference in input tax credit involved or</p> <p>c. the amount of fine, fees or penalty determined by such order, does not exceed ₹50,000.</p>
vi)	<p><b>No</b>, as per <b>section 112</b> of CGST Act, Authority <b>can't insist</b>, because once a valid appeal is filed i.e., on payment of requisite pre-deposit, the <b>recovery proceedings for the balance</b> amount of the demand in dispute <b>gets stayed</b> till the disposal of appeal.</p>
vii)	<p><b>Yes</b>, as per <b>section 118</b> of CGST Act, Anirudh Ltd. <b>can file another appeal</b> directly before the <b>Supreme Court</b> against the decision of the National Bench/Regional Bench of the Tribunal.</p>
viii)	<p><b>No</b>, there will be no <b>interest liability</b> on Anirudh Ltd. if it loses at all levels. A registered person who has paid IGST on a transaction considering it to be an inter-State supply which is subsequently held to be an intra-State supply is not required to pay any interest on CGST &amp; SGST payable because <b>there is no shortfall of overall tax amount</b>.</p>
2	<p><b>Legal Provision:-</b></p> <p>⇒ As per <b>section 108</b> of CGST Act, 2017, Revisional Authority cannot revise an order, if such order has been subject to an appeal before Appellate Authority or Tribunal or High Court or Supreme Court.</p> <p>⇒ However, Revisional Authority may pass an order on any point which has not been raised and decided in an appeal before Appellate Authority or Tribunal or High Court or Supreme Court.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>⇒ Commissioner wants to revise the order on the point which <b>is the subject matter in the appeal</b>.</p> <p>⇒ Therefore, the Commissioner <b>cannot exercise the power of revision</b> in respect of such order &amp; thus, the action taken by the Commissioner is <b>not correct</b>.</p>

3	<p><b>Legal Provision:-</b></p> <p>⇒ As per <b>section 107(6)</b> of CGST Act read with <b>section 20</b> of IGST Act, no appeal shall be filed before the Appellate Authority (AA), unless the appellant has paid:-</p> <p>a) <b>full admitted liability</b> of tax, interest, fine, fee &amp; penalty arising from impugned order &amp;</p> <p>b) <b>10% of disputed tax</b> arising from said order, subject to <b>maximum ₹ 50 Crores</b> in case of IGST.</p> <p>⇒ Further, no appeal shall be filed to AA against an order u/s 129(3), unless a sum equal to <b>25% of the penalty</b> has been paid by appellant.</p> <p>⇒ As per <b>section 112(8)</b> of CGST Act read with <b>section 20</b> of IGST Act, no appeal shall be filed before the Appellate Tribunal (AT), unless the appellant has paid:-</p> <p>a) <b>full admitted liability</b> of tax, interest, fine, fee &amp; penalty arising from impugned order &amp;</p> <p>b) <b>20% of disputed tax</b> arising from said order, <b>in addition</b> to amount deposited before the Appellate Authority, arising from the said order in relation to which appeal has been filed, subject to a <b>maximum ₹ 100 Crores</b> in case of IGST.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>(1) In given case, pre-deposit for filing an appeal with Appellate Authority against order of Joint Commissioner, where entire amount of tax is in dispute, is <b>₹28 crore</b> which is <b>lesser</b> of following:-</p> <p>a) ₹28 crore i.e. [10% of tax ₹280 crore in dispute] or</p> <p>b) ₹50 crore.</p> <p>(2) In given case, pre-deposit for filing an appeal with Appellate Tribunal against order of Appellate Authority, where entire amount of tax is in dispute, is ₹56 crores which is <b>lesser</b> of following:-</p> <p>a) ₹56 crores i.e. [20% of tax ₹280 crores in dispute] or</p> <p>b) ₹100 crores.</p> <p><b>Note:</b> Similar question is given in [CA final RTP Nov 19] with changes in Question &amp; answer as under:</p> <p>1. <b>CGST in dispute ₹280 crore</b> is given instead of IGST ₹280 crore.</p>
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2. Maximum limit of pre-deposit u/s 107(6) & u/s 112(8) shall be **₹25 crore & ₹50 crore.**
3. Final answers for pre-deposits shall be **₹25 crore** for appeal to AA & **₹50 crore** for appeal to AT.

## Question 34

Synotex Pvt. Ltd. manufactures taxable goods, 'Q' and exempt goods 'S'. Product 'S' is sold in international markets without payment of tax under letter of undertaking. The company is registered under GST in the State of Maharashtra.

The company provides the following information in relation to various supplies made by it during a tax period:

(a) Product 'S' has been exported to UK for £ 12,000

(b) Product 'Q' has been supplied to Betty Enterprises within India for ₹ 20,00,000

Note: The above amounts are exclusive of taxes, wherever applicable.

The company provides the following information in relation to tax paid on inward supplies received during the said tax period:

(a) GST of ₹ 5,00,000 has been paid on inputs

(b) GST of ₹ 2,40,000 has been paid on capital goods

(c) GST of ₹ 2,00,000 has paid on input services

(d) All the above inputs, input services and capital goods are used in the manufacturing process

Following additional information is also provided:

(i) Value of product 'S' exported to UK in Indian rupees is value of taxable invoice ₹ 12,00,000, Value in shipping bill is 12,75,000. 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.

[CA final RTP Nov 2020]

Answer:-

A. Export of product 'S'

Legal Provision :-

- As per **section 16(1)(a)** of IGST Act, 2017, export of goods is a zero-rated supply.
- As per **Section 16(2)** of IGST Act, 2017, subject to the provisions of section 17(5) of CGST Act, 2017, input tax credit (ITC) may be availed for making zero-rated supplies even if such supply may be an exempt supply.
- As per **section 54(3)** of 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.
- As per **rule 89(4)** of CGST Rules, 2017, in case of zero-rated supply of goods or services or both without payment of tax under bond/ letter of undertaking as per section 16(3) of IGST Act, 2017, refund of ITC shall be granted as per the following formula:-  
**Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover**

Discussion:-

- In given case, Synotex Pvt. Ltd. **will be eligible to claim** ITC for export of exempt product 'S' under section 16(2) of IGST Act and will thus, be able to claim refund of unutilised ITC under section 54(3) of CGST Act.
- **Accordingly, the amount refundable to Synotex Pvt. Ltd. for the tax period under rule 89(4) of CGST Rules is as under:-**
  - **Net ITC** means ITC availed on inputs and input services during the relevant period.

Thus, Net ITC = ₹7,00,000 i.e. (₹5,00,000 + ₹2,00,000).

➤ **Turnover of Zero-rated supply of goods (a or b, whichever is less) = ₹12,00,000**

a) Value of Zero-rated supply of goods under Bond/ LUT = ₹12,00,000 (refer note1)

**Note 1:-** The value of goods exported out of India shall be taken as the lower of:-

☞ FOB value declared in shipping bill = ₹12,75,000 or

☞ Value declared in tax invoice = ₹12,00,000.

b) 1.5 times the value of like goods domestically supplied in India (by the same supplier) i.e. (₹10,00,000 x 1.5) = ₹15,00,000.

➤ **Adjusted total Turnover = ₹32,00,000** i.e. (₹20,00,000 + ₹12,00,000).

➤ **Refund amount under Rule 89(4) = ₹7,00,000 x ₹12,00,000 / ₹32,00,000 = ₹2,62,500**

☞ **Further, as per CBIC Circular, the amount refundable to the applicant is least of the following amounts:-**

a) Maximum refund amount as per the formula in rule 89(4) of CGST Rules i.e. ₹ 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 i.e. ₹ 5,80,000.

c) Balance in the electronic credit ledger at the time of filing the refund application i.e. ₹3,00,000.

➤ **Thus, the amount refundable to Synotex Pvt. Ltd. of unutilized ITC is ₹ 2,62,500.**

**B. Supply of product 'R' to Betty Enterprises, a 100% EOU:-**

**Legal Provision:-**

☞ Supplies to EOU is notified as **deemed export** and for such supplies, 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 supplier may claim refund (**rule 89** of CGST Rules)

**Discussion & Conclusion:-**

☞ Therefore, since in given case, Betty Enterprises (recipient) is claiming ITC, **Synotex**

**Pvt. Ltd. (supplier of deemed exports) cannot claim refund of ITC. Therefore, the amount refundable to Synotex Pvt. Ltd. is ₹2,62,500.**

**Author's Note for students knowledge:-**

☞ if in the question, the value of such product when supplied domestically by the company in similar quantities was ₹ 5,00,000 instead of ₹ 10,00,000, then the **Turnover of Zero-rated supply of goods (a or b, whichever is less) = ₹7,50,000**

a) Value of Zero-rated supply of goods under Bond/ LUT = **₹12,00,000** (refer note 1)

Note 1:- The value of goods exported out of India shall be taken as the lower of:-

- FOB value declared in shipping bill = ₹12,75,000 or

- Value declared in tax invoice = ₹12,00,000 or

b) 1.5 times the value of like goods domestically supplied in India (by the same supplier) i.e. (₹5,00,000 x 1.5) = **₹7,50,000.**

☞ Accordingly, the **adjusted total turnover shall be ₹20,00,000 + ₹7,50,000 = ₹27,50,000.**

☞ **Accordingly, answer the question giving effect to this adjustment.**

### Question 35

**Super Engineering Works, a registered supplier in Haryana, is engaged in supply of taxable goods within the State. Given below are the details of 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:-**

Product	Turnover*	O u t p u t GST Rates	ITC Availed (₹)		Input GST Rates
			Input	Input services	
A	5,00,000	5%	54,000	20,000	18%
B	3,50,000	5%	54,000	20,000	18%
C	1,00,000	18%	10,000	5,000	18%

\*excluding GST

Determine the maximum amount of refund of the unutilized input tax credit that Super Engineering Works is eligible to claim under section 54(3) of the CGST Act, 2017 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. [CA Final RTP- Nov 2018] [CA final MTP Apr 19] [ICAI Study Material]

**Answer:-**

**Legal Provision:-**

- **Section 54(3)** of CGST Act, 2017 allows refund of unutilized input tax credit (ITC) at the end of any tax period to a registered person where the credit has accumulated on account of inverted duty structure i.e. rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods &/or services notified by Government on recommendations of Council.
- Further, as per **rule 89(5)** of CGST Rules, 2017, in the case of refund on account of inverted duty structure, refund of ITC shall be granted as per the following formula:-

$$\text{Maximum Refund Amount} = \left\{ \frac{\text{Turnover of inverted rated supply of Goods \& services} \times \text{Net ITC}}{\text{Adjusted Total Turnover}} \right\} - \left\{ \frac{\text{Tax payable on such inverted rated supply of goods \& Services}}{\text{Net ITC}} \right\} \times \left\{ \frac{\text{Net ITC}}{\text{ITC availed on Inputs \& Inputs services}} \right\}$$

Where,

- A. "Net ITC" means input tax credit availed (ITC) on **inputs** during the relevant period other than ITC availed for which refund is claimed under rule 89(4A) or 89(4B) or both.
- B. "Adjusted Total turnover" means the sum total of the value of:-
  - a) The turnover in a State or a Union territory as per section 2(112) excluding the turnover of services and
  - b) The turnover of zero-rated supply of services as per clause (D) of sub rule

89(4) & non-zero-rated supply of services,

**excluding –**

- i) the value of exempt supplies other than zero-rated supplies and
- ii) the turnover of supplies for which refund is claimed under rules 89(4A) or (4B) or both, if any, during the relevant period.

C. "Relevant period" means the period for which the claim has been filed.

**Discussion:-**

- In 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 for which no refund of unutilised ITC shall be allowed under section 54(3).
- Therefore, **only Product A is eligible for refund under section 54(3).**

**Calculation & Conclusion:-**

In given case, the maximum refund amount which Super Engineering Works is eligible to claim shall be computed as follows:-

- Tax payable on inverted rated supply of Product A = ₹5,00,000 × 5% = ₹25,000
- Net ITC = ₹1,18,000 i.e. (₹54,000 + ₹54,000 + ₹10,000)

**[Net ITC availed during the relevant period needs to be considered irrespective of whether the ITC pertains to inputs eligible for refund of inverted rated supply of goods or not]**

- ITC availed on inputs and input services = 1,63,000 i.e. (₹54,000 + ₹54,000 + ₹10,000 + ₹20,000 + ₹20,000 + ₹5,000)
- Adjusted Total Turnover = ₹9,50,000 i.e. (₹5,00,000 + ₹3,50,000 + ₹1,00,000)
- Turnover of inverted rated supply of Product A = ₹5,00,000
- **Thus, Maximum refund amount for Super Engineering Works =**  
= [5,00,000 × 1,18,000 / 9,50,000] – [25,000 × 1,18,000 / 1,63,000]  
= ₹44,007 (rounded off)





# **CUSTOMS** ACT 1962

## **IMPORTANT QUESTIONS**

**Question 36 (Ex - Factory Price Approach I)**

An importer from Cochin imports goods from an exporter in US. The vessel carrying the goods reaches Mumbai port first and from there goods are transhipped to Cochin port.

Determine the assessable value of the imported goods under the Customs Act, 1962 from the following particulars:

S.No.	Particulars	Amount
i.	Cost of the machine at the factory of the exporter	US \$ 20,000
ii.	Transport charges from the factory of exporter to the port for shipment	US \$ 1,000
iii.	Handling charges paid for loading the machine in the ship	US \$ 100
iv.	Buying commission paid by the importer	US \$ 100
v.	Freight charges from exporting country to India	US \$ 2,000
vi.	Actual insurance charges paid are not ascertainable	
vii.	Charges for design and engineering work undertaken for the machine in US	US \$ 5,000
viii.	Unloading and handling charges paid at the place of importation	₹ 1,500
ix.	Transport charges from Mumbai to Cochin port	₹ 25,000
x.	Exchange rate to be considered: 1\$ = ₹ 60	

**Answer:**

**Computation of assessable value of imported goods**

Particulars	₹
Price of the machine at the factory of the exporter	20,000

Transport charges up to the port in the country of the exporter [Note 1]	1000
<b>FAS</b>	<b>21,000</b>
Handling charges at the port in the country of the exporter [Note 1]	100
<b>FOB</b>	<b>21,100</b>
<b>Add: Adjustments under rule 10(1)</b>	
Charges for design and engineering work undertaken for the machine in US [Note 2]	5,000
Buying commission [Note 3]	Nil
<b>Adjusted FOB value</b>	<b>26,100.00</b>
<b>Add: Adjustments under rule 10(2)</b>	
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
<b>CIF value</b>	<b>28,393.63</b>
Add: Unloading and handling charges paid at the place of importation [Note 6]	Nil
<b>Assessable value</b>	<b>28,393.63</b>
<b>Assessable value in Indian rupees @ ₹ 60/ per \$</b>	<b>₹ 17,03,617.80</b>
Assessable value (rounded off)	₹ 17,03,618

**Notes:**

- (1) The cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation are includible in the assessable value [Rule 10(2)(a) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR)].

- (2) Design and engineering work undertaken elsewhere than in India and necessary for the production of the imported goods is includible in the assessable value [Rule 10(1)(b)(iv) of the CVR].
- (3) Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of the CVR].
- (4) If insurance cost is not ascertainable, the same shall be added @ 1.125% of FOB value of the goods [Third proviso to rule 10(2) of the CVR].
- (5) Cost of insurance, transport, loading, unloading, handling charges associated with transshipment of imported goods to another customs station in India is not included in the assessable value [Sixth proviso to rule 10(2) of the CVR].
- (6) As per rule 10(2) of the CVR only charges incurred for delivery of goods "to" the place of importation are includible in the transaction value.

The loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation are not to be added to the CIF value of the goods.

### Question 37

M/s. AMTL Ltd., Kolkata imported CNC Grinding machine from Catalyst Inc. USA, complete with accessories and spares in October 20XX for use in the manufacture of high precision micro tools.

Basic cost of machine with accessories US \$ F.O.B. 50,000. Catalyst Inc. supplied one extra set of accessories valued at US \$ 2000 free of cost to cover for transit damage. Other details available were as follows:

S.No.	Particulars	Amount
i.	Warranty Cost payable to Catalyst Inc. (not included in the cost of the Machine i.e., US \$ 50000)	US \$ 4,5 00
ii.	Design & Development charges paid in USA (not included in the cost of the Machine i.e., US \$ 50000)	US \$ 6,000
iii.	License Fee, AMTL is required to pay in USA	US \$ 1,000

iv.	Value of Drawings supplied by AMTL Ltd. Kolkata free of cost and is necessary for customizing machine to the needs of AMTL Ltd. Kolkata	US \$ 1,000
v.	Freight by Air	US \$ 15,000
vi.	Buying Commission paid to Indian Agent in India	₹ 30,000

Date of arrival of aircraft was 06-11-20XX and rate of exchange notified by CBIC on this date was ₹ 66.50 per US \$ and rate of BCD was 7.5%.

Machine was insured but Insurance premium was not shown /available in/from the invoice.

