Chapter 20

Liability to pay Certain cases

INDEX

S.N.	Description	Pg.No.	No. Illus.
1	Sec 85 - Liability in case of transfer of Business	120	1
2	Sec 86 - Liability of agent and principal	120	1
3	Sec 87 - Liability in case of amalgamation or merger of companies	120	1
4	Sec 88 - Liability in case of company in liquidation	120	1
5	Sec 90 - Liability of partner of firm to pay tax	120	1
6	Sec 94 - Liability in other cases	121	2
7	Case Study		1
	Total No. of Illustrations		8

S.No.	Description	Chap. code	Concept and Problem code	No. Illus.
1	Study Mat	20	Q. 02.02/ 05.05	2
2	Examination	20	-	-
3	RTP & MTP	20	Q. 07.08	1
4	Other	20	Q. 01.01/ 03.03/04.04/06.06/06.07	5
	Total No. of Illust.			8

01. Sec 85 - Liability in case of transfer of Business

MCQ 20.01.01.00

Who shall be liable to pay the tax, interest or penalty with effect from the date of transfer of business?

a. Transferor
b. Transferee
c. Transferor and transferee jointly and severally
d. Either (a) or (b)

[Hint: Refer Sec 85]

02. Sec 86 - Liability of agent and principal

MCQ 20.02.02.00

Mohandas, a registered person, has supplied goods to Karamchand, under his own invoice, on behalf of his principal, Krishnadev, a registered person. Which of the following statements is correct? [Study Mat]

a) Mohandas shall be jointly and severally liable to pay the GST payable on such goods.
b) Krishnadev shall be jointly and severally liable to pay the GST payable on such goods.
c) Both (a) and (b)
d) Neither (a) nor (b)

[Hint:- Refer Sec 86 & Para 3 of Schedule I – Here, principal-agent relationship exists as invoice is issued by agent in his own name]

03. Sec 87 - Liability in case of amalgamation or merger of companies

MCQ 20.03.03.00

In case of amalgamation between two companies, such companies shall be treated as two distinct companies till–

a. Till the date of the Court order
b. Till the effective date of merger
c. Till the date of cancellation of registration
d. None of the above

[Hint: Refer Sec 87]

04. Sec 88 - Liability in case of company in liquidation

MCQ 20.04.04.00

Who shall be liable to pay the dues of tax, interest and penalty of the private company in case of its winding up whether before or after its liquidation?

a. Shareholders
b. Every person who is director at the time of winding up of the company shall jointly and severally be liable.
c. Every person who was director of the company at any time during the period, for which the tax was due, shall jointly and severally be liable.
d. Liquidator

[Hint: Refer Sec 88]

05. Sec 90 - Liability of partner of firm to pay tax

MCQ 20.05.05.00

Which of the following statements are true in case of retirement of a partner from the firm, under GST law? [Study Mat]

a. Retiring partner and not the firm shall intimate the date of his retirement to the Commissioner. Retiring partner shall be liable to pay tax, interest or penalty due up to the date of such intimation.
b. The firm and not the retiring partner shall intimate the date of retirement of such partner to the Commissioner. Retiring partner shall be liable to pay tax, interest or penalty due up to the date of such intimation.
c. Either retiring partner or the firm, shall intimate the date of retirement of such partner to the Commissioner. Retiring 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.
d. Either retiring partner or the firm, shall intimate the date of retirement of such partner to the Commissioner. Retiring partner shall be liable to pay tax, interest or penalty due up to the date of such intimation.

[Hint: Refer Sec 90]

06. Section 94 – Liability in other cases

MCQ 20.06.06.00

Who shall be liable to pay tax, interest or penalty in case of partition of HUF or AOP?

a. Only Karta or head of AOP

b. All the members of HUF/AOP at the time of partition are jointly & severally liable

c. Only major members

d. All members except Karta

[Hint: Refer Sec 94]

MCQ 20.06.07.00

In case of discontinuance of the AOP, the liability of the member exists in respect of the tax dues imposed_____

a. Prior to the date of discontinuance

b. After the date of discontinuance

c. Both prior and after the date of discontinuance

d. None of the above

[Hint: Refer Sec 94]

07. Case Study

MCQ 20.07.08.00

William & Sons (WS) is a partnership firm, registered under GST, engaged in manufacturing activity in the State of Rajasthan under GST and files return on a monthly basis. In the month of July, following transactions were undertaken by WS:

(a) Intra-State sale of goods worth ₹ 10,00,000. Out of such sale, ₹ 5,00,000 worth of goods were liable to GST at 28% and balance were liable to GST at 18%.