From the above particulars, compute the assessable value for purpose of customs duty payable. Make suitable assumptions wherever required.

Working notes should form part of your answer.

Note: Custom duty calculations need not be shown. [May 2017]

Answer: Computation of Assessable Value

Particulars	Amount (\$)
FOB value of machine with accessories	50,000.00
<b>Add: Adjustment under rule 10(1)</b>	
Extra set of accessories supplied free of cost to cover for transit damage [Note -1]	Nil
Buying commission [Note-2]	Nil
Warranty cost [Note -3]	4,500.00
Design and development charges [Note -3]	6,000.00
License fee [Note-3]	1,000.00
Value of drawings supplied by AMTL Ltd. [Note 3]	1,000.00
Total FOB Value	62,500.00
<b>Add: Adjustment under Rule 10(2)</b>	
Air freight restricted to 20% of ₹ 62,500 in terms of second proviso to rule 10(2) of the Customs Valuation Rules	12,500.00
Insurance	

(Unascertainable insurance charges added @ 1.125% of ₹ 62,500) [Clause (iii) of first proviso to rule 10(2) of Customs Valuation Rules]	703.12
CIF Value =	75,703.12
Assessable value in US \$	75,703.12
	₹
Exchange rate is ₹ 66.25 per \$[Note 5]	
<b>Assessable value in rupees</b>	<b>50,15,332</b>

**Notes:**

- (1) Sale price of machine is deemed to include the value of such accessories. Also, value of imported goods is transaction value i.e. price actually paid or payable for imported goods. Hence value of free accessories not to be added in transaction value.
- (2) Buying commission is not includible in the assessable value. [Rule 10(1)(a)(i) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007]
- (3) As per rule 10(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the following are includible in the assessable value: -
  - (a) Payment made as a condition of sale is includible in the assessable value. So, warranty cost is includible in the assessable value. [Rule 10(1)(e)]
  - (b) Design and development charges [Rule 10(1)(b)(iv)]
  - (c) License fees- [Rule 10(1)(c)]
  - (d) Value of drawings supplied by AMTL Ltd. [Rule 10(1)(b)(iv)]
- (4) Rate of exchange notified by CBIC on the date of filing of bill of entry to be considered. [Third proviso to Section 14 of the Customs Act, 1962  
 Since the value for Such drawing is given in US\$ it is presumed that the same has been developed outside India
- (5) As per Rule 10(2) (a) if cost of transport loading, unloading and handling charges associated with the delivery of imported goods to the place of importation is ascertainable then it should be added in transaction value on actual basis. In given we assume that air freight includes loading, unloading & handling charges upto place of importation. Air freight cannot exceed 20% of FOB value. (N/n 91/2017)



## Question 38

Mr. A, went to Dubai to explore new business opportunities on 1/1/2022. His wife also joined him in Dubai after 3 months.

Following details are submitted by Mr. A with Customs authorities on return to India on 2/2/2023.

- A) Used personal effect worth Rs. 80000
- B) Travel Souvenir Rs. 12000
- C) Laptop worth Rs. 50000
- D) 2 music system worth Rs. 50000
- E) 2 Litre wine worth Rs. 10000
- F) Mobile Rs. 20000
- G) Digital camera Rs. 40000
- H) Sound system worth Rs. 50000
- I) 120 sticks of cigarettes of Rs. 100 each value Rs. 12000
- J) Fire arm with 100 cartridges (Value includes value of cartridges at @ Rs. 500 per cartridges).

Following details are submitted by Mrs. A with Customs authorities on return to India on 2/2/2023.

- A) Used personal effect worth Rs. 80000
- B) Travel Souvenir Rs. 6000
- C) Jewellery bought Rs. 99000 (40gms).

Answer following questions:

- 1) Determine customs duty.
- 2) What is duty payable by Mr. A if he is foreign origin and has come to travel to India.

Answer:- 1) Determination of Customs Duty Payable

Particulars	Mr. A		Mrs. A
	Duty-free allowances (Rs.)	Non-duty free allowances (Rs.)	Duty-free allowances (Rs.)
Used Personal effects	Nil	-	Nil
Travel souvenir	Nil	-	Nil
Other articles:			
1. Laptop	Exempt	-	-
2. Music system	50,000	-	-
3. Jewellery	-		99,000
4. Mobile	20,000		
5. Wine 2Ltr	10,000	-	
6. Sound system	50,000		
7. Digital camera	40,000		
8. Cigarettes (100 sticks can be accommodated in GFA)	10,000	2,000	
9. Fire arms (100000-[Rs. 500*100])	-	50,000	
10. Fire arm cartridge (50 cartridges can be accommodated in GFA)	25,000	25,000	
<b>Total</b>	2,05,000	77,000	99,000
<b>Duty Free Limit</b>	50000	Nil	50000
<b>Baggage on which duty is payable</b>	155000	82,000	49,000
<b>Duty Rate</b>	38.5%	110%	38.5%
<b>Custom Duty Payable</b>	59675	90,200	18865

**Notes:**

1. As per Rule 3 of 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 bonafied baggage, that is, to say, used personal effects and travel souvenirs and articles (other than certain specified category), upto value of Rs.50000 if these are carried on person or in the accompanied baggage of passenger.

2. Firm 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 Customs Tariff].

3. Mrs. A is not eligible for additional jewellery allowance as she had stayed abroad for a period of less than 1 year. She is only eligible to claim Rs.50000 as general duty free baggage allowance as per Rule 3.

2) GFA limit will be Rs.15000 in case Mr.A is foreign origin and has come to India to travel.

In such case,

$$\begin{aligned} \text{Duty payable by Mr.A} &= [(205000-15000) * 38.5\%] + 90200 \\ &= (190000 * 38.5\%) + 90200 \\ &= \text{Rs.73150} + \text{Rs.90200} \\ &= \text{Rs.163350} \end{aligned}$$

## Question 39

- i) Compute the interest payable to an exporter in the following case of delayed payment of drawback as per the Customs Act, 1962.

The claim was made on 30th June, 2020 for ₹ 80,000 and was settled on 15th September 2020.

- (ii) Compute the interest payable by the exporter under the Customs Act, 1962 in the case of recovery of ₹ 10,000 paid erroneously on 3rd July, 2020. Demand for recovery was issued on 5th September, 2020 and the exporter paid back the amount on 3rd November, 2020.

Answer:

Particulars	
Duty drawback claimed	₹80,000
No. of days of delay [31.07.2020 to 15.09.2020]	47 Days
Rate of interest	6%
Interest [ $₹80,000 \times 47/365 \times 6/100$ ] (rounded off)	₹618

**Note:** Since the claim of duty drawback is not paid to exporter within 1 month from the date of filing such claim, interest @ 6% per annum is payable from the date after the expiry of the said 1 month period till the date of payment of such drawback.

Particulars	
Duty drawback paid erroneously	₹10,000
No. of days of delay [04.07.2020 to 03.11.2020]	123 Days
Rate of interest	15%
Interest [ $₹10,000 \times 123/365 \times 15/100$ ] (rounded off)	₹505

## Question 40

Nirvaan Ltd. has exported following goods to Sri Lanka. Write a brief note with reason whether any duty drawback is admissible under Section 75 in each of the following cases:

Products	FOB Value of Exported goods ₹	Market Price of Goods ₹	Duty drawback rate
A	4,30,000	3,50,000	30% of FOB
B	6,00,000	7,00,000	3.50% of FOB
C	1,20,000	60,000	0.75 of FOB
D	3,00,000	3,50,000	1.50% of FOB

**Note :** (1) Imported value of Product B is ₹ 8,00,000

(2) Product D is manufactured out of duty free inputs.

(3) Working notes should form part of the answer.

Answer:

	FOB value in ₹	Market Price ₹	Duty draw back Rate	Gross Drawback	Eligible Amount of Duty Drawback
<b>A</b>	4,30,000	3,50,000	30% of FOB	1,29,000	1,16,667 [Drawback cannot exceed 1/3 of market price 1/3 of 3,50,000=1,16,667]
<b>B</b>	6,00,000	7,00,000	3.50% of FOB	Nil	Value of final product is less than value of imported inputs i.e. no value addition.
<b>C</b>	1,20,000	60,000	0.75% of FOB	900	900 [Valid, as amount exceeds ₹50]

<b>D</b>	3,00,000	3,50,000	1.50% of FOB	Nil	Nil [Product D is made out of duty-free inputs; since no duty is borne on inputs. there cannot be any drawback.]
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# Self Practice Questions

## 03 SUPPLY UNDER GST

### Question 41

Miss Sheetal, Proprietor of Fashion Varieties, is engaged in manufacturing and selling of cosmetic products in Pune (Maharashtra). It has made the following supplies in the month of Nov 20XX.

- 1) She has donated ₹3,00,000 to a Sewa Charitable Trust in the memory of her late father. The Sewa Charitable Trust had written on the door of the room constructed in the school run by it from the money donated by Sheetal Mehta "Donated by fashion Varieties, Pune (MH)",
- 2) She has given 50 units of Diwali Gift Box of ₹ 50,000 containing Sweets, chocolates, Dry Fruits & Cakes to her Employees & the rates are 14%, 12%, 28% & 5% respectively
- 3) Supply of Hair dryer along with the charger to a customer of Surat ₹ 80,000 (exclusive of GST)
- 4) She is planning to invest in stocks. She has opened a trading account with Vaydaa Brokers. During the month, Sheetal undertook future contracts (without a physical delivery option, but are cash settled on the expiry of the contract date), amounting to ₹ 5,00,000.
- 5) Shreya, Daughter of Sheetal plans to pursue her higher education in US. She receives career consultancy services from a US based consultant for 2,50,000
- 6) She received legal consultancy for her business from Hetal (Real sister who is wholly dependent on her) of UK (London) without consideration. (OMV= 99,000)
- 7) She has also provided Free Make up kit to her Friend for marriage function. Cost of providing said goods is ₹ 80,000, & She has not availed ITC on the same

- 8) As an incentive, Miss Sheetal pays an amount of ₹ 75,000 to her 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

The applicable rates are:

IGST	18%
CGST	9%
SGST	9%

From the above information, compute the GST liability (CGST, SGST and IGST, as the case may be) of Miss Sheetal for the month of November, 20XX

Answer:-

S.No.	Particulars	Amount (₹)	IGST @ 18% (₹)	CGST @ 9% (₹)	SGST @ 9% (₹)
1.	Donation to Sewa Charitable Trust [Note 1]	3,00,000	-	27,000	27,000
2.	Supply of Diwali Gift Box [Note 2]	50,000	-	-	-
3.	Supply of Hair dryer along with Charger to Surat customer [Note 3]	80,000	14,400	-	-
4.	Investment in Stocks [Note 4]	5,00,000	-	-	-
5.	Import of Consultancy Services [Note 5]	2,50,000	-	-	-
6.	Import of Legal consultancy services [Note 6]	99,000	17,820	-	-
7.	Free makeup Kit to friend [Note 7]	80,000	-	-	-



8.	Incentives to Employees [Note 8]	75,000	-	-	-
	<b>Value of Taxable supply</b>		<b>32,220</b>	<b>27,000</b>	<b>27,000</b>

**Notes:**

- 1) The name of “Fashion Varieties” has been displayed on the door of the room constructed in the school run by Sewa Charitable Trust, it might be aimed at advertising or promoting his business. There is a direct mention of his Fashion Varieties which is being advertised. Thus, it is a supply of service by Sewa Charitable Trust for a consideration received in the form of donation
- 2) It is a mixed supply and is treated as supply of that particular supply which attracts highest tax rate [viz. Dry Fruits] in terms of section 8(b) of the CGST Act, 2017. But, as per proviso to para II of schedule I gift to employee upto ₹50, 000 is not treated as supply.
- 3) Being naturally bundled, supply of Hair dryer along with the charger is a composite supply which is treated as the supply of the principal supply [viz. Hair dryer] in terms of section 8(a) of the CGST Act, 2017 and is an inter- State supply. Accordingly, IGST @ 18% will be charged
- 4) The definitions of the terms “goods” and “services” specifically exclude “securities” from their purview. Further, 'derivatives' are included in the definition of 'securities'. As 'derivatives' fall in the definition of securities, they are neither goods nor services and hence, are not liable to GST
- 5) As per section 7(1)(b) of CGST Act, 2017, Supply includes import of services for a consideration whether or not in the course or furtherance of business. Thus, it will be treated as a supply, However it is exempted vide notification.
- 6) As per para 4 of schedule I of CGST Act, import of services by a person from a related person located outside India, without consideration is treated as supply if it is provided in course or furtherance of business. It is taxable under RCM.
- 7) As per section 7(1)(c) under Schedule I of the CGST Act , goods or services are given to unrelated persons without consideration cannot be considered as supply
- 8) As per section 7(2) read with Schedule III of the CGST Act, services by an employee to employer in the course of or in relation to his employment shall not be treated as supply under GST.

Further, the amount paid as incentive by Miss Sheetal is not in the nature of gift, and thus, is not covered under Schedule I of the CGST Act

## 04 Reverse Charge Mechanism under GST

### Question 42

M/s Goyal Ganga, the promoter and builder registered under GST started a new project “Royal House”. Total cost of project is ₹ 300 crores. For that, it purchased following input and input services during the financial year 20XX-XY as follows:-

Particulars	Amount (₹)
Input (other than cement purchases) from ABC Pvt. Ltd. (exclusive of GST) –(Registered)	2,52,000
Input purchases from Mr. Anil (an unregistered supplier)	1,20,000
Input services received from M/s Subhash & Co. (an unregistered supplier)	48,000
<b>Total Inward supply</b>	<b>4,20,000</b>

What will be your answer if M/s Goyal Ganga purchases Cement from Registered as well as unregistered suppliers as under:-

Mr. Aman (Unregistered)	1,20,000
Mr. Boman (Registered)	2,23,000
ABC Ltd (UnRegistered)	4,500

### GST Rates are as follows

Inputs & Inputs Services	18%
Cement	28%

Determine the amount of GST in each case independently.

**Answer:**

#### 1) Legal Provision:

- ➔ As per section 9(4) of CGST Act read with relevant notification, If Value of inputs and input services purchased from registered supplier is less than 80% (i.e. purchases exceeding 20% from unregistered supplier) then

- Promoter has to pay GST @ 18% under RCM on all such inward supplies (to the extent of shortfall to make it 80% of the inward supplies from registered supplier).

#### Discussion & Conclusion:

- In the given case, the total inward supplies of input or input services of M/s Goyal Ganga was ₹4,20,000. out of which, inward supply of ₹2,52,000 is from registered supplier which amounts to 60 % of total purchases of financial year.
- Therefore, there is a shortfall of 20% (i.e. 80%-60%) which amounts to ₹84,000 (i.e 3,36,000-2,52,000) and the promoter is liable to pay GST @ 18 % on ₹84,000.
- So, M/s Goyal Ganga (Promoter) shall pay:
  - CGST = ₹7560/- (₹84000 \*9%)
  - SGST = ₹7560/- (₹84000 \*9%)

#### 2) Legal Provision:

As per section 9(4) of CGST Act read with relevant notification, if the registered person purchased cement from an unregistered supplier, then he shall pay tax on reverse charge basis as recipient of such goods.

#### Discussion & Conclusion:

- In the given case, cement is received from an unregistered person, the promoter shall pay tax on supply of such cement under RCM, at the applicable rates.
- So, M/s Goyal Ganga (Promoter) shall pay:

Supplier	Value (₹)	GST @ 28% (₹)
Mr. Aman (Unregistered)	1,20,000	33,600
ABC Ltd (Unregistered)	4,500	1,260
<b>Total</b>		<b>34,860</b>

**Note:** If Cement is purchase from unregistered person, then condition of 80% does not apply & promoter is liable to pay tax under RCM irrespective of amount of cement purchase from unregistered person

## 06 VALUE OF SUPPLY

### Question 43

M/s Jonty India Ltd. a manufacturer of heavy machines registered at Jaipur (Rajasthan) supplied one machine to M/s. Dhanuka Ltd. of Udaipur (Rajasthan) on 05-02-20XX under an invoice of the same date. Using the information given below, compute the value of the machine and the GST payable (CGST & SGST or IGST as the case may be) in cash for the month of February, 20XX by M/s Jonty India Ltd. with appropriate working notes.

Assume Rate of CGST, SGST and IGST on the machine to be 9%, 9% and 18% respectively.

S.No.	Particulars	Amount (₹)
1	The Basic price of the machine (exclusive of taxes and discount)	28,50,000
2	Trade discount is allowed at 3% on the basic price and is shown in the invoice	85,500
3	Discount for prompt payment (recorded in the invoice)	5,000
4	Freight charges for delivery of the machine	2,000
5	Secondary packing (in iron sheets) charges for safe transportation of the machine on the request of buyer.	30,000
6	Design and engineering charges of the machine	90,000
7	Tax levied by Municipal Authority on the sale of the machine	25,000
8	Subsidy received by the supplier from the State Government to encourage manufacture of the machine (adjusted in above price)	80,000
9	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
10	Interest amount paid by M/s. Dhanuka Ltd. for delay in payment for the machine	12,000

11	Inward Supplies: a) IGST paid on food items for consumption by employees working in the factory.	8,000
	b) SGST and CGST (₹ 15,000 each) paid on Electrical transformer used in the manufacturing process.	30,000

**Additional Information :-**

- (i) M/s Jonty India Ltd. offers 2% turnover discount on the list price. The discount was not known at the time of supply
- (ii) M/s Jonty India Ltd. has no input tax credit balance at the beginning of February, 20XX. All the other conditions necessary for availing the eligible input tax credit have been fulfilled.
- (iii) There are no other transactions of supplies during the month of February, 20XX.
- (iv) M/s Jonty India Ltd. and M/s. Dhanuka Ltd. are not related persons

**Answer:**

**Computation of value of machine sold by M/s. Jonty India Ltd. :-**

Particulars	Amount(₹)	Remarks
Basic price of machine	28,50,000	-
Less: 3% Trade discount on basic price of machinery	(85,500)	As per <b>sec 15(3)(a) of the CGST Act</b> , Discount given before or at the time of supply if duly recorded in invoice is deductible from the value of supply.
<b>Less:</b> Discount for prompt payment	(5,000)	<b>As per sec 15(3)(a) of the CGST Act</b> , Discount given before or at the time of supply if duly recorded in invoice is deductible from the value of supply.
<b>Add:</b> Freight charges for delivery of the machine	2,000	Since arranging freight is the liability of supplier, it is a case of composite supply and thus, <b>freight charges are added in the value</b> of principal supply as per <b>section 15(2)(c)</b> of CGST Act

Secondary packing	30,000	As per <b>section 15(2)(c)</b> of the CGST Act, the value of supply shall include incidental expenses, including commission and packing charges, charged by supplier to recipient
Design and engineering Charges	90,000	As per <b>section 15(2)(c)</b> of the CGST Act, the value of supply shall include incidental expenses, including design & engineering charges, charged by supplier to recipient
Tax levied by Municipal Authority	25,000	As per <b>section 15(2)(a)</b> of CGST Act, <b>Taxes other than</b> those levied under <b>GST</b> law are <b>Includible in value</b>
Subsidy received by the supplier from the State Government	-	As per <b>section 15(2)(e)</b> of CGST Act, 2017, the value of a supply includes subsidies directly linked to the price, <b>excluding</b> subsidies provided by the State Government & Central Government
Pre-delivery inspection charges paid by M/s. Dhanuka Ltd.	22,000	<b>As per section 15(2)(b)</b> of the CGST Act, Amount that supplier is liable to pay, but incurred by the recipient, is includible in the value of supply
Interest for delay in payment [₹12,000 x 100/118] (rounded off)	10,169	<b>As per section 15(2)(d)</b> of CGST Act, the value of supply shall include Interest or late fee or penalty for delayed payment of any consideration for 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
Turnover discount	-	<b>As per section 15(3)</b> , Since discount is not known at the time of supply, it is not deductible from the value of supply
<b>Taxable Value of Supply</b>	<b>29,38,669</b>	

**Computation of net GST payable (in cash) by M/s. Jonty India Ltd. for the month of February, 20XX:-**

Particulars	CGST @9% (₹)	SGST @9% (₹)
Tax on value of ₹ 29,38,669 (rounded off)	2,64,480	2,64,480
<b>Less:</b> Input tax credit [ITC] of tax paid on electrical transformer used in the manufacturing process [ITC on food or beverages is specifically <b>disallowed unless</b> the same is used for making outward taxable supply of the same category or as an element of the taxable composite or mixed supply [Sec 17(5)]. Further, since transformers are used in the course or furtherance of business, <b>ITC thereon is available as per section 16(1).</b> ]	15,000	15,000
<b>Net GST Payable</b>	<b>2,49,480</b>	<b>2,49,480</b>

## 07 COMPUTATION OF GST

### Question 44

Renudhoot Ltd. enters into a contract with XYZ Ltd. on 2nd July 20XX 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	02.07.20XX	02.07.20XX	02.07.20XX	15 lakh
50% completion of building	15.03.20XY	22.03.20XY	29.03.20XY	60 lakh
75% completion of building	20.06.20XY	24.07.20XY	23.07.20XY	35 lakh

100% completion of building	30.09.20XY	30.09.20XY	20.09.20XY	40 lakh
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**Answer:-**

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

- (A) Date of invoice or date of receipt of payment (to the extent the invoice or payment covers the supply of services), whichever is earlier, if the invoice is issued within the time prescribed under section 31;
- (B) Date of provision of service or date of receipt of payment (to the extent the payment covers the supply of services), whichever is earlier, if the invoice is not issued within the time prescribed under section 31. Since in the present case, the construction services are provided under a contract for a period exceeding three months with periodic payment obligations, such services would fall within the ambit of term “continuous supply of services” as defined under section 2(33).

**Legal Provision:-** First write general provision here as given in Note 12 refer above. Accordingly, the time of supply with respect to each of the stages of completion is as follows:

Stages of completion	Time of supply
Initial booking	Since invoice is issued within the prescribed time limit, earlier of the ➤ date of issuance of invoice (02.07.20XX) and ➤ date of receipt of payment (02.07.20XX) <b>Therefore, time of supply is 02.07.20XX</b>
50%	Since invoice has not been issued on or before the date of 50% completion, earlier of ➤ date of provision of service (15.03.20XY) or ➤ date of receipt of payment (29.03.20XY), <b>Therefore, time of supply is 15.03.20XY .</b>

75%	Since invoice has not been issued on or before the date of 75% completion, earlier of ➤ date of provision of service (20.06.20XY) or ➤ date of receipt of payment (23.07.20XY), <b>Therefore, time of supply is 20.06.20XY</b>
100%	Since invoice is issued within the prescribed time limit, earlier of the ➤ date of issue of invoice (30.09.20XY) or ➤ date of receipt of payment (20.09.20XY), <b>Therefore, time of supply is 20.09.20XY</b>

## 09 INPUT TAX CREDIT

### Question 45

Answer the following independent questions:-

a) SNP Pvt. Ltd. (Coimbatore) exclusively manufactures and sells product 'Z' which is exempt from GST vide notifications. The company sells 'Z' only within Tamil Nadu. The turnover of the company in the previous year was ₹55 lakh. The company expects the sales to grow by 20% in the current year.

Owing to the growing demand for the product, the company decided to increase its production capacity and purchased additional machinery for manufacturing 'Z' on 01.07.20XX in current financial year. The purchase price of such machinery was ₹20 lakh exclusive of GST @ 18%. Inputs purchased by SNP Pvt. Ltd. which are still in manufacturing process is ₹36,000 on which GST is charged @ 12% on 28.10.20XX

However, with effect from 01.11.20XX, exemption available on 'Z' was withdrawn by the Central Government and GST @ 12% was imposed thereon. The turnover of the company for the half year ended on 30.09.20XX was ₹40 lakh.

1) Advise SNP Pvt. Ltd. whether it can avail input tax credit on the additional machinery purchased exclusively for manufacturing 'Z'? Assuming it

applies for registration on 15th November & got registration certificate on 20th November

2) What would be your answer if Product "Z" is still exempt, but SNP Pvt. Ltd. voluntarily takes registration under GST on 25.10.20XX and grants registration on 01.11.20XX

3) What would be your answer if SNP Pvt. Ltd. is already registered under GST due to on account of tax payable by it under reverse charge with respect to certain taxable supplies being made by it along with manufacturing of exempt product 'Z',

Other facts remaining the same, can it take ITC on additional machinery purchased exclusively for manufacture of 'Z'? If yes, then how much credit can be availed by it.

4) What would be your answer if SNP Pvt. Ltd. was already registered under GST under composition scheme as its turnover did not exceeds ₹1.5 cr, however on 01.11.20XX its turnover exceeded ₹1.5 Cr. Calculate the amount of ITC available?

b) Daksh Ltd., a registered manufacturer, demerged its entity into DG gold Ltd. and DG gold testing Ltd. The total value of Assets of Daksh Ltd. is ₹45,00,000 and unutilized ITC of CGST, SGST and IGST is ₹56,000, ₹65,000, and ₹75,000 respectively. The value of assets of DG gold Ltd. and DG gold testing Ltd. is ₹20,00,000 and ₹25,00,000 respectively. Discuss the provisions regarding the transfer of unutilised Credit to the Demerged entities on account of Demerger.

c) M/s Blue India Ltd. has been exempted from GST with effect from 01.06.20XY, earlier these goods were liable to CGST and SGST @ 9% respectively. Following information is provided on 31.05.20XY:

S.No	Particular	GST paid (₹)
(i)	Inputs are lying in stock (inclusive of CGST & SGST at 9% each)	1,30,000
(ii)	Inputs are held in process. (Inclusive of CGST & SGST at 9% each)	53,100
(iii)	Finished goods are in stock, the input cost is 30% of the value. (Inclusive of CGST and SGST at 9% each)	2,95,000



(iv)	ITC on capital goods lying in stock. (These goods were purchased on 17.09.20XX)	90,000
(v)	The balance in electronic credit ledger	1,75,000

The department has asked M/s Blue India Ltd. to reverse the credit taken on inputs referred above. However, M/s Blue India Ltd. contends that once the ITC is validity taken it is not required to be reversed. What should be the amount to be paid by Blue India Ltd.?

What would be your answer, if the balance in electronic credit ledger as on 31.05.20XY is ₹1,10,000?

d) On 25th August, 20XX (FY 20XX-XY), 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 IGST, to Mr. Suresh Kumar of Andhra Pradesh on 20th August 20XY (FY 20XY-YZ). During purchase as well as sale of the machinery, the IGST rate applicable was 18%.

Is M/s Agarwal & Agarwal Ltd., required to pay GST? If yes, calculate the amount of tax payable under GST Laws at the time of sale of the machine.

What would be your answer if jigs and fixtures are sold as scrap of value ₹60,000 instead of Capital goods.

Answer:-

a)	<p><b>Legal Provision:</b></p> <p>➔ As per <b>section 18(1)(a)</b> of CGST Act, if a person applied for registration <b>within 30 days</b> from the date on which he becomes liable to registration &amp; has been granted such registration, then he shall be entitled to take ITC of:-</p> <ul style="list-style-type: none"> <li>➤ Inputs held in stock,</li> <li>➤ Inputs contained in semi-finished goods held in stock &amp;</li> <li>➤ Inputs contained in finished goods held in stock</li> </ul>
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**on the day immediately preceding** the date from which he becomes liable to pay tax.

➔ Further **as per section 22 of CGST Act**, 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.

➔ **As per section 18(1)(b) of the CGST Act**, if a person who applies for voluntary registration, is entitled to take credit of input tax in respect of:

- Inputs held in stock and
- Inputs contained in semi-finished goods held in stock &
- Inputs contained in 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

➔ Rule 43 of the CGST Rules, disallows input tax credit on capital goods used or intended to be used exclusively for effecting exempt supplies.

➔ **As per section 18(1)© of the CGST Act**, if a person ceases to pay tax **under section 10 (i.e. composition scheme)**, then he shall be entitled to take ITC of:-

- Inputs held in stock,
- Inputs contained in semi-finished goods held in stock,
- Inputs contained in finished goods held in stock &
- on capital goods

**on the day immediately preceding** the date from which he becomes liable to pay tax u/s 9 i.e. under regular scheme

➔ **As per section 18(1)(d) of the CGST Act**, 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,
- 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.

➔ **As Per Rule 40 of the CGST Rules, 2017**, 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 is received by the registered person

➔ Further **As per sec 18(2) of the CGST Act**, ITC on inputs needs to be availed within 1 year from the date of issue of the invoice by the supplier

**Discussion & Conclusion:**

1) ➔ In the given case, the exemption which was available on product “Z” is withdrawn on 1st November. As the turnover of SNP Pvt Ltd. in preceding financial year was ₹ 55 lakhs which is exceeding applicable threshold limit for registration of ₹ 40 lakhs (if it is exclusively engaged in Goods otherwise ₹ 20 lakhs) & thus applicable for registration on 1st November

➔ Though SNP Pvt Ltd. applies for registration **within 30 days from 1st November and it obtains such registration**, still it cannot get ITC on Capital goods but can take ITC of inputs held in stock and inputs contained in semi-finished or finished goods held in stock **on 31st October**

➔ **Eligible ITC** on Inputs for SNP Pvt. Ltd. is ₹ 4,320 i.e (₹ 36,000 x 12%)

2) ➔ In the given case, since SNP Pvt. Ltd. has been granted voluntary registration on 01.11.20XX, still it cannot get ITC on Capital goods but can take ITC of inputs held in stock and inputs contained in semi-finished or finished goods held in stock **on 31st October**

➔ **Eligible ITC** on Inputs for SNP Pvt. Ltd. is ₹ 4,320 i.e (₹ 36,000 x 12%)

3) ➔ In the given case, SNP Pvt. Ltd. could not claim ITC on machinery till the time the supply of product 'Z' for which said machinery was being used was exempt. However, on 1st November supply of product “Z” becomes taxable, so it can claim ITC on capital goods also as per Rule given above.

➔ Accordingly, the ITC which can be availed by SNP Pvt Ltd. for the remaining useful life of machinery on 1st November is as under:-

Date of purchase of machinery	01.07.20XX
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3) Date immediately preceding the day on which the product become taxable	31.10.20XX
Number of quarters for which credit is to be reduced	2
GST paid on machinery [₹ 20,00,000 x 18%]	3,60,000
Credit to be reduced [₹ 3,60,000 x 5% x 2]	36,000
Amount of credit that can be taken [₹3,60,000 – ₹36,000]	3,24,000

➔ **Eligible ITC** on Inputs for SNP Pvt. Ltd. is ₹ 4,320 i.e (₹ 36,000 x 12%)

➔ Thus, **Total ITC will be ₹ 3,28,320** i.e (₹ 3,24,000 + ₹ 4,320)

4) ➔ **In the given case, SNP Pvt. Ltd.** paying tax under composition scheme has crossed the threshold and becomes liable to pay tax under regular scheme on 01.11.20XY, so it can avail ITC on Inputs as well as capitals goods.

➔ Thus, total eligible ITC on Inputs & Capital goods is same as calculated in part (3) above

**b) Legal Provision:**

➔ **As per section 18(3) of CGST Act**, if there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business or change in ownership of business with the specific provisions for transfer of liabilities, the said **registered person shall be allowed to transfer** the input tax credit which remains unutilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business.

➔ **However, as per Rule 41 of CGST Rules**, in case of demerger, input tax credit shall be apportioned in the ratio of value of assets of new unit as specified in demerger scheme.

➔ **“Value of assets”** means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.

**Discussion & Conclusion:**

➔ In the given case, the unutilised ITC of Daksh Ltd. is transferred to DG Gold Ltd. & DG Gold testing Ltd. on account of Demerger is as under:

Particulars	Daksh Ltd. (₹)	DG Gold Ltd. (₹)	DG Gold testing Ltd. (₹)
Value of Assets	45,00,000	20,00,000	25,00,000

Total Unutilized ITC is ₹ 1,96,000 i.e (₹ 56,000 + ₹ 65,000 + is ₹ 75,000) is to be apportioned in ratio of value of assets of DG gold Ltd. & DG gold testing Ltd.) i.e ₹ 20,00,000: ₹ 25,00,000 20:25	45,00,000	87,111 (1,96,000 X 20/45)	1,08,889 (1,96,000 X 25/45)
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c) The contention of M/s Blue India Ltd. is not valid in the eyes of law.

**Legal Provision:**

As per section 18(4) of CGST Act, if registered person who has availed of ITC opts to pay tax u/s 10 (i.e switches to composition levy) or the goods or services or both supplied by him become wholly exempt, he shall pay an amount, equivalent to the credit of input tax in respect of:

- inputs held in stock and
  - inputs contained in semi-finished or finished goods held in stock and
  - on capital goods held in stock as reduce on prorata basis for remaining useful life of the asset
- on the day immediately preceding**
- the date of exercising of such option or the date of such exemption

➤ This payment can be made by debiting either electronic credit ledger or electronic cash ledger.

➤ After making payment, ITC balance lying in electronic credit ledger shall lapse.

**Discussion & conclusion:**

➤ Accordingly, Blue India Ltd. will have to pay an amount computed as follows:

Particulars	Amount(₹)
ITC taken on the machinery (₹ 12,39,000 × 18/118)	1,89,000
Less: Input tax credit to be reversed @ 5% per quarter or part hereof for the period of use of machine	
(i) For the FY 20XX-XY = (₹ 1,89,000 × 5%) × 3 quarters	28,350
(ii) For the FY 20XY-YZ = (₹ 1,89,000 × 5%) × 2 quarters	18,900
Amount required to be paid by adding the reversal amount to the output tax liability (A) [Note]	1,41,750

Duty leviable on transaction value (₹ 7,50,000 × 18%) (B)	1,35,000
<b>GST payable towards disposal of machine is higher of (A) and (B)</b>	<b>1,41,750</b>

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 second case, if jigs and fixtures are sold as scrap then value will be determined as per section 15.