(b) Intra-State purchase of goods worth ₹ 10,00,000 which is liable to GST at 28%.

(c) WS intended to transfer the business as going concern to Morgan & Sons (MS) on 31st July. As per the terms of transfer, WS will transfer all the business assets worth ₹ 50,00,000 and all the liabilities valued at ₹ 20,00,000.

(d) WS, on account of such transfer, paid gift worth ₹ 50,000 to its 3 employees as a reward towards their services to the firm. During the month of September, MS received the notice from the GST Department for outstanding liability of GST for ₹ 5,00,000 pertaining to the period before transfer of business by WS. Such liability was determined after the transfer of business. For this purpose, assume that all the assets and liabilities were transferred by WS to MS.

The balance of input tax credit at the beginning of the relevant period for WS is nil. Further, subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled.

GST is applicable on all inward and outward supplies at the following rates unless otherwise specified: CGST – 9%, SGST – 9%, IGST – 18%

All the amounts given above are exclusive of GST, wherever applicable.

Based on the facts of the case scenario given above, choose the most appropriate answer to Q. Nos. 35.1 to 35.5 below:- [CA Final MTP April 23]

35.1 The gross GST liability (without set off of input tax credit) of WS for the month of July is ____.

(a) ₹2,32,000 (b) ₹ 2,80,000

(c) ₹25,000 (d) ₹2,30,000

[Hint:- Intra-state supply of goods `500000 * 18% + intra-state supply of goods `500000 * 28% = `230000]

35.2 Suppose there is no transfer of business to MS, what is the amount of input tax credit lying in input tax credit ledger, if any, which can be claimed as refund by WS for the month of July?

(a) ₹ 50,000 under inverted duty structure

(b) Nil since WS is making outward supply of 28% also, the balance credit shall be carried forward

(c) ₹ 23,000 under inverted duty structure

(d) ₹ 25,000 under inverted duty structure

(Hint:{10,00,000*28%}-{5,00,000*28%} + { 5,00,000 * 18%})

[Hint:- Amount available in E-credit ledger for July:-

Particulars	ITC (₹)
ITC Available on intra-state purchases of goods (1000000 * 28%)	280000
Less:- ITC utilised for making payment of outward supplies (as caculated in above question)	-230000
ITC available after set-off that can be claimed as refund	50.000

35.3 In case of transfer of business to MS, what is the amount of input tax credit which shall stand transferred to MS?

(a) ₹ 25,000 (b) ₹ 50,000

(c) Nil. In case of partnership firm input tax credit cannot be transferred on account of transfer of business.

(d) Nil as the value of liabilities is more than the value of assets.

[Hint:- Refer sec 18(3)- ITC which remains unutilised in e-credit ledger can be transferred. Amount is same as calculated in sub-question 2 above]

35.4 Who is liable to discharge the liability of ₹ 5,00,000 on account of notice received by MS in the month of September?

(a) MS, as the business is transferred by WS in July and notice was received in September

(b) WS, as the notice pertains to liability before transfer of business

(c) Liability on MS only up to the amount of input tax credit transferred by WS

(d) MS and WS shall be jointly and severally liable

[Hint:- Refer sec 85- Taxable person & person to whom business is transferred shall, jointly and severally, be liable, wholly or to extent of transfer, whether determined before transfer & remained unpaid or is determined later.]

35.5 Suppose WS transfers the business as a going concern and transfers all the assets and liabilities of such business for a lumpsum amount to MS, the transaction shall be:

(a) treated as taxable supply liable to GST under forward charge as WS is a registered person under GST.

(b) liable to GST in the hands of MS under reverse charge basis.

(c) exempted from GST.

(d) liable to GST only for assets on which input tax credit is availed.

[Hint:- Refer sl. No. 2- Services by way of transfer of a going concern, as a whole or an independent part thereof is exempt. Transfer of business for a lump sum, often referred to as slump sale, falls under this.]

Answers: :-

20.01.01	b
20.02.02	c
20.03.03	a
20.04.04	c
20.05.05	c
20.06.06	b
20.06.07	c

20.07.08.01	d
20.07.08.02	a
20.07.08.03	b
20.07.08.04	d
20.07.08.05	c