**Accordingly** amount payable on supply of Jigs and fixtures by M/s Agarwal & Agarwal Ltd. will be ₹ 9,000 i.e (₹ 60,000 × 18%)

**Authors Note:**

➤ 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]

**Question 46**

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/Center	Turnover for the quarter ending September 20XX* (₹)	Eligible ITC on input services attributable to a specific unit/center, 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

**Table 2 :-**

S.No	Particular	CGST	SGST	IGST
1)	a) Input services used by all units and centres	1,20,000	1,20,000	2,40,000
	b) Ineligible ITC in terms of section 17(5) of the CGST Act, 2017	40,000	40,000	80,000
ii)	Inputs used by Pune unit and Kolkata centre	60,000	60,000	
ii)	Input services used by Chennai unit and Bengaluru centre (ITC pertaining to such invoices is eligible ITC under the provisions of the GST law)	30,000	30,000	10,000

**Chennai unit manufactures exempted products.**

**Compute the amount of ITC to be distributed to each of the units and centres.**

**Answer:-**

**Computation of ITC to be distributed by ISD**

S.No	Particular	Pune Unit	Chennai	Kolkata	Bengaluru
1	IGST credit of ₹3,00,000, CGST credit of ₹30,000 and SGST credit of ₹30,000 specifically attributable to Pune unit [Note 1]	(IGST 3,00,000) (CGST 30,000) (SGST 30,000)			

2	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)		
3	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)
4	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)
5	Inputs used by Pune unit and Kolkata centre [Note 5]	Nil	Nil	Nil	Nil
6	Input services used by Chennai unit and Bengaluru centre [Note 6]		IGST: 30,000		IGST : 40,000

**Notes:**

1	As per <b>Section 20(2)© of the CGST Act 2017 read with Rule 39</b> of the CGST Rules 2017, 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.
2	As per <b>Section 20(2)(c) of the CGST Act 2017 read with Rule 39 of the CGST Rules 2017</b> , 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
3	➔ As per <b>Section 20(2)(e) of the CGST Act 2017 read with Rule 39 (1)(b) of the CGST Rules 2017</b> , 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.

- ⇒ Ratio of the turnover of the units and centres in last quarter, previous to the month during which ITC is to be distributed:  
= 20 lakhs: 30 lakhs: 10 lakhs: 40 lakhs  
= 2: 3: 1: 4  
Therefore

Unit/Centre	CGST (₹)	SGST (₹)	IGST (₹)
Pune	$1,20,000 \times 2/10 = 24,000$	$1,20,000 \times 2/10 = 24,000$	$2,40,000 \times 2/10 = 48,000$
Chennai	-	-	$4,80,000 \times 3/10 = 1,44,000$
Kolkata	-	-	$4,80,000 \times 1/10 = 48,000$
Bangaluru	-	-	$4,80,000 \times 4/10 = 1,92,000$

- 4 ⇒ As per Section 20(2)(e) of the CGST Act 2017 read with Rule 39(1)(b) of the CGST Rules 2017, Ineligible ITC of CGST [₹ 40,000], SGST [₹ 40,000] and IGST [₹ 80,000] will be distributed among the units and centres in the ratio of their turnover of the last quarter
- ⇒ Ratio of the turnover of the units and centres in last quarter, previous to the month during which ITC is to be distributed:  
= 20 lakhs: 30 lakhs: 10 lakhs: 40 lakhs  
= 2: 3: 1: 4

⇒ Therefore,

Unit/Centre	CGST (₹)	SGST (₹)	IGST (₹)
Pune	$40,000 \times 2/10 = 8,000$	$40,000 \times 2/10 = 8,000$	$80,000 \times 2/10 = 16,000$
Chennai	-	-	$1,60,000 \times 3/10 = 48,000$
Kolkata	-	-	$1,60,000 \times 1/10 = 16,000$
Bangaluru	-	-	$1,60,000 \times 4/10 = 64,000$

- 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 ⇒ As per Section 20(2)(d) of the CGST Act 2017 read with Rule 39(1)(b) of the CGST Rules 2017, Eligible ITC of CGST [₹ 30,000], SGST [₹ 30,000] and IGST [₹ 10,000] will be distributed among the Chennai unit & Bengaluru centre in the ratio of their turnover of the last quarter
- ⇒ Ratio of the turnover of the units and centres in last quarter, previous to the month during which ITC is to be distributed:  
= 30 lakhs: 40 lakhs  
= 3:4

⇒ Therefore,

Unit/Centre	CGST (₹)	SGST (₹)	IGST (₹)
Chennai	-	-	$70,000 \times 3/7 = 30,000$
Bengaluru	-	-	$70,000 \times 4/7 = 40,000$

## 10 Exemption

### Question 47

Mr. Pethalal has obtained registration in the current financial year in Uttar Pradesh. His turnover in preceding financial year was ₹19,90,000. He is engaged in providing various services under one roof. He provides the following information pertaining to supplies made/input services availed by him during the month of September, 20XX:-

S.No.	Particulars	Amount
1	Funeral services	8,80,000
2	Services of warehousing of jaggery	50,000
3	Electrically operated buses given on hire to Municipal Corporation	5,00,000



4	Service provided to recognized sports body as commentator	2,00,000
5	Commission received as an insurance agent from insurance Company	65,000
6	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
7	Amount charged as business correspondent for services provided to urban branch of nationalized bank for savings bank accounts	15,000
8	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
9	Supply value including cost of fuel for provision of renting of motor vehicle service to NPS Ltd.	88,000
10	Professional services provided to foreign diplomatic mission located in India	50,000
11	Services provided by way of a labour contract for repairing a single residential unit otherwise than as a part of residential complex	3,00,000
12	Interest received on fixed deposits of the company with Dhanvarsha Bank	3,50,000
13	Receipts from running a Boarding School (including receipts for providing residential dwelling service of ₹ 6,20,000 to students)	19,00,000
14	Interest received on credit card facilities extended	1,80,000
15	Renting of residential dwellings for use as a residence to an unregistered person	18,00,000
16	Fumigation of sugarcane in warehouse	50,000
17	Margin earned from trading in derivatives & futures	2,00,000

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

a)	Freight paid to unregistered goods transport agency for his business activities relating to serial number (l) above	1,00,000
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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
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All the transactions stated above are intra-State transactions and amounts given are exclusive of GST, wherever applicable.

Determine the GST liability of Mr. Pethalal for the month of September, 20XX 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 which CGST and SGST @ 2.5% each is applicable.

**Answer:**

**Computation of net GST payable by Mr. Pethalal for the month of September:-**

S.No.	Particulars	Amount (₹)	CGST (₹)	SGST (₹)
1.	Supplies on which Mr. Pethalal is liable to pay GST under forward charge:-			
2.	Funeral services [Note 1]	8,80,000		
3.	Services of warehousing of jaggery [Note 2]	50,000	4,500 (50000*9%)	4,500 (50000*9%)
4.	Services by way of giving on hire electrically operated buses to Municipality [Note 3]	5,00,000		
5.	Service provided to recognized sports body as commentator [Note 4]	2,00,000	18,000 (200000*9%)	18,000 (200000*9%)
6.	Commission received as an insurance agent from insurance company [Note 5]	65,000	-	-
7.	Commission received as business facilitator for services provided to urban branch of a nationalised bank with respect to savings bank accounts [Note 6]	15,000	-	-
8.	Amount charged as business correspondent for services provided to urban branch of nationalized bank for savings bank accounts [Note 6]	15,000	1,350 (15000*9%)	1,350 (15000*9%)
9.	Security services (supply of security personnel) provided to DEC for security of college premises [Note 7]	28,000	-	-

10.	Renting of motor vehicle service [Note 8] Alternative-I Alternative-II	88,000	- 2,200 (88,000* 2.5%)	- 2,200 (88,000* 2.5%)
11.	Professional services provided to foreign diplomatic mission located in India [Note 9]	50,000	4,500 (50,000*9%)	4,500 (50,000*9%)
12.	Services provided by way of labour contracts for repairing a single residential unit otherwise than as a part of residential complex [Note 10]	3,00,000	27,000 (3,00,000* 9%)	27,000 (3,00,000* 9%)
13.	Interest received on fixed deposits with Dhanvarsha Bank [Note 11]	3,50,000	-	-
14.	Receipts from Boarding School including receipts for residential dwelling service to students [Note 12]	19,00,000	-	-
15.	Interest received on credit card facilities extended [Note 13]	1,80,000	16,200 (1,80,000*9%)	16,200 (1,80,000*9%)
16.	Renting of residential dwelling for use as residence to an unregistered person [Note 14]	18,00,000	-	-
17.	Fumigation of sugarcane in warehouse [Note 15]	50,000	4,500 (50,000*9%)	4,500 (50,000*9%)
18.	Margin earned from trading in derivatives & futures [Note 16]	2,00,000	-	-
<b>Value of taxable supply</b>		<b>9,33,000</b>	<b>-</b>	<b>-</b>
<b>Total tax liability on outward supplies (A)</b>		<b>-</b>	<b>78,250</b>	<b>78,250</b>
ITC available on input services [Note 17]			<b>Nil</b>	<b>Nil</b>
<b>Supplies on which Mr. Pethalal is liable to pay GST under reverse charge:</b>				
Services received from GTA [Note 17]		1,00,000	2,500 (1,00,000*2.5%)	2,500 (1,00,000*2.5%)
Legal services received [Note 18]		50,000	-	-
Value of taxable supply		1,00,000	-	-

Total tax liability on inward supplies under reversecharge payable in cash [Note 19] (B)	-	2,500	2,500
Net GST payable (A) + (B)		80,750	80,750

**Notes:-**

- 1) Funeral services **are not supply** as they are covered in entry 4 of Schedule III to CGST Act, 2017 and thus, are outside the ambit of GST.
- 2) Warehousing of jaggery is not covered under any exemption and hence, **taxable**.
- 3) Service of giving on hire electrically operated vehicle (EOV) meant to carry more than 12 passengers is exempt. Buses are EOVs meant to carry more than 12 passengers & hence, service of giving them on hire to Municipal Corporation is **exempt** from GST.
- 4) Services provided to a recognized sports body by an individual only as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body are exempt. Thus, service provided as **commentator is liable to GST**.
- 5) 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 recipient of service i.e., insurance company, under **reverse charge**. Thus, **Mr. Pethalal will not be liable to pay GST on such commission**.
- 6) Services provided by a business facilitator/business correspondent to a banking company with respect to accounts in its **rural area branch are exempt** from GST. Thus, services provided by him in respect of **urban area branch** of the bank **will be taxable**.  
However, in respect of service provided as business facilitator, the tax thereon is to be paid by recipient of service i.e., banking company, under **reverse charge & not by Mr. Pethalal** whereas in respect of service provided as business correspondent, the tax is to be paid by Mr. Pethalal under forward charge.
- 7) Security services **performed** in an educational institution which is providing pre-school education and education up to higher secondary school or equivalent are exempt from GST. Thus, **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 under **reverse charge & not by Mr. Pethalal**.

8) **Alternative-I: It is assumed that motor vehicle is designed to carry passengers:**

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 is payable by recipient – NPS Ltd. – **under reverse charge.**

**Alternative-II: It is assumed that motor vehicle is designed to carry goods:**

Not exempt.

9) Services given by a foreign diplomatic mission located in India are **exempt** from GST, but services provided to such mission are **taxable.**

10) 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. Thus, Labour contracts for **repairing** are **taxable.**

11) Services of extending deposits, loans or advances in where consideration is represented by interest or discount (other than Interest involved in credit card services) are **exempt.**

12) Services provided by an educational institution to its students, faculty and staff are **exempt.** 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 & food to students where principal supply is **supply of education.**

13) Credit extended through credit cards is covered under the exception part of exemption and hence, service is **taxable.**

14) The residential dwelling is given on rent to an unregistered person for residence is **Exempt**

15) It is **taxable** as not covered under any exemption

16) Securities are neither goods, nor services & hence, trading in derivatives & Futures (i.e. securities) is **not a supply.**

17) GST on services provided by an **unregistered GTA to a registered person** is payable by the recipient of service i.e., the registered person, under reverse charge. Since in given case, GTA is unregistered, **Mr. 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.**

18) Legal services provided by a partnership firm of advocates to a business entity (with an aggregate turnover up to such amount in preceding financial year (FY) as makes it eligible for exemption from registration under CGST Act) are exempt from GST. Since the aggregate turnover of Mr. Pethalal did not exceed ₹ 20 lakh [the applicable threshold limit for registration for Mr. Pethalal being a supplier of services] in preceding FY, legal **services received by him are exempt.**

19) As per **section 49(4)** of CGST Act, 2017, amount available in electronic credit ledger may be used for making payment towards output tax. However, tax payable under reverse charge is not an output tax as per section 2(82) & **will have to be paid in cash.**

20) Since all the transactions given hereunder are intra-State, **CGST and SGST are payable as per section 9(1)** of CGST Act, 2017.

## 11 REGISTRATION

### Question 48

**Answer the following questions with respect to casual taxable person (CTP) and Non-resident taxable person (NRTP) under the CGST Act, 2017: -**

**a) Who is CTP & NRTP?**

**b) Can a casual taxable person opt for the composition scheme?**

**c) When is the CTP & NRTP liable to get registered?**

**d) Is PAN being mandatory for registration of CTP and NRTP?**

**e) What is the validity period of the registration certificate issued to a CTP and NRTP?**

**f) Can the validity of registration certificate issued to a CTP and NRTP be extended? If yes, what will be the period of extension?**

Answer :-

a)	<p>➤ As per <b>section 2(20)</b> of CGST Act, 2017, <b>Casual taxable person means</b> a person-</p> <ul style="list-style-type: none"> <li>➤ who occasionally undertakes transactions involving supply of goods and/or services,</li> <li>➤ in the course or furtherance of business,</li> <li>➤ whether as principal, agent or in any other capacity,</li> <li>➤ in a State/UT where he has no fixed place of business.</li> </ul> <p>➤ As per <b>section 2(77)</b> of CGST Act, 2017, Non-resident taxable person means a person-</p> <ul style="list-style-type: none"> <li>➤ who <b>occasionally undertakes transactions</b> involving supply of goods and/or services,</li> <li>➤ whether as principal, agent or in any other capacity,</li> <li>➤ but who <b>has no fixed place</b> of business or residence <b>in India</b>.</li> </ul>
b)	<p><b>No</b>, as per <b>section 10(2) and 10(2A)</b> of CGST Act, 2017, a casual taxable person cannot opt for the composition scheme</p>
c)	<p>➤ As per <b>section 24</b> of CGST Act, 2017, a casual taxable person (CTP) is liable to obtain registration compulsorily under GST law.</p> <p>➤ CTP has to apply for registration <b>at least 5 days prior to commencement of business as per section 25(1) read with proviso thereto</b>.</p> <p>➤ However, if CTP is making taxable supplies of specified handicraft goods, then it is eligible for the threshold limit applicable as per <b>section 22</b>.</p> <p>➤ Whereas non-resident taxable person, should apply for registration <b>at least 5 days prior to the commencement of business</b> irrespective of the threshold limit.</p>
d)	<p>➤ <b>Yes, PAN is being mandatory</b> for registration of casual taxable person.</p> <p>➤ <b>However, PAN is not mandatory</b> for registration of non-resident taxable person.</p> <ul style="list-style-type: none"> <li>➤ He has to submit a self-attested copy of his <b>valid passport</b> along with the application signed by his authorized signatory who is an Indian Resident having valid PAN.</li> <li>➤ However, in case of a business entity incorporated or established</li> </ul>

	<p>outside India, the application for registration shall be submitted <b>along with its tax identification number or unique number</b> on the basis of which the entity is identified by the Government of that country or its PAN, if available.</p>
e)	<p>➤ As per <b>section 27(1) of CGST Act read with proviso thereto</b>, Registration Certificate granted to a casual taxable person &amp; non-resident taxable person will be valid for earlier of:-</p> <ul style="list-style-type: none"> <li>➤ <b>period specified in the application</b> for registration or</li> <li>➤ period of <b>90 days</b> from the effective date of registration.</li> </ul> <p>➤ However, at the request of the said taxable person, the proper officer may <b>extend the validity by a further period not exceeding 90 days</b>.</p>
f)	<p>➤ <b>Yes</b>, the <b>validity</b> of registration certificate issued to a casual taxable person and non-resident taxable person <b>can be extended</b>.</p> <p>➤ It can be extended by a <b>further period not exceeding 90 days</b> by making application before the end of period of validity of registration granted to him.</p>

## 12 TAX INVOICE

### Question 49

Answer the following questions

- 1) What is 'e-invoicing'?
- 2) Enumerate the persons to whom the provisions regarding E-invoicing are applicable.
- 3) What are the advantages of E-invoicing?
- 4) Fashion Queen Ltd., registered under GST and dealing in baby products has an aggregate turnover of ₹ 40 crore in the preceding financial year. The tax consultant of Fashion Queen Ltd. advised it to issue e-invoices mandatorily. However, Fashion Queen Ltd. is of the view that since its aggregate turnover is less than the threshold limit applicable for e-



invoicing, it is not required to issue e-invoices. You are required to comment upon the validity of the advice given by tax consultant.

What would be your answer if fashion Queen Ltd avails the services from Superfast transports, Goods Transport Agency for transporting of goods by road. The aggregate turnover of Superfast transports is ₹50 crore in the preceding financial year

Would your answer differ if transportation of goods is done through Air?

5) Enumerate the suppliers to whom the Dynamic Quick Response (QR) code is applicable when they issue an invoice to an unregistered person

Answer:

1)	E-invoicing is <b>reporting of business to business (B2B) invoices</b> to GST system for certain notified category of taxpayers
2)	<p>➤ <b>Mandatory e-invoicing</b> is applicable to all registered businesses whose aggregate turnover (based on PAN) in any preceding financial year from 2017-18 onwards <b>exceeds ₹ 10 Crore</b> will be required to issue e-invoices for <b>B2B supplies or for exports.</b></p> <p>➤ <b>Exception:-</b> Following persons are exempted from the mandatory requirement of e-invoicing:-</p> <ul style="list-style-type: none"> <li>➤ A Government Department</li> <li>➤ A local Authority</li> <li>➤ Special Economic Zone (SEZ) units</li> <li>➤ Insurer or banking company or financial institution including NBFC</li> <li>➤ GTA supplying services in relation to transportation of goods by road in a goods carriage</li> <li>➤ Supplier of passenger transportation service</li> <li>➤ Person supplying services of admission to exhibition of cinematograph films in multiplex screens</li> </ul> <p>➤ <b>Declaration to be given in tax invoice:-</b> A taxpayer whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds ₹ 10 Crore but is exempted from e-invoicing shall give a declaration in the tax invoice that</p> <ul style="list-style-type: none"> <li>➤ invoice is not required to be issued in the manner specified under rule 48(4).</li> </ul>

3)	<p><b>The advantages of E-invoicing are as follows:-</b></p> <ol style="list-style-type: none"> <li>1. <b>Auto-reporting of invoices into GST return &amp; auto-generation of e-way bill (wherever required):-</b> Once B2B invoice data is reported in e-invoice form, the same is reported in multiple forms (GSTR-1, e-way bill etc.).</li> <li>2. <b>Substantial reduction in transcription errors &amp; Reconciliation:-</b> Same data gets reported to tax department &amp; to buyer to prepare his inward supplies register. Buyer can reconcile with his Purchase Order.</li> <li>3. <b>Matching of ITC &amp; output tax by Dept. &amp; reduces tax evasion:-</b> A complete trail of B2B invoices is available with Department which enables the system-level matching of ITC &amp; output tax thereby reducing the tax evasion.</li> <li>4. <b>Eliminates fake invoices:-</b> Claiming fictitious ITC by raising fake invoices is eliminated. E-invoice system helps to curb actions of unscrupulous taxpayers &amp; reduces fraud cases as tax authorities have access to data in real-time.</li> <li>5. <b>Other Advantages:-</b> <ul style="list-style-type: none"> <li>➤ Facilitate standardisation &amp; inter-operability,</li> <li>➤ Reduction of disputes among transacting parties,</li> <li>➤ Better relationship,</li> <li>➤ Eco-friendly as it eliminates paper,</li> <li>➤ Improve payment cycles,</li> <li>➤ Internal controls,</li> <li>➤ Reduction of processing costs &amp;</li> <li>➤ Improving overall business efficiency greatly.</li> </ul> </li> </ol>
4)	<p><b>Legal Provision:</b></p> <ul style="list-style-type: none"> <li>➤ All registered businesses with an aggregate turnover (based on PAN) in any preceding financial year from 2017-18 onwards greater than ₹10 crore are required to issue e-invoices in respect of B2B supplies (supply of goods and/or services to a registered person).</li> <li>➤ However, Goods Transport Agency (GTA) supplying services of transportation of goods by road in a goods carriage is exempted from the requirement of preparing E-Invoice.</li> </ul>



Discussion & conclusion:	
1)	<ul style="list-style-type: none"> <li>➤ The advice given by tax consultant of Fashion Queen Ltd. for issuance of e-invoices mandatorily in the current financial year is valid in law</li> <li>➤ The aggregate turnover of Fashion Queen Ltd. exceeds the threshold limit of aggregate turnover applicable for e-invoicing &amp; thus, it is mandatorily required to issue e-invoices in respect of supplies made to registered persons.</li> </ul>
2)	<ul style="list-style-type: none"> <li>➤ In the second case, GTA is providing services by road which is specifically exempt from mandatory requirement of e-invoicing even if the turnover exceeds ₹ 10 crore in the preceding financial year &amp; thus, e-invoicing is not applicable to Superfast Transports</li> <li>➤ Further Superfast transports shall give a declaration in the tax invoice that Invoice is not required to be issued in the manner specified under Rule 48(4) as it is exempted from E-invoicing</li> </ul>
3)	<ul style="list-style-type: none"> <li>➤ In the third case, GTA is providing services by air. But the exemption from preparing E-Invoice is given to GTA only if it provides goods transportation services by road and not by air.</li> <li>➤ Since the aggregate turnover of GTA also exceeds ₹ 10 Crore in previous year 20XX-XY and it makes supplies to registered person only, the GTA is required to prepare E-invoice.</li> </ul>
5)	<ul style="list-style-type: none"> <li>➤ All invoices <b>issued to an unregistered person</b> (B2C invoice) <b>by a registered person</b> whose <b>aggregate turnover</b> in any preceding financial year from 2017-18 onwards <b>exceeds ₹ 500 crores</b> are required to have a Dynamic QR code.</li> <li>➤ However, Dynamic Quick Response (QR) code is <b>not applicable</b> to following suppliers when they issue an invoice to an unregistered person:-             <ol style="list-style-type: none"> <li>1. Insurer or banking company or financial institution including NBFC.</li> <li>2. GTA (Goods transport agency) supplying services in relation to transportation of goods by road in a goods carriage.</li> <li>3. Supplier of passenger transportation service.</li> <li>4. Person supplying services by way of admission to exhibition of</li> </ol> </li> </ul>

<ul style="list-style-type: none"> <li>cinematograph films in multiplex screens.</li> <li>5. Supplier of OIDAR (online information and database access or retrieval) services.</li> <li>6. In case of exports.</li> </ul>
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## 18 IGST ACT & PLACE OF SUPPLY

**Combined Question on Sec 10 of IGST Act:- POS of Goods other than those imported into or exported from India and Sec 11 of IGST Act:- POS of Goods Imported into or Exported from India**

### Question 50

Vidhyut Pvt. Ltd. is registered in Uttar Pradesh. Determine the place of supply of goods & nature of transaction under the provisions of IGST Act, 2017 for the following transactions undertaken by it:-

1. It received an order from A Ltd. of Surat for supply of certain goods which were to be delivered at Surat. Vidhyut Pvt. Ltd. arranges transportation of goods to Surat & price is inclusive of freight.
2. It sold goods to a SEZ unit located in Uttar Pradesh.
3. It enters into an agreement to sell goods to Bakul of Pune. While the goods were being packed in Uttar Pradesh godown of Vidhyut Pvt. Ltd., Bakul got an order from Shreyas of Shimoga, Karnataka for the said goods. Bakul agreed to supply the said goods to Shreyas and asked Vidhyut Pvt. Ltd. to deliver the goods to Shreyas at Shimoga.
4. Vidhyut Pvt. Ltd. has leased its machine (cost ₹ 8,00,000) to MB Pvt. Ltd. (Karnataka) for production of goods on a monthly rent of ₹ 40,000. After 14 months, MB Pvt. Ltd. requested Vidhyut Pvt. Ltd. to sell the machine to it for ₹ 4,00,000, which is agreed to by Vidhyut Pvt. Ltd.
5. Pure Refineries (Mumbai, Maharashtra) gives a contract to Vidhyut Pvt. Ltd. to supply a machine which is required to be assembled in a power plant in its refinery located in Kutch, Gujarat.

6. It entered into contract with an Indian airline (based in Uttar Pradesh) 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.
7. It imports electric food processors from China for its Kitchen Store in Noida, Uttar Pradesh.
8. It exports spices from New Delhi to London.
9. It 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 Vidhyut Pvt. Ltd. to C Ltd., a company based in Karnataka.

Answer:-

Legal Provision:-

- As per section 10(1)(a) of IGST Act, if supply involves movement of goods by supplier or recipient or any other person, then place of supply of such goods shall be the location of goods at the time at which the movement of goods terminates for delivery to the recipient.
- As per section 10(1)(b) of IGST Act, if goods are delivered by supplier to any person on direction of a third person, before or during movement of goods, then:-
  - it shall be deemed that the said third person has received the goods and
  - place of supply of such goods shall be the principal place of business of such third person.
- As per section 10(1)(c) of IGST Act, if the supply does not involve movement of goods by supplier or recipient, the place of supply shall be the location of goods at the time of the delivery to recipient.
- As per section 10(1)(d) of IGST Act, if goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly.
- As per section 10(1)(e) of IGST Act, if goods are supplied on board a conveyance including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.
- As per section 11 of IGST Act, place of Supply of goods:-
  - a) imported into India shall be the location of importer,
  - b) exported from India shall be the location outside india.

- As per section 7(1) of IGST Act, if the location of supplier and the place of supply are in two different States, then the supply shall be treated as inter-state supply and liable to IGST.
- As per section 8(1) of IGST Act, if the location of supplier and the place of supply are in same States, then the supply shall be treated as intra-state supply and liable to CGST & SGST.
- As per CBIC clarification, u/s 7(5)(b) of IGST Act, supply of goods &/or services to SEZ developer or SEZ unit is treated as inter-state supply irrespective of whether supplier & SEZ are situated in same state or different state.
- As per section 7(2) of IGST Act, supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be inter-state supply.
- As per section 7(5)(a) of IGST Act, when the supplier is located in India and the place of supply is outside India, supply is treated as inter-state supply.

Discussion & Conclusion:-

Determination of place of supply of goods for the various transactions undertaken by Vidhyut Pvt. Ltd.:-

Sr. No	Transaction	Place of Supply	Reason & Nature of Transaction
1	Goods sold to A Ltd.	Surat, Gujrat	<ul style="list-style-type: none"> <li>➤ The fact whether the supplier or recipient arranged the transport of goods is <b>irrelevant</b>.</li> <li>➤ <b>Location of Supplier is Uttar Pradesh and place of supply u/s 10(1)(a)</b> of IGST Act is <b>Surat</b> as movement of goods terminates for delivery to the recipient at Surat.</li> <li>➤ As per section 7(1) of IGST Act, it is <b>inter-state supply</b> &amp; thus, IGST will be charged.</li> </ul>
2	Goods sold to SEZ unit	Uttar Pradesh	<ul style="list-style-type: none"> <li>➤ Supply of goods to SEZ unit shall be treated as inter-state supply as per the given CBIC clarification &amp; thus, IGST will be charged.</li> </ul>

3	Goods sold to Bakul & further sold by Bakul to Shreyas	Pune, Maharashtra & Shimoga, Karnataka in two cases, respectively	<p><b>For Supply between Vidhyut Pvt. Ltd. (Uttar Pradesh) &amp; Bakul (Pune, Maharashtra):-</b></p> <ul style="list-style-type: none"> <li>➤ This is a bill to ship to supply where goods are delivered to Shreyas on the direction of Bakul.</li> <li>➤ Thus, it is deemed that Bakul has received the goods &amp; the place of supply of such goods u/s <b>10(1)(b)</b> of IGST Act is the principal place of business of Bakul i.e., <b>Pune, Maharashtra.</b></li> </ul> <p><b>For Supply between Bakul (Pune, Maharashtra) &amp; Shreyas (Shimoga, Karnataka):-</b></p> <ul style="list-style-type: none"> <li>➤ In this case, since the supply involves movement of goods, the place of supply u/s <b>10(1)(a)</b> of IGST Act is the location of the goods at the time when the movement of goods terminates for delivery to the recipient (Shreyas) i.e., <b>Shimoga, Karnataka.</b></li> </ul> <p><b>In both the above cases, location of supplier &amp; place of supply are in different states &amp; hence, they are inter-state supplies liable to IGST.</b></p>
4	Machine leased & later sold to MB Pvt. Ltd.	Karnataka	<ul style="list-style-type: none"> <li>➤ In this case, there will be <b>no movement</b> of goods and the same will be sold on as is where is basis.</li> <li>➤ Thus, location of machine at the time of sale will be the place of supply i.e., <b>Karnataka u/s 10(1)(c)</b> of IGST Act.</li> <li>➤ Since the location of Supplier and place of supply are in different States, it is <b>inter-state supply &amp;</b>, liable to <b>IGST.</b></li> </ul>
5	Machine sold to Pure Refineries	Kutch, Gujarat	<ul style="list-style-type: none"> <li>➤ The <b>place of supply u/s 10(1)(d)</b> of IGST Act is the site of assembly machine i.e., <b>Kutch</b> even though Pure refineries is located in Maharashtra.</li> <li>➤ Since the location of Supplier and place of supply are in different States, it is <b>inter-state supply &amp;</b>, liable to <b>IGST.</b></li> </ul>
6	Biscuit packets sold to Indian Airline who further sold it to passengers	Lucknow, Uttar Pradesh in both cases	<ul style="list-style-type: none"> <li>➤ In given case, place of supply of biscuit packets sold by Vidhyut Pvt. Ltd. to Indian Airlines is <b>Lucknow u/s 10(1)(a)</b> of IGST Act.</li> <li>➤ Further, the place of supply of biscuit packets sold by Indian Airlines to the passengers in Kolkata-Guwahati route is <b>Lucknow u/s 10(1)(e)</b> of IGST Act.</li> <li>➤ In both cases, the location of supplier and place of supply are in Uttar Pradesh &amp; hence, chargeable to <b>CGST &amp; SGST, being intra-state supply.</b></li> </ul>
7	Import of goods	Noida, Uttar Pradesh	<ul style="list-style-type: none"> <li>➤ The place of Supply of goods imported into India shall be the location of importer i.e. Noida, Uttar Pradesh.</li> <li>➤ It is <b>inter-state</b> supply u/s 7(2) of IGST Act &amp; liable to <b>IGST.</b></li> </ul>
8	Export of spices	London	<ul style="list-style-type: none"> <li>➤ In given case, supplier is located in India whereas place of supply is <b>outside India</b> as per <b>section 11</b> of IGST Act.</li> <li>➤ It is <b>inter-state</b> supply u/s 7(5)(a) of IGST Act &amp; liable to <b>IGST.</b></li> </ul>
9	Goods sold to B Ltd. but delivered to C Ltd. in India	Karnataka	<ul style="list-style-type: none"> <li>➤ Export of goods means <b>taking goods out of India to a place outside India.</b> In given case, since goods remain in India, i.e. with C Ltd. located in Karnataka, the transaction is not export of goods.</li> <li>➤ <b>Location of Supplier is Uttar Pradesh</b> and <b>place of supply u/s 10(1)(a)</b> of IGST Act is <b>Karnataka</b> as movement of goods terminates for delivery to the recipient at Karnataka.</li> <li>➤ As per section 7(1) of IGST Act, it is <b>inter-state supply</b> &amp; thus, <b>IGST</b> will be charged.</li> </ul>

## Question 51

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 supply(ies) involved in given scenario.

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

What would be the place of supply for service provided by way of organizing of a cultural event where:-

⇒ Musicera Pvt. Ltd. would be an unregistered person (other things remaining the same) or

⇒ Musicera Pvt. Ltd. would be an unregistered person & concert is to be held in Malaysia (other things remaining the same).

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:-

The IGST or CGST & SGST liability in each of the below three supplies involved in this case is as under:-

**1. Services provided by Musicera Pvt. Ltd. to audiences by way of admission to music concert:-**

**Legal Provision:-**

⇒ As per **section 12(6)** of IGST Act, the place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto shall be the **place where the event is actually held**.

**Discussion & Conclusion:-**

⇒ The place of supply of services supplied by Musicera Pvt. Ltd. (Ludhiana, Punjab)

to audiences by way of admission to music concert is the location of the Hotel Dumdum, i.e. **Gurugram, Haryana**.

⇒ Since, the location of supplier (Ludhiana, Punjab) & the place of supply (Gurugram, Haryana) are in different States, **IGST** will be leviable as under:-  
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.

**2. Services provided by Supriya (P) Ltd. to Musicera Pvt. Ltd. by organising the music concert.**

**Legal Provision:-**

⇒ As per **section 12(7)** of IGST Act, if service of organizing of a cultural event is provided to a registered person, the place of supply shall be the location of such registered recipient. The **location of the supplier and the location of the recipient** is irrelevant in this case.

⇒ However, if recipient is not registered, place of supply shall be the **place where event is actually held** and if the event is held outside India, the place of supply shall be the **location of the recipient**.

**Discussion & Conclusion:-**

a) The place of supply of services supplied by Supriya (P) Ltd. (Delhi) to Musicera Pvt. Ltd. (Ludhiana, Punjab) for organising the music concert is the location of registered person, i.e. **Ludhiana (Punjab)**.

Since, the location of supplier (Delhi) and the place of supply (**Ludhiana, Punjab**) are in different States, **IGST** will be leviable as under:-

Consideration for supply = ₹10,00,000

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

b) If the service recipient [Musicera Pvt. Ltd.] would be an **unregistered** person and event is held in India, place of supply is the location where the event is actually held, i.e. **Gurugram (Haryana)**.

c) However, if the concert is to take place outside India [Malaysia], the place of supply is the location of recipient, i.e. **Ludhiana, Punjab**.

**3. Services provided by Hotel Dumdum to Supriya (P) Ltd. by way of accommodation in the Hotel lawns for organising the music concert.**



### Legal Provision:-

- As per **section 12(3)** of IGST Act, the place of supply of accommodation services provided in any immovable property for organizing any cultural function shall be the location at which the **immovable property is located**.

### Discussion & Conclusion:-

- The place of supply for accommodation provided by Hotel Dumdum (Gurugram, Haryana) to Supriya (P) Ltd. (Delhi) in Hotel lawns for organising the music concert shall be the location of Hotel Dumdum, i.e. **Gurugram, Haryana**.
- Since, the location of supplier (Gurugram, Haryana) and the place of supply (Gurugram, Haryana) are in the same State, **CGST and SGST** will be leviable as under:-  
Consideration for supply = ₹4,00,000  
CGST @ 9% on value of supply = ₹4,00,000 × 9% = ₹36,000  
SGST @ 9% on value of supply = ₹4,00,000 × 9% = ₹36,000.

### If the price for the entry ticket is fixed at ₹450:-

- The **answer will change for (i)** i.e. for admission to music concert.
- There will be **no IGST liability** if consideration for ticket is ₹450.
- This is because the inter-state supply of service of right to admission to a musical performance is exempt from **IGST**, if consideration for the same is **not more than ₹500 per person**.
- However, there will be **no change in answer** for supplies mentioned in point **(ii) and (iii) above**.

### Question 52

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

You are required to determine the place of supply of the services in the instant case as also the value of supply attributable to the States of 'A', 'B', 'C', 'D' and 'E'. Further, compute the GST liability [CGST & SGST or IGST, as the case may be] of 'Moon Plus' as also advise it as to whether it should issue one invoice for the entire contract value or separate State-wise invoices.

The other relevant information is given hereunder:-

Table 1:-

State	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: -

State	Population as per latest census (On Crores)
A	50
B	180
C	20
D	100
E	25

The applicable rate of tax is as under:-

IGST	CGST	SGST
18%	9%	9%

[CA Final RTP May 20-New]

Answer:-

### Legal Provision:-

- As per **section 12(14)** of IGST Act read with **rule 3(8)** of IGST Rules, if service of advertisement is provided on television channel in more than one state, the **place of supply** shall be in **each of such States** where the advertisement is broadcasted or run or played.
- Proportionate value** for each state is calculated based on viewership of such channel in such State as under:-
  - Channel viewership for a State as published by Broadcast Audience Research Council are taken,



- b) Figures published for last week of a quarter are used to calculate viewership for succeeding quarter,
- c) If this figure relates to a region comprising of more than 1 State, the viewership figures for a State of that region is calculated in the ratio of population of that State (as per latest Census) to such viewership figures,
- d) Ratio of viewership figures for each State calculated is applied to the amount payable for that service to calculate value attributable to the dissemination in that State.

#### Discussion & Conclusion:-

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

➤ The value of supply attributable to 'A', 'B', 'C', 'D' & 'E' is computed as under:-

State	Viewership figures of 'Moon Plus' channel as per 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') & ('D' + 'E')
A	50,000	50,000 : 1,00,000 : 50,000 = 1:2:1	$10,00,000 \times \frac{1}{4} = ₹ 2,50,000$
B+C	1,00,000		$10,00,000 \times \frac{2}{4} = ₹ 5,00,000$
D+E	50,000		$10,00,000 \times \frac{1}{4} = ₹ 2,50,000$

  

State	Population as per latest census (in Cr)	Population ratio in States 'B' & 'C' & 'D' & 'E'	Proportionate value of advertisement services in the States 'A', 'B', 'C', 'D' & 'E'
A	50		₹ 2,50,000
B	180	B:C = 180:20 = 9:1	$5,00,000 \times \frac{9}{10} = ₹ 4,50,000$
C	20		$5,00,000 \times \frac{1}{10} = ₹ 50,000$
D	100	D:E = 100:25 = 4:1	$2,50,000 \times \frac{4}{5} = ₹ 2,00,000$
E	25		$2,50,000 \times \frac{1}{5} = ₹ 50,000$

➤ Since, there are 5 different places of supply, 'Moon Plus' channel will **have to issue 5 separate invoices** for each State i.e. 'A', 'B', 'C', 'D' & 'E' indicating the value pertaining to that State.

➤ The computation of GST liability of 'Moon Plus' channel is as under:-

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

Only for supply of service in State 'A', the location of supplier (State 'A') & the place of supply are in the same State. Hence, it is an **intra-State supply u/s 8(1)** of IGST Act & too liable to CGST and SGST.

In all other cases, the location of supplier (State 'A') & places of supply (States 'B', 'C', 'D' & 'E') are in two different States. Hence, they are **inter-State supplies** liable to IGST u/s 7(1)(a) of IGST Act.

**Section 13 of IGST Act:- Place of Supply of Services if Location of Supplier OR Location of Recipient is Outside India**

#### Question 53

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

1. Mr. X (New Delhi) imports a machine from Germany for being installed in his factory at New Delhi. To install such machine, Mr. X takes the service of an engineer who comes to India from Germany for this specific installation.

Mr. X has another software company "Soft Tech Pvt. Ltd." located in United States of America (USA) which takes services of a software company located in Bangalore to service its software in USA. The Indian software company provides its services through electronic means from its office in India.

Mr. X's wife - Ms. Subha, a makeup artist has to do make up of

an actress Ms. Priya of USA. Priya is shooting some scenes in Mumbai. Subha provides the makeup services in Mumbai. Analyse each scenario & determine place of supply in each case.

2. Arijit who is a well-known playback singer from Delhi organizes an event in America for which he hires and uses the services of a German based event organization. Along with the place of supply, also determine the liability to pay GST.
3. 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. What would be your answer if:-
  - a) such immovable properties are located in Pune and New York.
  - b) such immovable properties are located in Pune and Chennai.
4. Mr. D, an unregistered person based in New Delhi, leaves for a European holiday. He hires a car from London for 20 days. He has also obtained a loan from a foreign bank. Mr. D does not have an account with the foreign bank from whom it has taken the loan. Determine the place of supply for the two transactions. Whether RCM liability under GST laws should be discharged in this regard for import of services received in relation to the loan?
5. A shipping company in Mumbai (Maharashtra) transports a shipment of flowers from Mumbai to Paris for an event management company based in Paris.
6. Mr. A, a foreign tourist, has booked a ticket for New Delhi-Chennai-Sri Lanka flight from an airline registered in New Delhi for a continuous journey without any stopover.
7. A movie-on-demand is provided to passenger for his entertainment while he was on-board an aircraft during the Kolkata-Delhi leg of a Bangkok-Kolkata-Delhi-Chennai flight.
8. Post authorities of JNPT Port provides various services in relation to cargo handling. Some of such services are in respect of arrival of wagons at port, haulage of wagons inside port area up-to place of unloading, siding of wagons inside the port, unloading of wagons, movement of unloaded cargo to plot and staking hereof, movement of unloaded cargo to berth, shipment/loading on vessel, etc.

Answer:-

- |    |   |
|----|---|
| 1) | <p><b>Legal provision:-</b></p> <ul style="list-style-type: none"> <li>➤ As per <b>section 13(3)(a)</b> of IGST Act, for service supplied in respect of goods which are required to be made physically available by the recipient, the place of supply shall be the <b>place of performance</b>.</li> <li>➤ As per <b>proviso to section 13(3)(a)</b>, if service is provided from a remote location by electronics means, place of supply is the location where goods are situated at the time of supply of services.</li> <li>➤ As per <b>section 13(3)(b)</b> of IGST Act, for service supplied to an individual which require the physical presence of that person, the place of supply shall be the <b>place of performance</b>.</li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <ol style="list-style-type: none"> <li>a) The supply of installation service received by Mr. X requires the recipient to make the machinery physically available &amp; thus, place of supply u/s <b>13(3)(a)</b> is the place where service is actually performed i.e. <b>New Delhi</b>.</li> <li>b) The place of supply <b>under proviso to section 13(3)(a)</b> for the service received by Soft Tech Pvt. Ltd. is the location where goods are situated at the time of supply of service i.e., <b>USA</b>.</li> <li>c) The place of supply u/s 13(3)(b) for the service provided by Ms. Subha is <b>Maharashtra (Mumbai)</b> where service is performed.</li> </ol> |
| 2) | <p><b>Legal Provision:-</b></p> <ul style="list-style-type: none"> <li>➤ As per <b>section 13(5)</b> of IGST Act, for services provided by way of <b>admission to or organization</b> of an artistic, sporting or any other similar event &amp; services ancillary thereto, the place of supply shall be the place where the <b>event is actually held</b>.</li> </ul> <p><b>Discussion &amp; Conclusion for (1):-</b></p> <ul style="list-style-type: none"> <li>➤ In given case, the place of supply is <b>America</b> i.e. the place where the event is actually held.</li> <li>➤ Here, the location of Service Provider is Germany, location of recipient is in India but the place of supply is outside India &amp; hence, it is not an import of service.</li> <li>➤ Thus, <b>No GST will be triggered</b> as it is neither an intra-state supply nor an inter-state supply.</li> </ul>   |

<p>3) <b>Legal Provision:-</b></p> <ul style="list-style-type: none"> <li>➤ As per <b>section 13(4)</b> of IGST Act, 2017, if services are supplied directly in relation to an immovable property, including services provided in this regard by architects, the place of supply shall be the place where the immovable property is located or intended to be located.</li> <li>➤ As per <b>section 13(6)</b> of IGST Act, if any service covered u/s 13(4) is supplied at more than one location, including a location in taxable territory, the place of supply shall be the location in the taxable territory.</li> <li>➤ Further, as per <b>section 13(7)</b> of IGST Act, if any service covered u/s 13(4) is supplied at more than one state, the place of supply shall be <b>each of the respective States.</b></li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>➤ In first case, the place of supply shall be the location of immovable properties i.e. <b>Pune.</b></li> <li>➤ Since in second case, immovable properties are located in more than one location including a location in taxable territory, the place of supply of architect service is the location in the taxable territory, i.e. <b>Pune.</b></li> <li>➤ In third case, the place of supply shall be <b>Pune &amp; Chennai</b> as per section 13(4) read with section 13(7) &amp; the <b>value</b> of supply of service in each of the states will be ascertained by <b>dividing the value of the service equally</b> between these two States.</li> </ul>	<p>b) <b>Yes. RCM liability needs to be discharged on such services.</b></p> <p>In given case, banking company provides services to non-account holder, the place of supply is the <b>location of the recipient u/s 13(2)</b> of IGST Act i.e. <b>Mr. D, i.e., India</b> because it does not have an account with the foreign bank.</p> <p>Since supplier is outside India and recipient and place of supply are in India, said service qualifies as import of services thus, considered as <b>inter-State supply</b> as per <b>section 7</b> of IGST Act.</p>
<p>4) <b>Legal Provision:-</b></p> <p>As per <b>section 13(8)</b> of IGST Act, if either supplier or recipient is located outside India, the <b>place of supply shall be Location of Supplier</b> for the:-</p> <ol style="list-style-type: none"> <li>a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders,</li> <li>b) Intermediary services &amp;</li> <li>c) Service consisting of hiring of means of transport, including yachts but excluding aircrafts and vessel, upto a period of one month.</li> </ol> <p><b>Discussion &amp; Conclusion:-</b></p> <ol style="list-style-type: none"> <li>a) In given case, a means of transport is hired <b>for 20 days</b> i.e. upto period of 1 month &amp; hence, the place of supply is the location of supplier of services i.e., <b>London.</b></li> </ol>	<p>5) <b>Legal Provision:-</b></p> <ul style="list-style-type: none"> <li>➤ As per <b>section 13(9)</b> of IGST Act, the place of supply of service of transportation of goods, <b>other than</b> by way of mail or courier, shall be <b>place of destination of the goods.</b></li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>➤ The place of supply of transportation of shipment is the location of its destination i.e., Paris.</li> </ul>
	<p>6) <b>Legal Provision:-</b></p> <ul style="list-style-type: none"> <li>➤ As per <b>section 13(10)</b> of IGST Act, the place of supply of passenger transportation service shall be the place where passenger embarks on the conveyance for a continuous journey.</li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>➤ In given case, the place of supply of service is <b>New Delhi</b> which is place where Mr. A embarks on the aircraft for a continuous journey.</li> </ul>
	<p>7) <b>Legal Provision:-</b></p> <ul style="list-style-type: none"> <li>➤ As per <b>section 13(11)</b> of IGST Act, for services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, the place of supply shall be the <b>first scheduled point of departure of that conveyance for the journey.</b></li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>➤ In given case, the place of supply of service supplied on board an aircraft is <b>Bangkok</b> which is the first scheduled point of departure of the aircraft for the journey.</li> </ul>

- 8) ➤ As per CBIC clarification, services provided by Port authorities are ancillary to or related to cargo handling services and are not related to immovable property.
- Accordingly, the place of supply of such services will be determined as per section 12(2) or Section 13(2) of the IGST Act, as the case may be, depending upon the terms of the contract between the supplier and recipient of such services.

### Section 14 of IGST Act:- Provisions relating to OIDAR Services & Section 13(12):- POS of OIDAR Service

#### Question 54

Answer the following questions:-

1. 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?
2. AM Ltd. of Mumbai has provided services of allowing downloading of digital content from various websites (completely automated) ₹ 4 lakh to a recipient located in Singapore. Compute its GST liability@ 12%.

Answer:-

- 1) **Legal Provision:-**
- Services received by an individual from a service provider located in a non-taxable territory for any purpose other than commerce, industry or any other business or profession **is exempt from IGST.**
- However, this **exemption is not available in case of OIDAR services** received by a Non-Taxable Online Recipient (**NTOR**) from by a supplier located outside India and the same is liable to IGST.
- If service is supplied by any person located in a non-taxable territory to any person **other than NTOR** is payable by the recipient **under reverse charge.**

#### Discussion & Conclusion:-

- The supply of gaming software **is a OIDAR service** as per the definition of OIDAR services.
- Since Mr. Amar Kant is an individual who is receiving the OIDAR service for personal consumption by making the payment from his personal bank account and not from the bank account of his GST registered firm, he **is a Non-Taxable Online Recipient (NTOR).**
- Therefore, the **tax** on OIDAR services provided by the company located in USA to Mr. Amar Kant, a **NTOR**, will be payable by such company under **forward charge.**

#### 2) Legal Provision:-

- As per **section 13(12)** of IGST Act, the place of supply of Online Information and Database Access or Retrieval (OIDAR) services shall be the **location of recipient** of services.
- As per **section 16** of IGST Act, export of service is a zero rated supply which can be dealt in 2 ways:-
- (i) Export without the payment of IGST under a bond or LUT or
  - (ii) Pay IGST & claim a refund.

#### Discussion & Conclusion:-

- In given case, the service downloading of digital content from various websites (completely automated) is an **OIDAR service.**
- The place of supply of this service is **Singapore** i.e. the location of recipient of services.
- Since the location of supplier is Mumbai i.e. in India, place of supply is outside India & the location of recipient is outside India, the supply is an **export of service.**
- Exports of service is treated as inter-state supply as per section 7 of IGST Act & thus, it is leviable to **IGST of Rs 48,000** i.e. (Rs 4,00,000\* 12%).

#### Assumption:-

- It is assumed that consideration is received in convertible foreign exchange and exports are not covered letter of undertaking.



## Question 55

Always Right Private Limited is engaged in supply of taxable goods and is registered in the State of Orissa.

In the month of March, 20XX (i.e. F.Y. 20XX-YY), during the course of Departmental GST audit u/s 65 of CGST Act, 2017 of Always Right Private Limited, audit team observed that ITC claimed by the company was blocked u/s 17(5) of 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 had been rightly claimed. Department was not satisfied with the reply submitted by the company. Audit team served a show cause notice u/s 74 of CGST Act, 2017 for ₹ 50 lakhs and transferred the matter to adjudicating officer and also started recovery process u/s 78 and 79 of the CGST Act, 2017 for recovery of the ITC wrongly availed.

Despite having knowledge of said notice, Always Right Private Limited transferred its property located in Punjab in the name of one of its director, 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, it filed a reply to said demand notice stating that it would not be able to pay the amount of tax demanded in the notice due to its distressed financial situation.

In June, 20XX, it had paid CGST & 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 in the Departmental GST audit. Answer the following questions:-

1. You are required to comment whether the action of the Department to recover the amount is justified with the reference to the legal provisions of the GST law.
2. Briefly discuss the modes of recovery of tax available to the proper officer.
3. Determine the validity of the act of transferring of property by Always Right Private Limited to its director, under the provisions of the GST law.
4. Examine the recourse available with Always Right Private Limited with respect

to CGST & SGST paid in June, 20XX instead of paying IGST.

5. Assume that appeal was preferred by Always Right Private Limited against the notice issued u/s 74(1) & Appellate Authority concluded that the notice issued u/s 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 u/s 73(1). Is the action of the officer valid?
6. Assume that officer issued an adjudication order which did not specify payment of interest on the amount demanded from Always Right Private Limited. However, the interest amount was mentioned in the show cause notice issued. So, Always Right Private Limited contends that interest cannot be demanded as the said order is silent on the same. Is the contention of assessee correct?
7. Assume that adjudicating officer after personal hearing found that there was a typographical error while mentioning the amount of GST and he confirmed the demand for 500 lakhs instead of 50 lakhs. Always Right Private Limited seeks your advice. What would be your advice, if Always Right Private Limited comes to you:-
  - (a) after issue of order or
  - (b) a corrigendum revising the amount to ₹ 500 lakhs is issued.

Answer:-

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|---|--|
| 1 | <p>The <b>action</b> of the Department to initiate the recovery proceedings without adjudication order being passed is <b>not valid</b>.</p> <p><b>Legal Provisions:-</b></p> <p>➤ As per <b>section 78</b> of CGST Act, recovery proceedings can be initiated under GST law <b>if a taxable person fails to pay any amount payable in pursuance of an order passed</b> under this law within 3 months (or reduced period by proper officer) from the date of service of such order.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>➤ In given case, the recovery proceedings have been initiated only after serving the show cause notice and transferring the matter to the adjudicating officer.</p> <p>➤ Thus, the <b>adjudication order has not yet been passed</b> in the given case.</p> <p>➤ Hence, the <b>action</b> of the Department is <b>invalid</b>.</p> |
|---|--|



<p>2</p>	<p><b>As per section 79 of CGST Act, 2017, the proper officer may recover the dues in following manner:-</b></p> <p>a) Deduction of dues from the amount owed by the tax authorities payable to such person.</p> <p>b) Recovery by way of detaining and selling any goods belonging to such person.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>g) By enforcing the bond/instrument executed under GST Act or any rules or regulations made thereunder.</p> <p>h) CGST arrears can be recovered as an arrear of SGST and vice versa.</p>	<p><b>Discussion &amp; Conclusion:-</b></p> <p>➤ In given case, <b>transfer</b> of property by Always Right Private Limited to its director is <b>void</b>.</p> <p>➤ The property will still be considered in the hands of Always Right Private Limited under GST law for the purpose of recovery of dues under GST from it.</p>
<p>3</p>	<p><b>Legal Provision:-</b></p> <p>➤ As per <b>section 81</b> of CGST Act, 2017, after any amount has become due from a person, if such person creates a charge on or parts with any of the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer in favour of any other person with the <b>intention of defrauding</b> the Government revenue,</p> <p>- then <b>such charge or transfer shall be void</b> as against any claim for any tax or any other sum payable by the said person.</p> <p>➤ However, such charge or transfer <b>shall not be void</b> if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under GST or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.</p>	<p>4 <b>Legal Provision:-</b></p> <p>➤ As per <b>section 77(1)</b> of CGST Act, 2017, a registered person who has paid the Central tax and State tax/ 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 <b>refunded the amount of taxes</b> so paid.</p> <p>➤ Further, as per <b>section 19(2)</b> of IGST Act, 2017, a registered person who has paid central tax and State tax or 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, <b>shall not be required to pay any interest</b> on the integrated tax payable.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>➤ In the given case, <b>Always Right Private Limited shall be refunded</b> the amount of taxes so paid and it shall <b>not be required to pay any interest on the amount of IGST payable</b> by it on the transaction wrongly considered by it earlier as intra-State transaction.</p> <p>➤ The IGST liability <b>cannot be adjusted</b> against the CGST and SGST wrongly paid.</p>
<p>5</p>	<p>➤ <b>Valid.</b> As per <b>section 75</b> of 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).</p>	<p>➤ <b>Valid.</b> As per <b>section 75</b> of 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).</p>
<p>6</p>	<p>➤ <b>Incorrect.</b> As per <b>section 75</b> of 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.</p> <p>➤ However, the interest demanded in the order shall not exceed amount specified in the notice.</p>	<p>➤ <b>Incorrect.</b> As per <b>section 75</b> of 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.</p> <p>➤ However, the interest demanded in the order shall not exceed amount specified in the notice.</p>

- 7 (i) **Advice after issue of orders:-**
- As per section 75(7) of CGST Act 2017, the amount of tax, interest and penalty demanded in the order **cannot exceed the amount specified in the notice.**
  - In given case, the tax demanded in order exceeds the tax demanded in show cause notice and hence, Always Right Private Limited **can file an appeal** against adjudication order within the prescribed time limit.
- (ii) **Advice after issue of corrigendum:-**
- As per **section 161** of CGST Act 2017, any authority, who has issued any notice, may rectify any error which is apparent on the face of record in such notice on its own motion **within 6 months** from the date of issue of such notice **except** where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission.
  - In given case, since corrigendum has been issued to rectify a typographical error in the show cause notice, which is an error apparent on the face of the record, the **rectification is correct in law.**
  - Further, being rectification of a clerical error, the **time limit of 6 months will not apply.**
  - Therefore, Always Right Private Limited should **reply to the show cause notice considering the revised amount of demand.**

## 21 LIABILITY TO PAY CERTAIN CASES

### Question 56

M/s V'Smart & Co. is a partnership firm registered in the state of Kerala. Suresh, Mukesh, Naresh & Jayesh are 4 partners in this firm. Answer the following:-

1. Briefly discuss the liability of partners of M/s V'Smart & Co. to pay tax u/s 90 of CGST Act, 2017.
2. Suresh is also a proprietor of a trading concern which is registered person under GST. He 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 Suresh upto the time of

such transfer.

3. M/s V'Smart & Co. engages Raghav & Sons as an agent to sell goods on its behalf to Swami Associates. Determine the liability to pay GST payable on such goods u/s 86 of CGST Act.
4. Mukesh was a director in Dullness Pvt. Ltd. for past 5 years. The company got merged with Wellness Pvt. Ltd. in current financial year. On the other hand, Mukesh had 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 Dullness Pvt. Ltd. pertaining to the preceding financial year as the said dues cannot be recovered from company owing to its poor financial condition. Mukesh is of the view that such tax dues cannot be recovered from him as he is no more a director in the company.

Discuss the liability to pay tax & other dues for Mukesh as well as companies in case of merger.

5. Naresh is also providing consultancy services separately under his PAN & is registered in Kerala. Discuss the liability to pay tax, interest or penalty u/s 93(1), if Naresh dies.

6. Advice Jayesh regarding the following:-

- (i) What happens to the GST liability when the estate of a taxable person is under the control of Court of Wards?
- (ii) Whether the guardian/ trustee/ agent carrying on business on behalf of and for the benefit of a minor or other incapacitated person is liable to pay the tax dues, etc., in respect of the business of such minor or other incapacitated person?
- (iii) Liability of director of Private Company, if such Company is converted into Public Company.
- (iv) Liability for GST in case of company in liquidation.

Answer:-

- |    |  |
|----|--|
| 1) | Section 90 of the CGST Act explains the liability of partners of firm to pay tax as under:-        |
|    | 1) Partners of the firm jointly and severally liable to pay any tax, interest or penalty of firm:- |

	<p>☞ If a firm is liable to pay any tax, interest or penalty under GST Act, then the firm and each of the partners of the firm shall, jointly and severally, be liable for such payment.</p> <p>2) <b>Retiring partner liable to pay any tax, interest or penalty of the firm due up to the date of his retirement:-</b></p> <p>☞ If any partner retires from the firm, then such partner or the firm shall intimate the date of his retirement to the Commissioner by a notice in writing.</p> <p>☞ If intimation is given within 1 month from the date of retirement, 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.</p> <p>☞ However, if such intimation is not given within 1 month from the date of retirement, then the liability of such partner shall continue until the date on which such intimation is received by the Commissioner.</p>
2)	<p><b>Legal Provision:-</b></p> <p>☞ As per <b>section 85</b> of CGST Act, if a taxable person who is liable to pay tax under the CGST Act transfers his business in whole or in part, by sale, or in- any other manner,</p> <ul style="list-style-type: none"> <li>➤ <b>the taxable person and person to whom the business is transferred shall, jointly and severally, be liable</b> wholly or to the extent of such transfer,</li> <li>➤ to pay tax, interest or any penalty due from the taxable person <b>upto the time of such transfer.</b></li> <li>➤ whether such tax, interest or penalty has been determined <b>before such transfer, but has remained unpaid or is determined thereafter.</b></li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <p>☞ In given case, Suresh 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] <b>due from Suresh only upto the time of such transfer.</b></p>

3)	<p><b>Legal Provision:-</b></p> <p>☞ As per <b>section 86</b> of CGST Act, if an agent supplies or receives any taxable goods on behalf of his principal, such <b>agent and his principal shall, jointly and severally,</b> be liable to pay the tax payable on such goods under GST.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>☞ In given case, Raghav &amp; Sons (an agent) sells goods to Swami Associates on behalf of M/s V'Smart &amp; Co. (Principal) &amp; thus, V'Smart &amp; Co. and Raghav &amp; Sons shall, <b>jointly and severally, be liable</b> to pay GST payable on such goods.</p>
4)	<p><b>Liability to pay tax &amp; other dues for Mukesh:-</b></p> <p><b>Legal Provision:-</b></p> <p>☞ As per <b>section 89</b> of CGST Act, 2017, notwithstanding anything contained in Companies Act, 2013, if <b>any tax, interest or penalty due from</b> a private company for any supply of goods or services or both for any period <b>cannot be recovered,</b> then,</p> <ul style="list-style-type: none"> <li>➤ 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.</li> </ul> <p>☞ However, such director shall not be liable if 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 company.</p> <p><b>Discussion &amp; Conclusion:-</b></p> <p>☞ In given case, since Mukesh was the director of Dullness Pvt. Ltd. during preceding financial year for which the demand is raised, <b>he shall, jointly and severally, be liable</b> for the payment of 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.</p> <p><b>Liability to pay tax &amp; other dues for companies in case of merger:-</b></p> <p>☞ As per section 87 of CGST Act, when <b>two or more companies are amalgamated or merged in pursuance of an order of court or of Tribunal or otherwise</b> 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 or received any goods or services or both to or from each other</p>

	<p>during the period commencing on the date from which the order takes effect till the date of the order, then</p> <p>➤ 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.</p> <p>➡ The said two or more companies shall be treated as distinct companies for the period up to the date of the said order under GST.</p> <p>➡ Their registration certificates shall be cancelled with effect from the date of the said order.</p>
5)	<p><b>Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016</b>, if a person, liable to pay tax, interest or penalty under CGST Act, <b>dies</b>, then:-</p> <p><b>(a) Business is continued after his death:-</b></p> <p>➡ If business carried on by such 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 GST, whether determined before his death but has remained unpaid or is determined after his death.</p> <p><b>(b) Business is discontinued after his death:-</b></p> <p>➡ If business carried on by such person is discontinued, whether before or after his death, his legal representative shall be liable to pay tax, interest or penalty due from such person under GST out of the estate of the deceased and to the extent to which the estate is capable of meeting the charge, whether determined before his death but has remained unpaid or is determined after his death.</p>
6)	<p>(1) As per <b>section 92</b> of CGST Act, if <b>estate of a taxable person</b> owning a business for which any tax, interest or penalty is payable under GST <b>is under the control of</b> Court of Wards/ Administrator General/ Official Trustee/ Receiver or Manager appointed by or under any order of a Court, <b>the tax, interest or penalty shall be levied upon and recoverable from</b> such Court of Wards/ Administrator General/ Official Trustee/ Receiver or Manager.</p>

	<p>(ii) <b>Yes</b>, as per <b>section 91</b> of CGST Act, the <b>guardian, trustee, or agent</b> who is carrying on business on behalf of and for benefit of a minor or other incapacitated person <b>is liable</b> to pay tax dues, etc. in respect of such business.</p> <p>(iii) As per <b>section 89(2)</b> of CGST Act, if Private Company is converted into Public Company and the tax, interest or penalty for any supply for any period during which it was a private company cannot be recovered before such conversion, then any person who was a director of such private company <b>shall not be liable for those unrecovered dues such company</b>. However, <b>he shall be liable for any personal penalty</b> imposed on him.</p> <p>(iv) As per <b>section 88</b> of CGST Act, <b>Commissioner shall notify the liquidator an amount</b> that would be sufficient in his opinion to provide for any tax, interest or penalty payable/ likely to be payable within 3 months of the receipt of intimation of appointment of liquidator.</p> <p style="padding-left: 40px;">But, if any <b>private company is wound up</b>, then <b>every person who was a director</b> of such company at any time during the period for which the tax was due from such company shall, <b>jointly and severally</b>, be liable for the payment of such tax, interest or penalty.</p>
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## 23 OFFENCES AND PENALTIES

### Question 57

Answer the following independent questions:-

1. Elaborate about cognizable and non-cognizable offences under section 132 of CGST Act, 2017. What is the difference between these two while exercising powers by the GST authorities? [CA final Jan 2021 Exam] [CA Final May 18 Exam Old] [ICAI Study Material]
2. State the prosecution, arrest and bail implications, if any, in respect of the following independent cases pertaining to June:-



- (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. [CA Final RTP May 22]

3. Examine whether the offences committed in each of the following independent cases are bailable. Further, determine the quantum of punishment on prosecution under the CGST Act, 2017, in each of these cases:-

- (i) 'Homi Gabha' collects ₹ 240 lakh as tax from its clients and deposits ₹ 150 lakh with the Central Government. Balance amount of tax is not paid to the Central Government. It is found that he has falsified financial records and has not maintained proper records, to evade the tax.
- (ii) Datukeshwar Dutt' collects ₹ 630 lakh as tax from its clients, but deposits only ₹ 120 lakh with the Central Government. Balance amount of tax is not paid to the Central Government.

What would be the implications in above cases if 'Homi Gabha' & 'Datukeshwar Dutt' repeat the offences?

Note: It may be assumed that offences are proved in the court. [CA Final RTP May 2020] [CA Final May Exam 18 New] [ICAI Study Material-Similar]

Answer :-

1	<p>➤ All offences specified under section 132 except the offences that are cognizable and non-bailable (as mentioned below) are <b>non-cognizable offences</b> under the CGST Act, 2017.</p> <p>➤ The following are the <b>cognizable offences</b> under the CGST Act, 2017, if the amount of tax evaded or input tax credit wrongly availed or utilised or refund wrongly taken is <b>exceeding ₹ 5 crores:-</b></p>
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- 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 utilisation of ITC/refund of tax,
  - c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill or
  - d) Collects any amount as tax but fails to pay the same to the Government within 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.**

Person	Offence	Prosecution	Arrest	Bail
'Ashuram'	Non-cognizable offence [Section 132(1)(c) read with sec 132(4)]	Upto 1 year [Section 132(1)(c)(iii)]	No arrest [Sec 69(1)]	Bailable Offence [Section 132(4)]
'Bahubali'	Non-cognizable offence [Section 132(1)(e) read with sec 132(4)]	Upto 5 years [Section 132(1)(e)(i)]	No arrest [Sec 69(1)]	Bailable Offence [Section 132(4)]
'Chintamani'	Non-cognizable offence [Section 132(1)(f) read with sec 132(4)]	Upto 3 years [Section 132(1)(f)(ii)]	No arrest [Sec 69(1)]	Bailable Offence [Section 132(4)]
'Deendayal'	Cognizable offence [Section 132(1)(d) read with section 132(5)]	Upto 5 year [Section 132(1)(d)(i)]	Arrest can be ordered by Commissioner without arrest warrant [Sec 69(1)]	Non-Bailable [Section 132(5)]



## Question 58

DF Ltd. is a subsidiary of Y Ltd. Y Ltd. exported service valued at US \$1,00,000. Supply of service was completed on 15th November 20XX. Payment for this service was received on 30th December 20XX. Refund claim was filed by Y Ltd. in respect of tax paid on inputs and inputs services for ₹6,00,000 on 31st January, 20YY. The refund claim was sanctioned on 30th April, 20YY.

DF Ltd. exported goods valued ₹50 lakh and received refund of integrated tax paid amounting to ₹9 lakh on 16th August, 20XX. It 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 regards quality, time of supply and fulfilment of terms and conditions of sale.

Advise Y Ltd. on the following issues.

- With reference to section 54(3) of the CGST Act, 2017, mention the cases where refund of unutilised input tax credit is allowed.
- What is the time limit within which refund claim can be filed generally under the GST law?
- 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 in the given case above?
- What is the relevant date and rate of interest as per GST law in the given case above?
- DF Ltd. wants you to inform it about the consequences, in case RBI does not give the extension.

Answer:-

- |    |  |
|----|--|
| a) | As per section 54(3) of CGST Act, 2017, a registered person may claim refund of any unutilised input tax credit (ITC) at the end of any tax period in the following cases:-<br>1) Zero rated supplies made without payment of tax:-<br>Supply of goods &/or services to a SEZ developer/unit or export of goods &/or services qualifies as zero rated supplies. However, refund of |
|----|--|

(i) As per section 132(1)(d)(iii) of CGST Act, 2017, failure to pay any amount collected as tax within 3 months from due date of payment is punishable with specified imprisonment and fine provided the amount of tax evaded exceeds at least ₹100 lakh.

Thus, failure to deposit ₹90 lakh (₹240 lakh - ₹150 lakh) collected as tax by 'Homi Gabha' will not be punishable with imprisonment.

However, falsification of financial records by 'Homi Gabha' is punishable with imprisonment up to 6 months or with fine or both as per section 132(1)(f)(iv) and the said offence is bailable in terms of section 132(4) of the said act.

(ii) As per section 132(1)(d)(i) of CGST Act, 2017, failure to pay any amount collected as tax within 3 months from due date is punishable with imprisonment upto 5 years and with fine, if the amount of tax evaded exceeds ₹500 lakh.

Since amount of tax evaded by 'Datukeshwar Dutt' exceeds ₹500 lakh (₹630 lakh - ₹120 lakh = ₹510 lakh), 'Datukeshwar Dutt' is liable to imprisonment upto 5 years & with fine.

Further, as per section 132(3), the imprisonment shall be minimum 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment.

As per section 132(5), such offence is non-bailable.

If 'Homi Gabha' & 'Datukeshwar Dutt' repeat the offence, they shall be punishable for second & for every subsequent offence with imprisonment upto 5 years & with fine u/s 132(2).

Such imprisonment shall also be for minimum 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court.

	<p>unutilized ITC shall <b>not be allowed</b> if:-</p> <ul style="list-style-type: none"> <li>➤ the goods exported out of India are subjected to export duty (i.e. on which some export duty has to be paid at the time of export) or</li> <li>➤ the supplier of goods &amp;/or services avails of drawback in respect of CGST or claims refund of the IGST paid on such supplies.</li> </ul> <p><b>2) Accumulated ITC on account of inverted duty structure:-</b></p> <p>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.</p>
b)	<ul style="list-style-type: none"> <li>➤ As per <b>section 54</b>, A person claiming refund of any tax, interest, paid on such tax or any other amount paid by him, may make an application <b>before the expiry of 2 years from the 'Relevant Date'</b> in prescribed form and manner.</li> <li>➤ However, registered person may claim refund at the end of any tax period for the following:- <ul style="list-style-type: none"> <li>➢ any unutilised ITC in case of zero-rated supplies made without payment of tax or</li> <li>➢ accumulated ITC on account of inverted duty structure.</li> </ul> </li> <li>➤ Further, the time limit to apply for refund is not applicable in case of refund of excess balance in electronic cash ledger.</li> </ul>
c)	<ul style="list-style-type: none"> <li>➤ As per <b>first proviso to section 54(3)</b> of CGST Act, 2017, refund claim admissible to Y Ltd. on account of export of services being a zero-rated supply, is the unutilized ITC of <b>₹ 6,00,000</b>.</li> </ul>
d)	<p><b>Legal Provision:-</b></p> <ul style="list-style-type: none"> <li>➤ As per <b>explanation to section 54</b>, if 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 or in Indian rupees, wherever permitted by RBI, i.e. <b>30th December, 20XX</b>.</li> <li>➤ As per <b>section 56</b>, if 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.</li> </ul>

	<p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>➤ Since in given case, tax ordered to be refunded is <b>not refunded within 60 days</b> from the date of receipt of application i.e. 31st January, 20YY, <b>interest @ 6% p.a. is payable</b>.</li> </ul>
e)	<p><b>Legal Provision:-</b></p> <ul style="list-style-type: none"> <li>➤ If 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.</li> <li>➤ but if RBI writes off the requirement of such realization on merits, recovery shall not be made.</li> </ul> <p><b>Discussion &amp; Conclusion:-</b></p> <ul style="list-style-type: none"> <li>➤ In given case, 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.</li> <li>➤ 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.</li> </ul>

### Question 59

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.

S.no	Particulars	Amount (₹)
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

### [CA Final Nov 19 Exam New]

**Answer :-**

**Legal Provision:-** As per **Rule 89(4)** of CGST Rules, 2017, in case of zero-rated supply of goods or services or both without payment of tax under bond/ letter of undertaking as per section 16(3) of IGST Act, 2017, refund of input tax credit (ITC) shall be granted as per the following formula:-

**Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover**

**Discussion & Conclusion:-**

Accordingly, the amount of refund shall be computed as follows:-

Particulars	Amount (₹)
<b>Net ITC</b> on input and input services excluding ITC availed for which refund is claimed under rule 89(4A) and 89(4B) i.e. (₹12,00,000 - ₹ 2,40,000)	9,60,000
<b>Turnover of zero-rated supply of goods:-</b> Turnover of zero-rated supply of goods excluding turnover of supplies in respect of which refund is claimed under 89(4A) and 89(4B) i.e. (12,00,000 - 6,00,000) [Note 2, 6 & 7]	6,00,000

<b>Turnover of zero-rated supply of services:-</b> [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] [48,00,000 + 14,00,000 - 12,00,000] [Note 4]	50,00,000
<b>Adjusted total turnover =</b> 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)] [₹76,00,000 - ₹2,00,000 + ₹50,00,000 + ₹10,00,000 - (₹8,00,000 + ₹6,00,000 + ₹6,00,000)] [Note 1, 3 & 5]	1,14,00,000
<b>Refund of ITC for zero-rated supply of goods and zero-rated supply of services =</b> [₹9,60,000 x (₹56,00,000/ ₹1,14,00,000)]	4,71,579 (Rounded off)

**Notes:-** The above answer is based on following assumptions:-

1. Turnover at Sl. No. 1 [₹ 76 lakhs] includes the turnover of zero-rated supply of goods given at Sl. No. 2 [₹12 lakhs].
2. 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 lakhs].
3. Turnover of zero-rated supply of services computed as per rule 89(4)(D) [₹ 50 lakhs] includes the turnover of supplies of services in respect of which the refund is claimed under rule 89(4A) and 89(4B) [₹ 6 Lakhs]
4. It is assumed that Sl. No. 6 of the table in the question belongs to zero rated supply of service and not for zero rated supply of goods.
5. The exempt supplies are logically assumed to be other than zero rated supplies.
6. The value declared in shipping bill and tax invoice is same as not separate given in the question.
7. Since the value of like goods domestically supplied is absent in the question, it is assumed that the actual value of goods exported is lower than the like goods domestically supplied.

**Note by ICAI:-**

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 lakhs] 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 lakhs] does not include the turnover of zero-rated supply of goods given at Sl. No. 2 [₹ 12 lakhs] and turnover of supplies of goods in respect of which refund has been claimed under rule 89(4A) and 89 (4B) [₹ 6 lakhs].

**Author's Note:-**

While calculating turnover of zero rated supply of goods, 1st deduct supply for which refund claim is made under rule 89(4A) / 89(4B), if any, from the actual value of ZRS made without payment of tax under bond /LUT, and then we compare it with value of 1.5 times the value of like goods domestically supplied by the same, or similarly placed, supplier.

**Question 60**

Kailash Global (P) Ltd. supplies various goods in domestic and international markets. It is engaged in both manufacturing and trading of goods. The company is registered under GST in the State of Karnataka. The company exports goods without payment of tax under letter of undertaking in accordance with the provisions of section 16(3)(a) of the IGST Act, 2017.

The company has made the following supplies during a tax period:-

S.no	Particulars	Amount (₹)
(i)	Export of product 'A' to UK for \$10,000. Assessable value under customs in Indian rupees. [Export duty is levied on product 'A' at the time of exports. Further, value of like goods domestically supplied by the similarly placed supplier is ₹6,00,000]	7,00,000
(ii)	Domestic supplies of taxable product 'B'* during the period [excluding tax @ 5%] [Inputs used in manufacturing of such goods are taxable @18%] * not notified as a product, in respect of which refund of unutilised ITC shall not be allowed under section 54(3) of CGST Act, 2017	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 declared in shipping bill Value declared in tax invoice (Value of like goods domestically supplied by similarly placed supplier is ₹5,00,000)	6,00,000 7,00,000

The ITC available for the above tax period is as follows:-

S.no	Particulars	Amount (₹)
(i)	On inputs (including ₹ 50,000 on export of exempt supplies)	3,50,000
(ii)	On capital goods	1,20,000
(iii)	On input services (including ₹18,000 on outdoor catering)	2,00,000

Determine the maximum amount of refund admissible to Kailash Global (P) Ltd. for the given tax period. [CA Final RTP May 19] [ICAI Study Material]

**Answer :-**

Computation of maximum amount of refund admissible to Kailash Global (P) Ltd.

Particulars	Amount (₹)
Exports of product 'A' to UK [Note 1]	Nil
Domestic supplies of taxable product 'B' during the period [Note 2]	1,57,895
Supply of goods to Export Oriented Unit [Note 3]	Nil
Export of exempt supplies [Note 4]	1,14,000
<b>Total refund claim admissible</b>	<b>2,71,895</b>

**Notes:-**

1. Export of goods is a zero-rated supply as per section 16(1)(a) of IGST Act, 2017. Further, Kailash Global (P) Ltd. exports goods without payment of tax under letter of undertaking as per section 16(3)(a) of IGST Act, 2017.

Therefore, as per section 54(3) of CGST Act, 2017, a registered person may claim refund of any unutilised ITC in the case of zero-rated supply at the end of any tax period. However, the refund of unutilised ITC is not allowed if the goods exported out of India are subjected to export duty.



2. As per **section 54(3)** of CGST Act, 2017, 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 notified by Government.

➤ Further, as per **rule 89(5)** of CGST Rules, 2017, in the case of refund on account of inverted duty structure, refund of ITC shall be granted as per the following formula:-

$$\frac{\text{Turnover of inverted rated supply of Goods \& services} \times \text{Net ITC}}{\text{Adjusted Total Turnover}} - \left\{ \frac{\text{Tax payable on such inverted rated supply of goods \& Services}}{\text{Net ITC}} \right\} \times \left\{ \frac{\text{ITC availed on Inputs \& Inputs services}}{\text{Net ITC}} \right\}$$

Where,

➤ "**Net ITC**" means input tax credit availed (ITC) on **inputs** during the relevant period other than ITC availed for which refund is claimed under rule 89(4A) or 89(4B) or both.

➤ "**Adjusted Total turnover**" means the sum total of the value of:-

a) The turnover in a State or a Union territory as per section 2(112) excluding the turnover of services and

b) The turnover of zero-rated supply of services as per clause (D) of sub rule 89(4) & non-zero-rated supply of services,

**excluding –**

i. the value of exempt supplies other than zero-rated supplies and

ii. the turnover of supplies for which refund is claimed under rules 89(4A) or (4B) or both, if any, during the relevant period.

➤ Here,

Tax payable on inverted rated supply of goods = ₹10,00,000 × 5% = ₹50,000,

Net ITC = ₹3,50,000,

Adjusted Total Turnover = ₹ 28,00,000 i.e. [₹ 7,00,000 + ₹ 10,00,000 + ₹ 5,00,000 + ₹6,00,000],

Turnover of inverted rated supply of goods = ₹10,00,000 and

ITC availed on inputs and input services = ₹3,50,000 + ₹1,82,000 = ₹5,32,000.

➤ **Thus, maximum refund amount under rule 89(5)**

= (₹3,50,000 × 10,00,000 / 28,00,000) – (₹50,000 × 3,50,000 / 5,32,000)

= ₹1,25,000 – ₹32,895

**= ₹1,57,895**

3. Supplies to EOU is notified as **deemed export** and for such supplies, 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 supplier may claim refund (**rule 89** of CGST Rules).

Therefore, since in given case, the recipient is claiming ITC, **Kailash Global (P) Ltd. (supplier of deemed exports) cannot claim refund of ITC.**

4. As per **section 16(2)** of IGST Act, 2017, subject to provisions of section 17(5) of CGST Act, ITC may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply. **Section 54(3)** of CGST Act, 2017 allows refund of ITC in the case of zero-rated supply made without payment of tax.

➤ As per **Rule 89(4)** of CGST Rules, 2017, in case of zero-rated supply of goods or services or both without payment of tax under bond/ letter of undertaking as per section 16(3) of IGST Act, 2017, refund of input tax credit (ITC) shall be granted as per the following formula:-

**Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) × Net ITC ÷ Adjusted Total Turnover**

where,

a) "**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 rule 89(4A) or 89(4B) or both.

b) "**Turnover of zero-rated supply of goods**" means

- the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or

- the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier,



whichever is less,

- **other than** the turnover of supplies in respect of which refund is claimed under rules 89(4A) or 89(4B) or both.

c) **“Adjusted total turnover”** means the same as explained in note (2) above.

⇒ For the **purpose of rule 89(4)**, the value of goods exported out of India shall be the lower of:-

- a) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export or
- b) the value declared in tax invoice or bill of supply.

⇒ Here,

**Turnover of zero-rated supply of goods is ₹ 6,00,000 which is lower of (a) or (b) below:-**

- a) Value of goods exported out of India shall be ₹ 6,00,000 which is the lower of:-
  - FOB value declared in the Shipping Bill = ₹ 6,00,000 or
  - Value declared in tax invoice = ₹ 7,00,000 or

b) 1.5 times the value of like goods domestically supplied i.e. ₹ 5,00,000 \* 1.5 = ₹ 7,50,000.

**Net ITC** = ₹ 532000 i.e. (350000+200000-18000) (ITC on outdoor catering disallowed under section 17(5) of CGST Act, 2017), and

**Adjusted total turnover** = 2800000 (as computed above in note 2)

⇒ Thus, **Maximum refund amount under rule 89(4)** = ₹ 532000 x ₹ 600000 / ₹ 2800000 = ₹ 1,14,000.

## 26 MISCELLANEOUS PROVISION

### Question 61

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?

- a) Which documents are covered under section 161?
- b) Who can rectify the errors apparent on the face of record?
- c) What type of mistakes or errors can be rectified?

### d) What is the time limit for rectification? [CA Final RTP Nov 22]

**Answer:-**

a) Following documents are covered under section 161:-

- ⇒ Decision
- ⇒ Order
- ⇒ Any notice
- ⇒ Certificate
- ⇒ Any other document

b) 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.

c) Errors or mistakes which are apparent on the face of record may be rectified. It is a settled law that a decision on a debatable point of law is not a mistake apparent from the record.

d) **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.

# Customs

## 01 Valuation

### Question 62

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:

I.	<b>Bill of entry</b>	Date 21.01.2018 Exchange rate on that day a) Notified by CBIC 1 UK - ₹ 101 b) Prescribed by RBI UK = ₹ 100
II.	<b>Entry inward</b>	Date 26.01.2018 Exchange rate on that day:- (a) Notified by CBEC 1 UK £ = ₹ 102 (b) prescribed by RBI 1 UK £ = ₹ 103

	Particulars	Amount UK
1	Cost of the machine at the factory of the exporter	20,000
2	Transporter charges from the factory of exporter to the port for shipment	600
3	Handling charges paid for loading the machine on the ship at the port of exportation	500
4	License fee relating to the imported goods payable by the importer as a condition of sale	900
5	Actual Freight charges from the port of export to the port of import are not ascertainable	-
6	Actual insurance charges paid	200

7	Landing charges paid at the place of importation are not ascertainable	-
8	Handling charges associated with the delivery of the imported goods at the place of importation	₹ 15,000

Compute the assessable value of the machine (in rupees) for the purpose of levy of Customs Duty.

**Answer:- Computation of assessable value of machine**

Particulars	Amount UK
Cost of the machine at the factory of the exporter	20,000
Add: License 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) License 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 license 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 CBIC on the date of presentation of bill of entry is to be considered for the purpose of conversion of assessable value into Indian currency.

